

SCHEDULE A: Applications with Recommendation

14/0248

Item No: 01

Date of Committee: 16/05/2014

Appn Ref No:
14/0248

Applicant:
Citadel Estates Ltd

Parish:
Wetheral

Agent:
Holt Planning Consultancy
Ltd

Ward:
Wetheral

Location: Skelton House, Wetheral, Carlisle, CA4 8JG

Proposal: Variation Of Condition 2 (Approved Documents) Of Previously Approved
Permission 10/1066 (Revised Application)

Date of Receipt:
26/03/2014

Statutory Expiry Date
25/06/2014

26 Week Determination

REPORT

Case Officer: Richard Maunsell

1. Recommendation

- 1.1 It is recommended that this application is approved subject to legal agreement for a Deed of Variation to the S106 Agreement. If the variation is not completed within a reasonable time, then Authority to Issue is requested to the Director of Economic Development to refuse the application.

2. Main Issues

- 2.1 Principle Of Development
- 2.2 Scale, Layout And Design Of The Development
- 2.3 Highway And Parking Issues
- 2.4 The Impact Of The Proposal On The Living Conditions Of Neighbouring Residents
- 2.5 Affordable Housing
- 2.6 Landscaping
- 2.7 Waste Collection

3. Application Details

The Site

- 3.1 This application seeks consent for the variation of a planning condition on land previously occupied by Skelton House and its associated buildings, which are located at the northern extent of Pleasant View in Wetheral, to enable the erection of 15 apartments. 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 was vacant following the demolition of Skelton House, a former farmhouse, with an attached two storey barn, detached stables and two polytunnels, which were associated with its former use as a commercial nursery; however, building work has recently commenced.
- 3.3 Planning permission and conservation area consent were granted in 2012 and 2011 respectively for the demolition of the buildings together with the redevelopment of the site to provide a 3 storey building comprising of 15 apartments together with associated car parking.
- 3.4 An application for a Minor Material Amendment to vary condition 2 of the planning consent granted in 2012 and allow the substitution of the site layout and fenestration details was refused by Members of the Development Control Committee in 2013.
- 3.5 A further revised application for a Minor Material Amendment to vary condition 2 of the planning consent granted in 2012 and allow the substitution of the site layout and fenestration details was refused by Members of the Development Control Committee earlier this year for the following reasons:

“The proposal, by virtue of its scale, massing and position within the site, does not respond to the local context and form of surrounding building in relation to height, scale and massing. The siting of the proposed building would differ from the approved scheme and would be inappropriate to its prominent location in the Wetheral Conservation Area. The proposal is therefore contrary to criteria 1 of Policy CP5 (Design), criterion 2, 3 and 4 of Policy H1 (Location of New Housing Development) and criterion 1 and 2 of Policy LE19 (Conservation Areas) of the Carlisle District Local Plan 2001-2016.

The proposed building would be located adjacent to neighbouring residential properties. In this instance, by virtue of the number of proposed windows serving habitable rooms on the east and west elevations of the building, the development would result in overlooking and a significant loss of privacy to the occupiers of the neighbouring properties. The proposed windows would also conflict with the Council's required minimum distances. The proposal is therefore contrary to criteria 5 of Policy CP5 (Design) of the Carlisle District Local Plan 2001-2016 and the objectives of the Supplementary Planning

Document “Achieving Well Designed Housing”.

To the east of the application site is Acorn Bank which is a 2 storey Grade II listed building. Due to the proximity of the proposed building, together with its scale and mass, the development would fail to preserve the character or setting of the adjacent listed building. The proposal would be unsympathetic in scale and character and would adversely affect the appearance and setting of Acorn Bank, contrary to the Policy LE12 (Proposals Affecting Listed Buildings) of the Carlisle District Local Plan 2001-2016.”

The Proposal

3.6 When planning permission was granted in 2012 for the redevelopment of the site, the consent was subject to a number of planning conditions. Of relevance to this application is condition 2 which detailed the list of approved drawings. The current application seeks consent to vary this condition and effectively substitute these drawings with the current proposal and thereby introduce a series of changes to the scheme. In response to the reasons for refusal given by the Council to the previous applications for the variation of condition 2, the applicant has produced a summary of the changes as follows:

1. reduction in the overall footprint of the building;
2. a reduction in the number of storeys;
3. reduced height of the roof adjacent to Acorn Bank (roof spanning between the gables);
4. removal of balconies throughout;
5. an increase in the distance between the front street pavement and the building;
6. replacement of some windows to side elevations with windows with opaque glass and oblique windows;
7. omission of the ‘dummy’ front door and the introduction of 2 additional functioning doors to the front street elevation.

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 133 of the neighbouring properties. In response, 79 letters of objection have been received and the main issues raised are summarised as follows:

The Principle Of Development

1. this is a new proposal and should not be considered as a variation to the planning permission as the foundations laid exceed the size of the approved building by a third;
2. the plans shows an overlay of the proposed first floor on the approved ground floor which is misleading as this is smaller than the proposed ground floor;
3. the current proposal represents an increase in gross floor area of 20%

which can't be considered as amendment as previously confirmed by the Council;

4. the enlargement of the site means that it is not in keeping with the scale and character of the village or the impact on the conservation area;

Residential Amenity

5. the building is too close to Acorn Bank with an increase number of windows on both the east and west elevations which allows for overlooking and loss of amenity to the adjacent neighbours;
6. there are 11 windows proposed on the ground floor of the west elevation where the approved scheme provided only 4;
7. the approved scheme showed 9 windows plus 5 roof lights facing Acorn Bank and the current proposal shows 18 windows plus 4 roof lights;
8. the windows are less than the Council's required 21 metres to habitable rooms;
9. the provision of obscure glass is irrelevant as this could be changed at a later date and is an admission that the windows can't be properly accommodated within the building;
10. the stone barn which was to be retained adjacent to the western boundary afforded privacy to the occupiers of the neighbouring property. This building has been removed and is not proposed to be replaced;
11. the landscaping adjacent to the boundary with Caerluel will take at least 10 years to establish and develop and will not provide immediate privacy
12. the separation distances between the proposed windows and neighbouring properties are unacceptable;
13. the occupiers of the neighbouring properties will suffer an even greater loss of natural daylight;

Scale And Massing/ The Impact On The Character Of The Area

14. the revised application remains the same height and mass as the refused application and has significantly more height and mass compared to the approved scheme;
15. the proposal still fails to respond to the local context and the form of the surrounding building in height, scale, massing and position on the site;
16. whilst the plans show the flats removed from the top floor, the floor space remains and the flats will be added retrospectively if the current application is granted;
17. the bay window on Acorn Bank is exaggerated leading the Council to assume that the proposed forward position of the building is better than it actually is;
18. the eaves and ridge height on the south elevation are substantially higher and bear no relationship to Acorn Bank. This elevation serves to exacerbate the buildings monolithic nature and results in a more urban style of building;
19. the height of the building is substantially higher than the approved scheme despite the removal of the fourth floor accommodation;
20. the building is oversized, domineering and unsympathetic to the surrounding area;
21. the changes to the building are designed to optimise the value of the

- property;
22. the building is too close to the site boundaries;
 23. previously, there were entrances to the front and rear of the building, now there is only 1 on the west elevation;
 24. there is no provision within the building for emergency escape in the event of a fire;
 25. the scale and massing will adversely affect the setting of the adjacent listed building;
 26. the building will be the same as the refused scheme but without the penthouse;
 27. the size of the site has been increased to the north resulting in a loss of agricultural land and increased size of the building;
 28. much of the planting has been lost at the expense of the increased size of the building;

Highway/ Parking Issues

29. it is questionable whether refuse vehicles would be able to enter the site thus resulting in rubbish bins lining the street;
30. the access to the rear is of an insufficient size for emergency vehicles.
31. visitors to the properties will be forced to park on Scotby Road which will cause traffic problems, particularly for the local bus which passes the site;
32. the proposed building is much larger and would occupy land used for car parking provision;

Other Issues

33. given the increase size of the building, there is no indication where the additional surface water will go;
34. there is continued disregard to the main concerns of the size and positioning of the building as foundations have been laid;
35. the proposal has not addressed the reasons for refusal and is unacceptable and should itself be refused;
36. the developer has not adhered to conditions before starting work and needed to be served with a Stop Notice;
37. the foundations that have been dug appear to match those for the scheme refused under previous applications. If the current application is approved, this would be a thin disguise to circumvent the planning process resulting in a building similar to that which was refused;
38. the bin store within the building is inadequate in size and poorly located being adjacent to the bike store;
39. the proposal is still contrary to Policy H10 of the Local Plan;
40. there are still no valid planning reasons for increasing the size, volume or footprint of the approved scheme.

5. Summary of Consultation Responses

Cumbria County Council - (Econ. Dir. Highways & Transportation): - no response received;

Clerk to Wetheral PC, Downgate Community Centre: - the Parish Council was

disappointed to see the same mis-representative architectural drawings have once again been submitted. They wish their previous objections to still stand with the new variation of condition 2 submitted. Since the original plans were submitted in 2010 traffic has increased on this busy road, with parking remaining a problem. Members still feel this is overdevelopment of the site;

Cumbria Constabulary - North Area Community Safety Unit (formerly Crime Prevention): - no response received;

English Heritage - North West Region: - the application should be determined in accordance with national and local policy guidance;

Northern Gas Networks: - no objection;

Conservation Area Advisory Committee: - the following response has been received:

- the Committee retained the previous view that the development was excessive in massing, height and general form;
- they did not consider the secondary doors, inserted into the front elevation to be a suitable and asked for genuine 'active frontage' as per approved 10/1066 entrance arrangement;
- they did not consider the proposal to be an improvement of the present approved scheme, which in turn they are not enthusiastic about;
- the asymmetry of the approved scheme is replaced by an odd symmetry of forms with minimal relief which exaggerates its massing and 'bulk';
- the Committee recommends that the scheme be refused.

6. Officer's Report

Assessment

- 6.1 The relevant planning policies against which the application is required to be assessed are the National Planning Policy Framework (NPPF) and Policies CP3, CP5, CP17, H1, H2, H5, LE12, LE19, T1 and LC4 of the Carlisle District Local Plan 2001-2016. The proposal raises the following planning issues.

1. Principle Of Development

- 6.2 The application site lies within the settlement boundary of Wetheral and as such the principle of residential development is acceptable, subject to compliance with the criteria identified in Policy H1 and other relevant policies contained within the adopted Local Plan. In addition, planning permission has previously been granted for the redevelopment of the site.
- 6.3 Some of the objectors have questioned whether the proposed changes can be considered as a variation to the original planning permission. In 2010 the Government published "Greater flexibility for planning permissions Guidance." This document set the context and the framework for developers to apply for consent to amend existing planning permissions. The parameters of what Councils should accept as a minor material amendment was not defined and

left to the discretion of the Local Planning Authorities.

- 6.4 Great emphasis is placed on the percentage increase of the approved and proposed footprint and floor area by the objectors. As stated, there is no reference in the Government's document for any need for a comparative assessment of approved and proposed figures. In this instance, notwithstanding the decision of the earlier amendment applications, the Council nonetheless accepted that as a minor material amendment.
- 6.5 The issues regarding the amendments and the scale and nature of the proposal are discussed later in this report but it is clear principle and functionality of the building within the plot is unaffected and that this application procedure is legitimate. The process is transparent and all neighbours and interested parties have had the appropriate opportunity to comment as if it were any other planning application.

2. Scale, Layout And Design Of The Development

- 6.6 The building occupies a significant footprint with the floor area progressively reducing over the floors above, resulting in a staggered rear elevation.
- 6.7 The building will be set back from the pavement and the front elevation will be characterised by 3 gables including single storey projecting bays. The building retains many of the approved architectural features including traditional features such as chimney stacks, stone copings to the gables, stone archways and window surrounds. The front elevation has been designed to retain an asymmetrical frontage and staggered roof lines and also includes extensive use of natural stone mixed with render. Natural slate is to be used on the roof and all new windows and doors would be manufactured from timber.
- 6.8 The front of the site, where it abuts the pavement, is to be demarcated by a natural stone wall, supplemented with planting. Vehicular access is via the existing access point to the west of the site and will lead to the side and rear parking area, which comprises 24 spaces.
- 6.9 The Parish Council and several residents have objected to the scheme on the basis that the scale of the building is inappropriate to the site and that it will harm the setting of the Wetheral Conservation Area. The Conservation Area Advisory Committee (CAAC) has also commented that the scale and massing of the building is not appropriate to the site. The submitted drawings show a comparison between the approved scheme and the current proposal. Members are reminded that the principle of a building of similar height has already been approved under the previous application and based on Officers' assessment of the proposal, the scheme is not wholly contradictory to the approved scheme to relent on previous evaluations.
- 6.10 The perceived height of the building when viewed from the front elevation is broken up by the projecting gables and the attention to the architectural detail. As the rear elevation projects outwards towards the rear of the site it is reduced in both height and width thereby decreasing its physical mass. In

addition, the ridge of this element of the building is reduced from that of the previously approved scheme. The roadside frontage retains its natural stone boundary wall and landscaped backdrop. Although some parking is now proposed to the side of the building, additional landscaping is proposed between this and the junction with the County highway, thereby reducing its visual impact.

- 6.11 The approved scheme included some flat roofs within the building. These also feature in the proposed scheme; however, the flat roof areas would be to the rear of the building and would not be unduly prominent in the context of the building. Given the formation of pitched roofs, they would be appropriately screened from the wider public vantage points.
- 6.12 Notwithstanding the significant objections raised, it is the Officer's view that the scale, layout and design of the building are acceptable in relation to the site and do not detract from the character and appearance of the conservation area.
- 6.13 The scheme now includes the provision of 2 entrance doors on the front elevation in response to previous concerns that the development does not include an active frontage. Objectors have commented that this is not a true active frontage as the doors are secondary to the flats and serve a dining area, a view supported by CAAC. Whilst the entrances are not the sole point of entry to the units, both visually and practical viewpoint, they serve as entrances to the flats.
- 6.14 The proposal also safeguards the setting of the adjacent Listed Building, Acorn Bank. The objectors have raised concerns that the building would dominate and obliterate any views of Acorn Bank when approaching from the west due to its proximity to the frontage. The front elevation of the building would be broadly in line with the forward most projection of Acorn Bank but due to the curvature in the road and the position of the building there is no defined building line in the street scene. The position of the building will not have a significant visual impact on the setting of the adjacent property over and above that of the approved scheme. Following the decision of the previous application, the mass of the frontage has been reduced and the projecting bays have been omitted.
- 6.15 The building continues to propose the use of appropriate materials thus ensuring that the design is not compromised through the use of inappropriate external finishes and the proposed development introduces appropriate architectural features such as water tables. The scheme is of an appropriate architectural merit in its own right and the scale and use of appropriate materials is acceptable.

3. Highway And Parking Issues

- 6.16 One of the principal concerns raised by the local residents relates to their perception that there are insufficient parking spaces to serve the development. The number of parking spaces is reflective of the number of proposed apartments.

- 6.17 The approved scheme allowed for the provision of 24 spaces. The number of apartments and the number of bedrooms has not increased and it is therefore unreasonable to support any additional increase in parking spaces.
- 6.18 Previous applications considered the issue of the potential for additional on-street parking. At the time, the Highway Authority recognised that there was potential for increased parking on the highway but did not consider that these levels were such that any increase in on-street parking would be detrimental to highway safety or that the application should be refused on this basis. To ensure that parking does not occur on the bus stops adjacent to the site the Highway Authority requested that a financial contribution of £3500 is provided to enable an amendment to the Traffic Regulation Order to provide “bus clear way” markings. This agreement is unaffected by this application.

4. The Impact Of The Proposal On The Living Conditions Of Neighbouring Residents

- 6.19 The position of neighbouring properties and location of windows within those dwellings is such that the living conditions of surrounding residents are unlikely to be adversely affected by the proposal. Those properties on the opposite side of the road to the site, No.1 and No.20 Jennet Croft, are located 23m and 32m away from the building respectively. 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.
- 6.20 The scheme has been amended to include the provision of obscurely glazed windows and oriel windows to prevent any direct overlooking of neighbouring properties and the latter style of windows form part of the approved development.
- 6.21 The neighbouring property, Caerluel, has the potential to be most affected; however, the position of windows in the apartment building is such that there would be no direct overlooking. Although they are less than 21 metres, there is an oblique relationship and the windows in Caerluel are not primary windows and therefore fall to be considered under the 12 metre requirement which is achievable.
- 6.22 The windows have been revised following the previous refusal to reduce the potential for overlooking of the neighbouring properties. One window in the development would be less than the Council's minimum distance and relates to a window serving a living room that would face the blank gable of Acorn Bank; however, this is a secondary window with the primary window being on the front elevation.
- 6.23 Any concern about obscure glazing being removed in the future can be addressed through the imposition of a condition which requires their retention in perpetuity unless granted through the submission and approval of an application to the Council.

- 6.24 The approved scheme included a condition to increase the height of the boundary wall between the application site and Caerluel. No variation to this condition is sought as part of this application which is particularly relevant given the omission of the detached barn and the condition requires the developer to undertake the improvements to the boundary.
- 6.25 On balance, there would be no significant adverse effect on the living conditions of neighbouring residents.

5. Affordable Housing

- 6.26 The approved scheme included the provision of 3 affordable properties to be made available by discounted sale and this was secured through a S106 agreement. This agreement is unaffected by this application.

6. Landscaping/Ecology

- 6.27 The Council's Landscape Architect has raised no objections to the proposed development.

7. Waste Collection

- 6.28 The objectors have made reference to the recycling/waste collection arrangements, with concerns being expressed that 15 individual bins/recycling boxes could litter the pavement on collections days. To address these concerns the applicant has confirmed that this waste will be collected by a private contractor. That arrangement, including the maintenance of the site/building, will be overseen by a management company which has been secured in perpetuity through the completion of a S106 agreement.

8. The Impact On Human Rights

- 6.29 The human rights of the occupiers of the neighbouring properties have been properly considered and taken into account as part of the determination of the application. Several provisions of the Human Rights Act 1998 can have implications in relation to the consideration of planning proposals, the most notable being:

Article 6 bestowing the "Right to a Fair Trial" is applicable to both applicants seeking to develop or use land or property and those whose interests may be affected by such proposals;

Article 7 provides that there shall be "No Punishment Without Law" and may be applicable in respect of enforcement proceedings taken by the Authority to regularize any breach of planning control;

Article 8 recognises the "Right To Respect for Private and Family Life".

- 6.30 Article 1 of Protocol 1 relates to the "Protection of Property" and bestows the right for the peaceful enjoyment of possessions. This right, however, does not impair the right to enforce the law if this is necessary, proportionate and there is social need.

- 6.31 Article 8 and Article 1 Protocol 1 are relevant but the impact of the development in these respects will be minimal and the separate rights of the individuals under this legislation will not be prejudiced. If it was to be alleged that there was conflict it is considered not to be significant enough to warrant the refusal of permission.

9. Other Matters

- 6.32 The objectors have also raised the issue that work has commenced on site prior to the pre-commencement conditions have being discharged and that the foundations laid do not refer to the consent granted for the site. Although work was commenced, the application to discharge the conditions has been granted. The application should be considered on its merits and any works not in accordance with the approved plans are at the developer's own risk.

Conclusion

- 6.33 In overall terms, the principle of the proposed redevelopment of the site to provide 15 flats has previously been accepted. Likewise, the procedure allowing the submission of an application to substitute the proposed drawings as minor material amendments has also been accepted by this Council.
- 6.34 The proposed apartment building could be accommodated on the site without detriment to the living conditions of the neighbouring properties or the character/setting of the Wetheral Conservation Area and adjacent listed building. The parking/ access arrangements and the anticipated level of traffic generated by the proposal would be the same as those of the extant permission and would not be materially affected by this proposal. In all aspects the proposals are considered to be compliant with the objectives of the relevant Local Plan policies.
- 6.35 There are a significant number of objections to the proposal from residents and the Save Wetheral Village action group. Many of the issues relate to the scale, design and visual impact on the character of the Wetheral Conservation Area. It is a material consideration that the applicant has the fall back position of the planning consent granted in 2012 for the erection of a 3 storey building providing 15 flats and 24 parking spaces on the site. It is accepted the proposed scheme is different; however, in comparison between the 2 schemes, the alterations are marginal. It is the opinion of Officers that 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.
- 6.36 Members are reminded that all other conditions of the approved scheme remain applicable. If Members are minded to grant consent, authority to issue approval is sought to vary the S106 agreement to substitute the current application reference for that of the extant permission.

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-bed apartments with dedicated access, off-street parking and private amenity spaces.
- 7.3 Planning permission was refused last year 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 Planning permission was refused earlier this year for the variation of condition 2 (approved documents) of previously approved permission 10/1066.

8. Recommendation: Grant Subject to S106 Agreement

- 1. The development shall be begun not later than the expiration of 3 years beginning with the date of the grant of this permission.

Reason: In accordance with the provisions of Section 91 of the Town and Country Planning Act 1990 (as amended by Section 51 of the Planning and Compulsory Purchase Act 2004).

- 2. The approved documents for this Planning Permission comprise:
 - 1. the Planning Application Form received 21st March 2014;
 - 2. the Block Plan & Site Location Plan received 21st March 2014 (Drawing no. 03/2010/00revE);
 - 4. the Pre-Existing Buildings Overlay Plan received 21st March 2014 (Drawing no. 03/2010/206A);
 - 5. the Site Plan Comparison With Approved received 21st March 2014 (Drawing no. 03/2010/205B);
 - 6. the Ground Floor Plan received 21st March 2014 (Drawing no. 03/2010/202A);
 - 7. the First Floor Plan received 21st March 2014 (Drawing no. 03/2010/203A);
 - 8. the Second Floor Plan received 21st March 2014 (Drawing no. 03/2010/204A);
 - 9. the West & North Elevations received 21st March 2014;
 - 10. the South & East Elevations received 21st March 2014 (Drawing no. 03/2010/201RevB);

11. the Planning Statement received 21st March 2014;
12. the Notice of Decision.

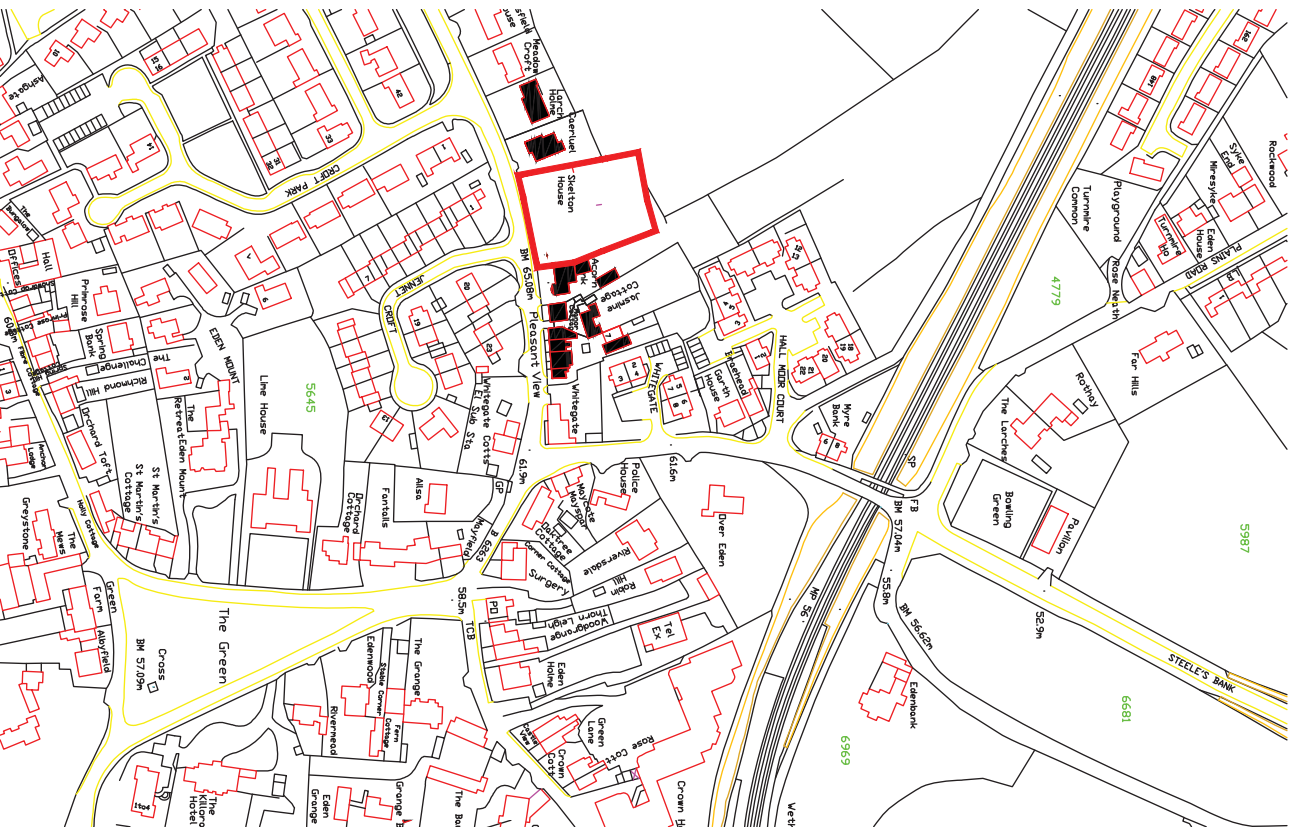
Reason: To define the permission.

3. The development shall be carried out in accordance with the remaining conditions attached to the "Full Planning" permission approved under application 10/1066.

Reason: For the avoidance of doubt.

4. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995, (or any Order revoking and re-enacting that Order), the obscurely glazed windows shown on Drawing West & North Elevations and Drawing South & East Elevations (Drawing no. 03/2010/201B) shall be installed thereafter retained as such to the satisfaction of the Local Planning Authority.

Reason: In order to protect the privacy and amenities of residents in close proximity to the site in accordance with Policy H2 of the Carlisle District Local Plan 2001-2016.

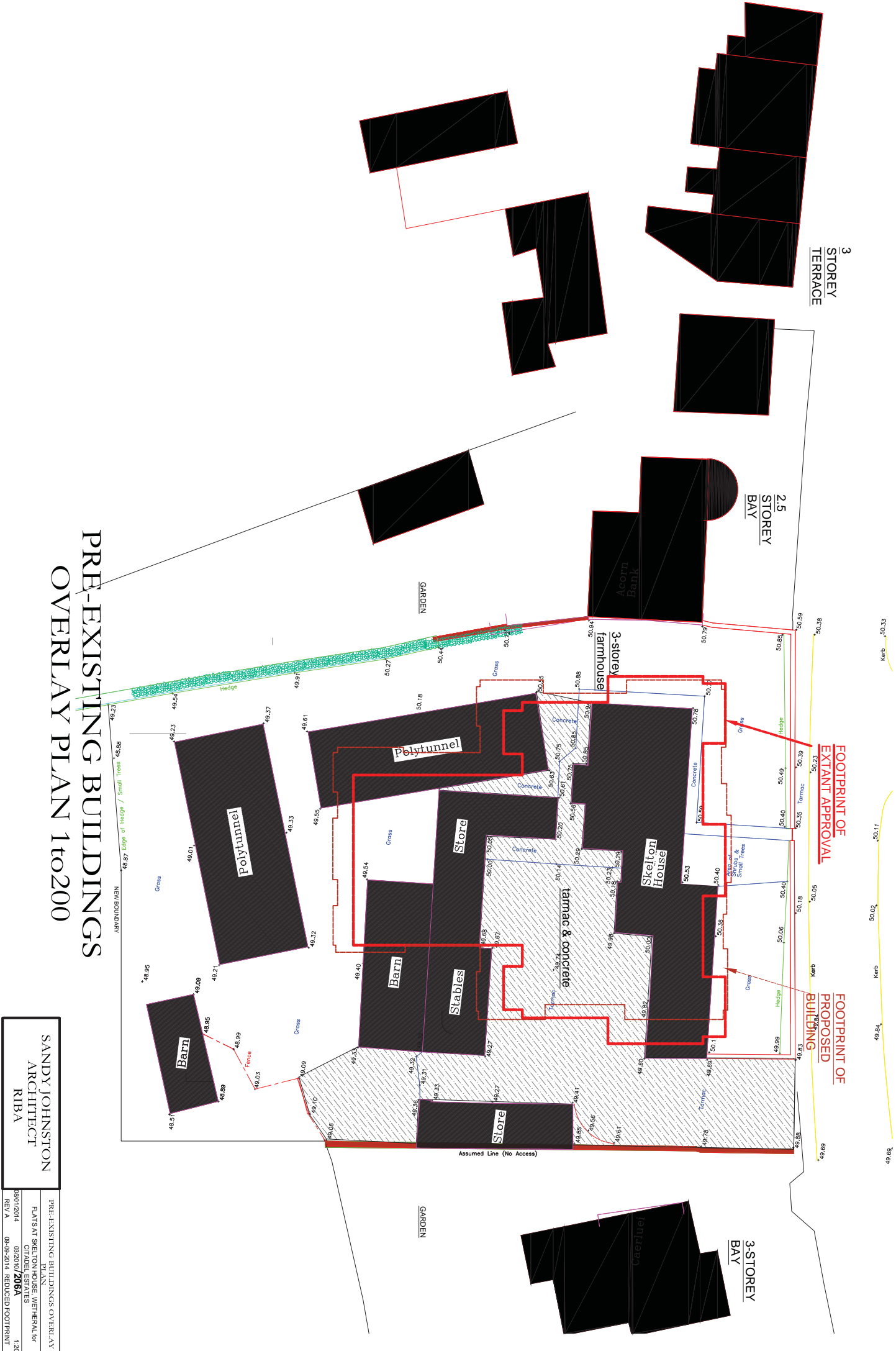


existing sandstone walls vary in height but are generally to be increased in height to 2m high (and to infill/repair areas where there is no wall or it is in poor repair).



BLOCK PLAN & SITE LOCATION PLAN

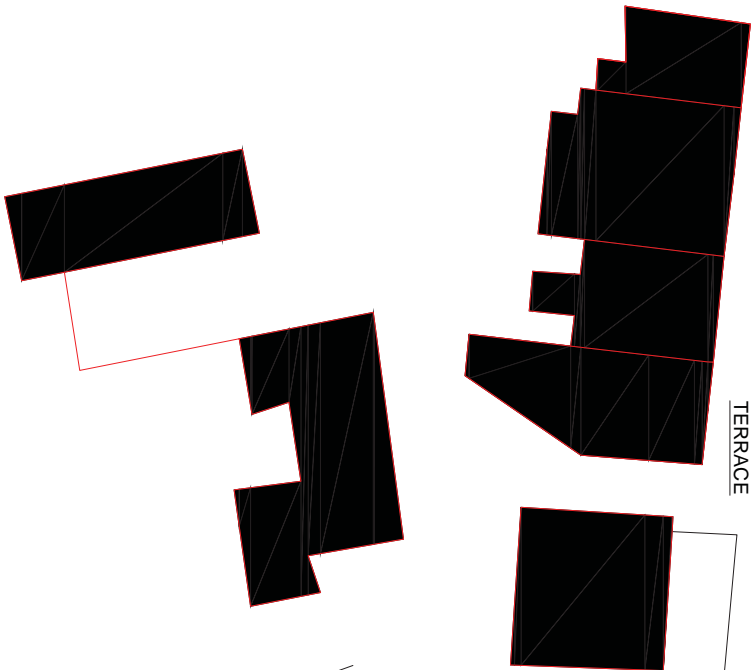
SANDY JOHNSTON ARCHITECT RIBA		BLOCK PLAN & SITE LOCATION PLAN	
		FLATS AT SKELTON HOUSE, WETHERAL for CITADEL ESTATES	
09-03-14	08/2010	00rev E	1:500/ 1:2500



PRE-EXISTING BUILDINGS
OVERLAY PLAN 1to200

SANDY JOHNSTON
ARCHITECT
RIBA

PRE-EXISTING BUILDINGS OVERLAY
PLAN
FLATS AT SKELTON HOUSE, WETHERAL
CITADEL, ESSTATES
03/2010 / 206A
REV A 09-09-2014 REDUCED FOOTPRINT



3
STOREY
TERRACE

2.5
STOREY
BAY

3-STOREY
BAY

5897- approved

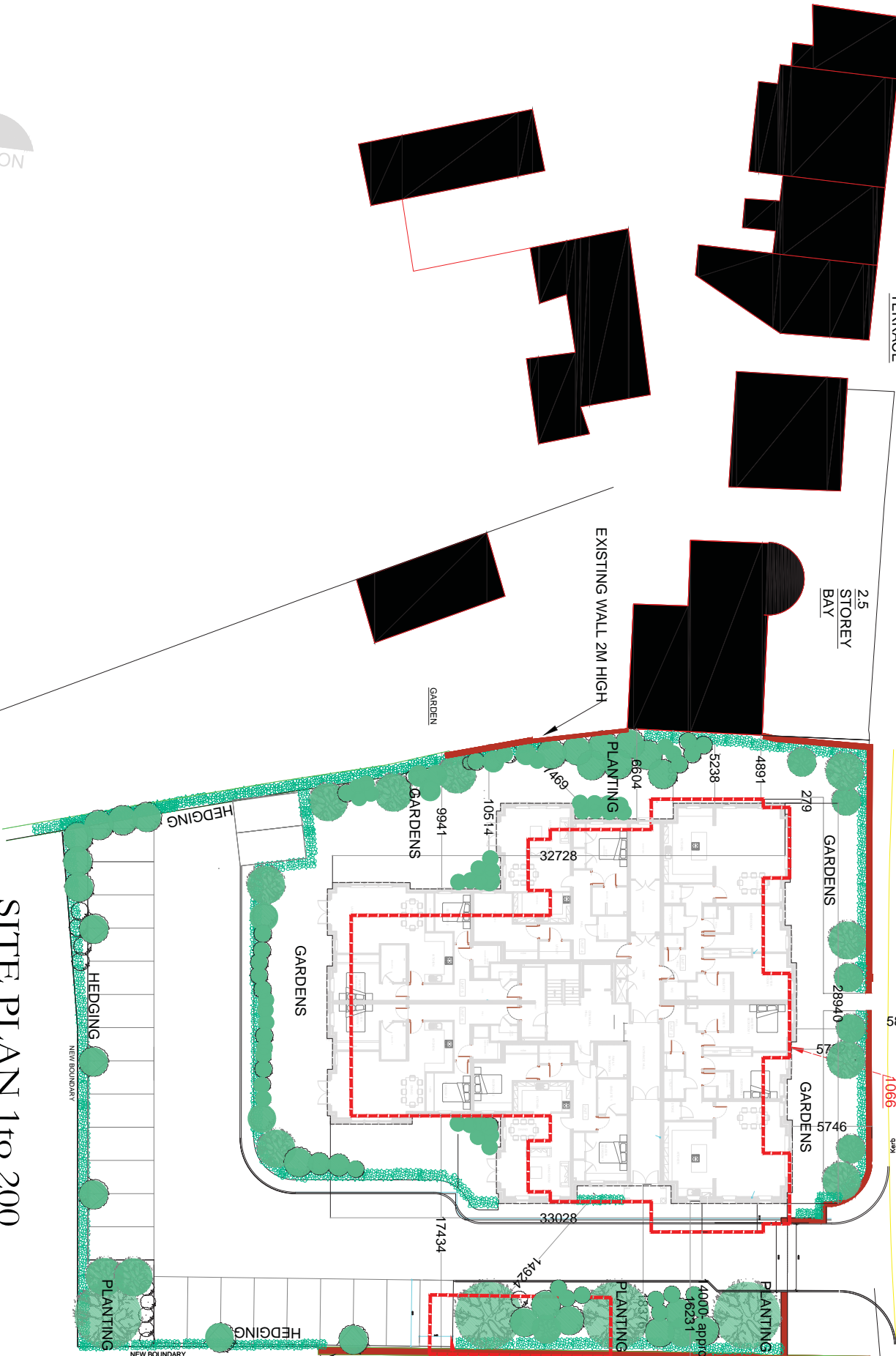
FOOTPRINT OF
EXTANT APPROVAL
1066

EXISTING WALL 2M HIGH:
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)

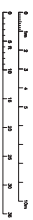
EXISTING WALL 2M HIGH

FOOTPRINT OF EXTANT
APPROVAL 1066 BIN/CYCLE
STORE:
replace bin store with planting

EXISTING WALL 2M HIGH:
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)



SITE PLAN 1to 200



SANDY JOHNSTON
ARCHITECT
RIBA

SITE PLAN, COMPARISON WITH	
APPROVED DEVELOPMENT	APPROVED DEVELOPMENT
PLATS AT SHERWOOD GARDENS	PLATS AT SHERWOOD GARDENS
09/03/2014	02/07/2014
Rev B: 09/03/14	Removal of bays



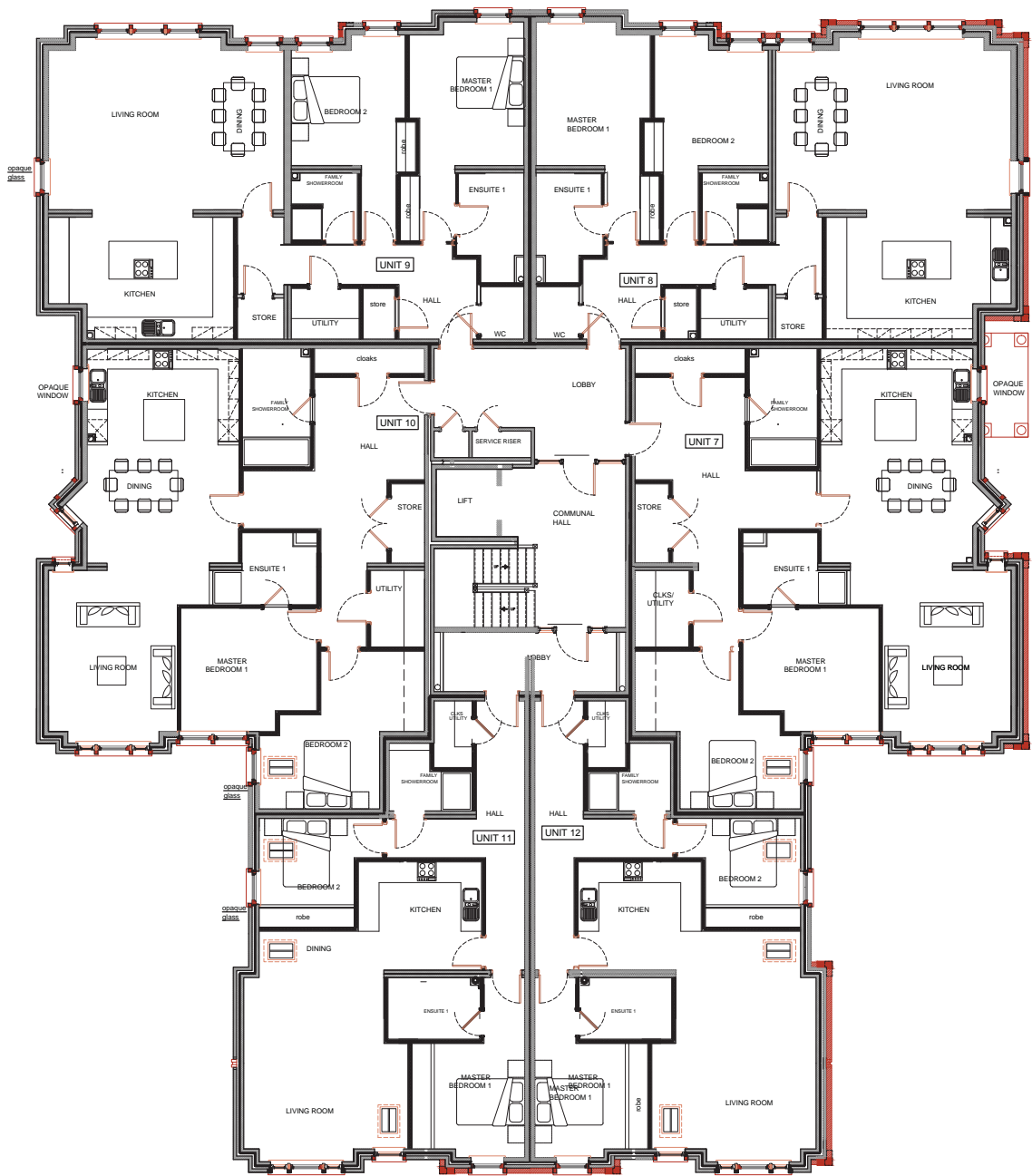
GROUND FLOOR PLAN 1:100

SANDY JOHNSTON
ARCHITECT
RIBA

GROUND FLOOR PLAN

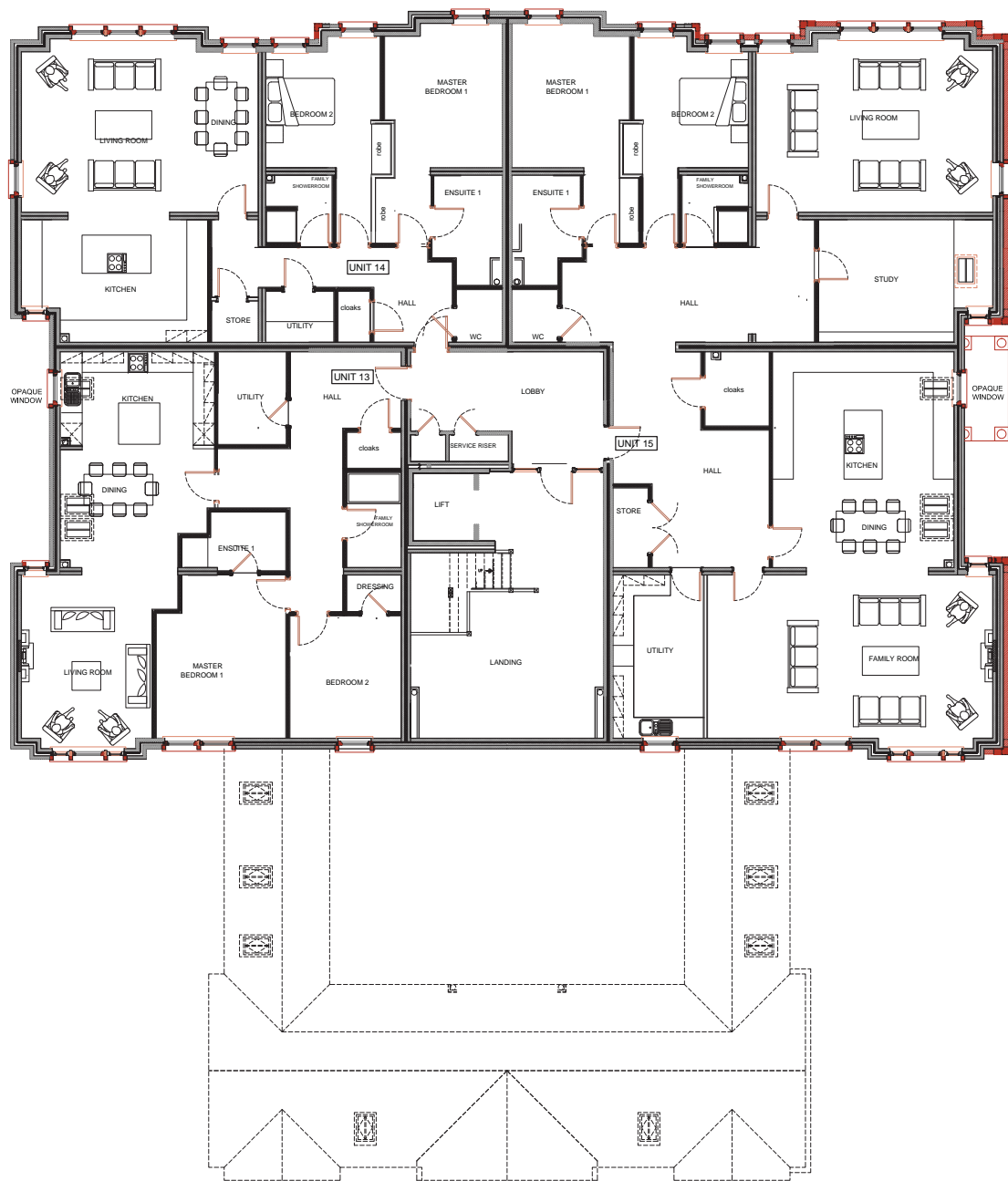
FLATS AT SKELTON HOUSE, WETHERAL for
CITADEL ESTATES

09/03/2014 03/2010/202A 1:100
Rev A 09-03-14 removal of bays



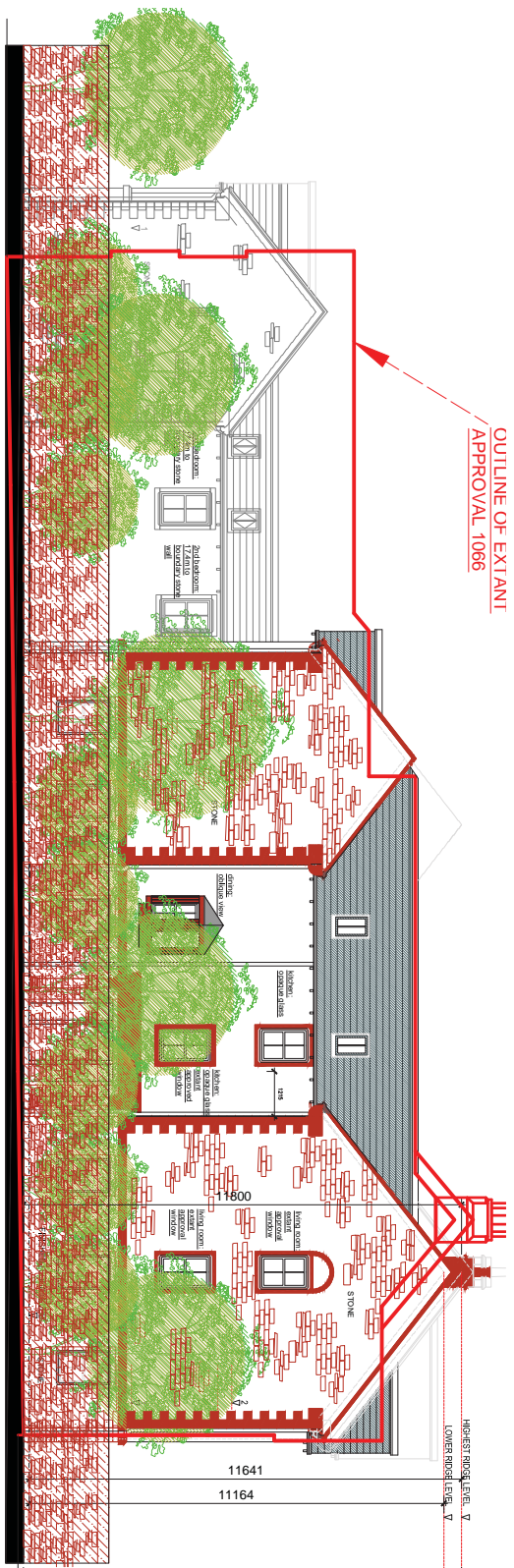
FIRST FLOOR PLAN 1:100

<p>SANDY JOHNSTON ARCHITECT RIBA</p>	FIRST FLOOR PLAN		
	FLATS AT SKELTON HOUSE, WETHERAL for CITADEL ESTATES		
	09/03/2014 Revision A	03/2010/203A removal of bays	1:100



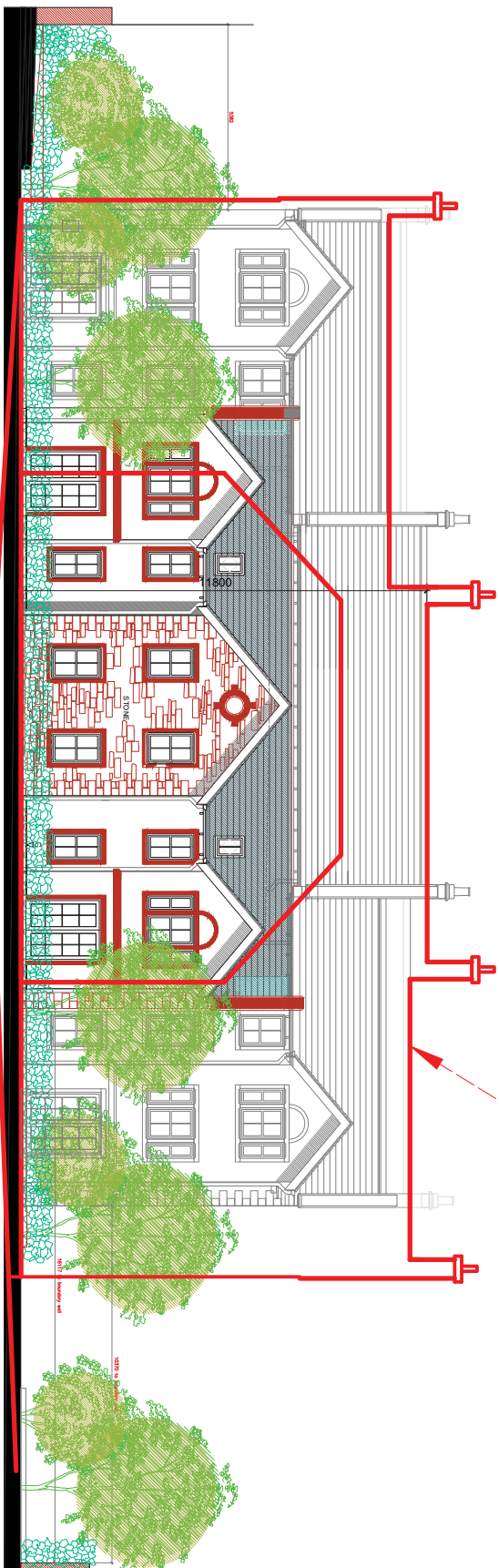
SECOND FLOOR PLAN 1:100

OUTLINE OF EXISTANT
APPROVAL 1066

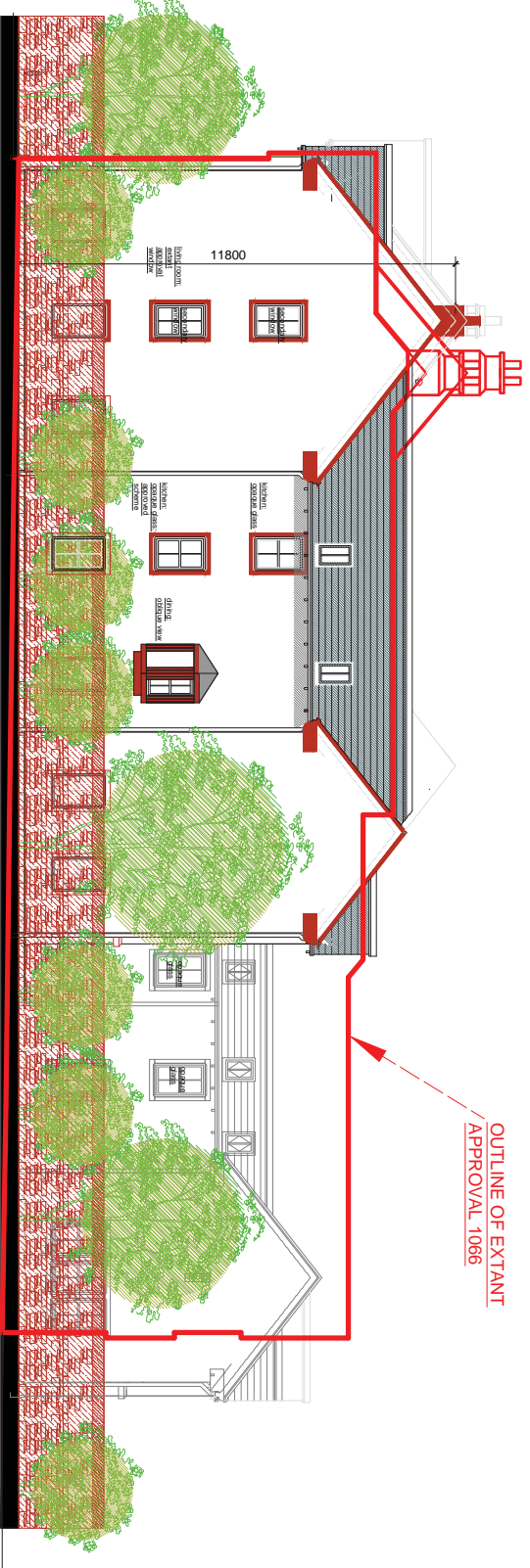


WESTERN ELEVATION
(LH SIDE)

OUTLINE OF EXISTANT
APPROVAL 1066

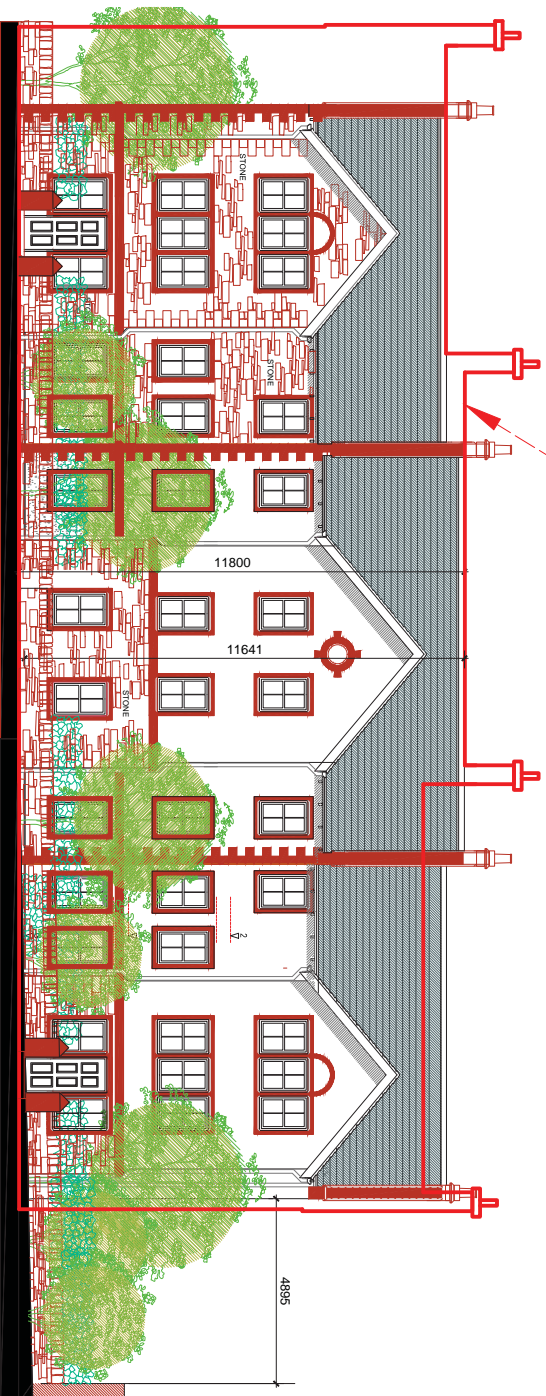


NORTHERN ELEVATION
(REAR)



OUTLINE OF EXTANT
/ APPROVAL 1066

EASTERN ELEVATION
(RH SIDE)



STREET ELEVATION
(SOUTH)

SANDY JOHNSTON
ARCHITECT
RIBA

SOUTH & EAST ELEVATIONS
FLATS AT SHELTON HOUSE, WETHERBY for
CITADEL ESTATES
03/09/2014
03/09/2014 / 2018
1:100
Revised 08/03/2014, removal of bay windows to roof & windows

PLANNING STATEMENT

s.73 – Application to vary Condition 2 attached to 10/1066 Land formerly Skelton House, Wetheral CITADEL ESTATES LTD.

SUMMARY

Please find herewith the 3rd application under s.73 to vary Condition 2 ('plans-list') of grant of full planning permission under 10/1066. This follows and logically responds to the recent refusals of the two previous s.73 applications (13/0521 & 14/0033). Again, the current application refers to CAD drawings using data from precise surveys, for the avoidance of doubt.

Ignorance of, or groundless dismissal of what the submitted precisely surveyed and prepared architectural plans actually show, both intrinsically and relative to previous applications including the baseline approval under 10/1066, would be tantamount to maladministration with a charge of unlawfulness against any consequential determination.

Turning to a fundamental issue upon which objectors previously applied significant weight: in contrast with objectors' view that previous s.73 refusals were irrelevant and that only the 10/1066 approval was material; previous s.73 decisions remain highly relevant and indeed place upon the applicant an obligation to address such in the context of 10/1066. This basic point was confirmed accordingly by both Officers, and Members of the Development Control Committee at the previous Meeting on the 7th March 2014.

Applications are made to the LPA, not to 3rd parties, and therefore it is the formal determinations made by the LPA and indeed the Secretary of State, having had regard to all relevant representations, that are material considerations, and subject to appeal/challenge. It is therefore perfectly proper and correct for applicants to not simply respond to previous decisions, but also critically appraise them as part of any such response, not only at Appeal but also, as encouraged by Central Government, "locally" upon resubmission.¹

Previously, the Applicant, via his Agent, took the opportunity at the previous 'Committee meeting (under 14/0033):

- A. to re-iterate the focussing influence of the 10/1066 fallback permission;
- B. to critically appraise the 13/0521 refusal reasons in the context of the common law relevance and application of baseline 'fallback permissions'; and,
- C. highlight the responsive differences achieved under 14/0033 relative to the previous refused scheme under 13/0521.

The Applicant sees no good reason to depart from this approach, and so reference is made hereunder to **APPENDIX 1** which explores again in greater detail these underpinning matters, the threads of which continue to run through this latest application.

Current Proposal

The current proposal marks a further refinement to the approved scheme under 10/1066, as well a response to the Reasons why 14/0033 and indeed 13/0521 were refused.

Broadly, **14/0033**:

- Removed the third floor accommodation, and proposed further truncations to 13/0521 notably in respect of the upper-floors front-projecting bays effecting a c.10% reduction to floorspace; and, a curtailment of visual impact into the main street-scene;
- Revised the fenestration to reduce any perceived undue overlooking, and maintain habitable conditions for new occupants in accord with the Council's adopted policies, whilst pointing out that previous objections (Reason 2 of 13/0521) related to 'secondary' windows not compelled by Policy.

Naturally it is becoming increasingly difficult to make further material refinements, but we believe this latest proposal marks a number of significant changes that we trust the LPA will appreciate fully and correctly both in relation to the preceding refusals, as well as of course the ever-present 10/1066 fallback permission.

Summarily, **THE CURRENT PROPOSAL** goes further, by:

- Removing the front projecting bays at GF as well as upper floors;
- Removing the 'dummy' front door whilst maintaining two active doors either side with amended front boundary wall access to suit;
- Removing the rearmost two-storey projection thereby reducing overall depth by c.2m;
- Revising internal steelwork to reduce main roof height across the 3-storey element nearest adjacent properties either side, more consistent with the 10/1066 'fallback'.

CONCLUSIVE FINDINGS

1. With regards the **overall scale, massing and siting/positional aspects** the current proposal achieves closer and even more compelling congruency with the baseline 10/1066 fallback permission – the overall physical urban design and townscape impact difference between the two schemes is negligible;
2. With regards proximity and overlooking of neighbours either side from habitable windows:
 - on the **West side toward 'Carluel'** there are no upper floor windows that conflict with the Council's own adopted detailed Supplementary Planning Guidance by reason of separation and/or orientation and/or obscuration, and/or internal room-layout;
 - on the **East side toward 'Acorn Bank'** all upper floor (FF) windows facing the neighbour's garden are not only acceptable against said 'Guidance, but are now obscured (supplemented by roof lights). In addition all windows facing the blank gable of 'Acorn Bank' are 'secondary' and/or obscured or re-orientated to restore new occupants' amenities.
3. With regards Reason 3 and the impact upon the adjacent listed 'Acorn Bank', the Applicant maintains that such objection, in the context of 10/1066 (and indeed 13/0521) is untenable.
4. Other: opportunity taken to provide substantial amenity landscaping alongside 'Carluel'.

APPENDIX 1.

A. FALLBACK PERMISSION – 10/1066

The 10/1066 planning permission represents the material fallback position or more precisely the ‘material fallback *permission*’ - ‘the baseline’.

Of all the different forms of ‘fallback position’, the ‘fallback *permission*’ is the most influential and compelling when determining a s.73 application for the simple reason that it was created by the same LPA (as opposed to i.e the Government - P.D. Fallback; or, the landowner - Lawful Breach Fallback).

In cases involving a Full (fallback) Permission, the LPA (that granted/created the ‘fallback’) must be fully accountable for its previous decision; it must pay due regard to every detail of such without reservation or revision, and likewise must assess with precision the difference(s) between such and the proposed variation thereon.

Previously, it was suggested to the ‘Committee that it approach and apply the ‘fallback’ as if it was already built, in-situ, and impacting upon the surroundings and its users, and that any proposed variation thereto be regarded as in effect an ‘alteration’ to an existing building. By doing so, one is surer to undertake the comparative analysis properly - **not** simply by identifying the differences *per se*, **but instead**:

- a. by identifying each and every instance of material/appreciable difference; and then,
- b. in each instance, ***objectively and precisely assessing the effect of the variation compared with the effect of the fallback.***

Illustration of Fallback Principle: an extant approved extension includes a side window of width 60cm. The proposed s.73 variation seeks the same extension but with the window widened to 80cm (an additional 10cm either side). Applying the fallback concept means the judgement on the variation application be focussed upon assessing **NOT** the impact of an 80cm window *per se*, **but the additional impact caused by the 10cm either side compared to the impact from the approved 60cm wide window (as if it were already built).**

This profoundly simple yet highly robust principle applies equally to the present case, which is precisely why the Applicant has gone to such great lengths employing **Overlays** to illustrate clearly where the instances of material difference occur, and thereafter to assist in quantifying the comparative impact across all related instances.

The bottom-line is that proper evaluation and assessment of any variation of 10/1066 requires focussed precision not vague and unqualified generalities. Moreover, singular isolated reliance upon % or sqm figures and differences is by itself meaningless – it is not how much, but *how such is applied and manifested*. Continued validation of the objectors’ dissuasion of proper, precise comparative analysis has resulted in decisions that are in at least some respects, fatally flawed² - as confirmed hereunder through critical appraisal of previous s.73 decisions.

B. PREVIOUS s.73 REFUSALS

The Applicant has already lodged the Appeal against the 1st variation refusal under 13/0521.

Attention here is therefore drawn naturally to the previous, 2nd variation under 14/0033.

However, and notwithstanding this, it remains important that successive decisions made by an LPA maintain reasonable consistency, and so any material differences between the decisions reached on 13/0521 and 14/0033 are worthy of further consideration here as part of the Applicant's entitlement to critically appraise the LPA's previous decisions.

13/0521

Omitted from
14/0033

1. Reason: The proposal, by virtue of its scale, massing and position within the site, does not respond to the local context and form of surrounding building in relation to height, scale and massing. The siting of the proposed building would differ from the approved scheme **and would not be located on or close to the site of the original dwelling.** The building is inappropriate to its prominent location in the Wetheral Conservation Area contrary to criteria 1 of Policy CP5 (Design), criterion 1 and 3 of Policy H10 (Replacement Dwellings in the Rural Area) and criterion 1 and 2 of Policy LE19 (Conservation Areas) of the Carlisle District Local Plan 2001-2016.

2. Reason: The proposed building would be located adjacent to neighbouring residential properties. In this instance, by virtue of the number of proposed windows serving habitable rooms on the east and west elevations of the building, the development would result in overlooking and a significant loss of privacy to the occupiers of the neighbouring properties. The proposed windows would also conflict with the Council's required minimum distances. The proposal is therefore contrary to criteria 5 of Policy CP5 (Design) of the Carlisle District Local Plan 2001-2016 and the objectives of the Supplementary Planning Document "Achieving Well Designed Housing"

Additional Reason for
Refusal – New Ground

14/0033

1. Reason: The proposal, by virtue of its scale, massing and position within the site, does not respond to the local context and form of surrounding building in relation to height, scale and massing. The siting of the proposed building would differ from the approved scheme and would be inappropriate to its prominent location in the Wetheral Conservation Area. The proposal is therefore contrary to criteria 1 of Policy CP5 (Design), criterion 2, 3 and 4 of Policy H1 (Location of New Housing Development) and criterion 1 and 2 of Policy LE19 (Conservation Areas) of the Carlisle District Local Plan 2001-2016.

2. Reason: The proposed building would be located adjacent to neighbouring residential properties. In this instance, by virtue of the number of proposed windows serving habitable rooms on the east and west elevations of the building, the development would result in overlooking and a significant loss of privacy to the occupiers of the neighbouring properties. The proposed windows would also conflict with the Council's required minimum distances. The proposal is therefore contrary to criteria 5 of Policy CP5 (Design) of the Carlisle District Local Plan 2001-2016 and the objectives of the Supplementary Planning Document "Achieving Well Designed Housing".

3. Reason: To the east of the application site is Acorn Bank which is a 2 storey Grade II listed building. Due to the proximity of the proposed building, together with its scale and mass, the development would fail to preserve the character or setting of the adjacent listed building. The proposal would be unsympathetic in scale and character and would adversely affect the appearance and setting of Acorn Bank, contrary to the Policy LE12 (Proposals Affecting Listed Buildings) of the Carlisle District Local Plan 2001-2016.

The straightforward comparison above between the refusals under **13/0521** and **14/0033** illustrates and highlights the differences.

The previous reliance upon the demolished Skelton House was correctly omitted from **14/0033**. This is a matter on principle and must be acknowledged again here, and indeed on any Appeal to the Secretary of State, current and future.

Unfortunately, the above admitted misconception regarding the former Skelton House is only now matched by the equally startling introduction of a new ground for refusal as expressed under **Reason 3**.

The following examines each of the three Reasons under 14/0033, whilst acknowledging the thread of critical failings stemming from 13/0521 both in terms of regrettable imprecision, and disregard for the common law principle evoked by the LPA's own creation of the 10/1066 fallback permission.

14/0033

Reason 1.

"The proposal, by virtue of its scale, massing and position within the site, does not respond to the local context and form of surrounding building in relation to height, scale and massing.....The siting of the proposed building [would differ from the approved scheme and] would be inappropriate to its prominent location in the Wetheral Conservation Area...."

The above serialised extracts from **Reason 1** are obviously related by their referencing of urban design criteria and characteristics and the impact upon the physical surroundings/the townscape.

However, on proper application of the 'fallback' principle, there is what can only be viewed as a flagrant disregard for such, and to justify otherwise requires detailed and precise comparative analysis between 14/0033 and 10/1066.

For obvious reasons, the Applicant maintains that no reasonable observer could maintain such a position. The Applicant, and the Officers both agree there is considerable and compelling evidential congruency across 10/1066 and 14/0033 in terms of ***"...scale, massing and position within the site"*** and of course the fact they fall on the same ***"....prominent location in the Wetheral Conservation Area..."***.

Otherwise, the statement that 14/0033 ***"..would differ from the approved scheme.."*** is otiose and merely compounds the general imprecision.

Reason 2.

Reason 2 remains consistent, and it is duly acknowledged that the issues raised regarding proximity and 'overlooking' are legitimate and subject to precise provisions within cited local Policy – the application of which nonetheless remains rooted and influenced by the fallback permission and its comparative effects in these regards (see earlier **illustration** of principle).

Reason 3.

For reasons both of procedural propriety, and Planning validity, this 'new' ground introduced for refusing 14/0033 is questionable as it is surprising, and to date its origin remains a mystery – it was not raised in debate by the Committee, nor did it figure when refusal was moved, seconded and voted-on by the 'Committee.

The adjacency of the listed Acorn Bank is not a new issue – Acorn Bank has always been there (!) but whether or not it was fully considered and appreciated under 10/1066 is now irrelevant – the 10/1066 approval was for a 3-storey block of equal proximity, and displaying very similar patterning, proportions, scale and massing to that proposed under 14/0033 (and indeed by 13/0521, but on that occasion no such Reason was cited).

As with Reason 1, **Reason 3** does not relate details with the required precision; it refers to: “**...proximity of the proposed building, together with its scale and mass...**” and cites its failure to “**...preserve the character or setting of the adjacent listed building**”; it is “**...unsympathetic in scale and character.**”

The lack of precision employed on a matter relating to the impact upon a distinct/unique designated townscape feature is only compounded by conspicuous disregard for the fallback permission created under 10/1066, which to any reasonable observer exhibits such compelling congruency to render this Reason untenable, as well as confounding by its inconsistency (with 13/0521).

Notwithstanding the apparently well-informed objection presented at the 7th March meeting, the CAAC's response to 14/0033 has yet to be reported by the LPA. Several requests have been made to the LPA for copies of such along with CAAC meeting minutes pursuant casting some light on a most intriguing *volte-face*.

Concluding Remarks: 10/1066 remains 'the baseline' for precise, objective comparative analysis. The LPA's Reasons for refusing 14/0033 are an important material consideration that warrant critical appraisal, individually and contextually with 10/1066 and 13/0521. Critical failings have been repeated and duly identified, and such frustrate the Applicant's *legitimate expectations* to have his proposals assessed appropriately in these particular circumstances, thus infringing human rights, contrary to natural justice. The LPA can refuse as well as approve any application, but must do so with adherence to acknowledged public interest principles of objectivity and fairness pursuant properly-reasoned consistency, exercised openly and transparently.

¹ *The reasons for refusal should be clear and comprehensive and if the elected members' decision differs from that recommended by their planning officers it is essential that their reasons for doing so are similarly clear and comprehensive. Clear reasons for refusal will help continued discussions and may mean that agreement can be reached. A new application may often be the best way forward.* [para.1.4.2 - Procedural Guide - Planning appeals and called-in planning applications – England – The Planning Inspectorate – 6th March 2004]

² The Local Government Association publication, *Probity in Planning*, explains under paras. 10.4-10.5 the need for why reasons must be given by Councillors for overturning officers' recommendations: if the planning committee makes a decision contrary to the officers' recommendation (whether for approval or refusal), a detailed minute of the committee's reasons should be made and a copy placed on the application file. Thus, members should be prepared to explain in full their reasons for not agreeing with the officer's recommendation. In so doing, members should observe the 'Wednesbury principle' (the case of *Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation* [1948] 1 K.B. 223) which, put simply, requires all relevant information (ie material considerations) to be taken into account and all irrelevant information (ie non-material matters) to be ignored. The officer should also be given an opportunity to explain the implications of the contrary decision; the courts have expressed the view that the committee's reasons should be clear and convincing.