



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/24/3337571

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 23/00756/FUL.
 - The development proposed is the change of use of basement areas to two dwellings.
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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. 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 Issue

6. The main issue is whether the development provides adequate living conditions for future occupiers, with particular regard to outlook, light and the size and layout of the internal accommodation.

Reasons

7. 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

¹ Appeal Refs: APP/A2335/W/23/3336666 and APP/A2335/W/23/3330242

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.

8. This appeal is seeking approval retrospectively for the creation of two, one-bedroom flats within the basement of the appeal building. A communal bike store and entrance foyer is situated between the two flats.
9. This part of the building has previously been granted approval² for residential use. However, whilst the previously approved scheme granted prior approval for use of the basement to provide residential accommodation, this was to provide bedrooms and bathrooms for the ground floor flats within the building, and not as self-contained units. The appeal proposal is seeking to create an additional two self-contained units, thereby increasing the overall number of residential units within the building to eight.
10. Policy DM13 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 proposals which involve residential conversion must not result in a significant detrimental impact on the amenity of nearby residents and the character and appearance of the street scene. It also states that they should satisfy all other relevant planning policy including the requirements of Appendix H where appropriate.
11. Appendix H of the DMDPD states that basement flats are generally considered to be unacceptable for the creation of flats for permanent residential occupation as they will have poor outlook, inadequate natural daylight and may be subject to flooding.
12. Policy DM29 of the 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.

Outlook

13. In respect of outlook, the Council has only raised specific concerns in relation to the openings serving the living, dining, kitchen area 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 Flat 2.
14. In the north elevation, the window openings which serve Flat 1 although large, they 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.
15. In respect of Flat 2, the submitted plans show that the bedroom would be served by a new high-level window, which would provide some natural light and ventilation into this space. However, the appellant has stated that no approval for this window is being sought under this proposal, it is the subject of

² Application Ref: 22/00393/PAC

- a separate application. This would mean that this bedroom would have no window, which would not provide acceptable living conditions for the future occupiers.
16. Even if the window was permitted and notwithstanding its intended use as a bedroom, the only window would be situated at a high level and face 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.
 17. The living, dining, kitchen area of Flat 2 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.
 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, in respect of the basement accommodation, the current proposal seeks approval for the creation of additional self-contained residential units, 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 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 existing built features being a factor in this conclusion.
 21. Consequently, I conclude that the development fails to provide adequate living conditions for future occupiers with particular regard to outlook.

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

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

Light

22. I have not been provided with a Daylight and Sunlight Assessment or any other substantive evidence to demonstrate that the flats would have adequate levels of sunlight and daylight.
23. As already stated, the flats would be located solely within the basement of the building. However, due to the topography of the area, I recognise that the lower ground floor/basement has windows which are visible above the ground level. Nevertheless, the proximity of neighbouring buildings and built features such as retaining/boundary walls would be likely to reduce the amount of daylight and sunlight that enters these properties at different times of the day. As a consequence, the occupiers of these properties would be likely to need to rely upon artificial light sources for the majority of the time.
24. Whilst the previous grant of prior approval⁵ considered the provision of light to habitable accommodation, the basement level was shown to provide mostly sleeping accommodation, with the primary living accommodation located on the ground floor level of the building. This is no longer the case.
25. For these reasons, I find that it has not been demonstrated that the flats would receive adequate levels of daylight and sunlight, which would as a consequence fail to provide adequate living conditions for the future occupiers.

Size & Layout of Internal Accommodation

26. Appendix H of the DMDPD sets out the minimum expected standards for flat conversions. It states that all flats must be fully self-contained with their own kitchen, bathroom, and toilet. The proposal accords with this.
27. It also states that rooms within flats must be of adequate size for the purpose proposed and provided suggested minimum room sizes. It also states that if the flat conversion involves an open plan living room and kitchen, then the overall minimum floorspace should be equal to the individual room provision.
28. In respect of Flat 1, it provides an open plan living, dining, kitchen area which totals 23.5m² of floorspace. The bathroom measures 5.5m² and the main bedroom 11.25m². Therefore, in respect of Flat 1, I am satisfied that this exceeds all of the minimum standards set out in Appendix H of the DMDPD.
29. In respect of Flat 2, which is the slightly larger of the two, the open plan living, kitchen dining area measures 25m², the bathroom 4.5m² and bedroom 11.2m². Therefore, in respect of Flat 2, I am satisfied that it also meets the minimum floorspace standards set out in Appendix H of the DMDPD.
30. The Council has also referred to the Nationally Described Space Standards (NDSS) in their reason for refusal. Whilst I accept that the proposed flats do not provide the minimum amount of floorspace required by the NDSS for a one bedroom, two person flat they do exceed the minimum standards for a one-bedroom, one-person flat. Accordingly, on this basis there is no conflict with the NDSS in respect of the overall floorspace to be provided. I am therefore satisfied that the development provides adequate living conditions for future occupiers, with regard to the size and layout of the internal accommodation.

⁵ Application Ref: 22/00393/PAC

31. Consequently, although I have found that the development provides adequate living conditions for future occupiers in respect of the size and layout of accommodation, I have also found that the proposal is harmful in relation to outlook and light. Therefore, as a whole, the development fails to provide adequate living conditions for future occupiers, with particular regard to outlook and light. It is contrary therefore to Policies DM13 and 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.

Other Matters

32. I acknowledge that the appeal site is located within a sustainable location, close to Carnforth Town Centre. I also recognise that there would be benefits arising from the re-use of an existing building, located within the Conservation Area. The proposal would also make a small contribution to housing supply, providing two additional units. However, these benefits are limited given the small scale of development.
33. My attention has been drawn to a previous planning application⁶ 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 on very limited weight.
34. I have also had regard to the principle of consistency, including the Davison v Elmbridge Borough Council [2019] EWHC 1409 (Admin) case, which was brought to my attention. However, for the reasons set out above, this current proposal differs from those previously granted approval.
35. The appeal site is located within Carnforth Conservation Area (CCA). 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).
36. 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.
37. 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 therefore lies in its historic and architectural interest and as a remaining building of the last 19th century expansion of the town.

⁶ Planning Application Ref: 17/00502/CU

38. 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 proposal is therefore considered to conserve and enhance the significance of the building within the CCA.
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.

Planning Balance

43. The proposal would fail to provide adequate living conditions for future occupiers, with particular regard to outlook and light. As such, there would be conflict with Policies DM13 and DM29 of the DMDPD. It would therefore not accord with the development plan as a whole and this a matter that counts significantly against allowing the appeal.
44. However, the Government's objective is to significantly boost the supply of homes. Other provisions of the Framework give support to the development of brownfield land within settlements and observe that small sites can make an important contribution to meeting the housing requirement. In Lancaster City Council, the housing land supply position is just 2.1 years⁷. This is not a matter which has been disputed by the Council. It is therefore accepted that there is a significant undersupply of housing land. Because of this, paragraph 11 d) of the Framework is engaged.
45. The policies in the Framework seek to both deliver a sufficient supply of homes and achieve well-designed places. However, the creation of high-quality places is fundamental to what the planning and development process should achieve. That would not be so here.
46. Therefore, I find that the adverse impacts of the proposal significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. As a result, the presumption in favour of sustainable development does not apply.

⁷ Turley Housing Monitoring Report (Dated February 2023)

Conclusion

47. For the reasons given above, I have found that the development would provide adequate living conditions for future occupiers in respect of the size and layout of the internal accommodation. However, I have also found that it would fail to provide adequate living conditions for future occupiers in respect of outlook and light.
48. 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