

## SCHEDULE A: Applications with Recommendation

17/0540

Item No: 01

Date of Committee: 15/09/2017

**Appn Ref No:**  
17/0540

**Applicant:**  
Citadel Estates Ltd

**Parish:**  
Wetheral

**Agent:**  
Sandy Johnston Architect

**Ward:**  
Wetheral

**Location:** Skelton Court, (formerly Skelton House), Wetheral, CA4 8JG

**Proposal:** Variation Of Condition 1 (Approved Documents) Of Previously Approved Permission 14/0472 To Retain A 2 No. Bed Apartment Within The Roof Space; Formation Of Rendered Plinth And Installation Of Glazed Screen In Lieu Of Glazing And Doors Already Installed; Reinstatement Of Ridge Line To That Already Approved Under Application Reference 14/0472; Formation Of Lift Housing Within The Roof Space; And Retention Of Reduced Flat Roof Area (Not For Any Associated Residential Amenity Space).

**Date of Receipt:**  
19/06/2017

**Statutory Expiry Date**  
14/08/2017

**26 Week Determination**

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### REPORT

**Case Officer:** Richard Maunsell

#### 1. Recommendation

- 1.1 It is recommended that this application is approved with planning conditions.

#### 2. Main Issues

- 2.1 Whether The Principle Of The Third Floor Flat Is Acceptable
- 2.2 The Scale, Layout And Design Of The Development And The Impact On The Heritage Assets
- 2.3 The Impact Of The Proposal On The Living Conditions Of Neighbouring Residents
- 2.4 Other Matters

#### 3. Application Details

**The Site**

- 3.1 This application seeks permission for the variation of a planning condition to retain the third floor flat, together with physical alterations to the building at Skelton Court, Wetheral. The application site is situated within the Wetheral Conservation Area and a Grade II Listed Property, known as Acorn Bank, is located immediately to the east of the site. The surroundings to the site are wholly residential with the exception of the agricultural land that lies beyond the northern boundary.

## Background

- 3.2 The site has been subject to a number of planning applications for Non-Material and Minor Material Amendments, the decisions of which are summarised in the Planning History. Some of these decisions have been the result of appeals to the Planning Inspectorate and the appeal decisions are reproduced following this report.
- 3.3 Members of the Development Control Committee considered an application on 2nd June 2017 for the variation of condition 1 (approved documents) of previously approved 14/0472 to retain the 2 bedroom flat within the roofspace; reduce the height of the lift housing to 0.3 metres above the roof; and raise the ridge on the east and north elevations to 1.8 metres above existing terrace floor level. Broadly, the revisions comprised:
- the retention of the third floor flat;
  - the reduction of the lift housing to 300 mm above the roof;
  - the alteration to the roof structure on the east and north elevations above the terrace.
- 3.4 The application was refused for the following reasons:

*“The combination of the accommodation within the roof space together with the associated alterations to the roof structure including the roof terrace do not respond to the local character and context of this prominent site within the Wetheral Conservation Area. The proposal is therefore contrary to paragraphs 58 and 138 of the National Planning Policy Framework (NPPF); criterion 1 and 4 of Policy SP6 (Securing Good Design), criteria 1 of Policy HO2 (Windfall Housing Development) and criterion 1, 2 and 3 of Policy HE7 (Conservation Areas) of the Carlisle District Local Plan 2015-2030.*

*The proposed building would be located adjacent to neighbouring residential properties. In this instance, by virtue of the roof top terrace, the development would result in overlooking and a significant loss of privacy to the occupiers of the neighbouring property. The roof terrace would have a brooding and oppressive effect on Acorn Bank and would contribute to making it a less pleasant place in which to live. The proposal is therefore contrary to criteria 7 of Policy SP6 (Securing Good Design) of the Carlisle District Local Plan 2015-2030 and the objectives of the Supplementary Planning Document “Achieving Well Designed Housing”.*

*To the east of the application site is Acorn Bank which is a 2 storey Grade II listed building. Due to the design and proximity of the alterations to the roof*

*structure including the roof top terrace, the development fails to preserve the character or setting of the adjacent listed building. The proposal is unsympathetic in scale and character and would adversely affect the appearance and setting of Acorn Bank, contrary to paragraph 133 of the National Planning Policy Framework (NPPF); and Policy HE3 (Listed Buildings) of the Carlisle District Local Plan 2015-2030.”*

- 3.5 This decision is currently the subject of an appeal to the Planning Inspectorate.

## **The Proposal**

- 3.6 The current proposal seeks permission for various alterations in response to previous planning decisions issued on the site. Broadly, the revisions comprise:
- the retention of the third floor flat within the roof space;
  - the formation of a rendered plinth and installation of a glazed screen in lieu of glazing and doors already installed;
  - the reinstatement of the ridge line to that approved under application reference 14/0472;
  - removal of external lift housing and installation of lift housing within the roof space;
  - the retention of the reduced external flat roof area.

## **4. Summary of Representations**

- 4.1 This application has been advertised by means of a site notice, a press notice and direct notification to the occupiers of 155 properties. In response, 52 letters of objection have been received and the main issues raised are summarised as follows:
1. after 17/0304 was rejected so decisively by the Development and Control Committee on 2nd June by arguments that were centred largely on observations from the latest Planning Inspectorate's Appeal Decision, 2 of the 3 principle elements of this new proposal have already been rejected by the Development and Control Committee. This application therefore has no justification in planning and should be rejected outright;
  2. the council and the Planning Inspectorate refused the third floor apartment and there is no justification or precedent for accepting amendments to alter something that has no planning permission in the first place. Therefore this application is irrelevant.
  3. on 25th August 2015 Citadel Estate applied for a revision of 14/0472 in the form of a Non-Material Amendment to gain approval for a "Revised roof-lighting and roof plan" which was refused by the council re-enforcing the position that the entire roof scape is without approval;
  4. linking 17/0540 to the previously approved 14/0472 especially in relation to seeking approval for a third floor apartment is really a manipulation of the conditions applied to this approval.
    - i. there is no floor plan relating to the Third Floor attached to this application.

- ii. there is no roof plan attached to this application so any references to dropped ridges are ambiguous and misleading as they mask the true purpose of doing this.
  - iii. there are 7 conditions attached to 14/0472 many of which relate to the impact of the neighbouring listed building Acorn Bank and the Conservation area. None of these conditions have been met in the construction of this apartment and therefore are in contravention of the approval.
  - iv. the Amended Block Plan attached to 14/0472 of the proportions of the Roof bear no resemblance to the as built.
  - v. the Planning Officer in his recommendations in his report attached to 14/0472 makes reference to the asymmetrical frontage of the building. Having these three elements was an attempt to break up the massing of the building. Looking at the north elevation these three distinct elements were clear, under 14/0472 to be reflected from the rear of the building. Comparison with the drawings attached to 17/0540 and clearly indicate that this asymmetrical appearance has been lost, and the layout of the as built roof is without approval.
  - vi. much of that which was approved under 14/0472 has been subsequently changed leaving little that relates to the original approval;
5. the developers solution of removing the sliding doors and replacing them with windows would be unacceptable. Taking into account the history of this development and the developer's ability to change things in a matter of months;
  6. the assumption that the roof terrace would suddenly become a "flat roof" is preposterous. 17/0304 was declined at the planning stage and taking into account the similarities 17/0540 as with the previous application and the total lack of recognition of the findings of the inspector and should be refused.
  7. Citadel Estates built this apartment at their risk. In doing so refusal of permission should have been part of the Risk Assessment before commencing this confrontational approach;
  8. there is no obligation to accept 17/0540 to go before the Development and Control Committee, the third floor apartment has been refused three times at committee and twice at appeal currently under section 70A of the Town and Country Planning Act. There has been no significant change to 17/0304 which was refused at committee on 2nd June, and the Developer has done little to address the concerns of the Planning Inspector's Decision Notice of 17th March;
  9. this apartment offers nothing beneficial to both the conservation area or to the setting of Acorn Bank. It fails to meet several policies of the Carlisle District Local Plan namely SP 6, HO 2, HE 3, and HE 7;
  10. if there is any doubt the application should be deferred pending the outcome of the latest appeal submitted to the Planning Inspectorate by Citadel Estates against the refusal of 17/0304;
  11. enough is enough and the Enforcement Notice should be activated;
  12. the plethora of skylights, roof lanterns etc. on the top of this building have no approval and are visible throughout the village and surrounding Conservation Area. The inspector made no mention of these in his report as they were not part of the enforcement notice, he was only dealing with

- items on that notice, i.e. the lift shaft housing;
  - 13. when reporting unauthorised work residents were repeatedly told that construction was at the developers own risk, it has subsequently turned out there was no risk. There is now a building that is almost 50% larger than first applied for - what need is there for a planning department. Apply for something befitting the space and receive approval, then through a series of amendments change it to what you want, with each and every amendment far out weighing the term "Minor Material Amendment";
  - 14. if an application was received for the development as it stands today it would be refused permission for not complying with NPPF.
  - 15. the council has a responsibility to ensure that buildings are completed in accordance with the relevant permissions;
  - 16. how can the development apply to amend something that doesn't have planning permission?;
  - 17. it is incorrect for the applicant to claim that the accommodation within the roof space is acceptable and beneficial in the public interest;
  - 18. the Inspector is clear that he was not satisfied that stipulating a requirement in perpetuity could be achieved by means of a condition.
- 4.2 Councillor Higgs has also objected that as with the previous application, the current proposal contravenes Policies SP6, HO2, HE3 and HE7. Members refused the previous application which has been appealed and any decision should be deferred until the appeal has been decided.
- 4.3 The matters raised by the objectors raise a number of planning issues together with other topics which include criticism of the developer, planning process and the manner in which matters appertaining to the site have been handled by Council officers. Members will be aware that these non-planning matters are out with the remit in the consideration of this application which should be assessed and determined on its planning merits.
- 4.4 In response to amended details which clarifies the ridge height of the proposed amended roof structure to be the same as that approved under application 14/0472 together with the removal of the external roof structure, a further 12 letters of objection have been received and the main issues raised are summarised as follows:
- 1. the poor quality submission once again demonstrates the total lack of regard in which Citadel Estates hold the planning process in Carlisle;
  - 2. no roof plan is available to make a proper assessment;
  - 3. there is no approval at all for the roof lights and roof lanterns;
  - 4. the additional plans and their apparent intention to remove the lift housing fundamentally changed the original application and therefore 17/0540 should be declined. A new application should then be submitted. This is especially relevant in this case as so much contained under 17/0540 has already been refused by the Development and Control Committee under 17/0304;
  - 5. the decision of 17/0304 is crucial in determining the outcome of 17/0540 as most of the elements to be considered in 17/0304 form the majority of the new application and any decision under 17/0540 should be put on

- hold until after the decision of the Planning Inspectorate is known;
6. it seems impractical that this application is being considered as it fails to address any of the elements raised by last decision notice by the Planning Inspector of 17th March 2017 in relation to the roof. It is wrong that Citadel Estates are able to cherry pick the elements of the appeal decision that are favourable to their case and totally ignore those elements that do not;
  7. the similarities of these applications call into question the status of this application under the Town and Country Planning Act Section 70A which has been raised on several occasions with the council but a satisfactory reply has yet to be received;
  8. this application is descending into farce and it is time that the process is slowed down and as planners you take control of the situation and manage this development to a satisfactory conclusion;
  9. Wetheral residents are concerned that our village is threatened with becoming a "retirement village". Carlisle City Planning Department suffers myopic views that do not include the wider implications where the Government's recent legislation gives guidance for developing sustainable communities;
  10. in recent years new estates built in the village are predominantly two bedroom houses and apartments'. In addition to the Skelton Court proposed development there are plans for some 124 additional houses to be built in our village, the majority of which are to have only 2 bedrooms.
  11. United Utilities provide the village potable water, foul and surface water disposal and manage a water treatment facility which is at capacity resulting in localised flooding;
  12. there is no Pedestrian Traffic Plan associated with the Skelton Court proposed development.

## **5. Summary of Consultation Responses**

Wetheral Parish Council: - the following response has been received:

1. This retrospective application for a penthouse apartment has already been refused by the development control committee and upheld by a government inspector;
2. Para 51 "As regards the third floor flat, I see no reason to take issue with the principle of providing additional living accommodation within the roof space of Skelton Court. However, the physical consequences of the particular scheme in question are such that they render it unacceptable. Not only would the living conditions of the neighbours be harmed as a result of the Creation of the Roof Terrace, but also the alterations of the roof profile of the build would tend to detract from both the character and appearance of the Conservation Area and the setting of Acorn Bank. As such I consider this part of the scheme would be Contrary to the Carlisle District Plan Policies SP6, HO2, HE3, and HE7."

Nothing has changed with the latest application therefore it remains unacceptable and should be refused;

Historic England - North West Office: - on the basis of the information

available to date, Historic England do not wish to offer any comments but suggest that the views of the council's specialist conservation and archaeological advisers, as relevant are sought.

## **6. Officer's Report**

### **Assessment**

- 6.1 Section 54a of the Town and Country Planning Act 1990/ Section 38(6) of the Planning and Compulsory Purchase Act 2004, requires that an application for planning permission is determined in accordance with the provisions of the Development Plan unless material considerations indicate otherwise.
- 6.2 In following the Planning Inspector's decisions, relating to earlier proposals on the site, the relevant planning policies against which the application is required to be assessed are the National Planning Policy Framework (NPPF) and Policies SP6, HO2, HE3 and HE7 of the Carlisle District Local Plan 2015-2030. The council's Supplementary Planning Document on "Achieving Well Design Housing" is also a material planning consideration.
- 6.3 The requirements of the public sector equality duty under Section 149 of the Equality Act 2010 is also a material consideration. Section 149(1) of the Equality Act 2010 establishes a duty to have due regard to three identified needs in the delivery of public services and the exercise of public powers, namely:
- a) to eliminate discrimination, harassment, victimisation etc;
  - b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
  - c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 6.4 The relevant protected characteristics include age, gender, disability and race.
- 6.5 The proposal raises the following planning issues.

#### **1. Whether The Principle Of The Third Floor Flat Is Acceptable**

- 6.6 The application site lies within the settlement boundary of Wetheral. In determining the appeal the Inspector made particular reference to the third floor flat, commenting in paragraph 51 that:

*"As regards the third floor flat, I see no reason to take issue with the principle of providing additional living accommodation within the roof space of 'Skelton Court'. However, the physical consequences of the particular scheme in question are such that they render it unacceptable. Not only would the living conditions of the neighbours be harmed as a result of the creation of the roof terrace, but also the alterations to the roof profile of the building would tend to detract from both the character and appearance of the conservation area and the setting of 'Acorn Bank'. As such I consider this part of the scheme would be contrary to CDLP Policies SP 6, HO 2, HE 3, and HE 7."*

- 6.7 The Inspector did not take issue with the principle of an additional residential unit within the building, moreover the works associated within this aspect of the development; the planning implications of the revisions to the building linked to the retention of this flat are discussed later in this report.
- 6.8 As such the principle of residential development is acceptable, subject to compliance with the criteria identified in Policy HO2 and other relevant policies contained within the local plan.
- 6.9 Some of the correspondence received challenges the description of this application insofar as it refers to the “retention” of the third floor flat. It is questioned how the application can be for the retention of the flat when the application is for the variation of a planning permission that included no detail of the flat and which has never been granted planning permission.
- 6.10 This is considered to be a point of procedure. It is accepted that the flat has not previously been granted planning permission and does not relate to any drawings considered under the application reference stated. The fact that the application is part retrospective and that the flat has been formed means that the application seeks to retain the flat which he has formed and the drawings submitted are explicit in terms of the scale and nature of the changes for which planning permission is sought.

## **2. The Scale, Layout And Design Of The Development And The Impact On The Heritage Assets**

- 6.11 The Parish Council together with residents have objected to the scheme on the basis nothing has changed since the proposal was determined by the Planning Inspectorate. These comments refer to the initial submission which included the retention of the external lift housing (albeit at a reduced height) and not to the currently revised scheme.

### **2a. Impact On The Heritage Asset – Listed Building**

- 6.12 When considering the impact on the neighbouring Listed Building Section 66 (1) of the Planning (Listed Building and Conservation Areas) Act 1990 highlights the statutory duties of Local Planning Authorities whilst exercising of their powers in respect of listed buildings. The aforementioned section states that:

*"In considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses".*

- 6.13 Members, therefore, must give considerable importance and weight to the desirability of preserving the listed buildings within the immediate vicinity and their setting(s) when assessing this application. If the harm is found to be less than substantial, then any assessment should not ignore the overarching



statutory duty imposed by section 66(1).

- 6.14 Paragraph 133 of the NPPF states that Local Planning Authorities should refuse consent for any development which would lead to substantial harm to or total loss of significance of designated heritage assets. However, in paragraph 134, the NPPF goes on to say that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use.
- 6.15 Planning Practice Guidance (March, 2014) explains that, in relation to assessing harm, such a judgement is for the decision taker having regard to the circumstances of the case and the policy in the NPPF. In general terms it is the degree of harm to the asset's significance rather than the scale of the development that needs to be assessed. The harm may arise from works to the asset or from development within its setting.
- 6.16 Policy HE3 also indicates that new development which adversely affects a listed building or its setting will not be permitted.
- 6.17 English Heritage has produced a document entitled 'The Setting of Heritage Assets' (TSHA) which, although out-of-date, still includes useful advice and case studies. The TSHA document provides a definition of the setting of a heritage asset as *"the surroundings in which [the asset] is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive and negative contribution to the significance of an asset, may affect the ability to appreciate that significance or may be neutral"*.
- 6.18 In this case, the neighbouring grade II Listed Building is Acorn Bank. Based on the foregoing it is considered that Members need to have cognizance of: a) the significance of the respective listed building and the contribution made to that significance by their setting; and then assess b) the effect of the proposal on their setting (inclusive of their significance and on the appreciation of that significance).
- 6.19 In the case of the former, the more significant the heritage asset, the greater should be the presumption in favour of its conservation. For the latter, different elements of a setting make different contributions to a building's significance as a heritage asset, namely: it's immediate context; the area that can be seen from the building; and the street scene in which the building is set.
- 6.20 Grade II listed buildings are nationally important and of special interest. The listing record indicates that Acorn Bank probably dates from the early nineteenth century and comprises a house with red sandstone and stucco walls, graduated slate roof with timber sash windows.
- 6.21 The increased roof height above the terrace would be of the same character and appearance as the approved roof structure, permitted under application 14/0472 and the external lift housing structure would be removed in its entirety.

- 6.22 In this context it is considered that the proposal (in terms of its location/ physical separation, scale/ massing, materials and overall design) would not be detrimental to the immediate context or outlook of the aforementioned listed building.

#### 2b. Impact On The Heritage Asset – Wetheral Conservation Area

- 6.23 The application site is located within the Wetheral Conservation Area and Section 72 of the Planning (Listed Building and Conservation Areas) Act 1990, the NPPF, PPG and Policy HE7 of the local plan are the relevant material considerations
- 6.24 Section 72 of the Planning (Listed Building and Conservation Areas) Act 1990 highlights the statutory duties of local planning authorities whilst exercising of their powers in respect to any buildings or land in a conservation area. The aforementioned section states that:

*"special attention shall be paid to the desirability or preserving or enhancing the character or appearance of that area".*

- 6.25 The aim of the 1990 Act is reiterated in the NPPF, PPG and policies within both the local plan. Policy HE7 of the local plan advises that proposals should preserve or enhance their character and appearance, protecting important views into and out of conservation areas. The typical matters of design include use, scale, height, massing, alignment, detailing, and materials.
- 6.26 An assessment on the impact of the proposal on the street scene in which the listed building is set, ties in with the wider appraisal of such on the Wetheral Conservation Area.
- 6.27 The application site occupies a prominent location within the street scene and is viewed in the context of Acorn Bank with views as the road rises up when approaching from the centre of the village and from Scotby in the opposite direction. In overall terms it is considered that locality has been largely retained albeit with the use of some modern materials, however, the underlying character and appearance of the more traditional buildings has been retained.
- 6.28 The Conservation Area Advisory Committee commented on the previous application (reference 17/0304) that:
- *"it is difficult to assess the visibility of the lift housing, if it remains visible it will remain incongruous and therefore could a different treatment to the roof of the lift housing (i.e. pitched roof) be used to make it better blend in with the existing roofscape;*
  - *if the reduction in lift housing means that it is no longer visible then no comments are made;*
  - *the increase of the ridge lines along the terraced area appear to remove the opportunity for overlooking."*

6.29 The alteration to the roof slope adjacent to the current terraced area facing Acorn Bank would be the same when viewed from out with the site as that approved under application reference 14/0472. In this context, given that the form and materials would match the existing building, it could not be reasonably argued that alterations to the roof structure would adversely affect the character or appearance of the conservation area.

6.30 In respect of the lift housing, the Inspector notes in paragraph 28 that:

*“The essentially functional rectilinear form of the lift housing does not sit at all comfortably with the pitched roof and gabled features of the main body of ‘Skelton Court’. The lift housing appears as a rather utilitarian box-like and inharmonious addition to the building. In my view it is a visually incongruous feature, poorly related to, and out of keeping with, both the form of the host building and that of the neighbouring listed property, ‘Acorn Bank’.”*

6.31 In paragraph 30 his commentary continues:

*“Compared to the size of ‘Skelton Court’, the scale of the lift housing is fairly modest and only parts of it tend to be visible. Nevertheless, due to its markedly incongruous form and appearance, as a matter of fact and degree, it is a feature that materially affects the external appearance of the building as a whole.”*

6.32 The lift housing is located to the rear of the majority of the roof structures when viewed from the front of the site. The Inspector’s comments are based on the height of the lift housing in its present form, being approximately 0.9 metres from the roof on which it is positioned. The Inspector notes that there are viewpoints from *“the southern part of Jennet Croft, from the rear garden of ‘Acorn Bank’ and, more distantly, from Plains Road to the north.”* He continues that *“in all probability it would also be visible from the rear of some of the properties in the western part of Hall Moor Court, from parts of the garden of ‘Jasmine Cottage’, and from the first floor windows of the pair of houses on the eastern corner of the junction of Jennet Croft and Scotby Road.”*

6.33 The latter part of this assessment is the Inspector’s opinion based on judgement rather than any evidence gained from the site visit. It is apparent from the report that although there are some viewpoints of the structure out with the site, these are limited in number. The Inspector accepts that its visual impact is a “matter of fact and degree” and in making his decision, decided that the visual impact is detrimental to the character of the area.

6.34 The current proposal seeks to remove external structure that accommodates the lift housing and the lift mechanism would be installed within the roof space which would overcome any concerns regarding its visual impact and address the previous reasons for refusal and the assessment made by the Planning Inspector in his decision. On this basis, the proposal would not have a detrimental impact on the character or appearance of the conservation area to warrant a refusal of the application.

- 6.35 Notwithstanding the objections raised, the revised proposals are acceptable in relation to the site and do not detract from the character and appearance of the conservation area.

### **3. The Impact Of The Proposal On The Living Conditions Of Neighbouring Residents**

- 6.36 There are properties on the opposite side of the road in Jennet Croft that face the application site. Acorn Bank to the west of the site has no openings in the side elevation of the dwelling, albeit the roof to the single storey rear projection of Acorn Bank is glazed.

- 6.37 In respect of the scheme, the roof terrace has the greatest potential to affect the occupiers of neighbouring properties and this is confined to the occupiers of Acorn Barn. The application that was considered at appeal, proposed planters along the edge of the terrace with a hedgerow to prohibit any overlooking. In respect of the terrace, he noted that:

*“There are no windows on the west elevation of ‘Acorn Bank’, but the house has a single storey rear extension on top of which is a large glazed rooflight feature. As the photographs submitted by the neighbours illustrate, it is possible to look down into both the extension and the garden of ‘Acorn Bank’ from the roof terrace. Likewise, having had the opportunity to see the appeal site from inside ‘Acorn Bank’s extension and from its garden, the parapet wall on the edge of the roof terrace is clearly visible from both.”*

- 6.38 The Inspector concurred with the council's reason for refusal and commented that:

*“In light of the foregoing, my view is that the presence of the roof terrace in its current form and extent would have unacceptable adverse consequences for the living conditions of neighbours. I do not consider there are any other conditions that would overcome my concern in this respect.”*

- 6.39 The application now before Members includes the continuation of the roof slope above the terrace resulting in a physical structure that is more robust and substantial than the landscaping previously proposed. The structure, at this height and position on the building, would be 1.8 metres above the level of the terrace. In this context, the neighbouring property would not be visible from the terrace.

- 6.40 The applicant further proposes that the glazing and doors leading from the flat and allowing access onto the external terraced area are to be removed and replaced with the rendered plinth and glazed non-opening screen. The result would be that this would prohibit access to the external area that would revert to an external flat roof.

- 6.41 Subject to the imposition of a condition requiring the altered roof structure and installation of the glazed screen to be completed within a given period of time, together with the retention of the glazed screen in perpetuity, it is not

considered that the living conditions of the occupiers of neighbouring properties would be adversely affected by this development through overlooking or loss of privacy or through the perception of such.

#### **4. Other Matters**

6.42 Some of the objectors make reference to the roof lights and lanterns on the building. In determining the planning and enforcement appeal, the Planning Inspectors had the authority to amend the enforcement notice, as he did with other elements of the proposal.

6.43 Reference is made to the fact that the council should refuse to deal with the application under Section 70A of The Town and Country Planning Act 1990. Fundamentally, this section allows a local authority to refuse to determine a planning application on the fulfilment of certain conditions.

6.44 Paragraph: 056 Reference ID: 14-056-20140306 of the Planning Practice Guidance states:

*“An application can be made for a development which has already been refused. However local planning authorities have the power to decline an application for planning permission which is similar to an application that, within the last 2 years, has been dismissed by the Secretary of State on appeal or refused following call-in. A local planning authority may also decline to determine an application for planning permission if it has refused more than one similar application within the last 2 years and there has been no appeal to the Secretary of State. In declining to determine an application, a local planning authority must be of the view that there has been no significant change in the development plan (so far as relevant to the application) and any other material considerations since the similar application was refused, or dismissed on appeal.”*

6.45 Officers have considered the implications of s70A of the act and given the reasons for refusal together with the proposed changes, the council can legitimately determine the application.

#### **Conclusion**

6.46 In overall terms, the principle of the proposed redevelopment of an additional flat within the roof space is acceptable. The physical alterations to the roof structure adjacent to the terrace would address the concerns raised by the objectors and previously outlined by Members and the Planning Inspector in terms of overlooking and loss of privacy together with the perception of it being an overbearing feature.

6.47 The impact of the building on the character and appearance of the conservation area would not be significantly different from the approved scheme. On the basis of the approved scheme together with the amendments proposed, the proposal is acceptable and would not have a detrimental impact on the character of the conservation area or the adjacent listed building.

- 6.48 In all aspects, the currently proposed development addresses the reasons for refusal given for previous planning applications and adequately addressed the concerns and decision issued by the Planning Inspectorate. The proposal is compliant with both local and national planning policies and in this respect, is therefore recommended for approval.

## **7. Planning History**

- 7.1 In 2011, conservation area consent was granted for the demolition of house, adjoining barn and outbuildings.
- 7.2 Planning permission was granted in 2012 for the demolition of the house, adjoining barn and outbuildings; redevelopment of site for the erection of single block comprising 15 two bedroom apartments with dedicated access, off-street parking and private amenity spaces.
- 7.3 Planning permission was refused in 2013 for the variation of condition 2 (approved documents) of previously approved permission 10/1066.
- 7.4 A Temporary Stop Notice was served on 14th January 2014 which required the cessation of any works on the land involved in the construction of the apartment blocks, access works, off street parking and private amenity areas subject to planning permission no. 10/1066 or any other works which do not have the benefit of planning permission.
- 7.5 Two planning applications were refused separately in 2014 and 2015 for the variation of condition 2 (approved documents) of previously approved permission 10/1066. Appeals to the Planning Inspectorate against these decisions to refuse the planning applications were dismissed in 2015.
- 7.6 Planning permission was granted for a revised application in 2015 for the variation of condition 2 (approved documents) of the previously approved permission 10/1066.
- 7.7 In 2015, an application for a non-material amendment was approved for changes to the approved scheme 14/0472.
- 7.8 Later in 2015, a further application for additional non-material amendments was refused.
- 7.9 In 2016, a partly retrospective application for planning permission was refused for an additional 2 flats with associated external works to the building and grounds (including revised landscaping and parking layout) (application reference 15/0920).
- 7.10 An Enforcement Notice was served on 6th May 2016 for the unauthorised works on the site.
- 7.11 In 2016, 3 separate applications were refused for:

- retrospective planning permission for the subdivision of the second floor layout to create an addition apartment (application reference 16/0316);
- retrospective planning permission for the revised landscaping and parking layout (application reference 16/0317);
- the retention of uPVC windows (application reference 16/0319).

7.12 The applications refused under applications 15/0920, 16/0316, 16/0317 and 16/0319 together with the Enforcement Notice were subject of an appeal that was partially allowed by the Planning Inspectorate.

7.13 An application for planning permission was refused earlier this year for the variation of condition 1 (approved documents) of previously approved 14/0472 to retain the 2no. bedroom flat within the roofspace; reduce the height of the lift housing to 0.3 metres above the roof; and raise the ridge on the east and north elevations to 1.8 metres above existing terrace floor level.

## 8. Recommendation: Grant Permission

1. The development shall be undertaken in strict accordance with the approved documents for this Planning Permission which comprise:

1. the Planning Application Form received 14th June 2017;
2. the As Existing North Elevation received 1st September 2017 (Drawing no. 07E);
3. the As Existing East Elevation received 1st September 2017 (Drawing no. 08E);
4. the As Existing West Elevation received 1st September 2017 (Drawing no. 09D);
5. the Third Floor Plan received 1st September 2017 (Drawing no. 03/2010/211B);
6. the As Existing Roof Plan received 1st September 2017 (Drawing no. 03/2010/212);
7. the As Proposed North Elevation received 1st September 2017 (Drawing no. 07F);
8. the As Proposed East Elevation received 1st September 2017 (Drawing no. 08F);
9. the As Proposed West Elevation received 1st September 2017 (Drawing no. 09E);
10. the As Proposed Third Floor Roof Plan received 24th August 2017 (Drawing no. 03/2010/211E);
11. the As Proposed Roof Plan received 1st September 2017 (Drawing no. 03/2010/212C);
12. the Amended Supporting Statement received 4th September 2017;
13. the Notice of Decision;
14. any such variation as may subsequently be approved in writing by the local planning authority.

**Reason:** To define the permission.

2. The alterations to the lift housing, the roof structure over the third floor

terrace together with the installation of the glazed screen shall be commenced within 1 month from the date of this approval and the local planning authority notified in writing. Within 2 months from the date of the commencement, the works required by this condition shall be completed in their entirety.

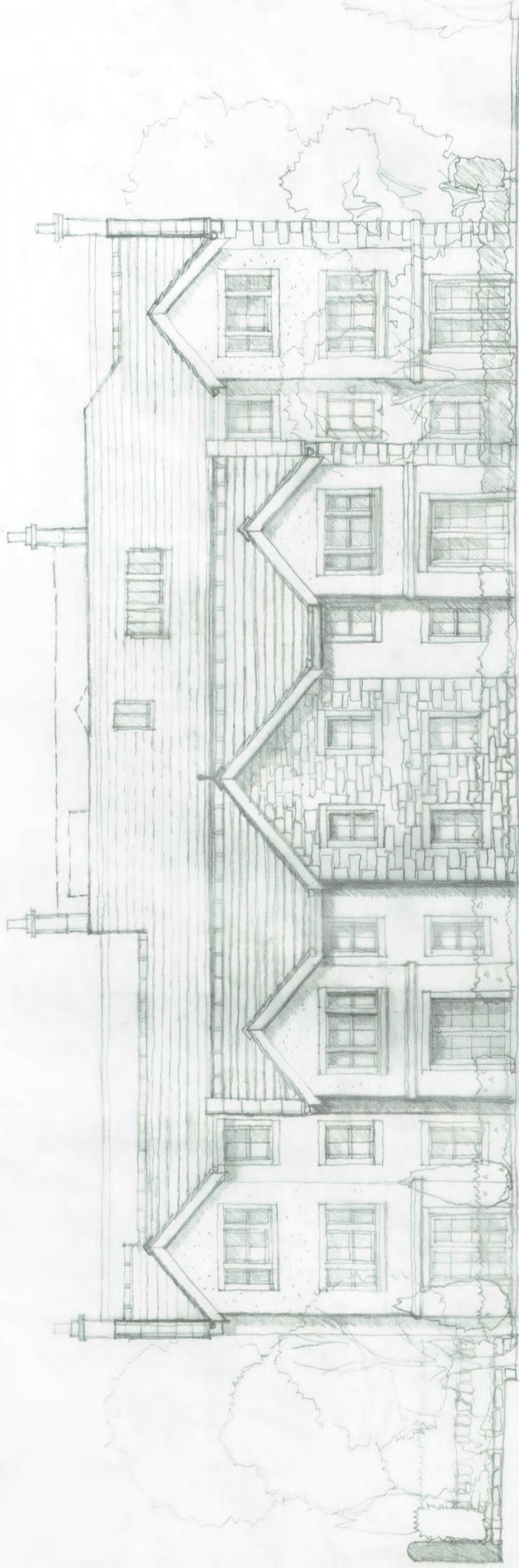
**Reason:** In the interests of the character and appearance of the area and the residential amenity of the occupiers of neighbouring properties in accordance with Policies HE7 and SP6 of the Carlisle District Local Plan 2015-2030.

3. The rendered plinth and glazed screen separating the third floor accommodation from the external area shall be undertaken in accordance with the requirements of condition 2 of this permission and shall remain in situ without any modification in perpetuity unless otherwise agreed in writing by the local planning authority.

**Reason:** In the interests of the character and appearance of the area and the residential amenity of the occupiers of neighbouring properties in accordance with Policy SP6 of the Carlisle District Local Plan 2015-2030.

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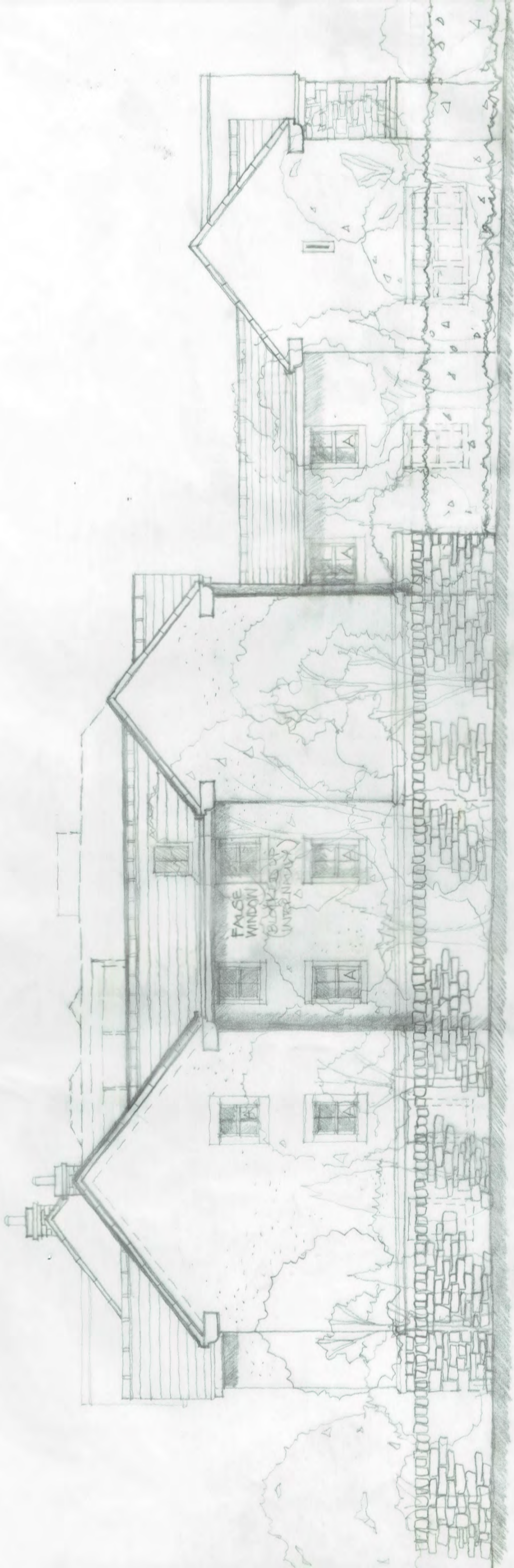




AS EXISTING NORTH ELEVATION  
(REAR)

CITADEL ESTATES Ltd		AS EXISTING NORTH ELEVATION	
FLATS AT SKELTON HOUSE, WETHERAL for CITADEL ESTATES Ltd		22-12-2014	
REV E:		04-12-15	07E
		1:100	rooflights and lift shaft indicated



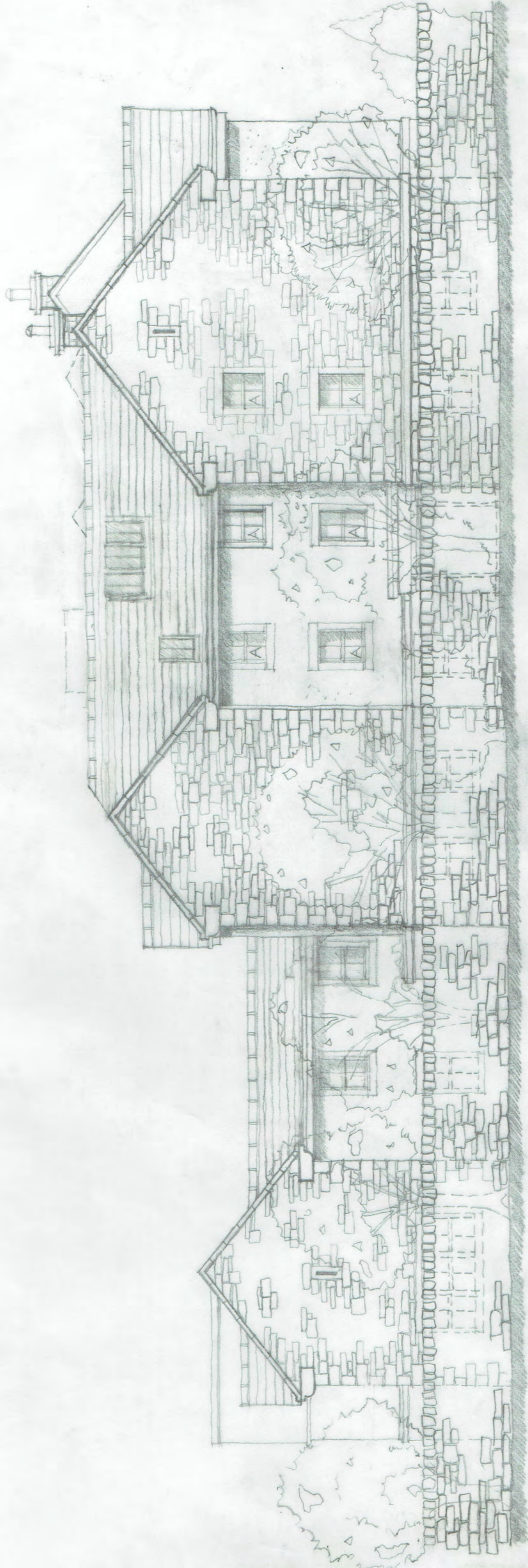


AS EXISTING EASTERN  
ELEVATION

AS EXISTING EAST ELEVATION			
CITADEL ESTATES LTD			
FLATS AT SKELTON HOUSE, WETHERAL FOR CITADEL ESTATES LTD			
DATE: 22-12-14	08E	SCALE 1:100	
REV E	04-12-15	dummy window note	

WINDOWS MARKED 'A' TO HAVE THE BOTTOM PANES  
IN OBSCURE GLASS TO BE RETAINED IN  
PERPETUITY UNLESS OTHERWISE AGREED BY  
THE LPA





AS EXISTING WEST ELEVATION

CITADEL  
ESTATES Ltd

AS EXISTING WEST ELEVATION

FLATS AT SKELTON HOUSE, WETHERAL for  
CITADEL ESTATES

22-12-2014

Revision **D**

12-05-15

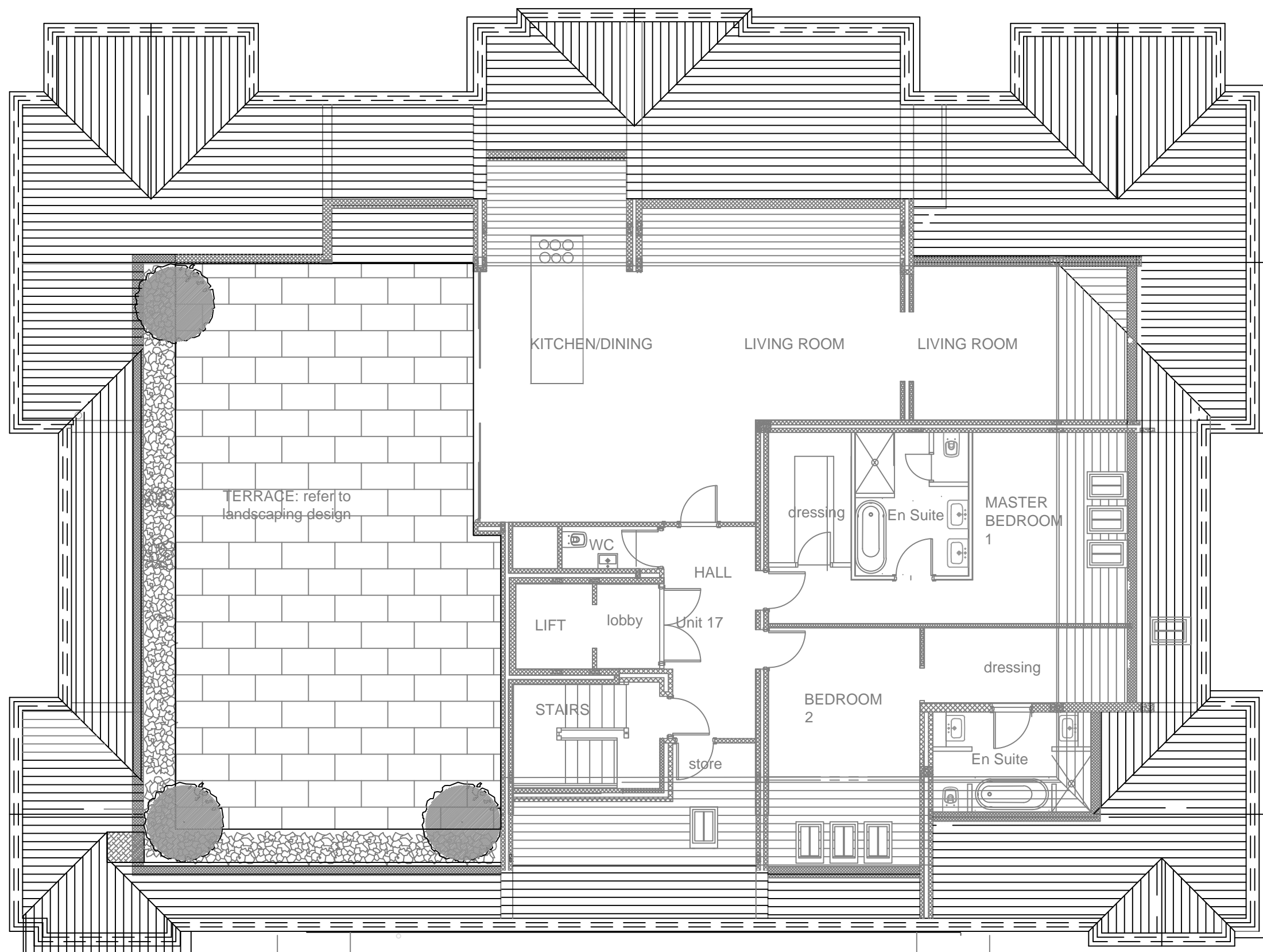
window

1:100

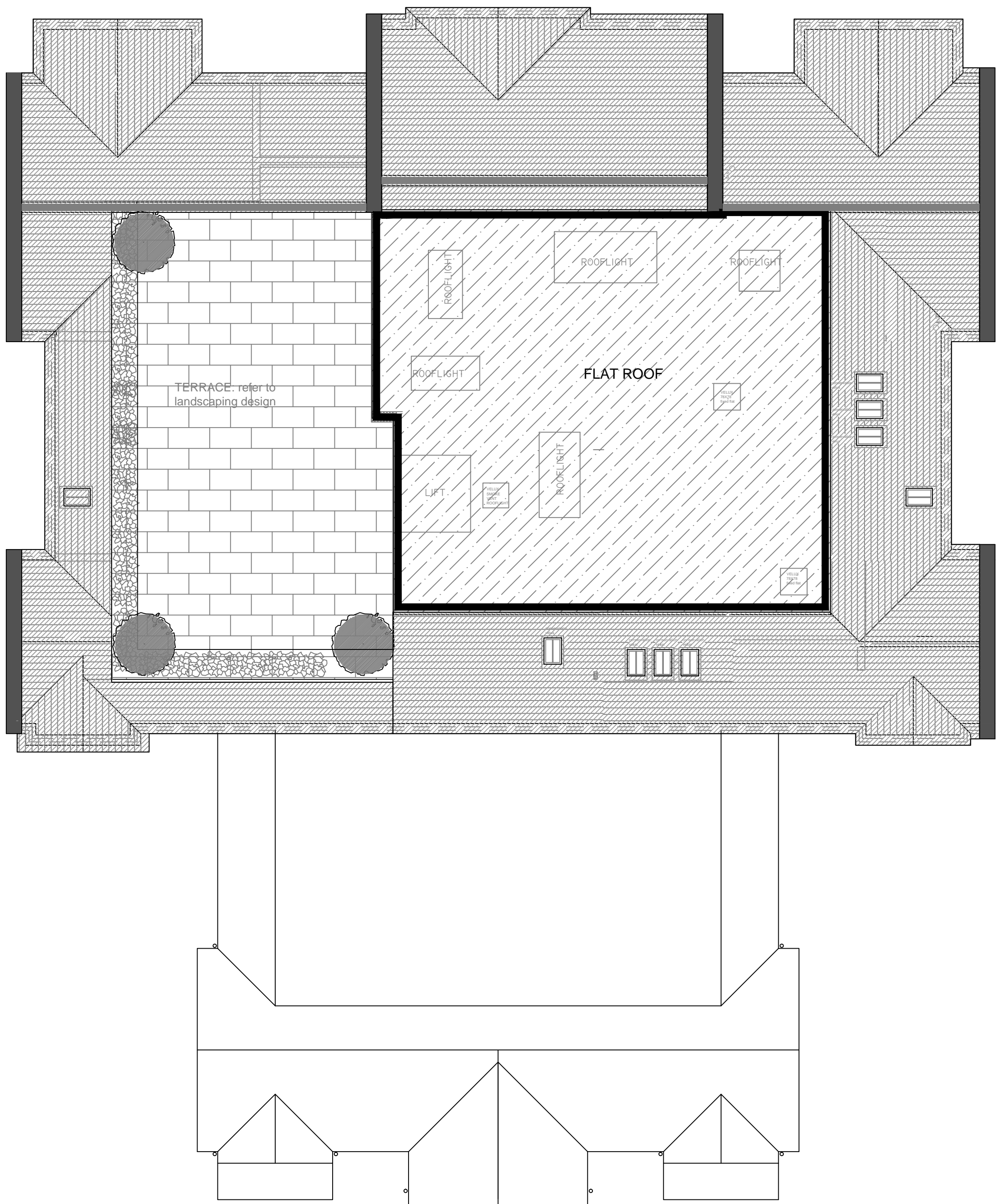
alterations

WINDOWS MARKED 'A' TO HAVE THE BOTTOM PANES  
IN OBSCURE GLASS TO BE RETAINED IN  
PERPETUITY UNLESS OTHERWISE AGREED BY  
THE LPA

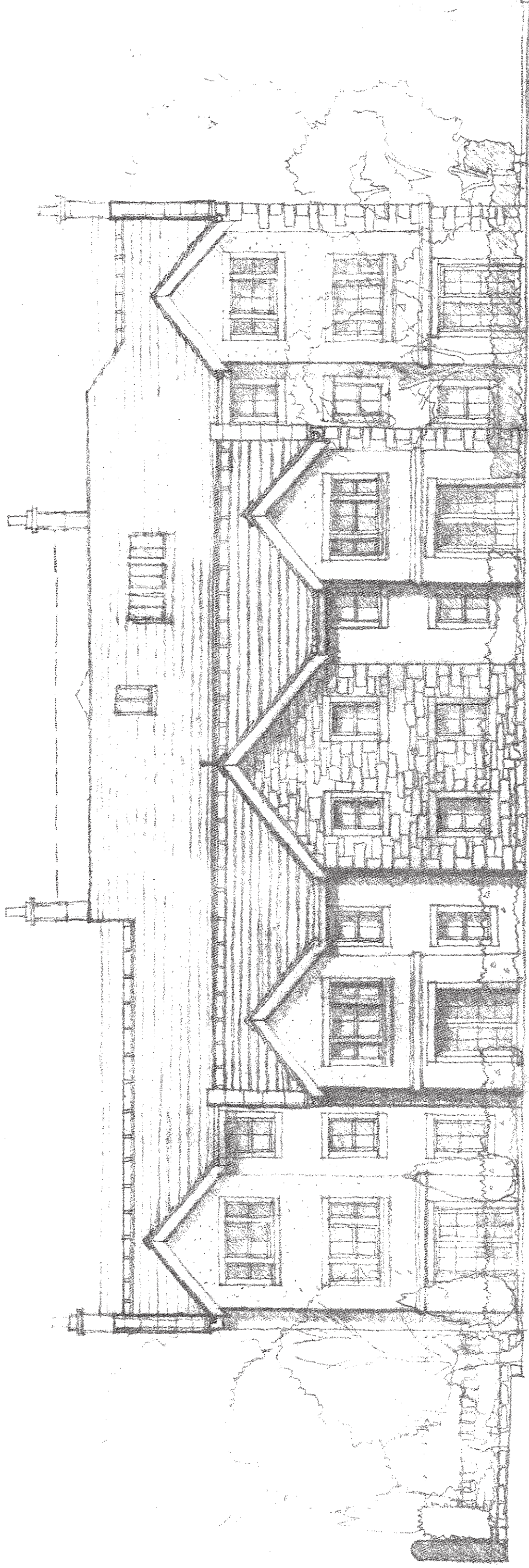




AS EXISTING THIRD FLOOR PLAN



AS EXISTING ROOF PLAN 1:100



AS PROPOSED NORTH  
ELEVATION

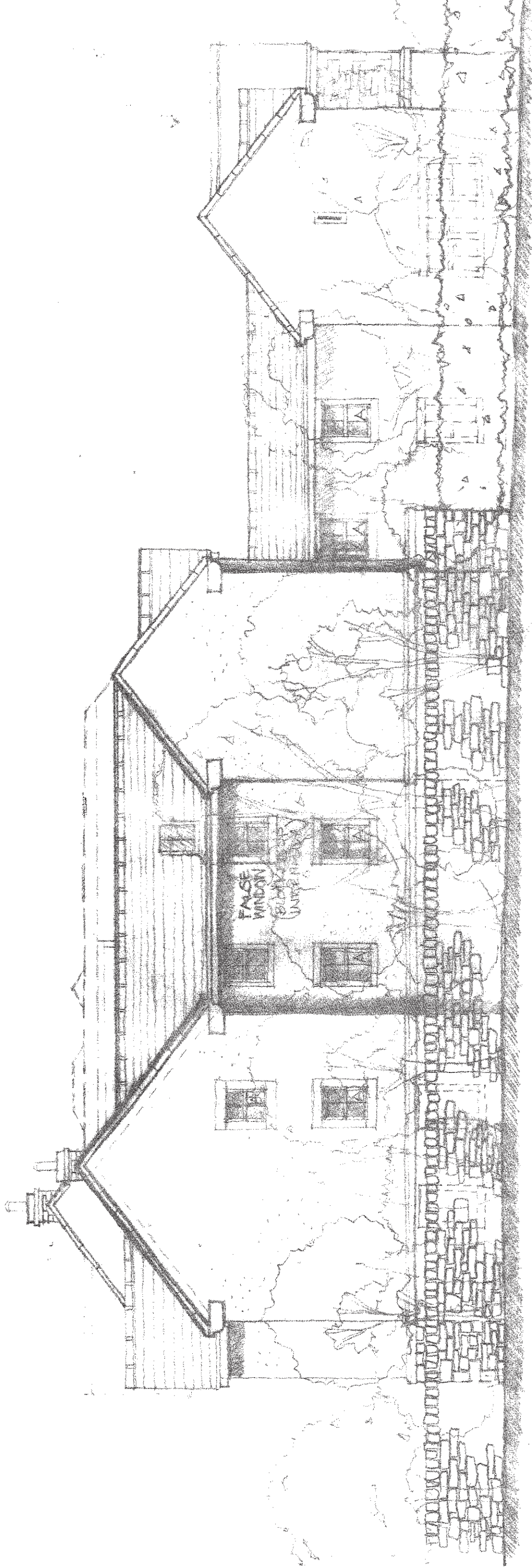
SANDY JOHNSTON  
ARCHITECT  
RIBA

AS PROPOSED NORTH ELEVATION

Retention of apartment within existing Attic, Skelton  
House, Wetheral for Citadel Estates

MARCH 2017 03/2010/07 F 1:100  
24-03-17 Roof alterations to raise ridges around terrace



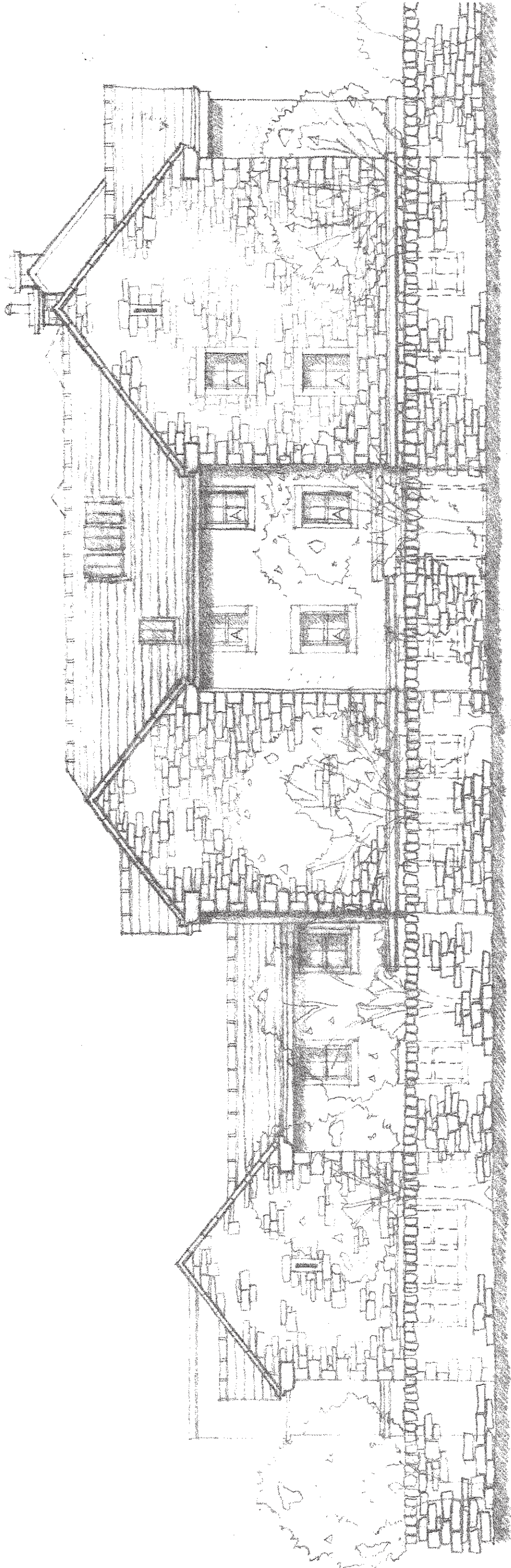


AS PROPOSED EAST ELEVATION

AS PROPOSED EAST ELEVATION	
SANDY JOHNSTON ARCHITECT RIBA	
Retention of apartment within existing Attic, Skelton House, Wetheral for Citadel Estates	
MARCH 2017	03/2010/08F
24-03-17	Roof alterations to raise ridges around terrace

WINDOWS MARKED 'A' TO HAVE THE BOTTOM PANES  
IN OBSCURE GLASS TO BE REPLACED BY  
REPTON UNILUX CURVEFACE AGOOD BY  
THE RIBA

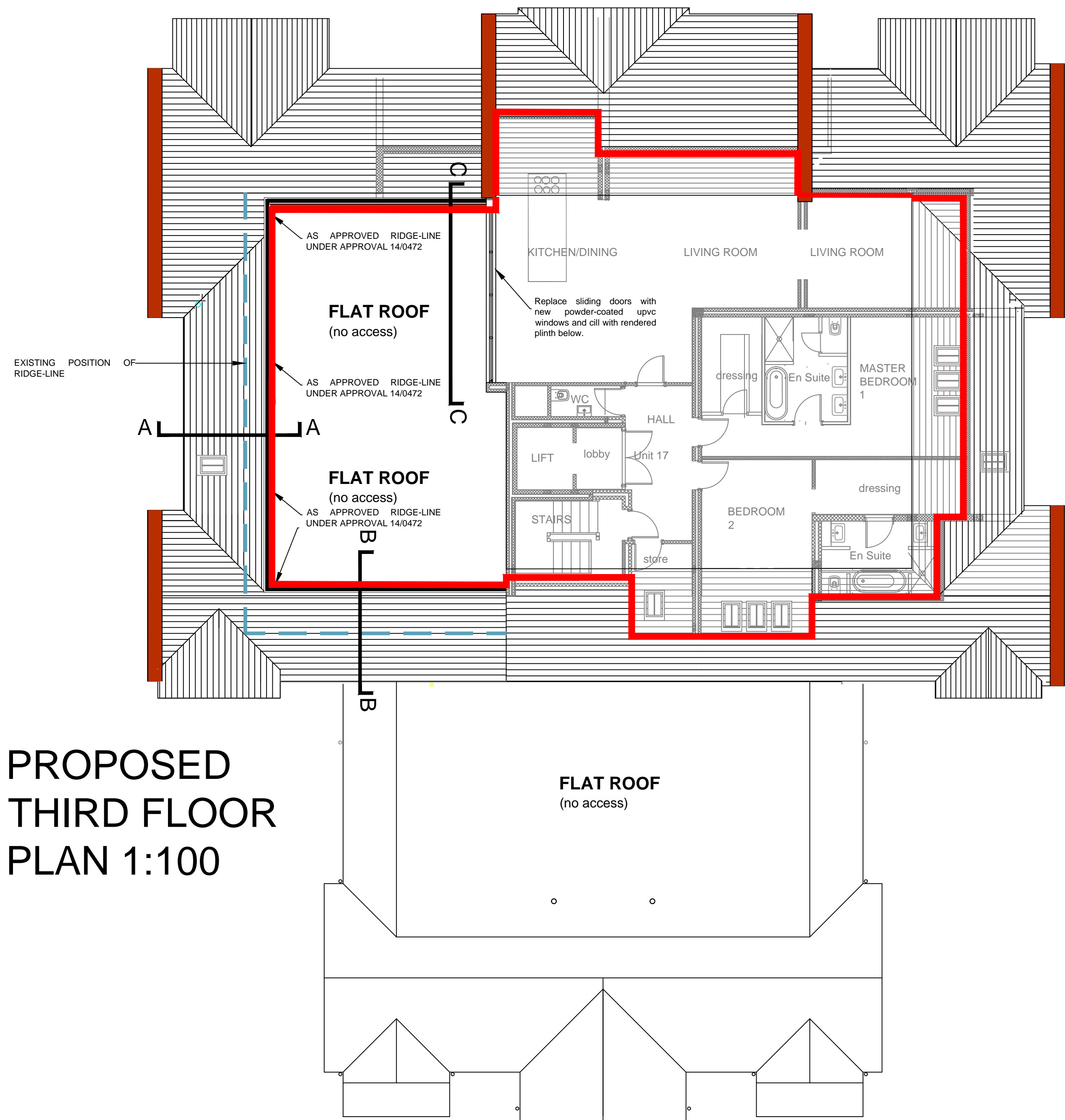




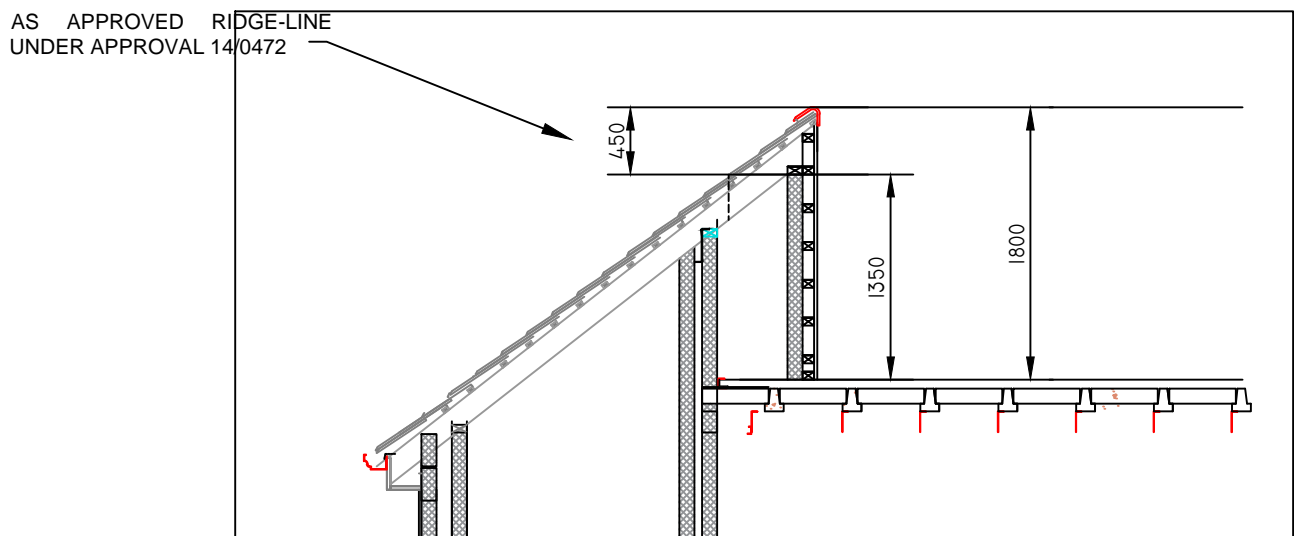
AS PROPOSED WEST  
ELEVATION

AS PROPOSED WEST ELEVATION	
SANDY JOHNSTON ARCHITECT RIBA	
Retention of apartment within existing Attic, Skelton House, Wetheral for Citadel Estates	
MARCH 2017	03/2010/09E 1:100
24-03-17 Roof alterations to raise ridges around terrace	

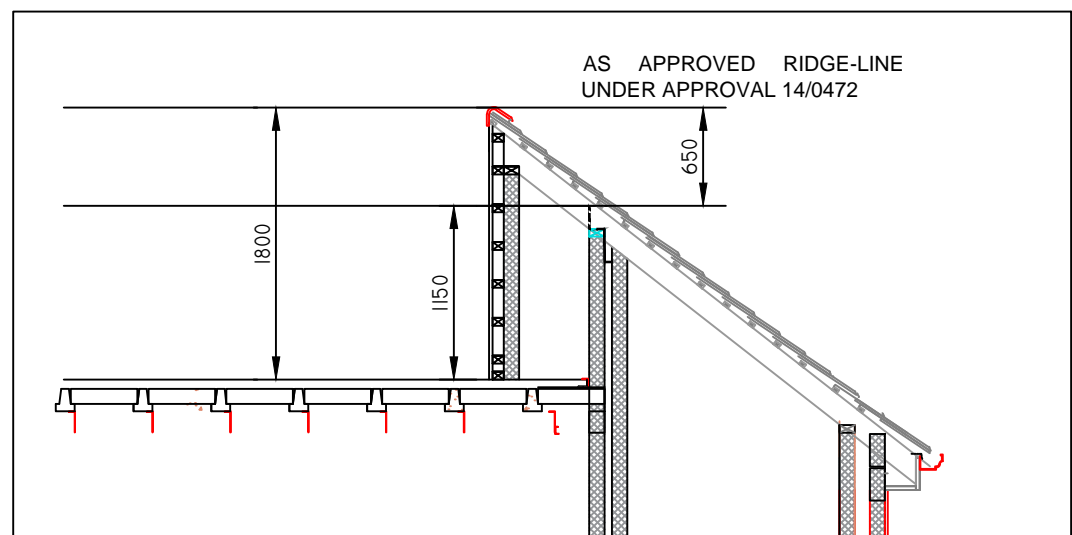




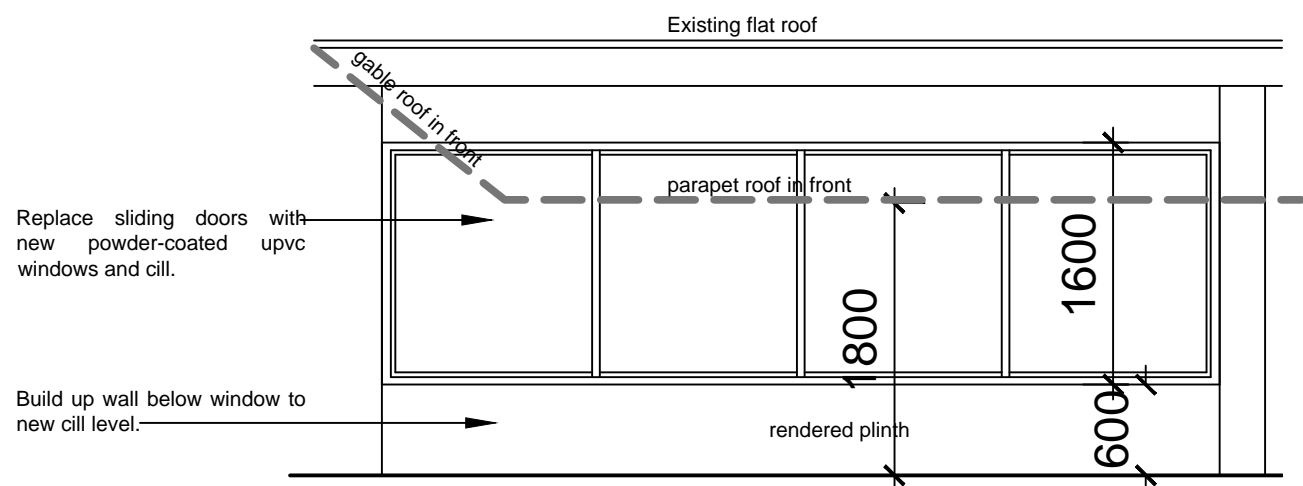
PROPOSED  
THIRD FLOOR  
PLAN 1:100



SECTION A-A 1:50



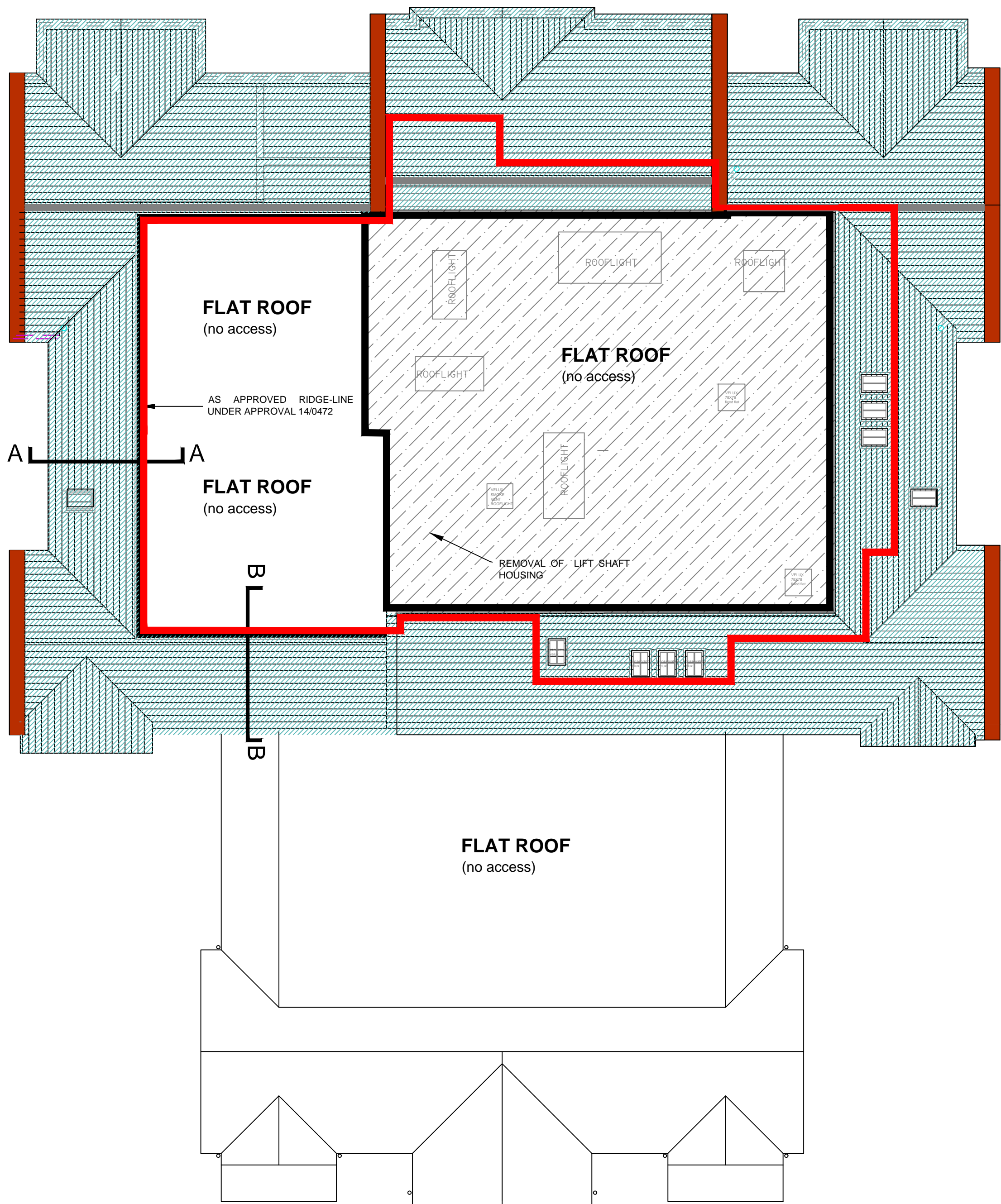
SECTION B-B 1:50



SECTION C-C 1:50  
(elevation view of window)

SANDY JOHNSTON  
ARCHITECT  
RIBA

AS PROPOSED THIRD FLOOR PLAN		
<b>VARIATION of CONDITION 1 (Approved Documents)</b> of Previously Approved 14/0472 to retain a 2-bed flat within the roofspace; formation of rendered plinth and installation of glazed screen in lieu of glazing and doors already installed; reinstatement of ridge-line to that already approved under application ref 14/0472; formation of lift housing within roof space and retention of reduced flat roof area (not for any associated residential amenity space). <b>SKELTON HOUSE, WETHERAL for CITADEL ESTATES LTD</b>		
JULY 2017	03/2010/ <b>211E</b>	1:100
DATE: 22-08-17	PAPER: A2	



AS PROPOSED ROOF PLAN 1:100

SANDY JOHNSTON  
ARCHITECT  
RIBA

AS PROPOSED ROOF PLAN

**VARIATION of CONDITION 1 (Approved Documents)** of Previously Approved 14/0472 to retain a 2-bed flat within the roofspace; formation of rendered plinth and installation of glazed screen in lieu of glazing and doors already installed; reinstatement of ridge-line to that already approved under application ref 14/0472; formation of lift housing within roof space and retention of reduced flat roof area (not for any associated residential amenity space).  
SKELTON HOUSE, WETHERAL for CITADEL ESTATES LTD

AUGUST 2017

03/2010/212C

1:100

DATE: 22-08-17

PAPER: A2

# **Skelton Court, Wetheral, Carlisle, CA4 8JG**

## **Amended Supporting Statement**

### **1. Introduction**

- 1.1. This Amended Supporting Statement has been prepared by Squire Patton Boggs (UK) LLP, Solicitors of 6 Wellington Place, Leeds, LS1 4AP on behalf of **Citadel Estates Ltd ("the Applicant") in support of its application for planning permission for the following development at Skelton Court, Wetheral, Carlisle, CA4 8JG:**

"Variation of Condition 1 (Approved Documents) of previously approved 14/0472 to retain a 2 no. Bedroom Flat within the roofspace; formation of a rendered plinth and installation of a glazed screen in lieu of glazing and doors already installed; reinstatement of ridge-line to that already approved under application ref 14/0472; formation of lift housing within roof space and retention of reduced flat roof area (not for any associated residential amenity space)"

### **2. Executive Summary**

- The principle of providing additional living accommodation within the existing roof space is acceptable, beneficial in the public interest and was accepted by Inspector Brier
- This application addresses the concerns raised by Inspector Brier in his decision letter and any residual concerns on the part of elected members articulated in the reasons for refusal for planning application reference 17/0304
- The Conservation Area Advisory Committee raised no objection to the proposals contained within application 17/0304 which form part of this application
- This application deals with all issues relating to loss of privacy or perception of harm on the part of the occupiers of Acorn Bank
- The reduction in the height of the lift housing would remove any design incongruity and consequentially any harm to the two designated heritage assets.

### **3. Procedural history**

- 3.1 Skelton Court is a modern apartment block which lies within the village of Wetheral. It lies within the Wetheral Conservation Area.

- 3.2 Conservation Area Consent was granted for the demolition of the buildings that previously stood on the site in July 2011 (reference number 10/1067) and planning permission was granted for the erection of 15 apartments in May 2012 (reference number 10/1066). The fundamental relationship of the form and mass of Skelton Court and its immediate surrounds with the Conservation Area and the neighbouring properties including the Grade II listed Acorn Bank is already fixed.
- 3.3 Since the original planning permission was granted, a number of amendments to the scheme have been approved. Planning permission now comprises:
- (1) Planning permission reference number 10/1066 and (2) Conservation Area consent reference number 10/1067
  - (2) Section 73 application reference 14/0472
  - (3) Section 96A application reference 14/0472
  - (4) Section 96A application reference 15/0712
  - (5) Planning application reference 15/0920 (allowed in part on appeal APP/E0915/W/16/3150248)
  - (6) Section 73A Application reference 16/0316 (allowed on appeal APP/E0915/W/16/3152779)
  - (7) Section 73A Application reference 16/0317 (allowed on appeal APP/E0915/W/16/3152781)
  - (8) Section 73 Application reference 16/0319 (allowed on appeal APP/E0915/W/16/3152782)
  - (9) Enforcement notice (allowed in part on appeal APP/E0915/C/16/3151214)
- 3.4 Notwithstanding the consistently expressed supportive view of the professional planning officers towards the development, the above Enforcement Notice was served on 6<sup>th</sup> May 2016.
- 3.5 The Enforcement Notice alleged ten separate breaches of planning control which can be summarised as follows:
- (i) Insertion of PVCu window in Unit 16
  - (ii) Creation of one additional flat with lift housing and external roof terrace
  - (iii) Sub-division of 1 flat to create 2 flats on the 2<sup>nd</sup> floor

- (iv) Erection of bin store in unapproved position
- (v) Creation of 5 additional parking spaces
- (vi) Creation of landscaping areas not in accordance with approved scheme
- (vii) Erection of sandstone wall omitting two pedestrian gates
- (viii) Erection of entry gates contrary to approved drawings
- (ix) Insertion of double glazed PVCu windows throughout
- (x) Formation of utility area and cycle store.

3.6 Citadel appealed against the Enforcement Notice on ground (a), namely that:

**"That planning permission should be granted for what is alleged in the enforcement notice, or that the condition which is alleged not to have been complied with should be discharged."**

This appeal was determined by Inspector Brier in a comprehensive decision letter dated 17<sup>th</sup> March 2017

3.7 The Inspector corrected the Enforcement Notice very extensively by:

### **Section 3**

- Deletion of items (i), (iv), (v), (vi) and (x)
- **Deletion from item (ii) of all of the text after "roof terrace"**
- Deletion from item (iii) of **all the text after "2<sup>nd</sup> floor"**
- **Deletion from item (vii) of all the text after "pedestrian gates"**
- **Deletion from item (viii) of all the text after "south elevation"**
- **Deletion from item (ix) of all the text after "the development"**

### **Section 5**

- Deletion of items (i), (iv), (v), (vi) and (x)

3.8 Subject to these corrections, the Inspector allowed the appeal insofar as it related to items (iii), (vii), (viii) and (ix) and granted planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended for:

- Subdivision of one flat to create two flats (numbers 13 and 14) on the second floor
- Erection of a solid sandstone wall along the frontage of the development
- Erection of 2.10 m high vehicle and pedestrian gates on the south elevation
- Insertion of double glazed uPVC window units throughout the whole development

3.9 The Inspector dismissed the appeal and upheld the notice as corrected insofar as it related to the creation of an additional flat within the existing roof space including lift housing and an external roof terrace. He refused to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

3.10 Relevant conclusions reached by Inspector Brier are as follows:

Paragraph 28

**"The essentially functional rectilinear form of the lift housing does not sit at all comfortably with the pitched roof and gabled features of the main body of 'Skelton Court'. The lift housing appears as a rather utilitarian box-like and inharmonious addition to the building. In my view it is a visually incongruous feature, poorly related to and out of keeping with, both the form of the host building and that of the neighbouring listed property, 'Acorn Bank'"**

Paragraph 29

**"The height and massing of 'Skelton Court' tends to screen the lift housing from view when looking at the building from Scotby Road. However, I noted that the presence of the lift housing is apparent from view points in the southern part of Jennet Croft, from the rear garden of 'Acorn Bank' and, more distantly from Plains Road to the north. In addition, judging by the disposition of the buildings in the vicinity indicated on the Ordnance Survey Map, it seems to me that in all probability it would also be visible from the rear of some of the properties in the western part of Hall Moor Court, from parts of the garden of 'Jasmine Cottage', and from the first floor windows on the pair of houses on the eastern corner of the junction of Jennet Croft and Scotby Road"**

Paragraph 30

**"Compared with the size of 'Skelton Court', the scale of the lift housing is fairly modest and only parts of it tend to be visible. Nevertheless, due its markedly incongruous form and appearance, as a matter of fact and degree, it is a feature that materially affects the external appearance of the building**



as a whole. In what I regard as a sensitive location, the lift housing is a visually intrusive and inappropriate addition to the building which in turn has a negative effect upon both the conservation area and the setting of the listed 'Acorn Bank'

Paragraph 45

**"The roof terrace, which the parties estimated to be about 9 m by 6 m in extent, is a sizeable entity. It is on the eastern side of the building opposite the western side of 'Acorn Bank'. And, as can be seen from the third floor plan, the eastern and northern flanks of the terrace are fairly close to the outer edges of the building's roof"**

Paragraph 46

**"There are no windows on the west elevation of 'Acorn Bank' but the house as a single storey rear extension on top which is a large glazed rooflight feature. As the photographs submitted by the neighbours illustrate, it is possible to look down into both the extension and the garden of 'Acorn Bank' from the roof terrace. Likewise, having had the opportunity to see the appeal site from inside 'Acorn Bank's' extension and from its garden, the parapet wall on the edge of the roof terrace is clearly visible from both."**

Paragraph 47

Because of the elevated position and relative proximity of the roof terrace to 'Acorn Bank', **I consider the neighbours' concerns about the loss of privacy in their home and its garden is well-founded.** In addition to this, my impression was that for essentially the same reasons, the very presence of the roof terrace has a somewhat brooding and oppressive effect on 'Acorn Bank'. To my mind, this is likely to be a source of apprehension for the neighbours in its own right and would also contribute to making 'Acorn Bank' a less pleasant place in which to live. I see this as a further disadvantage which adds to my concern in this respect.

Paragraph 48

**"I acknowledge that since the neighbours' photographs were taken, measures to alleviate these concerns, and which form part of planning application reference 15/0920 (Appeal B), have been implemented. This has involved the installation of planters that run alongside the inner edge of the parapet walls that flank the terrace and the planting of an evergreen hedge in the planters. In addition, although it is not indicated on the plans, I saw that seating has been placed in front of the planters.**

Paragraph 49

**"The introduction of the greenery means that, with the planting in place, people would not be able to look down onto 'Acorn Bank's extension or its garden from the roof terrace. Indeed, this is illustrated on drawing S/02. On the face of it therefore, the boundary treatment here would appear to have resolved the problem. However, this solution would only be effective if the planting remained in place permanently and provided that it was kept at a minimum height at least. I am not satisfied that stipulating what effectively would be a requirement in perpetuity could reasonably be achieved by means of a condition attached to a planning permission. I have read that the appellant would do so via a unilateral undertaking but as no such undertaking has been put before me, this is not a consideration to which I can attach any weight"**

Paragraph 50

**"In the light of the foregoing, my view is that the presence of the roof terrace in its current form and extent would have unacceptably adverse consequences for the living conditions of the neighbours. I do not consider there are any other conditions that would overcome my concern in this respect."**

Paragraph 51

**"As regards the third floor flat, I see no reason to take issue with the principle of providing additional living accommodation within the roof space of 'Skelton Court'. However, the physical consequences of the particular scheme in question are such that they render it unacceptable. Not only would the living conditions of the neighbours be harmed as a result of the creation of the roof terrace but also the alterations to the roof profile of the building would tend to detract from both the character and appearance of the conservation area and setting of 'Acorn Bank'. As such I consider this part of the scheme would be contrary to Policies CDLP Policies SP6, HO2, HE3 and HE7.**

Paragraph 52

**"Paragraph 132 of The National Planning Policy Framework (The Framework) advises that when considering the impact of development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. In this instance, the development in question has resulted in less than substantial harm. In such circumstances, paragraph 134 of The Framework advises that this harm should be weighed against the public benefits of the proposal. Here though, the benefits that have accrued from the disputed development appear to me to be essentially private ones. As a result, they do not outweigh the harm to the significance of the conservation area or that of 'Acorn Bank'.**



- 3.11 As a direct response to the concerns expressed by Inspector Brier, the Applicant submitted application reference number 17/0304 on 7<sup>th</sup> April 2017 for the following development (with the description of development shown as amended by the Council at the point of validation):

**"Variation Of Condition 1 (Approved Documents) Of Previously Approved 14/0472 To Retain The 2no. Bedroom Flat Within The Roofspace; Reduce The Height Of The Lift Housing To 0.3 Metres Above The Roof; And Raise The Ridge On The East And North Elevations To 1.8 Metres Above Existing Terrace Floor Level"**

- 3.12 In his professional officer report to planning committee on 2<sup>nd</sup> June 2017, Richard Maunsell concluded as follows:

**"6.44 In overall terms, the principle of the proposed development of an additional flat within the roof space is acceptable. The physical alterations to the roof structure adjacent to the roof terrace would address the concerns raised by the objectors and previously outlined by Members and the Planning Inspector in terms of overlooking and loss of privacy together with the perception of it being an overbearing feature.**

6.45 The impact of the building on the character and appearance of the conservation area would not be significantly different from the approved scheme. On the basis of the approved scheme together with the amendments proposed, the proposal is acceptable and would not have a detrimental impact on the character of the conservation area or the adjacent listed building.

6.46 In all respects, the currently proposed development addresses the reasons for refusal given for previous planning applications and adequately addressed the concerns and decision issued by the Planning Inspectorate. The proposal is compliant with both local and national planning policies and in **this respect, is therefore recommended for approval"**

- 3.13 Notwithstanding this clear professional advice, elected members resolved to refuse planning permission and on the 5<sup>th</sup> June 2017, Notice of Refusal was received giving the following three reasons:

**"1. The combination of the accommodation within the roof space together with the associated alterations to the roof structure including the roof terrace do not respond to the local character and context of this prominent site within the Wetheral Conservation Area. The proposal is therefore contrary to paragraphs 58 and 138 of the National Planning Policy Framework (NPPF); criterion 1 and 4 of Policy SP6 (Securing Good Design), criteria 1 of Policy HO2 (Windfall Housing Development) and criterion 1, 2 and 3 of Policy HE7 (Conservation Areas) of the Carlisle District Local Plan 2015-2030.**

2. The proposed building would be located adjacent to neighbouring residential properties. In this instance, by virtue of the roof top terrace, the development would result in overlooking and a significant loss of privacy to the occupiers of the neighbouring property. The roof terrace would have a brooding and oppressive effect on Acorn Bank and would contribute to making it a less pleasant place in which to live. The proposal is therefore contrary to criteria 7 of Policy SP6 (Securing Good Design) of the Carlisle District Local Plan 2015-2030 and the objectives of the Supplementary Planning Document “Achieving Well Designed Housing”

3. To the east of the application site is Acorn Bank which is a 2 storey Grade II listed building. Due to the design and proximity of the alterations to the roof structure including the roof top terrace, the development fails to preserve the character or setting of the adjacent listed building. The proposal is unsympathetic in scale and character and would adversely affect the appearance and setting of Acorn Bank, contrary to paragraph 133 of the National Planning Policy Framework (NPPF); and Policy HE3 (Listed Buildings) of the Carlisle District Local Plan 2015-2030”

- 3.14 The current application not only meets all of the concerns raised by Inspector Brier in his decision letter but it also meets any residual concerns harboured by elected members and articulated by them in the three reasons for refusal used for planning application reference 17/0304.
- 3.15 Notwithstanding that the Applicant is confident of the acceptability of all elements of the proposed development as it was submitted, following consultation responses, a minor amendment has been made which removes the lift housing in its entirety.

#### **4. Description of development**

4.1 The development is shown on the following plans:

- Existing plans: As built drawings
- Proposed plans:
  - East Elevation 03/2010/08F
  - North Elevation 03/2010/07F
  - West Elevations 03/2010/09E
  - third floor plan 03/2010/211E
  - roof plan 03/2010/212C
- All other drawings remain as per the approved drawings:
  - Site location plan
  - Block Plan
  - landscaping plan

- Ground Floor Plan
- First Floor Plan
- Second Floor Plan
- South Elevation

4.2 The proposed amendments would have the following effect:

### **East Elevation**

- raise the ridge between the 2 main gables so that the height of the ridge is 1800mm high above the flat roof (formerly a terrace). This height was approved under planning permission reference number 14/0472
- remove the lift housing in its entirety. This would not be seen from anywhere within Conservation Area

### **West Elevation**

- remove the lift housing in its entirety. This would not be seen from anywhere within Conservation Area.

### **North Elevation**

- raise the ridge on the left-hand side of the elevation (near 'Acorn Bank') so that the height of the ridge is 1800mm high above the flat roof (formerly a terrace).
- Remove the lift housing in its entirety. This would not be seen from anywhere within Conservation Area.

### **Attic Floor plan**

- form 2-bed apartment within existing roof space and replace sliding doors with windows thus preventing access onto the flat roof. The external terraced area no longer has access and will be therefore become a flat roof, with access only for maintenance, as per the other flat roofs within this development. No raising or altering of rooflines would be necessary for retention of the apartment. The development includes raising of the ridgelines around the terrace on the East and North side.

### **Roof plan**

- Remove the lift housing in its entirety.

## **5. Justification for the development**

### **Retention of 2-bed apartment**

- 5.1 The principle of providing additional living accommodation within the existing roof space is acceptable, beneficial in the public interest and was accepted by Inspector Brier. The existing 2-bed apartment would be retained. The existing sliding doors would be replaced with windows to physically prevent access on to the adjacent flat roof.

### **Flat roof**

- 5.2 The proposed development would **completely address the Inspector's** concerns regarding the impact, both real and perceived on the privacy of 'Acorn Bank' by **physically preventing access to or use of the flat roof** adjacent the apartment.

### **Lift housing**

- 5.3 The lift housing will be removed in its entirety.
- 5.4 It will not be possible to see the lift housing from anywhere within the Conservation Area or from adjacent properties..

## **6. Planning policy framework**

### **Adopted development plan**

- 6.1 For the purposes of section 38(6) of the Planning and Compulsory Purchase Act 2004, the adopted development plan comprises:
- Carlisle District Local Plan 2015-2030
- 6.2 Relevant policies are as follows:
- Policy SP6: Securing Good Design
  - Policy HO2: Windfall Housing Development
  - Policy HE3: Listed Buildings
  - Policy HE7: Conservation Areas

### **Heritage legislation**

- 6.3 Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that special attention be paid to the desirability of preserving or enhancing the character or appearance of a conservation area.
- 6.4 Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that special regard be paid to the desirability of preserving the setting of a listed building

## **National planning policy**

- 6.5 The National Planning Policy Framework contains, amongst other things, important policy in relation to:
- Provision of housing
  - Design
  - Heritage

## **Supplementary Planning Document**

- 6.6 The Council has produced a Supplementary Planning Document called **"Achieving Well Designed Housing"**. One of its objectives is that development should relate well to its context and be integrated with its townscape or landscape setting.
- 6.7 The development has been brought forward to address all of the specific concerns raised by Inspector Brier and to address any residual concerns articulated by elected members when refusing permission for planning application reference 17/0304.
- 6.8 Formation of the 2-bed apartment is of public benefit in that it provides additional residential accommodation and introduces variety and choice into the local housing market.
- 6.9 The amended design entirely removes the visual incongruity of the lift shaft housing and resolves concerns pertaining to the roof terrace, as noted by Inspector Brier.
- 6.10 No harm to the significance of either the Conservation Area or **'Acorn Bank'** would result. The effect of the development on the significance of both assets would be neutral. If, contrary to this view, some harm was identified then it would be negligible and clearly outweighed by the public benefits of the development within the meaning of paragraph 134 of the NPPF.
- 6.11 **The 'Conservation Area Advisory Committee' raised no objection to the recently refused application 17/0304 that incorporated the raised ridge lines and the lowered lift shaft that are also part of this application. The Committee reported that 'the increase of the ridge lines along the terraced area appear to remove the opportunity for overlooking'.**

## **7. Concluding remarks**

- 7.1 This application now incontrovertibly addresses the concerns raised by Inspector Brier in his decision letter and any residual concerns on the part of elected members articulated in the reasons for refusal for planning application reference 17/0304. It is clear from reading his conclusions that Inspector Brier took no issue with provision of the 2-bed apartment within

the existing roof space. The two issues concerning him were the lift housing and loss of privacy for the occupiers of Acorn Bank resulting from the external terrace.

- 7.2 Changes to the ridgelines and the lift shaft housing were clearly analysed by **the planning officer when assessing application 17/0304**; 'the currently proposed development addresses the reasons for refusal given for previous planning applications and adequately addressed the concerns and decision issued by the Planning Inspectorate'. **The further amendment to completely remove the lift shaft housing removes all doubt.**
- 6.3 The Conservation Area Advisory Committee raised no objection to the proposal to raise the ridge lines and lower the lift shaft housing.
- 6.4 Access to or use of the flat roof would no longer be available. This deals with all issues relating to loss of privacy or perception of harm on the part of the occupiers of Acorn Bank.
- 6.5 Removal of the lift housing would remove any design incongruity and consequentially any harm to the two designated heritage assets.
- 6.6 The application is in conformity with the provisions of the adopted development plan and there are no material considerations which would indicate a different result. Accordingly, planning permission should be granted without delay.

**Squire Patton Boggs LLP  
6 Wellington Place  
LEEDS  
LS1 4AP**

**4<sup>th</sup> September 2017**

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# Appeal Decisions

Site visit made on 30 January 2017

**by D H Brier BA MA MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 17 March 2017**

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## **Land at Skelton Court, Wetheral, Carlisle CA4 8JG** **Appeals made by Citadel Estates Ltd**

The appeals are made under section 174 (Appeal A) and section 78 (Appeals B – E) of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991. The appeals are against an enforcement notice issued by Carlisle City Council and the same Council's refusal to grant 4 planning permissions.

### **Section 174 Appeal A Ref: APP/E0915/C/16/3151214**

- The enforcement notice was issued on 6 May 2016.
- The breach of planning control as alleged in the notice is, without planning permission:
  - i. The insertion of a pvcu window in unit 16 on the second floor of the east elevation.
  - ii. The creation of an additional flat within the existing roof space including lift housing and an external roof terrace.
  - iii. Subdivision of one flat to create 2 flats (nos 13 & 14) on the second floor.
  - iv. Erection of a bin store.
  - v. The creation of 5 additional parking spaces.
  - vi. The creation of landscaping areas not in accordance with the approved drawing No.03/2010/00 Rev G.
  - vii. Erection of a solid sandstone wall along the frontage of the development.
  - viii. Erection of 2.10m high vehicle and pedestrian gates on the south elevation.
  - ix. Insertion of double glazed pvcu window units throughout the whole development.
  - x. Formation of utility area and cycle store.
- The requirements of the notice are:
  - i. Remove the unapproved window in unit 16 and make good by blocking up and rendering over the opening to match the existing building.
  - ii. Remove all internal partitions, fixtures and fittings including the kitchen, ensuite bathrooms, bedrooms, living room, fireplace, kitchen/dining area and external terrace, including the planters and landscaping. Reinstate the roof structure to match the existing approval.
  - iii. Reinstate units 13 & 14 into a single flat.
  - iv. Remove the bin store and construct the bin store in the north-west corner of the site.
  - v. Reinstate the parking spaces in accordance with drawing No.03/2010/00 Rev G.
  - vi. Reinstate the landscaped areas in accordance with drawing No.03/2010/00 Rev G.
  - vii. Insert 2 pedestrian accesses and associated gates in accordance with drawing No.03/2010/00 Rev G.
  - viii. Remove the entry gates on the south elevation.
  - ix. Remove the pvcu windows to the whole development and inset timber framed windows.
  - x. Reinstate the utility area and cycle store as shown on drawing No.03/2010/202B.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) of the Town and Country Planning Act 1990 as amended.

### **Section 78 Appeal B Ref: APP/E0915/W/16/3150248**

- The application Ref 15/0920, dated 5 October 2015, was refused by notice dated 15 February 2016.
  - The development proposed is additional 2 flats with associated external works to building and grounds including revised landscaping and parking layout.
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### **Section 78 Appeal C Ref: APP/E0915/W/16/3152779**

- The application Ref 16/0316, dated 8 April 2016, was refused by notice dated 27 May 2016.
  - The development proposed is subdivision of second floor apartment to provide an additional apartment.
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### **Section 78 Appeal D Ref: APP/E0915/W/16/3152781**

- The application Ref 16/0317, dated 8 April 2016, was refused by notice dated 27 May 2016.
  - The development proposed is revised landscaping and parking layout.
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### **Section 78 Appeal E Ref: APP/E0915/W/16/3152782**

- The application Ref 16/0319, dated 8 April 2016, was refused by notice dated 27 May 2016.
  - The development proposed is installation of upvc windows.
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## **Preliminary Matters**

### *The Appeals Site and Background*

1. The appeals all concern a modern apartment block and the land associated with it. The site lies within the Wetheral Conservation Area and the neighbouring **property to the east, 'Acorn Bank' is a grade II listed building.**
2. Conservation Area Consent was granted for the demolition of the buildings that previously stood on the site in July 2011 (reference 10/1067) and planning permission was granted for the erection of 15 apartments in May 2012 (reference 10/1066). Since then a number of amendments to the scheme have been approved. Of especial relevance to the enforcement notice is the approval of a variation of condition 2 of the 2012 permission<sup>1</sup> on 11 November 2014 (reference 14/0472) which is expressly referred to in the enforcement notice. Also of note is an approval of a non-material amendment dated 23 June 2015 (reference 15/0475).
3. Two section 78 appeals following the **Council's refusal to discharge conditions** attached to the 2012 planning permission were dismissed in August 2014<sup>2</sup>.
4. As most of the development (except for the parking layout in Appeal B – see paragraph 16) comprised in the section 78 appeals has been carried out I shall deal with these matters as ones arising from the provisions of section 73A, that is for their retention.

### **Objections**

5. The matters raised by the objectors cover a wide range of topics. These include criticism of the developer and the manner in which matters appertaining to the

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<sup>1</sup> This condition listed the approved plans and documents for planning permission reference 10/1066.

<sup>2</sup> Appeal references APP/E0915/A/14/2214847 & APP/E0915/A/2216562.

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site have been handled by Council officers. It is not within my remit to pass judgment on these points – my decision will be based on the planning merits of the appeals before me.

6. **The objectors' submissions also include** claims that '**Skelton Court** is taller and larger than approved. The enforcement notice is, however, silent on this point. Nor does it form the subject of any of the section 78 appeals. As a result, investigating this lies outside the ambit of my decisions; it is a matter, in the first instance, for the Council. In so saying, I note that whereas the appellant contends that, following a detailed survey by the Council, it is common ground that these allegations are factually wrong, the Council say that the survey only **relates to the ridge height of the building's south elevation**<sup>3</sup>.

### ***The Enforcement Notice***

7. Ten separate breaches of planning control are identified in the allegation which, I note, is based upon the provisions of section 171A (a) of the 1990 Act. Although no appeal have been made on grounds (b) and (c), nor has it been claimed the notice is defective, I have a number of concerns in this respect. I elaborate on this below.
8. In my view, 4 of the items listed in the allegation, that is (i), (iv), (vi), and (x) either do not constitute development as defined by section 55 of the Act, or are permitted development by virtue of the provisions of The Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). My reasons for saying this are as follows:
- **Item (i).** Having regard to the pattern of fenestration on the rest of the building, together with the judgement in *Burroughs Day v Bristol City Council [1996] 1 P.L.R. 78 [1996] 1 E.G.L.R.167*, as a matter of fact and degree the works do not materially affect the external appearance of the building.
  - **Item (iv).** The bin store appears to have been formed by the erection of an '**L' shaped wall inside the site's western and northern boundary walls** to form an enclosure where the bins are stored. The '**L' shaped wall is less than 2m high, and so is 'permitted development'** by virtue of Part 2 Class A of Schedule 2 of the GPDO.
  - **Item (vi).** As a matter of fact and degree, the creation of landscaping areas such as those on the appeal site do not constitute operational development.
  - **Item (x).** The utility area and cycle store are located inside the building and only affect its interior.
9. Following the site inspection, at my behest, the parties were contacted by the Inspectorate in a letter dated 1 February 2017 which invited comments on the above points, and I have taken the respective responses<sup>4</sup> into account. While the appellant agrees with the points raised, the Council maintain that permission is required for the 4 items and the enforcement notice is still '**applicable**'.

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<sup>3</sup> Letters from Squire Patton Boggs and Carlisle City Council, both dated 8 February 2017.

<sup>4</sup> Ibid.

10. **I find the Council's response somewhat enigmatic. In particular, in arriving at their conclusion, it is acknowledged that items (i), (vi) and (x) do not constitute development under section 55 and that item (iv) 'would fall' within Part 2 Class A of Schedule 2 of the GPDO.**
11. **The Council's stance appears to be based on the premise that the development at 'Skelton Court' has not been undertaken in accordance with the approved details. This may be so, but, significantly in my view, the notice is silent insofar as section 171A(b) is concerned; it is not alleged that any of the items identified constitutes a breach of condition. The Council make no claim that this is the case. I note that condition 2 of planning permission ref.14/0472 requires the development to be carried out in accordance with the 'remaining conditions' attached to planning permission ref 10/1066. But, while both permissions list the plans to which they relate, neither of them includes a condition requiring that the development be carried out in strict accordance with the approved details. Nor has any other permission containing such a condition been put before me.**
12. Section 171A(a) expressly refers to the carrying out of development without planning permission. As 3 of the items do not constitute development and the other is 'permitted development' and so has planning permission by virtue of the provisions of Article 3(1) of the GPDO, I find the notice defective in that the allegation encompasses matters which do not constitute breaches of planning control.
13. In so saying, I note that the Council allude to the distinction between flats and dwellinghouses insofar as permitted development rights are concerned. I **accept the definition of 'dwellinghouse' in the GPDO** does not generally apply to a building containing one or more flats. But, whereas Part 1 of Schedule 2 expressly addresses works within the curtilage of a dwellinghouse, this is not so with Part 2 which is directed at Minor Operations, including the erection of walls and other means of enclosure.
14. **References to Drawings.** The items listed in the allegation all refer to drawings. I find this unnecessary in that this adds nothing to the individual allegations – the various references effectively augment the reasons for issuing the notice. Deleting them from the matters listed in section 3 would help put the notice into sharper focus and would add clarity to the deemed application. This point was also put to the parties, but the Council have not responded to it.
15. **Item (v).** The full allegation refers to drawing no. L/01/Rev E submitted with planning application ref 15/0920 [the subject of Appeal B]. However, in response to a further request for clarification, the appellant indicates that the current parking layout accords with drawing no. L/01F [the subject of Appeal D]<sup>5</sup> and was in place at the time the enforcement notice was issued. Likewise, the Council acknowledge that the parking layout appears to accord with drawing no. L/01F<sup>6</sup>.
16. The merits of the parking layout and associated landscaping shown on drawing L/01/Rev E fall to be considered under Appeal B come what may. Nevertheless, from what is before me, it seems that, on the balance of probability, the

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<sup>5</sup> Letter from the Planning Inspectorate dated 16 February 2017; email response from Squire Patton Boggs dated 20 February 2017.

<sup>6</sup> Letter from Carlisle City Council dated 22 February 2017.

matters alleged in item (v) have not occurred as a matter of fact. Had there been an appeal on ground (b), it would have succeeded on this basis. I therefore see this as another defect in the notice; it should be further corrected by the deletion of item (v) together with the related requirement. The merits of the parking and landscaping layout shown on drawing no. L/01F fall to be considered under Appeal D.

17. It is incumbent upon me to get the notice right. In this instance, I am satisfied that I can exercise my power to correct the notice by deleting items (i), (iv), (v), (vi), and (x) from the matters alleged, together with the requirements that expressly relate to them, as well as the references to the various plans contained in the outstanding allegations, without causing injustice to the parties.

## **Section Appeal 174 Appeal on Ground (a), the Deemed Application and the Section 78 Appeals**

### ***Background, Main Issues and Planning Policy***

18. Because of the corrections to the notice referred to above, the scope of the deemed application under section 177(5) is reduced somewhat, albeit some of the points are encompassed by the section 78 appeals. For the avoidance of doubt, the matters still outstanding insofar as the deemed application is concerned relate to items (ii), (iii), (vii), (viii) and (ix) of the allegation.
19. The points in contention essentially comprise a series of departures from what has been approved previously at the appeals site. In this respect, it is important to note that as a result of what has been already approved here, the fundamental relationship of the form and mass of 'Skelton Court' and its immediate surrounds with the conservation area and the neighbouring properties, including the listed 'Acorn Bank', would remain essentially the same regardless of the outcome of the appeals. This is a consideration to which I attach a good deal of weight.
20. Notwithstanding the latter point, I consider there are 2 main issues. Firstly, whether the character and appearance of the Wetheral Conservation Area and the setting of '**Acorn Bank**' **would be adversely affected. And**, secondly, whether the living conditions of the neighbours would be adversely affected.
21. As regards the first issue, I am mindful that section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that special attention be paid to the desirability of preserving or enhancing the character or appearance of a conservation area. In addition, section 66 requires that special regard be paid to the desirability of preserving the setting of a listed building.
22. Since the appeals were lodged, the planning policy position as set out in the reasons for issuing the enforcement notice and the refusals of planning permission has changed somewhat. In particular, The Carlisle District Local Plan 2015-2030 (CDLP), which at the time was referred to as the Proposed Submission Draft, was adopted on 8 November 2016. I therefore rely on the provisions of the up-to-date CDLP.
23. CDLP Policy SP 6, headed '**Securing Good Design**', sets out a number of design principles against which development proposals will be assessed. Development should, amongst other things: respond to the local context and the form of

surrounding buildings<sup>7</sup>; take into consideration the historic environment; and ensure there is no adverse effect on the residential amenity. A similar approach is contained in Policy HO 2, **headed 'Windfall Housing Development'**. Policies HE 3 and HE 7 are directed at listed buildings and conservation areas respectively. Their provisions reflect the statutory requirements referred to in paragraph 21 above.

24. **Also relevant is the Council's Supplementary Planning Document (SPD) 'Achieving Well Designed Housing'**. One of its objectives is that development should relate to its context and be integrated with its townscape or landscape setting. I attach weight to the SPD commensurate with its status.

### **Issue 1**

#### ***Additional Flats – Appeals A, B and C***

25. Two additional flats have been added to the scheme. One on the second floor of 'Skelton Court', and the other at third floor level, formed within the roof space of the building.
26. The extra second floor flat has been created by reconfiguring the approved living accommodation inside the building. It has not involved any significant alterations to the exterior of the building. As a result, the subdivision of the second floor accommodation has not had any perceptible impact on either the conservation area or the setting of '**Acorn Bank**'.
27. As to the third floor flat, there is some difference between the parties as to whether all of the flat and the associated roof terrace are contained wholly within the approved roof space as the appellant contends. But, while the Council indicate that the ridge nearest the eastern boundary, that is the one closest to '**Acorn Bank**', is no higher, the east and west elevation drawings submitted with application 15/0920<sup>8</sup> show the outline of the top of the lift housing as well as roof lanterns protruding above '**Skelton Court's** roof. None of these features are shown on the equivalent elevation drawings approved under application ref 15/0475<sup>9</sup> which, according to the appellant, are the currently approved ones. Moreover, they are expressly referred to in the section of the **appeal statement headed 'Differences between the Appeal Scheme and the Consented Scheme'**<sup>10</sup>, albeit the terms 'rooflights' and 'lift shaft roof' are used.
28. The essentially functional rectilinear form of the lift housing does not sit at all comfortably with the pitched roof and gabled features of the main body of '**Skelton Court**'. The lift housing appears as a rather utilitarian box-like and inharmonious addition to the building. In my view it is a visually incongruous feature, poorly related to, and out of keeping with, both the form of the host building and that of **the neighbouring listed property, 'Acorn Bank'**.
29. The height and massing of '**Skelton Court**' tends to screen the lift housing from view when looking at the building from Scotby Road. However, I noted that the presence of the lift housing is apparent from viewpoints in the southern part of Jennet Croft, **from the rear garden of 'Acorn Bank'** and, more distantly, from Plains Road to the north. In addition, judging by the disposition of the buildings

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<sup>7</sup> This approach is reiterated in criterion 1 of Policy HO 2.

<sup>8</sup> O8E Rev E and O9D Revision D.

<sup>9</sup> O8C Revision C and O9C Revision C.

<sup>10</sup> Appeal Statement : Cultural Heritage Matters, page 4.

in the vicinity indicated on the Ordnance Survey Map, it seems to me that in all probability it would also be visible from the rear of some of the properties in **the western part of Hall Moor Court, from parts of the garden of 'Jasmine Cottage', and from the** first floor windows of the pair of houses on the eastern corner of the junction of Jennet Croft and Scotby Road.

30. **Compared with the size of 'Skelton Court'**, the scale of the lift housing is fairly modest and only parts of it tend to be visible. Nevertheless, due to its markedly incongruous form and appearance, as a matter of fact and degree, it is a feature that materially affects the external appearance building as a whole. In what I regard as a sensitive location, the lift housing is a visually intrusive and inappropriate addition to the building which in turn has had a negative **effect upon both the conservation area and the setting of the listed 'Acorn Bank'**.
31. The provision of the additional units is also likely to have had consequences for the parking provision and layout within the site, together with the landscaping - I address this separately below.

#### ***Alterations to Parking Area and Revised Landscaping – Appeals B and D***

32. The appeals relate to 2 different schemes. The relevant drawing for Appeal B (planning application reference 15/0920) is no.L/01/Rev E, and that for Appeal D (planning application reference 16/0317) is no.L/01 F. As noted in paragraph 16 above, it appears that in all probability the former scheme, that is the one to which the enforcement notice purports to attack, was not implemented. Be that as it may, it is still a component of the subject matter of the section 78 appeal, so my decision will address both schemes.
33. According to the enforcement notice, the approved parking and landscaping **areas are shown on drawing No. 03/2010 rev G 'attached'** to the planning permission ref.14/0472, referred to in paragraph 2 above. 24 parking spaces are shown on this plan. And, although the plan contains no details of the type or precise extent of the landscaping proposed, from the symbols depicted on the drawing, it is just about possible to deduce where it was intended that planting would take place.
34. The 2 further schemes differ mainly in that 29 parking spaces are indicated on drawing no.L/01/Rev E, whereas drawing no.L/01 F shows 37. Perhaps self-evidently, both schemes provide for more parking spaces than was approved initially – more than half as **many in the case of the '37 space' scheme**. That said, insofar as the **site's frontage onto Scotby Road** – the part of the site that is most apparent to passers-by in the conservation area - is concerned, the area set aside for landscaping on the north side of the building in both schemes is essentially the same as the approved scheme provided for. The same goes for the **part of the site between the building and 'Acorn Bank'**. And there would still be a reasonable and effective amount of **landscaping alongside the site's boundary with 'Caerluel' to the west**.
35. Both schemes would entail an increase in the amount of hard surfacing within the site - all the more so in the case of the 37 space scheme. But, mindful that the approved scheme made provision for a not insignificant amount of hard surfacing, I am not satisfied that this would significantly or perceptibly alter the **visual balance between 'hard' and 'soft' landscaping at the site**. Furthermore,

as most of the increase would be in the least prominent rear part of the site, to the south of the apartment block building, I do not consider that this would have a significant impact upon, or seriously erode, either the visual quality of **the conservation area or the setting of 'Acorn Bank'**.

36. The provision of 37 parking spaces for 17 flats is relatively generous, but it has not been claimed that either this or the 29 space scheme would be likely to increase the propensity for car-borne travel. There is nothing to indicate that some of the spaces are intended to be set aside for visitors. Nevertheless, the schemes could be advantageous in this respect as the additional spaces could well encourage visitors to park within the site as opposed to parking on Scotby Road.

#### ***Front Wall and Vehicular and Pedestrian Gates - Appeal A***

37. The wall in question runs alongside the back of the pavement in front of the main body of 'Skelton Court'. I saw that the gates alleged to have been omitted (item vii) have now been installed, in which case the notice appears to have been complied with in this respect. However, as the deemed application derives from the allegation, which still forms part of the notice, it is necessary for me to consider the merits of a solid boundary wall, albeit doing so now might prove to be a somewhat academic exercise.
38. **Being on the site's frontage and alongside one** of the main thoroughfares in the conservation area, both the wall and the disputed entry gates are features that are readily apparent to passers-by. The Council raise no objection to the form and materials of the wall; the concern as expressed in the Committee report focuses upon the claimed incompatibility of the unbroken length of wall with the pattern of individual accesses within the conservation area, and the increased perception of 'Skelton Court' as a large building mass that it creates.
39. The concern referred to above is not without merit, and I accept that without **the gates the site's frontage would** probably be **somewhat 'inactive'**. **Be that as** it may, I am mindful that the approved scheme has a lengthy central section of unbroken boundary wall which extends in front of a large proportion of the south elevation of 'Skelton Court'. In the light of this, I am not satisfied that the omission of the gates would have a detrimental effect on the conservation area or the setting of 'Acorn Bank'. I would not go so far as to say that either would be enhanced, but as I see it, the effect on both would be essentially neutral and so the attributes of both would be preserved.
40. The same view applies to the metal entrance gates which are positioned close **to the site's western boundary** (item viii). Despite their height, the vertical railings are fairly slender which tends to give the gates **a somewhat 'light'** appearance. And, being set back from Scotby Road, just behind the front of the western part of the apartment block, I do not consider the gates impinge upon the setting of 'Acorn Bank', which is some way away to the east, beyond the mass of 'Skelton Court'.

#### ***Installation of UPVC Windows – Appeals A and E***

41. I see no reason to take issue with the Council's **view that the installation of** uPVC windows in conservation areas is often inappropriate and can lead to the type of problems they highlight. Despite this however, it seems to me that

each case has to be considered on its merits, even in a sensitive location such as the appeals site and its surrounds.

42. The overall form of the windows accords with that indicated on the approved elevation drawings. And, to my mind the type of uPVC windows that have been installed in the appeals building are significantly less strident than the more commonplace (and more visually damaging) forms of uPVC windows, examples of which are in evidence within the conservation area, including some further along Scotby Road to the east. In particular, the glazing bars do not have the **'heavy' appearance that often characterises uPVC windows and which can make them look insensitive**. In addition, the recessed nature of the windows, with their stone surrounds and returns, tends to temper the impact of the window frames.
43. The front elevation of the building facing onto Scotby Road contains a large number of window openings. But, the nature of the windows that have been installed is such that I do not consider they appear unduly strident or incongruous, to the extent that they have had a detrimental effect on the conservation area, or the setting of 'Acorn Bank', albeit the front windows of the latter have timber frames. In my view, the effect of the windows is neutral, so the attributes of the conservation area and the setting of the listed building have been preserved.

## **Issue 2**

44. The site **lies between 'Acorn Bank' to the east and 'Caerluel' to the west**. Its **vehicular access is located between the main body of 'Skelton Court' and the latter house**. While the increased parking provision could well result in more vehicular movements to and from the site, there is what appeared to me to be **a robust boundary along the site's western edge**. Consequently, I do not consider the extra comings and goings would be likely to have an adverse effect **on the living conditions of the occupiers of 'Caerluel'**. Nor, for the most part, would the alterations in question be likely to impinge upon the living conditions of the occupiers of both sets of neighbours. There is however, one exception to this, namely the roof terrace that has been created in association with the formation of the additional flat on the third floor of the appeals building.
45. The roof terrace, which the parties estimated to be about 9m by 6m in extent, is a sizeable entity. It is on the eastern side of the building opposite the **western side of 'Acorn Bank'**. And, as can be seen from the third floor plan, the eastern and northern flanks of the terrace are fairly close to the outer edges of **the building's roof**.
46. There are no windows on the west elevation **of 'Acorn Bank'**, but the house has a single storey rear extension on top of which is a large glazed rooflight feature. As the photographs submitted by the neighbours illustrate<sup>11</sup>, it is possible to look down into both the extension and the **garden of 'Acorn Bank'** from the roof terrace. Likewise, having had the opportunity to see the appeal **site from inside 'Acorn Bank's** extension and from its garden, the parapet wall on the edge of the roof terrace is clearly visible from both.

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<sup>11</sup> Submission by I Ferguson and D Stephenson dated 17 July 2016, pages 21 & 22.

47. Because of the elevated position and relative proximity of the roof terrace to **'Acorn Bank'**, I consider the neighbours' concern about the loss of privacy in their home and its garden is well-founded. In addition to this, my impression was that for essentially the same reasons, the very presence of roof terrace **has a somewhat brooding and oppressive effect on 'Acorn Bank'**. To my mind, this is likely to be a source of apprehension for the neighbours in its own right and would also contribute to **making 'Acorn Bank' a less pleasant place** in which to live. I see this as a further disadvantage which adds to my concern in this respect.
48. I acknowledge that since the **neighbours'** photographs were taken, measures to alleviate these concerns, and which form part of planning application reference 15/0920 (Appeal B)<sup>12</sup>, have been implemented. This has involved the installation of planters that run alongside the inner edges of the parapet walls that flank the terrace, and the planting of an evergreen hedge in the planters. In addition, although it is not indicated on the plans, I saw that seating has been placed in front of the planters.
49. The introduction of the greenery means that, with the planting in place, people would not be able to **look down onto 'Acorn Bank's extension or its garden** from the roof terrace. Indeed, this is illustrated on drawing S/02. On the face of it therefore, the boundary treatment here would appear to have resolved the problem. However, this solution would only be effective if the planting remained in place permanently, and provided that it was kept at a minimum height at least. I am not satisfied that stipulating what effectively would be a requirement in perpetuity could reasonably be achieved by means of a condition attached to a planning permission. I have read that the appellant would do so via a unilateral undertaking, but as no such undertaking has been put before me, this is not a consideration to which I can attach any weight.
50. In the light of the foregoing, my view is that the presence of the roof terrace in its current form and extent would have unacceptably adverse consequences for the living conditions of the neighbours. I do not consider there are any other conditions that would overcome my concern in this respect.

### **Overall**

51. As regards the third floor flat, I see no reason to take issue with the principle of **providing additional living accommodation within the roof space of 'Skelton Court'**. However, the physical consequences of the particular scheme in question are such that they render it unacceptable. Not only would the living conditions of the neighbours be harmed as a result of the creation of the roof terrace, but also the alterations to the roof profile of the building would tend to detract from both the character and appearance of the conservation area and **the setting of 'Acorn Bank'**. As such I consider this part of the scheme would be contrary to CDLP Policies SP 6, HO 2, HE 3, and HE 7.
52. Paragraph 132 of The National Planning Policy Framework (The Framework) advises that when considering the impact of development on the significance of a designated heritage asset, great **weight should be given to the asset's** conservation. In this instance, the development in question has resulted in less than substantial harm. In such circumstances, paragraph 134 of The

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<sup>12</sup> Drawing nos.L/02 Rev A & S/02.



Framework advises that this harm should be weighed against the public benefits of the proposal. Here though, the benefits that have accrued from the disputed development appear to me to be essentially private ones. As a result, they do not outweigh the harm to the significance of the conservation area or **that of 'Acorn Bank'**.

53. Turning to the second floor flat and the various physical changes to the appeal building and the land associated with it contained in the deemed application and the section 78 appeals. I would not go as far as to say that they would enhance either the character or appearance of the Wetheral Conservation Area, **or the setting of the listed 'Acorn Bank'**. **Be that as it may, for the reasons** given above, I do not consider there would be adverse consequences in these respects either. The effect would be essentially neutral, in which case the attributes of the conservation area and the setting of the listed building would be preserved. Accordingly, therefore, insofar as these matters are concerned, I see no conflict with the relevant provisions of the CDLP or the SPD.
54. Drawing all the various threads of the case together, the section 174 appeal on ground (a) succeeds insofar as items (iii), (vii), (viii) and (ix) of the allegation are concerned, but fails in respect of item (ii). A split decision will be made on the deemed application on this basis. In the case of those matters for which planning permission will be granted, as the provisions of section 180 will come into play, there is no need for me to make any further corrections to the enforcement notice.
55. Section 78 appeals C, D and E succeed and planning permission will be granted accordingly. It is questionable whether the parking and landscaping layout in appeal B will be implemented, but this is not a reason to withhold the granting of planning permission for this part of the scheme. As this element of the scheme is severable in that it is a separate physical entity, distinct from the works affecting the building, a split decision can be issued on this basis. However, I do not consider this is a practical proposition insofar as the other components of the application are concerned. In so saying though, I am mindful that some of these matters are covered by the deemed application and the other section 78 appeals.
56. As regards conditions, it is reasonable that the ground level landscaping should be addressed in this manner, It would also be prudent to ensure that the parking provision continues to remain available for that purpose. **As the '29 space scheme' is a proposal and is a discrete element, the 'standard' time limit** for commencement should be proscribed. Other than that, I see no need for any further conditions in respect of the various matters covered by the appeals.

### **Other Matters**

57. I have taken into account all the other matters raised, but none are sufficient to outweigh the considerations that have led me to my conclusions.

### **Formal Decisions**

#### **Section 174 Appeal A Ref: APP/E0915/C/16/3151214**

58. I direct that the notice be corrected:

A. In section 3 by:

- (a) The deletion of items (i), (iv), (v), (vi), and (x);
- (b) **The deletion from item (ii) of all the text after "roof terrace";**
- (c) The deletion from item (iii) of all the text after "2nd floor";
- (d) The deletion from item (vii) **of all the text after "pedestrian gates";**
- (e) The deletion from item (viii) of all the text after **"south elevation";**
- (f) The deletion from item (ix) of all the text after **"the development"**.

B. In section 5 by the deletion of items (i), (iv), (v), (vi), and (x).

59. Subject to these corrections, I allow the appeal insofar as it relates to items (iii), (vii) (viii) and (ix) and I grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for:

- a. the subdivision of one flat to create 2 flats (nos 13 & 14) on the second floor;
- b. the erection of a solid sandstone wall along the frontage of the development;
- c. the erection of 2.10m high vehicle and pedestrian gates on the south elevation;
- d. the insertion of double glazed uPVC window units throughout the whole development

at 'Skelton Court', Wetheral, Carlisle CA4 8JG.

60. I dismiss the appeal and uphold the notice as corrected insofar as it relates to the creation of an additional flat within the existing roof space including lift housing and an external roof terrace. I refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

### **Section 78 Appeal B Ref: APP/E0915/W/16/3150248**

61. I dismiss the appeal insofar as it relates to 2 additional flats and associated external works. I allow the appeal insofar as it relates to the revised parking and landscaping layout at 'Skelton Court', Wetheral, Carlisle CA4 8JG in accordance with the terms of the application, Ref 15/0920, dated 5 October 2015 and the plan reference L/01/Rev E and submitted with it and subject to the following conditions.

- 1) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

- 2) The parking area hereby approved shall be kept available at all times for the parking of vehicles **by the occupants of the flats at 'Skelton Court'** and their visitors.

**Section 78 Appeal C Ref: APP/E0915/W/16/3152779**

62. The appeal is allowed and planning permission is granted for the subdivision of second floor apartment to provide an additional apartment at 'Skelton Court', Wetheral, Carlisle CA4 8JG in accordance with the terms of the application, Ref 16/0316, dated 8 April 2016 and the plans submitted with it.

**Section 78 Appeal D Ref: APP/E0915/W/16/3152781**

The appeal is allowed and planning permission is granted for a revised landscaping and parking layout at 'Skelton Court', Wetheral, Carlisle CA4 8JG in accordance with the terms of the application, Ref 16/0317, dated 8 April 2016 and the plans submitted with it subject to the following conditions.

- 1) Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 2) The parking area hereby approved shall be kept available at all times for the parking of vehicles **by the occupants of the flats at 'Skelton Court'** and their visitors.

**Section 78 Appeal E Ref: APP/E0915/W/16/3152782**

63. The appeal is allowed and planning permission is granted for the proposed installation of uPVC windows at 'Skelton Court', Wetheral, Carlisle CA4 8JG in accordance with the terms of the application, Ref 16/0318, dated 8 April 2016 and the plans submitted with it.

*D H Brier*

Inspector

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## Appeal Decisions

Hearing held on 1 July 2014

Site visit made on 1 July 2014

**by Andrew Dawe BSc(Hons) MSc MPhil MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 6 August 2014**

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### **Appeal A: APP/E0915/A/14/2214847**

#### **Former I/a Skelton House, Wetheral, Carlisle, Cumbria CA4 8JG**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
  - The appeal is made by Citadel Estates Ltd against the decision of Carlisle City Council.
  - The application Ref 13/0521, dated 1 July 2013, was refused by notice dated 24 December 2013.
  - The application sought planning permission for demolition of house, adjoining barn and outbuildings; redevelopment of site for the erection of single block comprising 15No. two-bed apartments with dedicated access, off-street parking and private amenity spaces without complying with a condition attached to planning permission Ref 10/1066, dated 24 May 2012.
  - The condition in dispute is No 2 which states the approved documents of the planning consent.
  - The reason given for the condition is: to define the permission.
- 

### **Appeal B: APP/E0915/A/14/2216562**

#### **L/a former Skelton House, Wetheral, Carlisle, Cumbria CA4 8JG**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
  - The appeal is made by Citadel Estates Ltd against the decision of Carlisle City Council.
  - The application Ref 14/0033, dated 17 January 2014, was refused by notice dated 7 March 2014.
  - The application sought planning permission for demolition of house, adjoining barn and outbuildings; redevelopment of site for the erection of single block comprising 15No. two-bed apartments with dedicated access, off-street parking and private amenity spaces without complying with a condition attached to planning permission Ref 10/1066, dated 24 May 2012.
  - The condition in dispute is No 2 which states the approved documents of the planning consent.
  - The reason given for the condition is: to define the permission.
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### **Decision**

1. Appeal A is dismissed and Appeal B is dismissed.

## **Application for costs**

2. At the Hearing an application for costs was made by Mr Dean Thomas Montgomery against Carlisle City Council. This application is the subject of a separate Decision.

## **Procedural matters**

3. I have taken into account the Government's Planning Practice Guidance (PPG), issued on 6 March 2014, in reaching my decision but in light of the facts of the case this has not altered my conclusions.
4. The applications subject to these appeals are made under Section 73 of the Planning Act for minor material amendments<sup>1</sup>. They seek revised designs to the development approved under planning permission 10/1066 but with the same number of units and not a substantially different footprint area. This type of application is possible as a condition was imposed on the original permission specifying the approved plans. The appeals seek removal of the condition and replacement with a condition specifying the plans that reflect the amended designs.
5. Planning permission 10/1066 remains extant and is a material consideration of considerable weight in determining these appeals.
6. For ease of reference I refer to the different cases as Appeals A and B in this decision letter as set out in the headers. I have dealt with each appeal on its individual merits but to avoid duplication I have considered the proposals together in this document. Although there are two appeals, I have used singular terms in places for ease of reading.
7. I saw on my site visit that development had commenced on the site principally relating to the laying of the foundations which appeared to reflect the footprint of the two appeal proposals.

## **Main Issues**

8. The main issues in both appeals are:
  - (i) whether the proposed development, as amended, would preserve or enhance the character or appearance of the Wetheral Conservation Area (CA) and preserve the setting of the Grade II listed building (LB) known as Acorn Bank;
  - (ii) the effect of the proposed development, as amended, on the living conditions of the occupiers of Acorn Bank and Caerluel in respect of privacy.

## **Reasons**

### *Character and appearance of CA and setting of LB*

9. The appeal site lies within the CA and adjacent to the LB on land previously occupied by Skelton House which has now been demolished along with all other associated buildings. Therefore, special attention has to be paid to the

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<sup>1</sup> See Greater flexibility for planning permission: Guidance, October 2010 (Department of Communities and Local Government)

desirability of preserving or enhancing the character or appearance of the CA and preserving the setting of the listed building.

10. I note that the decision notice for Appeal B included a third reason for refusal, which was not on that for Appeal A, referring specifically to the impact of the development on the setting of the LB. Notwithstanding the lack of such a reason in relation to Appeal A, the Council said at the hearing that this did not reflect any greater impact of Appeal B. In any case, regardless of whether such a reason was given or not, there is a statutory duty to have regard to the effects on the special interest of the LB, and this is how I have approached both appeals.
11. The key design changes to the scheme approved under application 10/1066, other than positioning and design of fenestration, which, in relation to living conditions, I have dealt with separately under 'living conditions' below, would be as follows. For both appeals, the main front elevation and bays would be closer to the road, although the bays relating to Appeal B would be single storey as opposed to the full three storey height for Appeal A. The former would have shallow depth, full height, gable features, the central one being slightly deeper than the two either side.
12. Both appeal schemes would be narrower at the front, but with the front block extending further back than for the approved scheme, and the overall length of the buildings would be increased. The front elevation in both case would also be symmetrical either side of the central gable feature, which would not be the case with the approved scheme which, amongst other things would have a lower roof height on the side nearest Acorn Bank. The walls of the entire western section of the front elevation for Appeal B would be stone clad. The rear section of the building in both cases would have a reduced ridge height.
13. Appeal A would introduce glazed balconies. Both schemes would have the main entrance on the western side of the building with a false door in the front elevation. Appeal A would have a fourth storey within the roof space, created with a significant flat roof element hidden behind outward facing pitched roofs, although this additional level would be evidenced by velux windows. Both schemes would include alterations to the car parking and landscaping layout.
14. The CA, in the vicinity of the site, comprises a range of designs and sizes of properties. Whilst there are some examples of three storey buildings, these are in the minority. In the case of one such property in Pleasant View, a short distance to the east of the site, and a three storey element to Caerluel with the third storey being partially within the roof space, these are narrow and do not dominate the street scene. Acorn Bank is a two storey detached building of fairly modest height with a slightly higher semi-circular front bay to the east side of its front elevation. This is an attractive LB which, despite being set back from properties to its east, retains a strong presence. This is by virtue of its clear visibility when approaching from the west, particularly as the road starts to bend round more towards the east in front of the appeal site, and also given the modest height of the immediately neighbouring property to the east.
15. The proposed development, in the case of both appeals, would result in the main front elevation projecting noticeably beyond the line of the main front elevation of Acorn Bank, where the approved scheme showed it aligned with it. That scheme would have three storey bays projecting forward to the approximate alignment of the main elevation of the appeal schemes, but they

- would be three, separated, and relatively narrow, features as opposed to a continuous mass along that particular alignment. The proposed bays whether single storey or three storey would project further still which, as I saw on site, would be just beyond the line of the front of the circular bay of Acorn Bank.
16. Therefore, although the building would be narrower than that approved, the front elevation would still present a wide frontage whose massing would be much more to the fore. Whilst the overall impact of Appeal B, with only the single storey front bays, would be less than Appeal A, both proposals would create a structure that would have an adverse visual impact compared with the approved scheme and dominate the adjoining LB and the street generally, making it an obtrusive and jarring feature. Despite the varying use of stone finish on the front elevation of both proposals, the symmetrical lines would further emphasise the singular massing of the building.
  17. The introduction of glazed balconies in Appeal A, whilst intended not to screen the features of the main building and to provide amenity space for the apartments, would nevertheless introduce alien features into the street scene that would further draw the eye disproportionately towards the development. This would be all the more so with the inevitable household paraphernalia that would be visible on the balconies. Furthermore, the attempt to portray a frontage onto the street with a false front door would portray a disingenuous appearance particularly as it would not be read as such without an associated entrance pathway and general evidence of activity. Whilst it was explained at the hearing that this was partly done to reduce the likelihood of vehicles being parked on the road in the vicinity of the adjacent bus stop, it has been agreed that clear way markings would be implemented to prevent such parking.
  18. With regard to paragraphs 132 and 134 of the Framework, harm to the significance of the LB and the character and appearance of the CA would be less than substantial, due to the fact that the LB itself remains unaltered and given the relatively small, but nevertheless significant amendments to the approved scheme. However, I do not consider there to be any public benefits sufficient to outweigh that harm.
  19. I have had regard to the appellant's submissions relating to inconsistent comments made by the Conservation Officer and the Conservation Area Advisory Committee. However, I have determined these appeals on their merits taking account of all the evidence and observations on my site visit.
  20. For the above reasons, I conclude on this issue that the proposed development, as amended, relating to both Appeals A and B, would neither preserve the character and appearance of the CA nor preserve the setting of the LB. As such it would be contrary to Policies CP5, H1, LE12 and LE19 of the Carlisle District Local Plan (the Local Plan). These policies together, in respect of this issue, require, amongst other things, development to respond to local context and the form and character of the existing settlement and surrounding buildings, to preserve or enhance the CA and to preserve the character and setting of listed buildings.
  21. The Council also refers to Policy H10 of the Local Plan in its decision notice. However, the Council confirmed at the hearing that this policy is not relevant to this appeal, which relates to amendments to a development already approved and is extant, and I agree with that position.

### *Living conditions*

22. Caerluel has some windows on its side elevation, most of which appeared to be related to non-habitable rooms although I understand that one of them serves a bedroom. There is an existing wall along the side boundary and I understand that it would be intended to raise this further in order to provide adequate screening from any potential overlooking from ground floor rooms and the entrance door of the proposed development. I saw that this would be the case.
23. In terms of any overlooking from upper floor rooms with windows facing the side of Caerluel, the main differences with the approved scheme Ref 10/1066 would be as follows. Above the entrance door there would be a second floor study window for Appeal A or obscure glazed kitchen window for Appeal B, as opposed to roof veluxes to a bedroom, and a first floor bedroom window for appeal A and obscure glazed kitchen window for Appeal B, as opposed to an oblique view oriel window. Appeal B would also include a first floor oblique view oriel kitchen window alongside the obscure glazed window. Towards the rear of the building on the side elevation, there would be high level veluxes serving first floor rooms for both schemes and Appeal B would include two first floor conventional bedroom windows.
24. Whilst there would be additional upper floor windows compared to the approved scheme, those that would be obscure glazed or of oriel design would prevent undue overlooking to the side windows of Caerluel. As agreed at the hearing, further details of the obscured windows, to ensure this, could be secured by condition were the appeal allowed. In relation to the other proposed additional conventional windows, there would not be a significantly greater level of overlooking of the side bedroom window of Caerluel than would be the case from the previously approved side living room windows of the front flats. The angle of any viewing would also be slightly oblique. Together with the degree of distance there would be between the windows of the two properties, and the fact that they would be slightly further apart than for the approved scheme, I consider that there would not be undue additional loss of privacy to the residents of Caerluel in this respect.
25. In terms of any potential overlooking of the rear garden of Caerluel, the additional windows that would directly face that space would be set a significant distance from the boundary. Furthermore, the rear facing windows would only afford oblique angle viewing of the garden. Caerluel also has quite a wide rear garden such that in the context of the overall amount of outdoor space of that property, any additional overlooking would not amount to unacceptable loss of privacy to its residents.
26. The windows in the east side elevation would match those on the west side. Acorn Bank has no side windows and so the only potential additional overlooking of this property compared to the approved scheme would be of its rear garden. In terms of ground floor windows, the boundary wall and hedge would prevent overlooking and, were the appeal allowed, details of measures to augment this treatment could be secured by condition as agreed at the hearing. The first floor side oriel window would be angled towards the rear garden but as it would be set back from the rear building line of Acorn Bank's rear extension, the angle of view to the garden would be oblique.
27. The proposed first floor side bedroom windows towards the rear would have the potential to result in direct overlooking of part of Acorn Bank's garden, but



whilst closer to the boundary than those on the western side, the degree of separation would still mitigate this to a significant degree. Again, the rear facing windows would only afford oblique angle views of the garden. Furthermore, it is a large garden, such that the majority of it would not be directly overlooked. Therefore, any additional overlooking would not amount to an unacceptable loss of privacy to the residents of Acorn Bank.

28. For the above reasons, I conclude on this issue that the proposed development, as amended, relating to both Appeals A and B would not cause unacceptable harm to the living conditions of the occupiers of Acorn Bank and Caerluel in respect of privacy. As such, in respect of this issue, it would accord with Policy CP5 of the Local Plan and would not be at odds with the principles of the Council's Supplementary Planning Document: Achieving Well Designed Housing (the SPD) to which I have applied considerable weight due to its fairly recent adoption in 2011. This policy and SPD, in respect of this issue, requires, amongst other things, development not to have any adverse effect on the residential amenity of existing areas or adjacent land uses.
29. Some discussion was had at the hearing as to whether the second reason for refusal in each case related also to the privacy of prospective residents in respect of any overlooking from side windows in Caerluel. Although the reason does not refer to this, I am nevertheless satisfied that, in light of the above reasoning, the prospective occupiers of the proposed flats would not be overlooked from rooms of Caerluel to the extent that this would cause unacceptable levels of privacy.

#### *Other matter*

30. The appellant submits that the amendments would make the apartments more marketable and thereby improve deliverability to the benefit of housing supply. However, I have no substantive evidence before me as to why this would be the case or the extent to which the approved and appeal schemes differ in respect of marketability. I have therefore applied little weight to this factor in coming to my decision.

#### **Conclusion**

31. I have found that the proposed development, as amended, relating to both Appeals A and B would not cause unacceptable harm to the living conditions of the occupiers of Acorn Bank and Caerluel in respect of privacy. However, this does not outweigh the harm that would be caused in respect of the character and appearance of the CA and the setting of the LB.
32. Therefore, for the above reasons, and having regard to all other matters raised, I conclude that the appeals should be dismissed.

*Andrew Dawe*

INSPECTOR

## APPEARANCES

### FOR THE APPELLANT:

Sandy Johnston	Architect
Andrew Willison-Holt	Agent

### FOR THE LOCAL PLANNING AUTHORITY:

Cllr Barry Ogilvie Earp	Councillor
Rachel Lightfoot	Planning Agent
Karen Greig	Appeals Officer
Michelle Sowerby	Appeals Officer

### INTERESTED PERSONS:

Isabel Ferguson	Local Resident
Geoff Ferguson	Local Resident
David Notman	Local Resident (representing the Save Wetheral Village Group)
Maureen Lofthouse	Local Resident
Michael Norman	Local Resident
Alun Porter	Local Resident
Lis Price	Local Resident
Andrew Hall	Local Resident
Andrew Lomax	Local Resident

### DOCUMENTS AND PLANS SUBMITTED AT THE HEARING:

- 1 Plan Ref 03/2010/100 Proposed Block Plan revision A (Appeal A).
- 2 Plan Ref 03/2010/205B Site Plan showing proposed bin store location (Appeal B).
- 3 Copy of internal memorandum from Urban Design and Conservation Officer dated 14 August 2013.
- 4 Annotated drawings produced by appellant to show comparisons between the appeal schemes and that approved under application Ref 10/1066.
- 5 Deed of Variation of Agreement under Section 106 and 106A of the Town and Country Planning Act 1990 (one submitted for each of the two appeals).