



Appeal Decision

Site visit made on 20 June 2022

by M Woodward BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 October 2022

Appeal Ref: APP/A2335/W/21/3278368

11 Moor Lane, Lancaster LA1 1QB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Fuelsmart Ltd against the decision of Lancaster City Council.
 - The application Ref 20/00403/FUL, dated 9 April 2020, was refused by notice dated 6 January 2021.
 - The development is change of use from former offices to 10no student apartments. Works comprising internal alterations/sub-division, refurbishment of interior and exterior with new repaired/replacement windows, partial demolition of brick structure.
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Decision

1. The appeal is allowed and planning permission is granted for change of use from former offices to 10no student apartments. Works comprising internal alterations/sub-division, refurbishment of interior and exterior with new repaired/replacement windows, partial demolition of brick structure at 11 Moor Lane, Lancaster LA1 1QB in accordance with the terms of the application Ref 20/00403/FUL, dated 9 April 2020, subject to the following condition:
 - 1) Within one month of the date of this permission, a method statement for the works involving the restoration of the shop front, based on drawing No: 2163-SK1, shall be submitted to the Local Planning Authority for approval. The method statement shall also include a timetable for the repairs and materials to be used. The restoration of the shop front shall be carried out in accordance with the approved method statement.

Preliminary Matters

2. The proposal lies in the Lancaster Conservation Area and affects a Grade II listed building. Consequently, I have had special regard to section 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act).
3. According to the Council's officer report, an application for listed building consent¹ was refused at the same time as the planning application. However, no appeal against the listed building consent refusal has been made². As a result, this appeal deals only with the Council's decision to refuse planning permission and the proposal as set out in the banner heading above.
4. In addition, the Council's reasons for refusal did not relate to heritage, despite harm to heritage assets being identified in the officer report. As a result of this

¹ Reference number - 20/00404/LB

² under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990

and my duties under the Act, I gave the appellant an opportunity to address heritage matters as part of this appeal.

5. It was apparent on my site visit that extensive works had been carried out both internally and externally, including the insertion of windows and the complete refurbishment of the building internally, and the building appeared to be in use as student accommodation. However, there are discrepancies between the submitted plans and the situation I observed on the ground. For example, the position of one of the courtyard facing windows differs. Moreover, a stone wall has also been built which appears to be located in a different position to that shown on the proposed layout plan.
6. It was not possible on my site visit to inspect each and every element of the proposal, particularly as some features were obscured by the internal works that have already been completed. However, some of the external works involving proposed repairs to the shop front did not appear to be complete. As a result of this, I have based my decision on the scheme as built, having regard to the submitted plans as necessary.
7. Finally, a number of uPVC windows exist within one of the side elevations of the building, depicted on the 'existing' and 'proposed' plans³. There is no proposal to alter these windows and they do not form part of this appeal.

Main Issues

8. The main issues in this case are:
 - The effect of the proposal on the living conditions of occupiers of the appeal building, with particular regard to outlook and light; and,
 - Whether the proposal would preserve a Grade II listed building, '11, Moor Lane' (Ref: 1211607), and any of the features of special architectural or historic interest that it possesses and the extent to which it would preserve or enhance the character or appearance of the Lancaster Conservation Area.

Reasons

Living conditions

9. Appendix G of the Local Plan for Lancaster District Part Two: Review of the Development Management DPD 2011-2031 (2020) (Local Plan), which relates specifically to purpose-built student accommodation, requires that all living spaces have an adequate level of natural light and outlook, with a distance of at least 12m between proposed windows and any wall or structure opposite. There is no dispute between the main parties that a number of windows within the habitable rooms of the apartments fail to meet this separation distance.
10. In particular, habitable windows within each of the apartments facing the courtyard⁴ are approximately 5m away from the wall of the opposing courtyard building, substantially below the 12m distance advocated. Whilst the opposing building is clearly visible when viewed internally through the habitable room windows of several student apartments, it is an attractive traditional building and one that does not appear as a jarring visual intrusion in the obtainable

³ Elevation D as detailed on Plan refs – 089/06C and 089/04C

⁴ Apartment no's 1, 2 and 5 according to plan no 089/05C

outlook from these windows, despite its large scale and close proximity. Moreover, I visited the affected rooms on my site visit and none of them appeared cramped or significantly deficient in terms of natural light. This is partly due to the window openings which, in the main, are generously proportioned, allowing a significant amount of natural light to enter the living space.

11. In respect of the east side elevation which is on the opposite side of the building to the courtyard, the submitted plans show the bedrooms of apartment No 2 at a distance of approximately 5m from the building opposite. However, the facing building's impact is reduced by its irregular, pitched roof form and modest height which allows partial views of the sky from most of the ground floor rooms. The impact is even less for occupiers of the first floor living accommodation on this side of the building given their elevated position relative to the building opposite, resulting in the opposing building being less prominent when viewed through facing windows. Importantly, none of the rooms appeared to be gloomy as a result of insufficient natural light entering, despite the proximity of the building opposite.
12. The Council refers to a recent appeal decision where it was concluded that students should expect high quality living accommodation and living standards⁵. I agree with this, and also note that policies seeking high quality living accommodation form part of the adopted Local Plan, reflected in the National Planning Policy Framework (the Framework)⁶, and are equally applicable to student accommodation.
13. At the same time, determining the acceptability of living conditions is dependent on a range of different factors. In this case, the appeal site's city centre location and the utilisation of an existing historic building is a clear constraint which limits the extent to which the building can be used flexibly for the intended purpose. The accompanying text to policy DM29 of the Local Plan⁷ recognises that the minimum 12m distance may need to be reduced depending on circumstances, including density. As a result, the distance of windows from other buildings is not the only determining factor.
14. Turning to the other matters which can affect the acceptability of living conditions. Apartment no's 3 and 8 as marked on the submitted plan face a building on the opposite side of Moor Lane, the habitable room windows of which lie at a distance of approximately 16m. Whilst this is less than the 21m distance advocated by policy DM29 of the Local Plan, I am satisfied that this distance is sufficient to ensure that views into the opposing building and vice versa and subsequent loss of privacy for occupiers is limited. As I have already stated, policy DM29 advocates flexibility in circumstances such as there where the urban environment has reduced the distance between buildings. I note that the Council have reached the same conclusion.
15. The appellant's submitted solar study⁸ demonstrates that there are times of the year when some of the rooms are likely to be overshadowed by the buildings nearby. However, the same study also shows times of the year when overshadowing from existing buildings is limited. Given the urban context, this

⁵ As referred to by an Inspector in decision ref - APP/Z1775/W/20/3244807

⁶ Paragraph 130

⁷ Paragraph 9.4 of the Local Plan

⁸ Drawing ref - 2163-10-A

is to be expected, and I find no evidence to suggest that overshadowing is prevalent so as to significantly diminish the living conditions of the building's occupants. There is no other evidence before me to suggest that living conditions are deficient in any other way.

16. In these circumstances therefore, whilst I accept that the development conflicts with Appendix G of the Local Plan as the minimum space standards are not met, I attribute limited weight to this conflict in this case. This is due to the scheme's utilisation of an existing building in a city centre location where it is reasonable to assume reduced levels of separation. Furthermore, is no significant harm to occupants due to inadequate outlook or insufficient light. In this context, I am satisfied that use of the building as student accommodation does not result in significant detrimental impacts to amenity for existing and future occupiers, addressing Policy DM29 of the Local Plan and paragraph 130 of the Framework⁹.

Heritage

17. According to the list description, the appeal property originated as a townhouse constructed in the late 18th Century. It is a three-storey property with an ashlar stone façade and a four-bay symmetrical arrangement of sash windows. The ground floor of the building comprises a traditional shop frontage articulated by a deep fascia, cornice and corbels. The remaining elevations are mainly constructed of rubble and include sash windows.
18. The main architectural significance of the building is embodied in the main façade. Internally, some historic elements remain such as a staircase and part of the internal roof structure, as well as various other elements of historic fabric. Given this, I find that the special interest of the building, insofar as it relates to this appeal, to be primarily associated with its architectural legibility as a shop building and townhouse as well as any surviving historic fabric.
19. In terms of the Lancaster Conservation Area (CA), whilst I have not been provided with a copy of any relevant CA appraisal, I have taken into account the evidence before me as well as the observations I made on my site visit. In this regard, the appeal building forms part of a prominent row of historic, mixed-use properties constructed from characteristic local sandstone. The commercial function of the building remains clearly legible and consistent with the wider street scene given its intact shop frontage carriage entrance. As such, it makes an important contribution to the historic form and function of this part of the city. Consequently, insofar as it relates to this appeal, I find the significance of the CA to be primarily associated with the historic legibility, materials and architectural detail of its commercial buildings.
20. The appeal building has been the subject of a number of significant interventions in the past, including more recent adaption to an office. Despite this, the evidence suggests that the ground floor retained historic elements, particularly in relation to the traditional staircase, and exposed stonework was retained on the inside of the principal elevation. The first and second floors, on the other hand, were significantly altered to accommodate the office space so that their original townhouse layout and character was diminished. A modern outtrigger was also added to the rear of the building.

⁹ The Council refer to paragraph 127 of the Framework, but the relevant text is contained in paragraph 130 of the latest version.

21. The condition of the building degraded when the office closed, as the property was left derelict prior to purchase by the current landlord¹⁰. This apparently led to water ingress, structural issues, and deterioration of historic window frames which the Council accepts were in very poor condition prior to removal. Therefore, although the building still expresses limited evidential value in terms of its historic fabric, its special interest has been diminished through later intervention, and its historic plan form has largely been eroded.
22. A key element of the Council's concerns relate to the replacement of many of the building's windows. Within the principal elevation, the replacements comprise single-glazed timber sash frames. Whilst of modern construction and materials, the replacements are generally reflective of the appearance and traditional materials that would have characterised the historic windows that were lost as a result of the decay.
23. The replaced windows within the elevations facing the inner courtyard included a mix of window styles ranging from modern uPVC to traditional timber sash windows, as verified by the Council. Their replacements comprise modern timber framed windows with a traditional sash style. However, as a result of their top hung opening and double glazing, they are not sympathetic to original design, but to some extent this is balanced by the removal of several unsightly, modern window insertions. On balance, I find that the removal of the existing windows within the principal and side elevations of the building has failed to preserve its special interest.
24. Internally, extensive remodelling and new partition walls have been inserted to create apartments and rooms within them, along with the electrical and other utility provisions necessary to serve them. This compartmentalisation appears to have eroded the historical layout of part of the ground floor which comprised the shop unit. However, I saw on my site visit that historic fabric, comprising the existing staircase and some of the exposed internal walls, had been retained, along with elements of the traditional roof structure in the attic. The other main internal features of historical significance relate to several fireplaces, but the proposal is to largely obscure them behind internal walls with plasterboard screening the internal chimney breasts, as such I was not able to identify them on my visit.
25. As a result, due to the subdivision of the ground floor, and in the absence of evidence to demonstrate that all the fireplaces and features remain in situ, I conclude that there has been a minor loss of historic fabric and legibility, and this has caused harm to the special interest of the building.
26. I note that the position of the window in relation to proposed apartment no 1¹¹ does not reflect the situation on the ground. The inserted sash window is also larger than shown on the plan and some surrounding historic fabric has been lost. The provision of vents to the traditional slate roof has had a limited impact on the historic form of the building. Therefore, these elements constitute a minor loss of historic fabric, and an alien addition to the historic roof form, thus causing harm to the special interest of the building.
27. The scheme also includes restoration of the shop front by repairing and replacing elements where appropriate. Some of these works have not been

¹⁰ As detailed in the submitted Report and Valuation Ref 2151540 dated July 2019

¹¹ Plan ref - 089 / 06C

carried out yet and the scheme does not therefore, conform to the submitted plan¹². The traditional cobbles within the courtyard have also been revealed through removal of some areas of tarmac hardstanding. A modern outrigger of limited architectural merit has been removed revealing more of the building's historic stonework. Considering the completed works and the proposed restoration of the shop frontage, I find these to be beneficial because they better reveal historic architectural detailing and help preserve a key feature of the building, namely the shop front.

28. Turning to the effect on the significance of the CA. The internal works detailed above, along with external works relating to the courtyard facing elevation and minor roof alterations would be largely inconspicuous from the public and private domains thus would not be detrimental to the CA. The proposal to restore the shop front would enhance the character and appearance of the CA. However, removal of the existing windows from the principal elevation is detrimental to the building's historic character for the reasons set out, resulting in harm to the appearance of the CA.
29. Finally, there is no contention between the main parties in relation to the other elements proposed, including that the construction of a wall within the courtyard would be sympathetic in its composition to traditional construction. As a result, this element has not resulted in any harm to the heritage assets as built given that its appearance is generally reflective of that shown on the proposed plans, despite the alternative position shown on the layout.
30. However, in conclusion, due to the loss of historic fabric in terms of the replacement windows and new window openings, and the limited loss of internal and external historic fabric and harm to the legibility of the historic layout and form, I find that the proposal, on balance, fails to preserve the special interest of the listed building. The proposal also fails to preserve the significance of the CA due to the loss of historic fabric in terms of the replacement windows and new window openings in the principal elevation.
31. Paragraph 199 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 its conservation. Paragraph 200 goes on to advise that significance can be harmed or lost through the alteration or destruction of the asset and that any such harm should have a clear and convincing justification. I find the harm to be less than substantial in this instance but nevertheless of considerable importance and weight.
32. For these reasons, the proposal fails to preserve the special historic interest of the Grade II listed building and the character and appearance of the Lancaster Conservation Area, and conflicts with the requirements of policies DM37 and DM38 of the Local Plan which seek to protect heritage assets.
33. Under such circumstances, paragraph 202 of the Framework advises that this harm should be weighed against the public benefits of the proposal, which includes the securing of optimal viable use of designated heritage assets.

¹² Plan ref - 2163-SK1

Heritage and Planning Balance

34. Whilst the scheme does not meet the spacing standards advocated by Appendix G of the Local Plan, I give this conflict limited weight due to the constraints associated with urban context and the use of an existing building. I have applied a flexible approach to spacing standards as advocated by the supporting text to policy DM29 of the Local Plan. In any event, the development does not result in unacceptable living conditions for occupiers of the appeal building.
35. For the reasons set out in my decision, I have concluded that there is harm to heritage assets. These harms, whilst less than substantial, nevertheless carry considerable importance and weight. I shall now weigh this harm against the public benefits of the proposal.
36. In this case, as outlined in my reasoning, benefits include works to reinstate the shopfront and façade which improve the building's historic legibility along with improvements to the courtyard area by the removal of modern additions. These are tangible public benefits because they would enhance its special interest which would, in turn, enhance the significance of the CA. Moreover, the building is occupied which suggests that the use is viable, and the proposal gives a new lease of life to a once derelict building. I acknowledge the limited weight attributed to the policy breach in relation to external space standards, but overall, I find no unacceptable harm to the living conditions of the building's occupants. Therefore, this scheme secures optimum viable use of the building. Furthermore, the use of the building as student accommodation will inevitably ensure an indirect economic benefit to businesses within the city centre.
37. I have considered the foregoing as public benefits and taken together find that they are sufficient to outweigh the less than substantial harm to both the listed building and the CA. As such, the conflict with DM37 and DM38 of the Local Plan is outweighed by the benefits of the proposal, clearly indicating that planning permission should be granted in this case, notwithstanding identified conflict with the development plan.

Conditions

38. I have considered potential conditions in light of the guidance contained in the Planning Practice Guidance and the relevant tests set out in the Framework¹³.
39. A condition requiring the shop front restoration to be completed in accordance with the submitted plan, with additional detail concerning the methodology and materials to be used, is needed in order to ensure that the principal elevation of the building is properly reinstated, in order to preserve and better reveal the building's historic legibility.
40. It appears to me that noise and air quality mitigation has already been provided in accordance with the submitted details. In any event, the Council have not suggested any additional conditions relating to these aspects as part of this appeal. With this in mind, and as the development is largely complete, no other conditions are necessary.

¹³ See paragraph 56 of the Framework

Conclusion

41. For the above reasons the appeal is allowed subject to the condition set out in this decision.

M Woodward

INSPECTOR