

SCHEDULE A: Applications with Recommendation

17/0304

Item No: 04

Date of Committee: 02/06/2017

Appn Ref No:
17/0304

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 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

Date of Receipt:
07/04/2017

Statutory Expiry Date
02/06/2017

26 Week Determination

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, reduce the height of the lift housing and raise the

height of the roof structure over the terrace 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 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.

The Proposal

- 3.3 The current proposal seeks Full Planning Permission for the creation of an additional 2 flats together with alterations to the layout of the site and to the building. Broadly, the revisions comprise:
- 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.

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, 40 letters of objection have been received and the main issues raised are summarised as follows:
1. the Inspector upheld concerns about the oppressive nature of the roof terrace and its impact on the occupiers of neighbouring properties and the unacceptable aspect of the lift housing;
 2. the Inspectors comments are unequivocal in the disapproval of the roof terrace and there is no logical reason for its acceptance;
 3. although the lift housing would be lower, this merely reduces the visual impact of the structure and totally fails to address the Inspector's concerns in that it still remains rectangular, box-like and inharmonious in appearance;
 4. the Inspector fails to make reference to the preponderance of roof lights and lanterns that are of a similar height to the lift housing;
 5. the reduction to the height of the lift housing would serve to expose the air conditioning unit and roof lantern thereby totally failing in its objective;
 6. the Inspector comments that the massing of Skelton Court tends to screen the lift housing; however, the structure is visible from further afield including White Close Gate, Hall Moor Court and Green Acres;
 7. the Inspector's views are supported and the application fails to meet with local plan policies SP6, HO2, HE3 and HE7 and should be refused;

8. residents are concerned that the village is threatened with becoming a “retirement village” with a large number of 2 bedroom houses and flats being granted permission;
9. the capacity of foul water collection systems in parts of the village and the water treatment works are saturated which the City Council was advised of in 2013 by Cumbria County Council but the Planning Officer appears to have adopted a “not my problem” attitude;
10. there is no pedestrian traffic plan to access village amenities that are located on the opposite side of the B6263;
11. there has been concern regarding the size and scale of this development which appears to have been built larger than necessary to accommodate an extra, unconsented storey;
12. the application does not address the Inspector’s concerns;
13. the penthouse apartment has no permission and was dismissed in the appeal. An application cannot be made to retain something that has no permission and is subject to an enforcement notice;
14. if the current as built height of the building and the lift housing together with the skylights and air conditioning unit had been presented to the council it would have failed on numerous planning conditions with regard to design and conservation area;
15. the drawings on the north east elevations have omitted the skylights and the air conditioning unit which can clearly be seen from Hall Moor Court;
16. the Enforcement Notice is silent on the height of the building and the fact that it has been omitted from any of the Section 78 appeals. As a result, the inspector excludes any consideration on the height of the building from his findings, because the council failed to request a ruling from him on this which is crucial in this matter;
17. the supporting statement by Squire Patton Boggs LLP seems to be somewhat liberal with the facts. Much is made of the height of the roof ridges being approved under 14/0472 which may be so, but the existence of an apartment in the roof space was consistently denied by Citadel Estates at that time;
18. as no permission was applied for the apartment it is ridiculous that the existence of this apartment should be passed for consideration to the Development Control Committee and to do so is to reward Citadel Estates for its flagrant disregard of protocol;
19. throughout this whole process no detailed drawing of the roof area has ever been submitted with an overhead view of the development. One is forced to rely on the Block Plan which in the case of most amendments has been found deficient in detail. Even the submitted block plan for 17/0304, for which approval is sought, is full of inaccuracies;
20. the Inspector describes the Council’s approach to the Enforcement Notice as “enigmatic” and he calls into question the Council’s stance, “*that the development should be built in accordance with approved detail*”. A logical point, but the Inspector makes recognition of this, noting that the Council have been deficient in highlighting these inconsistencies. That they seem unable to show where this condition has been listed;
21. the roof terrace is overbearing in nature and leaves little doubt of its presence has on the neighbouring Acorn Bank;
22. the Inspector’s report merely grants approval for the use of UPVC window in the elevations of the development. However the Roof Lights, Roof

- Lanterns and Velux windows attached to the roof scape are not covered by the Inspectors report as they represent a component of an element of the development for which there is no approval;
23. the removal of the window under 14/0472 to Apartment 16 has not yet to been complied with. The current arrangement where a faux window remains, I would point out that this solution is without approval. I would remind you that this window does not have approval as it fails to meet the council's own guidelines on the approved distance between properties. The status of this window should be incorporated into any future official notice;
 24. there have been c.500 objections against this contentious development but the developer continues to submit application after application. The council should ensure the building projects are completed in line with the parameters of the planning permission;
 25. to date the only planning permission granted for the development is approved under application 14/0472. All other applications have been declined by the Development Control Committee;
 26. the NPPF advises that when considering the impact of development on the significance of a designated heritage asset, great weight should be given to the assets conservation, the harm should be weighed against the public benefits of the proposal. This proposal is for personal and private gain and does not outweigh the harm to the significance of the conservation area or that of the listed building. Any approval would mean the permanent loss of privacy for both the current and future occupants of Acorn Bank;
 27. the inspectors concerns do not relate to the roof line/ridges surrounding the roof terrace, these already have approval to be higher, the lowering of these ridges formed the basis of our objections, a fact the inspector is only too well aware of. The inspectors concerns relate to the alteration of the whole of the roof profile and the fact that it has not been constructed in accordance with the approved plans. The whole roof in its current form does not sit comfortably in the conservation area, nor does it comply with the approval, as demonstrated by the images submitted;
 28. it will, and it does result in harm to the conservation area and listed building. In addition this does not have any advantage to the wider community, but merely benefits the developer personally;
 29. the approved block plan OORevG clearly shows a return to the pitch on the central raised section on the northern elevation, like wise it shows a return on all the pitches on the south elevation, running across the width of the building. It also shows a pitch with returns to the roof on the two story rear section. These returns would allow any flat roof to be sunken and hidden behind a parapet of ridges, the addition of the various roof paraphernalia would then also be hidden causing less harm to the conservation area and listed building. The flat roof as constructed has been heightened to sit parallel with the top of the roof ridges which allows all the roof additions to sit proud and visible. The manipulation and alteration of the whole roof structure and profile is clearly unacceptable to the inspector, and does not conform with any approval
 30. under application 17/0304, the planning portal documents show 'north, west, and eastern "existing elevations', however none of these existing elevations have approval,(they should not be there!) the application can

only be fairly judged and assessed when compared and balanced with approved documents. Currently, that constructed does not comply with any approval, or approved documents, the inspector is clear in that he upheld the refusal and the enforcement notice. As mentioned above you can not apply to “retain” something that has been repeatedly refused permission and has no approval;

31. the inspector also raises concern regarding the lift shaft housing and its shape, lowering the housing does not address the problem of its incongruous shape, because the flat roof sits at the highest point of the building and is not hidden behind the parapet of pitched roofs, we feel strongly that it will always be visible from somewhere within the conservation area. The approved development to the north of Skelton House in Hall Moor Court is only metres away, these new houses will have a clear view of the increased massing of the roof. Equally visible are the roof lanterns, air-conditioning unit, and satellite dish, whilst these elements may form an integral part of the 3rd floor apartment none have any planning approval;
32. the window on the eastern elevation to apartment 16 does not have approval, approved 14/0472 documents shows no window to this apartment. The applicant has been adamant throughout, that this window will be removed, currently it is plastered over internally. This simply allows the installed window to run with condensation, and leaves way for the possibility of it being opened up. The inspectors report approved application 16/0319 for UPVC windows, under this application there is no window to apartment 16 on the eastern elevation. As this window does not exist on any approved documents it has no approval and should be removed, as per the enforcement notice;
33. to allow approval of this application would be contrary to the Carlisle District Local Plan, contrary to NPPF, and contrary to the inspectors appeal decision, it should be refused on the above grounds as it does not comply with policies SP6, HO2, HE3, and HE7;
34. national planning policy guidance suggests that variations to facilitate minor material amendments are intended to allow minor changes not for making wholesale changes to the structure and variations should give retrospective consent to unauthorised development;
35. consideration of this application would frustrate the decision of the Development Control Committee in refusing 15/0920 and the Inspector’s subsequent decision;
36. it is a complete travesty of democratic accountability to ask the committee to consider allowing a variation of a previous application, the effect of which would be to overturn their own later decision to refuse the application;
37. approval of this application will bring the entire process of decision making into disrepute and would create sufficient grounds for an application for judicial review.

- 4.2 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.

5. Summary of Consultation Responses

Wetheral Parish Council: - the Parish Council object to the application on the following grounds:

The roof terrace

Raising the ridge of the building would be out of keeping to both the character and appearance of the conservation area and the setting of Acorn Bank. As such members consider this part of the scheme would be contrary to the Carlisle District Plan Policies SP6, HO2, HE3, and HE7;

Retention of the flat

Members question that the flat should be retained? No planning application was ever made for the flat, therefore in breach of the planning policy. Members request that an application is made with detailed drawings to enable its proper consideration;

The lift housing

By reducing the height of the lift housing would allow the existing roof lanterns, air conditioning unit and roof lights to be more visible to areas of the village as they are currently masked by the lift housing, so failing in its objective;

Historic England - North West Office: - it is not necessary for Historic England to be consulted on this application unless there are material changes to the proposal.

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 the building is already large in scale and is detrimental to both the setting of the conservation area and the adjacent listed building. It is stated that to grant this further application would compound these issues and have a greater visual impact on the character of the area.

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: its 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, the difference being that the ridge height would be lower than the approved ridge. The lift housing, with the proposed reduction in height, would be significantly lower than its present form and its prominence within the roof structure would be minimal.
- 6.22 In this context it is considered that the proposal (in terms of its location/ physical separation, scale/ massing, site levels, 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. Section 72 of the Planning (Listed Building and Conservation Areas) Act 1990, the NPPF, PPG and Policy HE7 of the local plan.
- 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 has commented 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 structure would be slightly lower than that of the extant permission but would essentially be a continuation of this structure. 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 reduce the lift housing to 0.3 metres above the height of the roof, a reduction of approximately 0.6 metres. This would reduce the number of viewpoints from which the structure would be visible and would significantly reduce the perceived detrimental visual impact of the lift housing.
- 6.35 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 which is supported by the Conservation Area Advisory Committee.
- 6.36 Notwithstanding the significant objections raised, the scale, layout and design of the building together with the boundary treatment and landscaping, 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

- 6.37 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.
- 6.38 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 previous application, and that which was considered at the 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."

- 6.39 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."

- 6.40 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. Given the height of the roof structure and distance from the edge of the building as proposed, in such circumstances the view would be further to White gate and not into Acorn Bank.

- 6.41 The Inspector acknowledged that the installation of the planters 'appeared' to have resolved the problem of overlooking down onto Acorn Bank; however, his concern was with regard to the landscaping within the planters with, in his view, no planning mechanism to retain the landscaping in perpetuity. It therefore follows that through the increase in height of the roof structure and being further from the boundary, the concerns of the Inspector have been addressed.

- 6.42 Subject to the imposition of a condition requiring the altered roof structure to be completed within a given period of time, 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

- 6.43 Some of the objectors make reference to the air conditioning unit and television aerial located on the lift housing. If planning permission is granted, these would need to be relocated due to the reduced height of the structures and would be repositioned elsewhere on the building which may be installed under the Permitted Development Rights depending of their siting.

Conclusion

- 6.44 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.

- 6.45 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 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.

8. Recommendation: Grant Permission

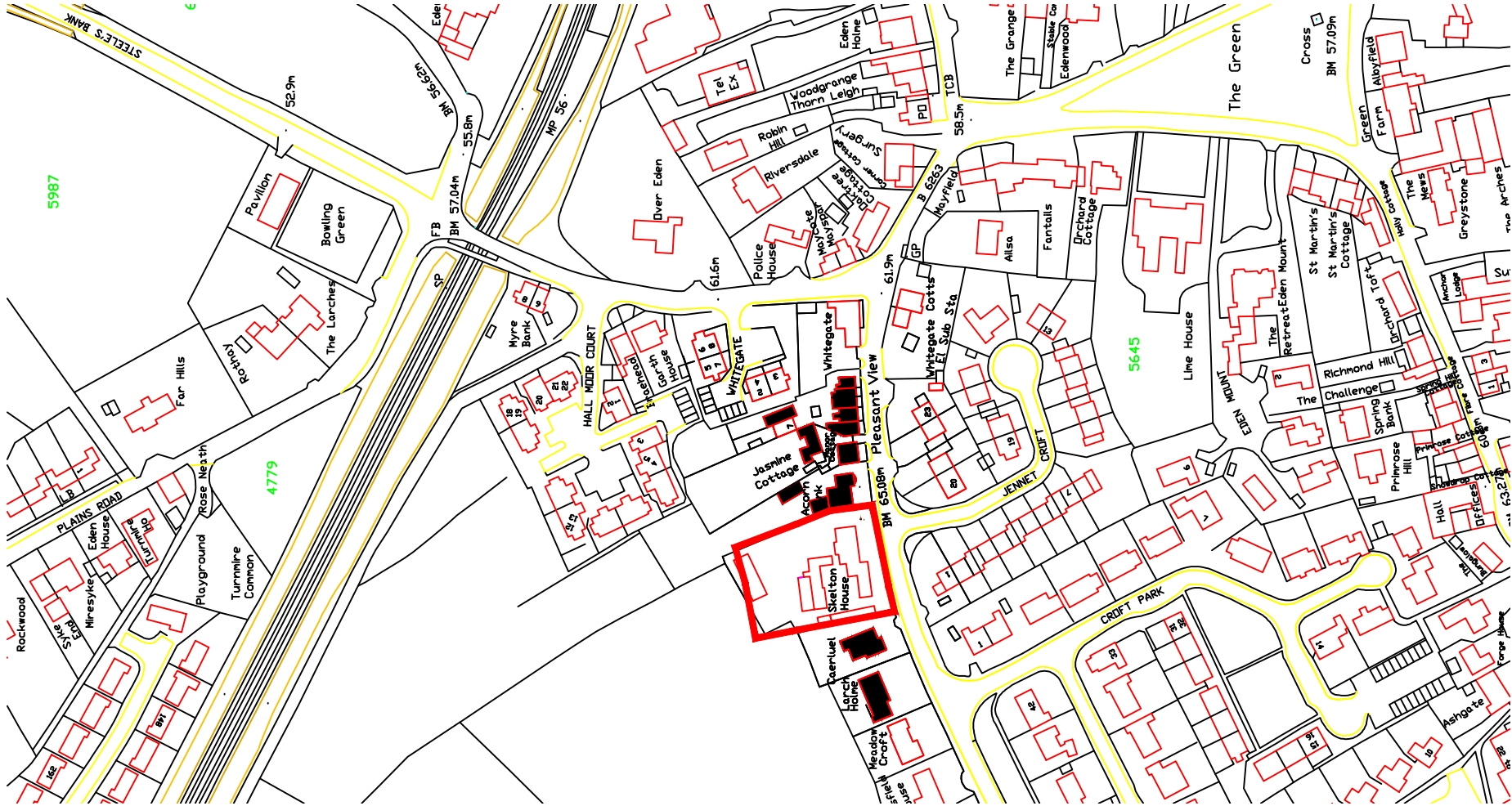
1. The development shall be undertaken in strict accordance with the approved documents for this Planning Permission which comprise:
 1. the Planning Application Form received 3rd April 2017;
 2. the Block Plan & Site Location Plan received 3rd April 2017 (Drawing no. 03/2010/00 rev G);
 3. the Existing North Elevation received 3rd April 2017 (Drawing no. 03/2010/07E);
 4. the Proposed North Elevation received 6th April 2017 (Drawing no. 03/2010/07F);
 5. the Existing East Elevation received 3rd April 2017 (Drawing no. 03/2010/08E);
 6. the Proposed East Elevation received 3rd April 2017 (Drawing no. 03/2010/08F);
 7. the Existing West Elevation received 3rd April 2017 (Drawing no. 03/2010/09D);
 8. the Proposed West Elevation received 3rd April 2017 (Drawing no. 03/2010/09E);
 9. the Existing Third Floor Plan received 3rd April 2017 (Drawing no. 03/2010/211B);
 10. the Proposed Third Floor Plan received 3rd April 2017 (Drawing no. 03/2010/211C);
 11. the Existing Roof Plan received 3rd April 2017 (Drawing no. 03/2010/212);
 12. the Proposed Roof Plan received 3rd April 2017 (Drawing no. 03/2010/212A);
 13. the Notice of Decision; and
 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 and the roof structure over the third floor terrace 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.



existing sandstone walls vary in height but are generally to be increased in height to 2m high (and to infill/repair areas where there is no wall or it is in poor repair).

**LINE OF 3-STOREY BUILDING
MOVED BACK**
red line: Approved scheme

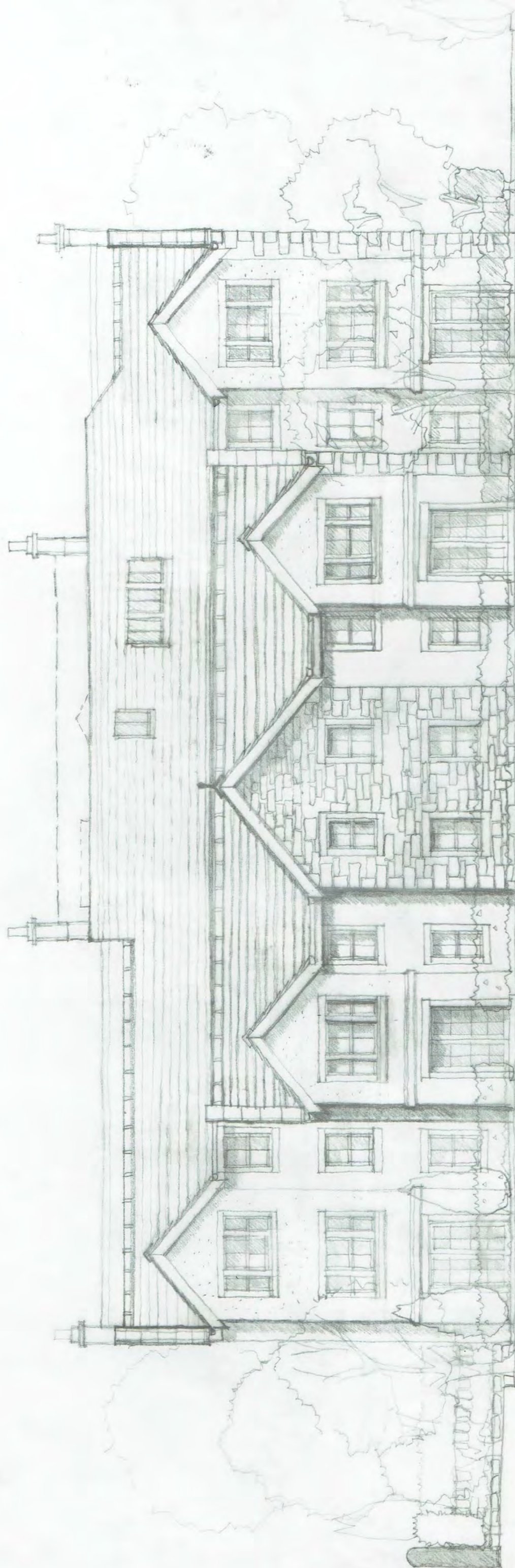
DETAIL A 1to200

DETAIL A

BLOCK PLAN & SITE
LOCATION PLAN 1to500

SANDY JOHNSTON
ARCHITECT
RIBA

BLOCK PLAN & SITE LOCATION PLAN
FLATS AT SKELTON HOUSE, WETHERAL for
CITADEL ESTATES
09-03-14 03/2010/00rev G 1:500/ 1:2500



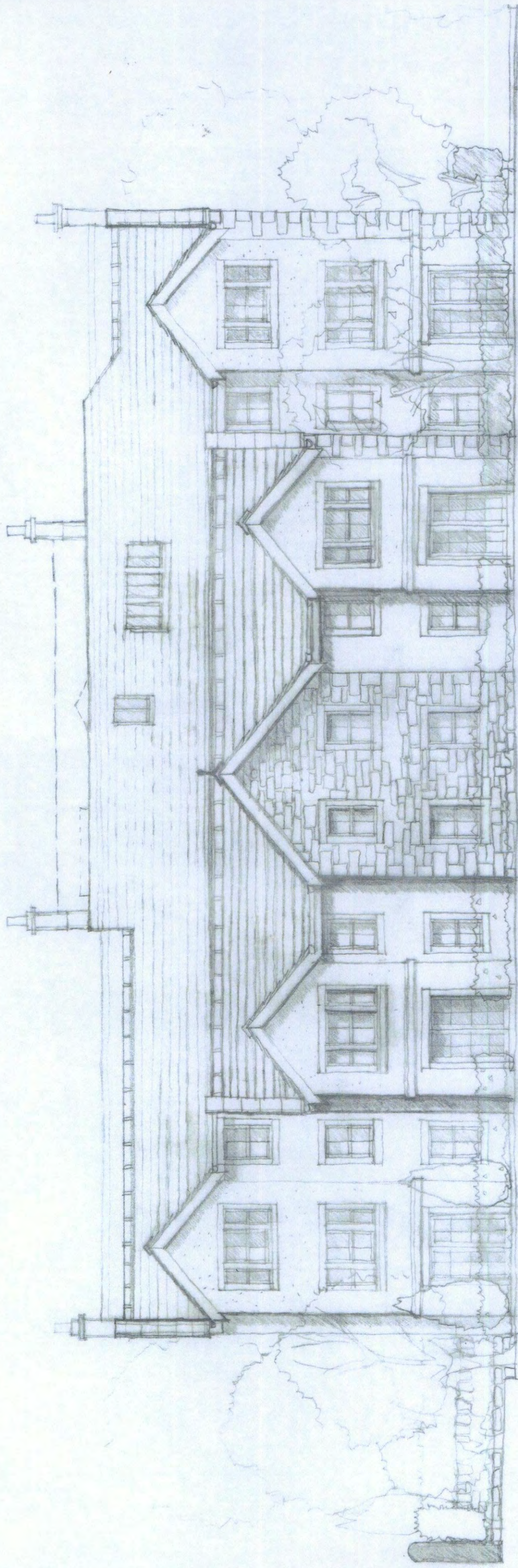
NORTHERN ELEVATION
(REAR)

SANDY JOHNSTON
ARCHITECT
RIBA

NORTH ELEVATION

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

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

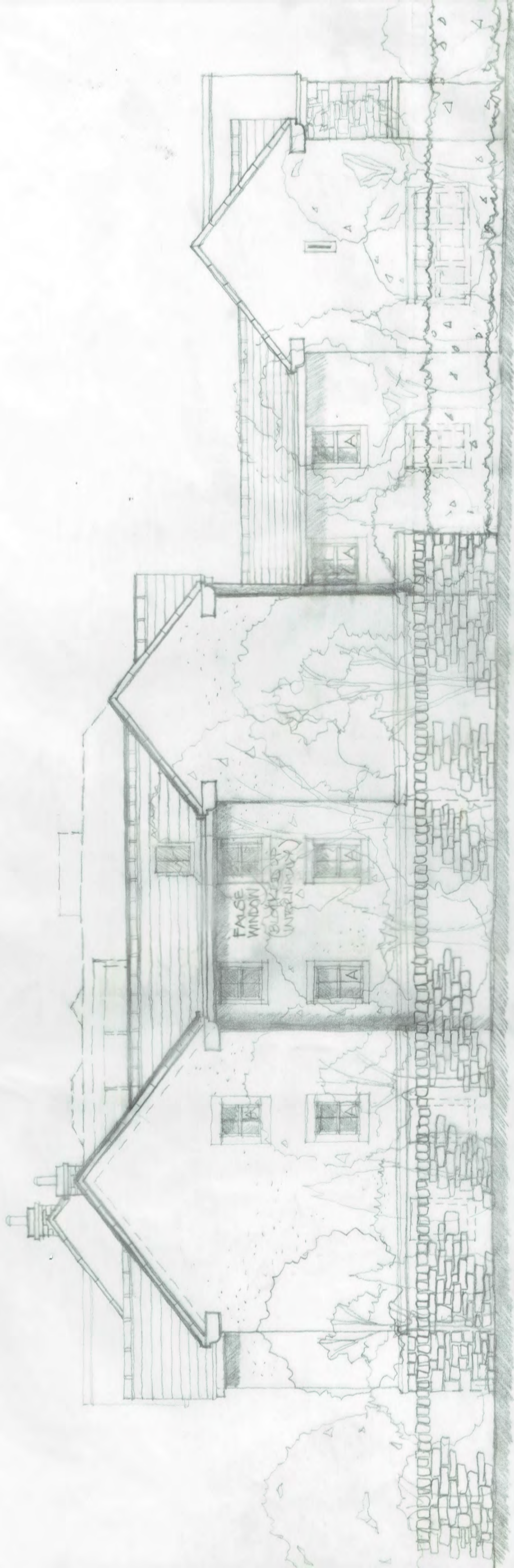


NORTHERN ELEVATION
(REAR)

RECEIVED
- 6 APR 2017
17/0304

SANDY JOHNSTON
ARCHITECT
RIBA

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

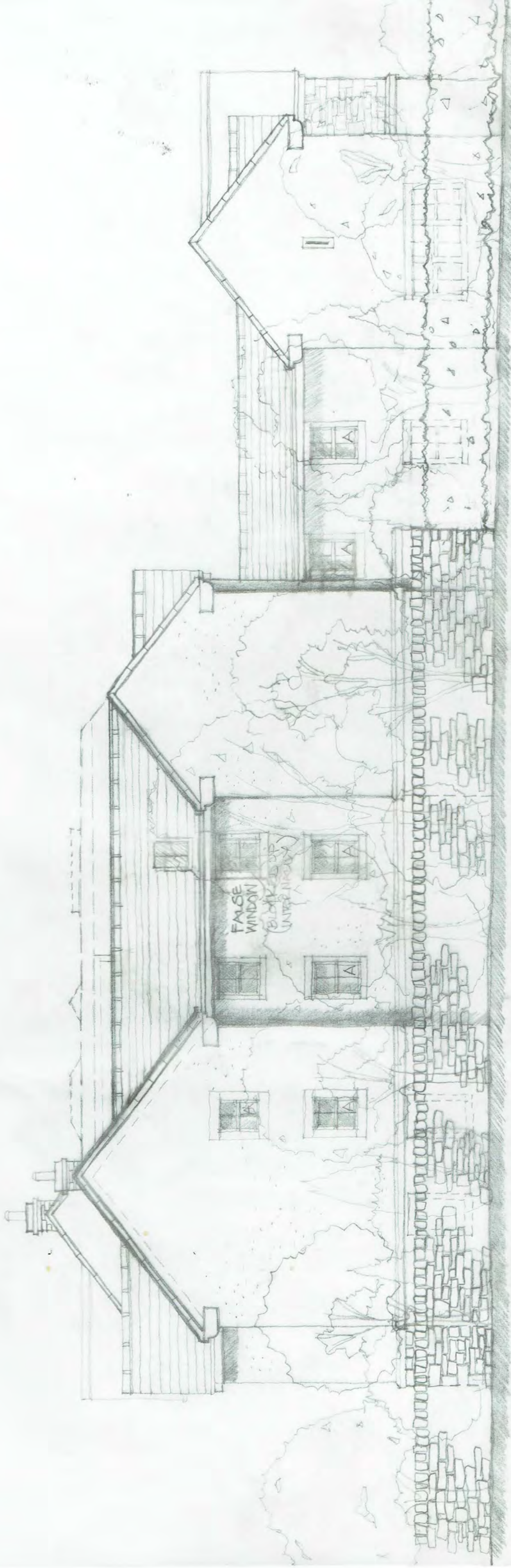


EASTERN ELEVATION

EAST ELEVATION			
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	

CITADEL
ESTATES LTD

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



EASTERN ELEVATION

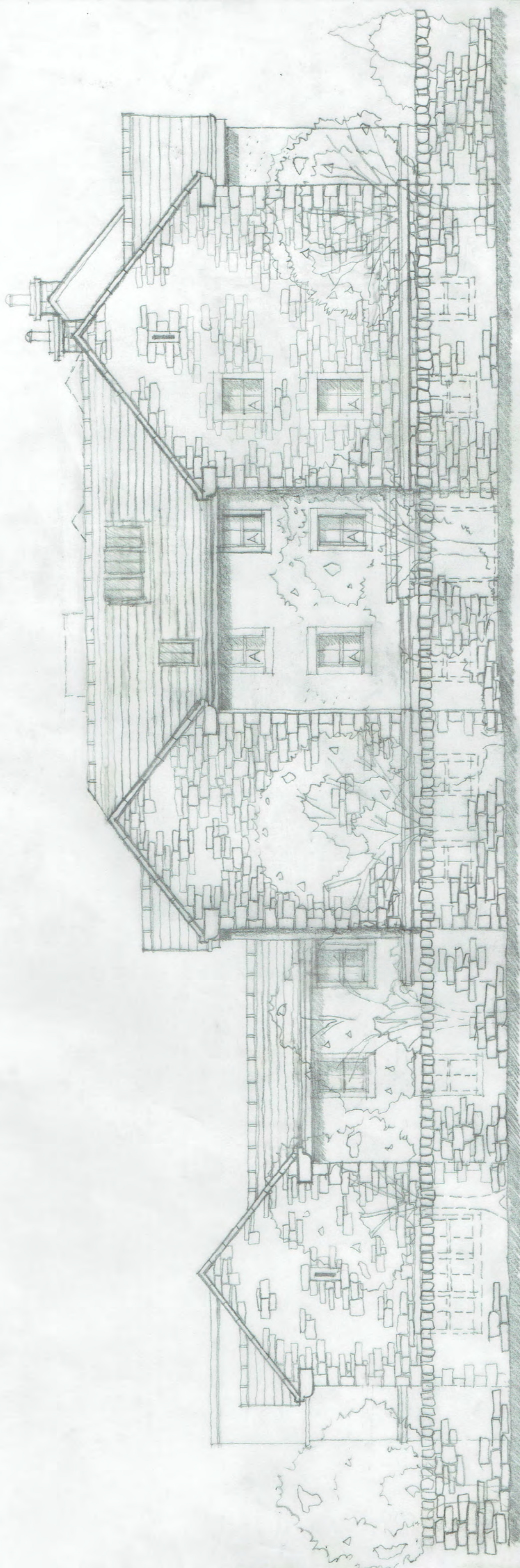
EAST ELEVATION

SANDY JOHNSTON
ARCHITECT
RIBA

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

MARCH 2017 03/2010/08F 1:100
24-03-17 Roof alterations to raise ridges around terrace

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



WESTERN ELEVATION
(LH SIDE)

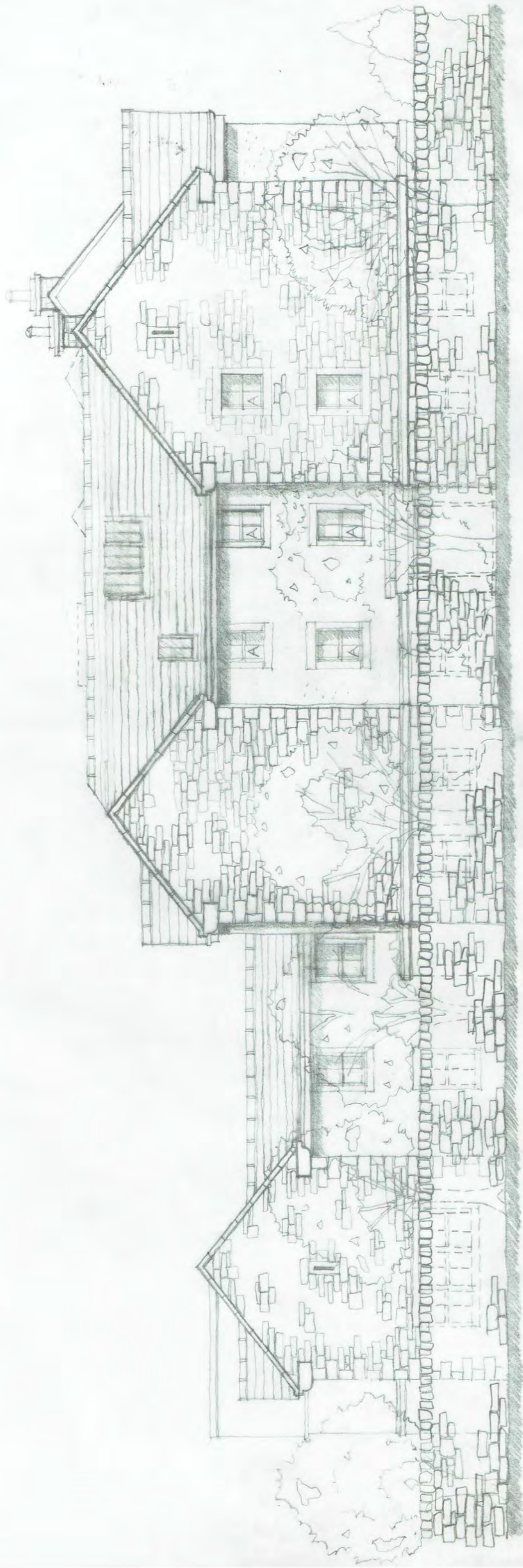
WINDOWS MARKED 'A' TO HAVE THE BOTTOM PANES
IN OBSCURE GLASS TO BE RETAINED IN
PERPETUITY UNLESS OTHERWISE AGREED BY
THE LPA

WEST ELEVATION

FLATS AT SKELTON HOUSE, WETHERAL for
CITADEL ESTATES

22-12-2014
Revision **D** 12-05-15 window alterations
1:100
09D

CITADEL
ESTATES Ltd



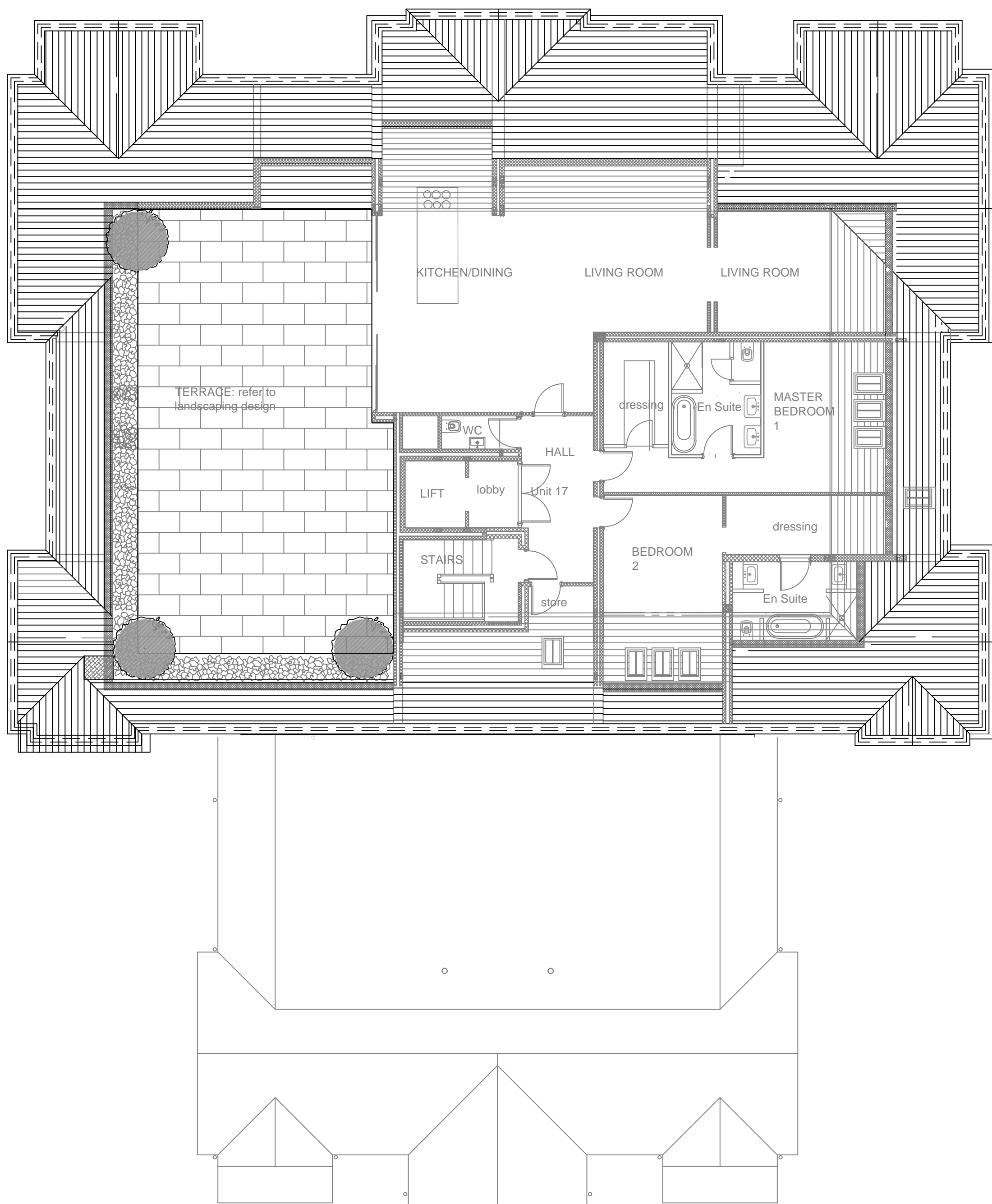
WESTERN ELEVATION
(LH SIDE)

SANDY JOHNSTON
ARCHITECT
RIBA

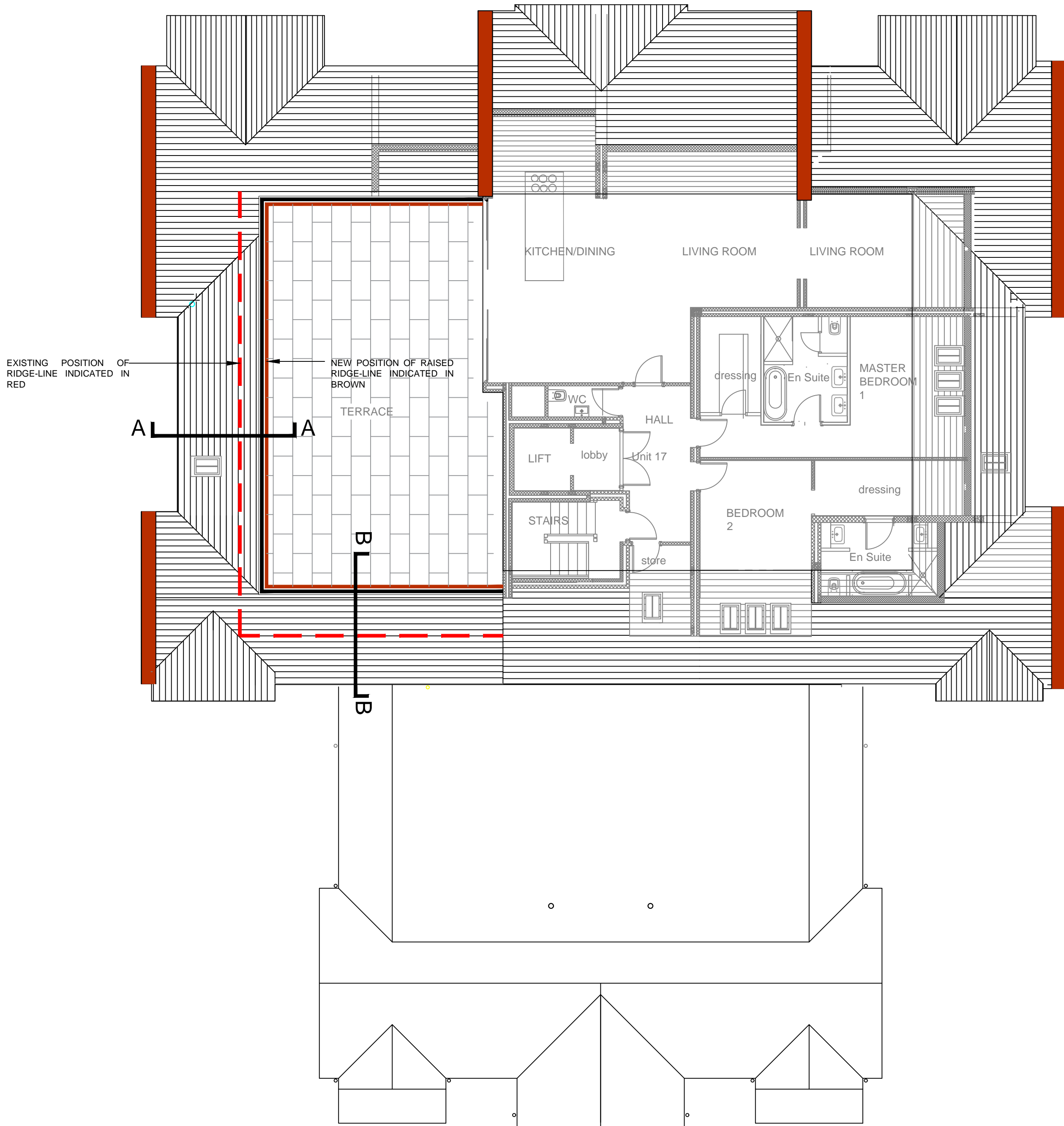
WEST ELEVATION

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

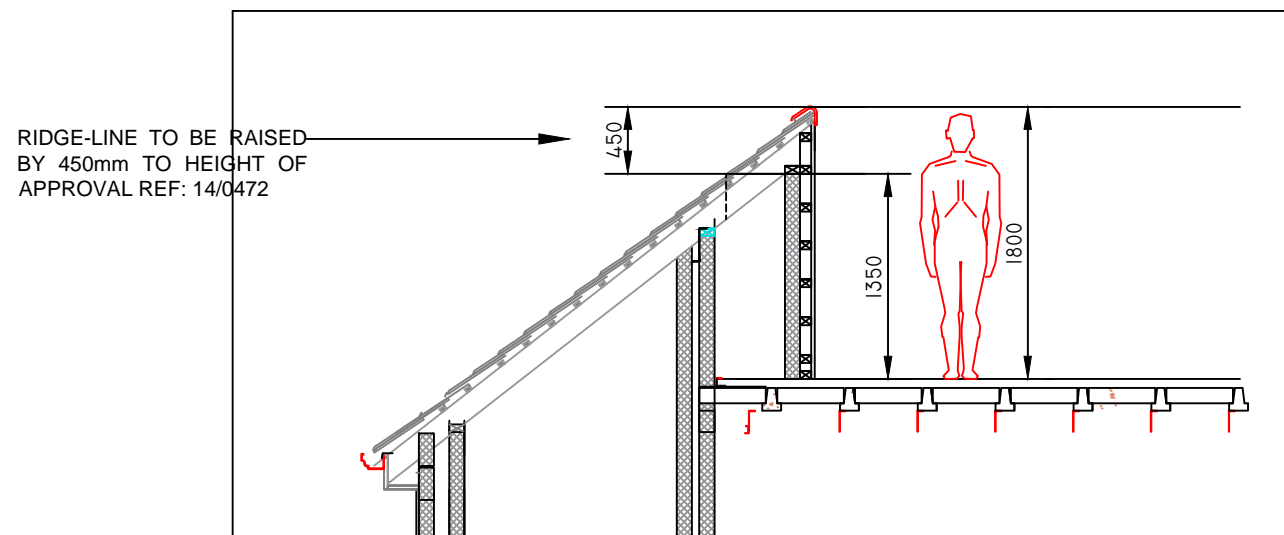
MARCH 2017 03/2010/09E 1:100
24-03-17 Roof alterations to raise ridges around terrace



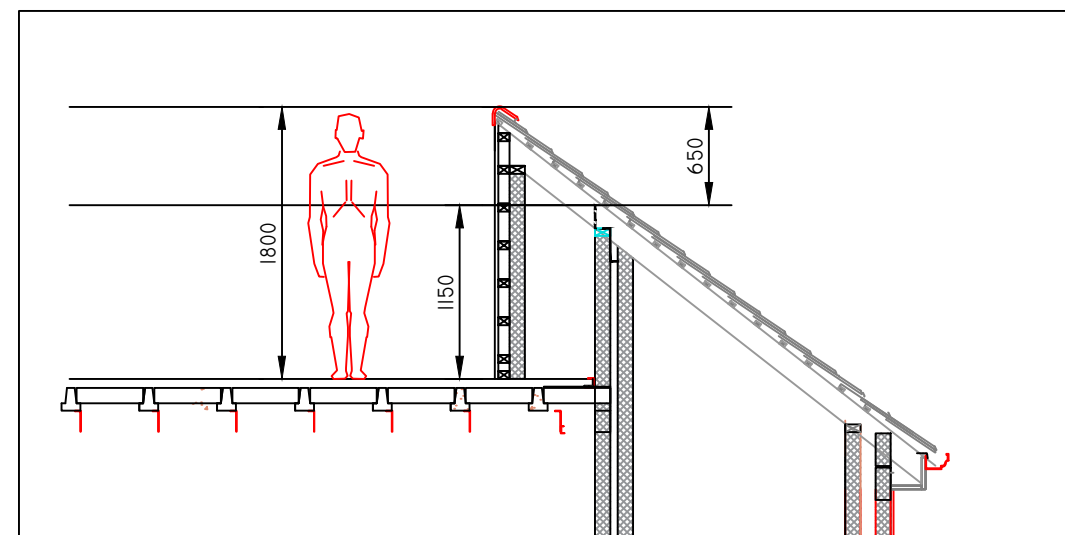
THIRD FLOOR PLAN 1:100



THIRD FLOOR PLAN 1:100



SECTION A-A 1:50

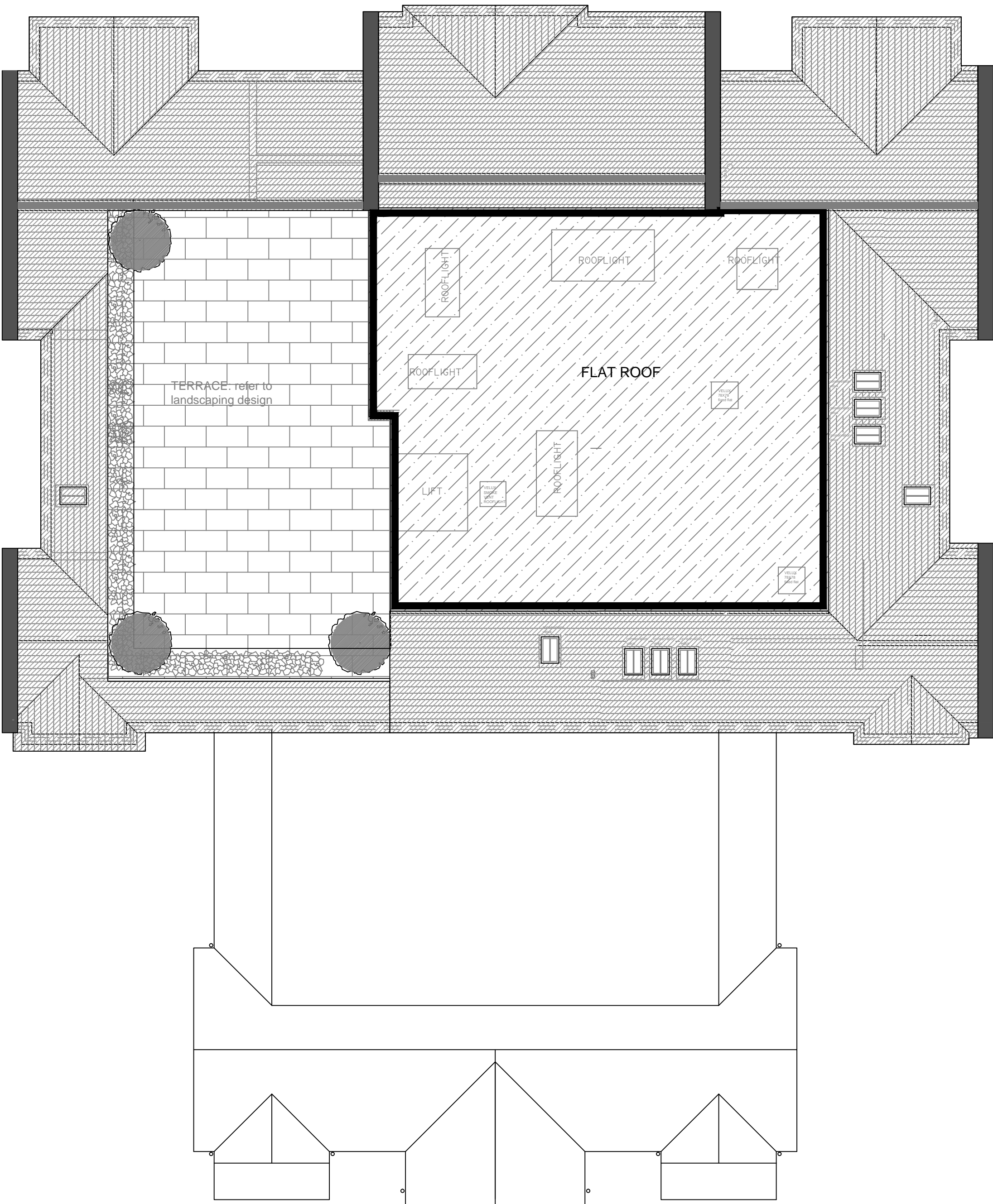


SECTION B-B 1:50

SANDY JOHNSTON
ARCHITECT
RIBA

THIRD FLOOR PLAN

RETENTION OF APARTMENT WITHIN EXISTING
ATTIC, SKELTON HOUSE, WETHERAL for CITADEL ESTATES
MARCH 2017 03/2010/211C 1:100
24-03-17 Roof alterations to raise ridges around terrace



ROOF PLAN 1:100

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

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.
-

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 amendments¹. 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

¹ 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).

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

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.
-

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.
-

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.
-

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.
-

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 permission¹ 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 2014².
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

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

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

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**³.

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 responses⁴ 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**'.

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

⁴ 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]⁵ 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/01F⁶.
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

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

⁶ 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 buildings⁷; 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 15/0920⁸ 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 15/0475⁹ 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'**¹⁰, 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

⁷ This approach is reiterated in criterion 1 of Policy HO 2.

⁸ O8E Rev E and O9D Revision D.

⁹ O8C Revision C and O9C Revision C.

¹⁰ 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 illustrate¹¹, 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.

¹¹ 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)¹², 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

¹² 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