



Appeal Decision

Site visit made on 12 December 2023

by Sarah Manchester BSc MSc PhD MIEEnvSc

an Inspector appointed by the Secretary of State

Decision date: 19th February 2024

Appeal Ref: APP/A2335/W/23/3321388

23 Queen Street, Lancaster, Lancashire LA1 1RX

- 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 Mr Jimmy Cinquemani of Assi Holdings Ltd against the decision of Lancaster City Council.
 - The application Ref: 22/00971/FUL, dated 31 July 2022, was refused by notice dated 2 November 2022.
 - The development proposed is retrospective application for change of use of basement into a studio bedroom (C3), installation of a replacement window to the front and 2 external vents to the rear.
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Decision

1. The appeal is dismissed.

Background and Preliminary Matters

2. Listed building consent (Ref: 20/00469/LB) was granted in July 2020 for development described as "Works to and relocation of partition walls, and installation of suspended ceiling across ground floor, new plasterboard ceiling to underside of timber ground floor, ventilation ductwork and extract grille to the rear elevation". The permission includes the conversion of the basement that is subject of this appeal into living accommodation in association with the ground floor flat in No 23. However, the basement has been converted separately and it has been occupied as a self-contained unit of accommodation, which is accessed via the internal circulation space which serves the ground floor flat.
3. At the same time the planning application subject of this appeal was refused, listed building consent (Ref: 22/00973/LB) was refused for works described as "the installation of a replacement window to the front elevation, installation of shower room and associated pipework, an internally wall mounted heat recovery unit". The appeal relates only to the refusal of planning permission. It should be noted that if this appeal had been successful, the appellant would still have needed to secure listed building consent for the associated works. Irrespective, the submitted plans illustrate the listed building consent application works that would be necessary to facilitate the proposed residential use. The development has not been completed in accordance with the submitted plans. Therefore, while I have taken into account what I saw, I have determined the appeal on the basis that permission is sought for the scheme illustrated on the plans and that was considered by the Council.

4. As the proposal is in a conservation area and relates to a listed building, I have had special regard to sections 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act).
5. The revised National Planning Policy Framework (the Framework) was published on 20 December 2023. This is a material consideration in the determination of this appeal. However, the revisions are not directly relevant to the main issues and I am therefore satisfied that the interests of the main parties will not be prejudiced as a result of this change.
6. The appeal site is within the zone of influence of Morecambe Bay SPA, SAC and Ramsar site (the European site). I have a duty under the Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitats Regulations) to consider the implications of the proposal for the European site. This is a matter that I will return to later in my decision.

Main Issues

7. The main issues are:
 - i) The effect of the proposal on the living conditions of future occupiers of the basement flat and the ground floor flat; and
 - ii) Whether the proposal would preserve a Grade II listed building, "23,23A,23B,23C, Queen Street" (Ref: 1212614) (the LB), 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 (the CA).

Reasons

Living conditions

8. The basement is served by a single, small window that provides only a low level of natural light to the basement. As a result, except for immediately next to the window, the basement is a poorly-illuminated and gloomy space. Future occupants would be heavily reliant on artificial lighting to carry out even the most basic of tasks such as cooking, dining, laundry or reading. The small high level window is located just above the height, and immediately to the rear, of the external footway. The view from the window is dominated by the on-street parking of vehicles along the adjacent footway, resulting in a very poor outlook for future occupiers. I find that the very low levels of daylight and sunlight and the poor outlook would be detrimental to the health and well-being of the occupants of the basement studio flat.
9. The appellant points out that basement flats are commonplace and, although they may be associated with poor light levels, he considers that they offer other advantages. Be that as it may, new residential development is expected to provide a reasonable standard of living accommodation including in terms of natural light and outlook. Compliance with the requirements of planning policy in relation to matters including noise, privacy and security do not weigh in favour of the proposal.
10. The Council's reasons for refusal also relate to the loss of living space for the ground floor flat, which it considers would diminish the previously approved scheme. The loss of the basement living and storage space would result in a

ground floor flat with 2 en-suite bedrooms and a small kitchen and dining area. This would reduce the suitability and desirability of the ground floor flat to different groups in the community including families and those with children. However, it has not been demonstrated that the ground floor flat would fundamentally fail to provide adequate internal floor space for a 2 bed dwelling such as would be suitable for student occupation.

11. I understand the appellant intends to rent out the basement flat separately. Nevertheless, it is accessed via the internal circulation space serving the ground floor flat. The Council is therefore concerned that it could be subsumed into the ground floor flat to form a House in Multiple Occupation (HMO). As the concentration of HMOs in this area already exceeds the 10% threshold set out in DMDPD Policy 13, any further HMOs would contribute to further imbalance in the local housing market and conflict with the policy. Moreover, the creation of a new HMO in this location would be unacceptable because the basement would provide sub-standard living conditions.
12. Therefore, I conclude that the proposal would not provide an adequate standard of living conditions for future occupants of the basement studio flat, with particular regard to outlook and natural light. It would conflict with policies DM7, DM13, DM29 and Appendix G of A Local Plan for Lancaster District 2011-2031 Part Two: Review of the Development Management DPD Adopted July 2020 (the DMDPD). These require, among other things, that residential accommodation should provide adequate standards of residential amenity including natural light and outlook. It would also conflict with the residential amenity aims of the Framework in relation to the creation of places which promote health and well-being, and with a high standard of amenity.

Heritage Assets

13. The LB was listed in 1970 and dates from the early 19th century. It comprises a mid-terrace pair of townhouses with 2-storeys above a basement, finished in sandstone ashlar with a slate roof. The ground floor is elevated above street level and accessed via external steps to the front of the doors in the central projecting bay. The LB abuts the rear of the footway and the basement is served by a single low window just above street level. Much of its historic interior was lost and its windows were replaced during 20th century conversion works. However, the basement retains an exposed timber beam and fireplace with stone surround, the latter possessing evidential value in terms of the historic use of the basement. Externally, the LB remains a fine example of a late Georgian townhouse in Neo-Classical style. Given the above, I find that the special interest of the listed building, insofar as it relates to these appeals, to be primarily associated with its historic façade and remaining historic fabric.
14. The appeal site is in the High Street Character Area (the HSCA) of the CA. The HSCA comprises a Georgian townscape that originated as a late 18th century suburb of Lancaster. Its significance is derived from its consistent Georgian architecture and ashlar facades, which contribute to a unified mixed townscape including residential, community and institutional uses. Given the above, I find that the significance of the CA, insofar as it relates to this appeal, to be primarily associated with the high quality Georgian facades and traditional materials. The LB makes a positive contribution to the significance of the CA in this regard.

15. The plans illustrate that the existing single frame white uPVC basement window would be replaced with a white painted, timber-framed opening light. While the window has been replaced, the 2-light casement window does not match the illustrated multiple-light window. Furthermore, a detailed specification for the window, including sectional drawings, has not been provided. Nevertheless, the replacement of the incongruous modern uPVC window with a traditional wooden frame would enhance the façade and thereby the special interest of the LB. Taking into account its small scale and limited visibility, the replacement window would make a positive, albeit limited, contribution to the character and appearance and thereby the significance of the CA.
16. Being below ground and poorly-ventilated by the small window, the basement is an inherently damp space. The proposed self-contained residential use would be a more intensive use than the approved use as living space ancillary to the ground floor flat. Activities such as sleeping, cooking and showering would result in higher humidity levels and contribute to damp issues. I accept that the basement has been lined in accordance with the approved plans. However, the proposal would require a different approach to the management of moisture and humidity, such as the use of more traditional breathable building materials as well as a mechanical ventilation and heat recovery system (MVHR).
17. The plans illustrate a MVHR housed in a cupboard in the kitchenette, with ducting to serve the shower room, living and bedroom areas. The external vents in the rear wall would result in a minor loss of historic fabric. Although not clearly illustrated, the plans suggest that the MVHR and associated cupboard and ducting would encroach upon the exposed fireplace and beam. The loss or partial covering of these historic features would detract from the special interest of the LB.
18. The Council's Conservation Officer suggests the less-visually harmful option of installing the MVHR in the chimney should be explored. The appellant considers there would be minimal visual impact provided the ventilation unit did not cover the fireplace. However, no further information has been provided to demonstrate that a MVHR could be installed in the chimney without damage to the fireplace and its surround or the exposed beam. The MVHR would be necessary in the interests of the living conditions of future occupants and to protect the historic building. As it has not been demonstrated that it could be installed without harm to the historic features, this is not a matter that could be addressed by the imposition of a planning condition.
19. Given the above, I find that the proposal would fail to preserve the special interest of the listed building. Consequently, I give this harm considerable importance and weight in the planning balance of these appeals.
20. Paragraph 205 of the Framework advises that when considering the impact of development on the significance of designated heritage assets, great weight should be given to the asset's conservation. Paragraph 206 goes on to advise that significance can be harmed or lost through the alteration or destruction of those assets and that any such harm should have a clear and convincing justification. Given the scale and nature of the proposal, I find the harm to be less than substantial in this instance but nevertheless of considerable importance and weight.
21. Where a proposal will lead to less than substantial harm to the significance of a designated heritage asset, paragraph 208 of the Framework advises that this

harm should be weighed against the public benefits of the proposal, including, where appropriate, securing its optimal viable use. The appellant is of the opinion that the proposal would be beneficial because it would be the effective use of developed land in an accessible urban location, contributing to the supply of housing and meeting the needs of students for 1 bed flats.

22. Compliance with policy in terms of the suitability of locations for residential development is not a public benefit. The replacement window would be a minor public benefit. The minimal contribution to the supply of housing would be a public benefit, as would the limited economic benefits during the conversion works and future occupation of the flat. Collectively, the public benefits are not sufficient to outweigh the harm that I have identified. Moreover, the continued viable use of the appeal property as a residential dwelling is not dependent on the proposal as the building has an ongoing residential use that would not cease in its absence.
23. Given the above, I conclude that, on balance, the proposal would fail to preserve the special historic interest of the Grade II listed building. This would fail to satisfy the requirements of the Act, paragraph 205 of the Framework and conflict with DMDPD policies DM7, DM29 and DM37 and Policy SP7 of A Local Plan for Lancaster District 2011-2031 Part One: Strategic Policies and Land Allocations DPD Adopted July 2020. These seek among other things, to ensure that proposals contribute positively to the identity and character of the area through good design and having regard to local distinctiveness, conserving and where appropriate enhancing those elements that contribute to the significance of listed buildings, and protecting and enhancing the district's unique heritage, including its early 19th century townhouses. As a result, the proposal would not be in accordance with the development plan.

Other Considerations

Housing Land Supply

24. The Council is unable to demonstrate a five year supply of deliverable housing sites (5YHLS). In this regard, its most recent Housing Land Supply Statement indicates a 2.4 year supply, which is a significant shortfall.
25. Paragraph 11d) of the Framework sets out that where the policies which are most important for determining the application are out-of-date, including where the Council cannot demonstrate an adequate housing supply, permission should be granted unless the exceptions in paragraph 11d)(i) or 11d)(ii) apply. Paragraph 11d)(i) indicates that permission should not be granted where the application of policies in the Framework that protect areas or assets of particular importance provide a clear reason for refusing the development proposed. Footnote 7 sets out that the policies referred to include designated heritage assets.
26. In weighing the public benefits against the less than substantial harm to the listed building, I have already considered the benefits of the scheme including the contribution to the Council's 5YHLS. Taking into account that I have concluded the proposal would harm a designated heritage asset, paragraph 11d)(i) is engaged. Consequently, the proposal would not be sustainable development and the presumption in favour of sustainable development does not apply.

European Sites

27. The appeal property is within the 3.5km zone of influence of Morecambe Bay SPA, SAC and Ramsar site. New residential development in this zone has the potential to result in adverse recreational pressure on the designated sites. The Habitats Regulations sets out that where proposals would affect European sites, permission may only be granted if it can be ascertained that the proposal would not adversely affect the integrity of the designated site.
28. I note that the Council has suggested a planning condition in the event the appeal was allowed. This would secure a homeowners/ tenants information pack providing details of the nature conservation interest of the European sites, their sensitivities to recreational pressure and promoting the use of alternative areas for recreation. Irrespective of whether or not the Council has undertaken an assessment for the purposes of the Habitats Regulations to establish the likely effects and the need for mitigation, I am the competent authority for the purposes of the Habitats Regulations in the determination of this appeal. Nevertheless, as I have found that the proposal is unacceptable for other reasons, there is no need for me to consider this matter further.

Conclusion

29. For the above reasons and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Sarah Manchester

INSPECTOR