



Appeal Decisions

Site visit made on 23 May 2024

by K Lancaster BA (hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 June 2024

Appeal Ref: APP/A2335/W/24/3336666

Former Co-Op Building, 3 John Street, Carnforth, Lancashire LA5 9ER

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Marshaw Developments Ltd against the decision of Lancaster City Council.
 - The application Ref is 23/01159/FUL.
The development proposed is the removal of the external staircase, various alterations to windows and openings as well as the installation of metal balustrades.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Marshaw Developments Ltd against Lancaster City Council. This application is the subject of a separate decision.

Preliminary Matters

3. Two further appeals have been submitted relating to the appeal site¹. Each appeal has been considered on its own merits and is the subject of a separate decision.
4. The appeal scheme seeks retrospective permission for the development, which has commenced, and I was able to view the works which have already been undertaken in situ at my site visit. I have considered the appeal on this basis.
5. Since the determination of this application, the Government published a revised National Planning Policy Framework (the Framework) on 19 December 2023 and updated it on 20 December 2023. Those parts of the Framework most relevant to this appeal have not been amended. As a result, I have not sought further submissions on the revised Framework, and I am satisfied that no party's interests have been prejudiced by taking this approach.

Main Issues

6. The appeal site is within the Carnforth Conservation Area (CCA). Although not a reason for refusal, the Council has identified in the officer report that the development causes less than substantial harm to the Carnforth Conservation Area. As the effect of the proposal on the CCA, is potentially a determinative issue, I have elevated this matter to a main issue.

¹ Appeal Refs: APP/A2335/W/23/3337571 and APP/A2335/W/23/3330242

7. Therefore, the main issues are:

- whether the proposal provides adequate living conditions for future occupiers of the flats;
- the effect of the proposal on living conditions of neighbouring occupiers, with particular regard to privacy; and
- the effect of the proposal on character and appearance of the area, with particular regard to whether it would preserve or enhance the character or appearance of the Carnforth Conservation Area.

Reasons

8. The appeal site comprises a four-storey, stone building, which fronts onto John Street and is attached to the former Co-Operative Building. The immediate surrounding area is predominantly residential in character, but there are some commercial uses nearby. The area is characterised by mostly terraced housing with small rear yards, laid out in a back-to-back pattern, separated by narrow lanes or alleyways.
9. This appeal is seeking planning approval retrospectively for various alterations to the exterior of the building only. The submitted plans also show the creation of two additional flats within the basement of the building, which are the subject of a separate application and appeal².
10. In respect of the external works which have been undertaken, these mostly utilise existing openings within the building. However, there have been some changes for example where doorways have become windows openings, where existing openings have been enlarged or where new openings have been created.
11. The Council has not raised any concerns in respect of the main issues in relation to the majority of works, including the removal of the staircase and the installation of metal balustrades. Based on the evidence before me and my own observations, I see no reason to disagree with these conclusions.

Living Conditions for Future Occupiers

12. Policy DM29 of A Local Plan for Lancaster District 2011-2031 Part Two: Review of the Development Management Development Plan Document, adopted July 2020 (DMDPD) states that new development should ensure there is no significant detrimental impact to amenity in relation to overshadowing, visual amenity, privacy, overlooking, massing, and pollution. This policy also states that new development should contribute positively to the identity and character of the area through good design, having regard to, amongst other things, layout, orientation and separation distances.
13. It is not disputed that due to the location of the building and its proximity to existing built development, the outlook from some of the windows within the development does not meet the minimum standards normally required by Policy DM29 of the DMDPD.

² A separate application is under consideration for the creation of two additional flats in the basement of the building (Application Ref: 23/00756/FUL) (Appeal Ref: APP/A2335/W/24/3337571)

14. In respect of outlook, the Council has raised concerns in relation to the openings serving the living, dining, kitchen areas of Flat 1 within the 'North Elevation' and Flat 2 in the 'East Elevation', and a further single window opening within the 'South Elevation', serving the bedroom of Flat 2. Although approval is not being sought as part of this proposal for the retention of these flats, these flats have already been created and the submitted plans clearly show that the two additional flats are located within the basement level of the building. I have therefore considered the appeal on this basis.
15. In the 'North Elevation', the window openings which serve Flat 1 although large, face out onto a private enclosed courtyard. The outlook from these windows would be constrained by virtue of the close proximity of the high boundary fence which encloses the courtyard. The proximity of the boundary fence contributes to a strong sense of enclosure experienced from these windows. As they serve primary living accommodation, it has not been demonstrated that this would provide an adequate level of outlook for future occupiers.
16. In respect of Flat 2, the living, dining, kitchen area would have a single window opening located in the 'East Elevation'. This window faces out onto a retaining wall which is located in very close proximity to the window. As this is the only window within the main living accommodation of Flat 2, it therefore fails to provide an adequate level of outlook for future occupiers.
17. The submitted plans show that the bedroom of Flat 2 would be served by a new high-level window, which would provide some natural light and ventilation into this space. However, notwithstanding its intended use as a bedroom, this would be the only window serving this room and would be situated at a high level, facing out onto a car parking space. Therefore, it does not provide any meaningful outlook for this room and the proximity of a parked car is likely to contribute to an unacceptable sense of enclosure for the future occupiers of the bedroom.
18. I acknowledge that due to the topography of the area, the lower ground floor/basement has windows which are visible above the ground level, would mostly make use of some existing openings, and that the previous approvals did not find harm. However, the current proposal indicates the creation of additional self-contained residential units within the basement, whose only living accommodation would be served by these openings. The previously approved schemes³ to which my attention has been drawn, would have only contained sleeping accommodation and bathrooms. Therefore, whilst I accept that there has been no material change to the physical relationship of the openings to neighbouring buildings, there has been a material change to intended use of the rooms.
19. My attention has been drawn to the Cherkley Case⁴ which outlined that "when determining the conformity of a proposed development with a local plan the correct focus is on the plan's detailed policies for the development and use of land in the area. The supporting text consists of descriptive and explanatory matter in respect of the policies and/or a reasoned justification of the policies. That text is plainly relevant to the interpretation of a policy to which it relates

³ Application Ref: 17/00502/CU and 22/00393/PAC

⁴ R (Cherkley Campaign Ltd) v Mole Valley DC [2014] EWCA Civ 567

but it is not itself a policy or part of a policy, it does not have the force of policy and it cannot trump the policy”.

20. However, whilst I recognise that the supporting text contains specific guidance on the minimum expected separation distances for example, which has been cited by the Council in the reason for refusal, Policy DM29 of the DMDPD also states that new development will be expected to have regard to separation distance and orientation. For the reasons given above and in accordance with Policy DM29 of the DMDPD I have found that the proposal would not achieve adequate outlook for future occupiers, with the location, separation distance and orientation of the windows to built features being a factor in this conclusion.
21. Consequently, for the above reasons, I find that the proposal would not provide adequate living conditions for future occupiers, with particular regard to outlook. It is contrary therefore to DM29 of the DMDPD, which requires amongst other things, that development should ensure there is no significant detrimental impact to amenity. It is also contrary to Paragraph 135 of the Framework which requires development to provide a high standard of amenity for existing and future users.

Living Conditions of Neighbouring Occupiers

22. As outlined above, the surrounding area is characterised by tight-knit residential streets of mostly terraced properties. There is a lot of intervisibility between existing properties. Within the immediate vicinity, I observed that New Steet, Edward Street, Back New Street and Booth Street all have limited distances between windows due to this tight-knit relationship.
23. In such a context, and where a proposal involves the re-use of an existing building and existing openings within a building, it is not always possible to achieve the minimum distance between windows and blank walls or habitable windows set out in the supporting text to Policy DM29 of the DMDPD. Furthermore, there is already a high degree of overlooking within the area from upper floor windows. This is due to the limited separation distances between the rows of terraced properties which are prevalent in the surrounding area.
24. The Council states that the majority of the window openings do not give rise to concerns in relation to overlooking of neighbouring properties. The Officer Report outlines the specific locations, which they do consider results in harmful overlooking. The external works which have been identified as harmful by the Council all relate to pre-existing openings, albeit some of these have been changed from doorways to windows.
25. The ‘East Elevation’ of the appeal building, which contains the majority of the windows openings, does not face directly towards the rear of the terraced properties on this part of Lancaster Road, it is orientated diagonally facing primarily towards an area of hardstanding which is currently used for car parking. I note that some of the rear yards of the properties along this section of Lancaster Road are used for car parking, and some as areas of amenity space. However, whilst some views towards these external areas are possible, the orientation of the building, existing boundary treatments and presence of a triangular area of car parking, minimises the opportunities for direct overlooking to occur.

26. The 'South Elevation' does have some views towards the properties on Lancaster Road, but primarily faces towards the rear parking area of 50 and 50a St John's Terrace, Lancaster Road. The opening in the 'South Elevation' serving Flat 3 on the Ground Floor, replaces what is shown on the 'Existing Elevation' as a solid wooden feature, possibly a former doorway. I note that previous approvals granted by the Council have permitted larger openings with this part of the building and found that this would not be harmful. Therefore, whilst I accept that this window faces diagonally towards the rear elevations of some of the properties on St John's Terrace and Lancaster Road, I find that the replacement of a doorway with a window in this particular location does not cause an unacceptable amount of overlooking or loss of privacy to the occupiers of these properties.
27. The additional openings in the 'East Elevation' serving Flats 3 and 5 face primarily towards the car parking area for the appeal building and the rear access lane and beyond to the rear of the terrace of properties along Lancaster Road. It is not clear from the Officer Report why the addition of these two openings would cause significant detrimental harm to the living conditions of the occupiers of these properties, when taking into account the number and position of openings within this elevation, which have not been found to be harmful. However, in any case, these windows, by virtue of their position and orientation do not cause significant harm to the living conditions of the neighbouring properties on Lancaster Road.
28. The 'East Elevation' of the building is orientated towards the rear elevations of No.25 and 27 Edward Street, which I accept means that there is a greater possibility of overlooking occurring. The lower-level windows in the appeal building face towards the rear boundary of these properties, which is currently a tall boundary wall. The presence of this boundary treatment ensures that there is no direct overlooking possible at ground floor level of Nos. 25 and 27.
29. In respect of the window in the 'East Elevation' which would serve the living, dining, kitchen area of Flat 4, this utilises an existing opening, which was previously shown as being a solid door. Although raised in height, by virtue of its position in relation to boundary walls and other built features present in front of the appeal building, it does not cause significant adverse impact harm, by virtue of overlooking to the occupiers of Nos. 25 and 27.
30. Therefore, I find that whilst these windows would be in close proximity to each other and would fail to meet the minimum standards suggested in the supporting text to Policy DM29, taking into account the context of the site and the existing relationships between terraced properties within the immediate surrounding area, I have not been presented with any compelling evidence that the proposal results in significant detrimental harm.
31. On balance, I therefore conclude that the development does not cause adverse harm to the living conditions of the occupiers of neighbouring properties, with particular regard to privacy. It would thus comply with Policy DM29 of the DMDPD, as the development would not cause a significant detrimental impact on the amenity of neighbouring occupiers.

Conservation Area

32. In determining this appeal involving development within a conservation area, I have had special regard to section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act).
33. The significance of the CCA as a whole lies in its historic and architectural interest as a small market town. The town centre has a strong and consistent character resulting from the extensive survival of late 19th Century architecture. The town is densely developed with few open spaces. There is a consistent urban form throughout the Conservation Area. Which consists of an irregular street grid, and creates a tight, enclosed feel, especially as most of the streets are relatively narrow. The perpendicular streets of Haws Hill, New Street and Edward Street all descend steeply southwards and North Road slopes steeply uphill to the north from Market Street.
34. The significance of the CCA in so far as it relates to the appeal site is the building which is a former warehouse attached to the Co-Operative Building, which is prominently sited on the corner of New Street and John Street. The former co-operative store is noted as a striking building. Its significance lies in its historic and architectural interest and as a remaining building of the last 19th century expansion of the town.
35. The proposal would contribute to the re-purposing of the building as residential accommodation, including the improvement of the external appearance of the building and finding a long-term viable use for the building. The Council also concluded that the works are in keeping with the style and materials used on the existing building and would not look out of character when viewed from the wider street scene or conservation area. Based on the evidence before me I see no reason to disagree with this conclusion.
36. The proposal is therefore considered to conserve and enhance the significance of the building within the CCA. It thus complies with Policy DM38 of the DMDPD which requires that development proposals and/or alterations to buildings, features and open spaces in Conservation Areas should preserve or enhance the character and appearance of the Conservation Areas.

Other Matters

37. My attention has been drawn to a previous planning application⁵ for the appeal building which granted planning permission for the conversion of the building to provide six flats, with associated external alterations. Whilst I have had regard to the planning history of the site, this permission was granted under a different version of the Local Plan and therefore attracts very limited weight.
38. The appeal site is the subject of a recent appeal decision⁶ which sought approval to vary a condition attached to a previous grant of planning approval for the use of the building as six flats. As part of this revised scheme approval was granted for external works to the building, which although similar are not directly comparable to this scheme. The appeal was allowed. However, an important distinction between that decision and my findings in respect of this scheme is the creation of self-contained accommodation within the basement of the building. Therefore, whilst I have had regard to this decision as an

⁵ Planning Application Ref: 17/00502/CU

⁶ Appeal Ref: APP/A2335/W/23/3330242

important material consideration, it does not alter my findings in respect of the main issues.

39. The appeal site is located within 1.5km of the Morecambe Bay Special Area of Conservation (SAC), Special Protection Area (SPA) and Ramsar site. The SPA and SAC have been designated because they support internationally important populations of seabirds and wading birds, together with the habitats that support these birds.
40. The Conservation of Species and Habitats Regulations 2017 (the Habitats Regulations) require the Competent Authority to consider whether the proposal could adversely affect the integrity of the protected sites, either alone or in combination with other plans and projects.
41. As a result of the proximity of the proposed development to the sensitive sites, it could have a detrimental impact upon these internationally designated sites, particularly as a result of increased recreational pressure and disturbance.
42. Had I concluded that the development would be acceptable in terms of the main issues, it would have been necessary to investigate the effect of the proposal on the integrity of these sites as part of Habitats Regulation Assessment and Appropriate Assessment. However, as I have found harm in respect of the main issues, I have not considered this matter further.

Conclusion

43. For the reasons given above, I have found that the development does not cause harm to the character or appearance of the area, with particular regard to whether it preserves or enhances the character or appearance of the Carnforth Conservation Area. I have also found that the development does not cause harm to the living conditions of neighbouring occupiers, with particular regard to privacy. However, I found that the development fails to provide adequate living conditions for future occupiers, with particular regard to outlook.
44. Taking all of the above into account, on balance, the development does not accord with the development plan when taken as a whole. There are no material considerations of sufficient weight that indicate that a decision should be taken otherwise in accordance with the development plan. Therefore, the appeal should be dismissed.

K Lancaster

INSPECTOR