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

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

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

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

The Appeals Site and Background

1. The appeals all concern a modern apartment block and the land associated with it. The site lies within the Wetheral Conservation Area and the neighbouring property to the east, 'Acorn Bank' is a grade II listed building.
2. Conservation Area Consent was granted for the demolition of the buildings that previously stood on the site in July 2011 (reference 10/1067) and planning permission was granted for the erection of 15 apartments in May 2012 (reference 10/1066). Since then a number of amendments to the scheme have been approved. Of especial relevance to the enforcement notice is the approval of a variation of condition 2 of the 2012 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 elevation³.

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