



Appeal Decision

Site visit made on 22 September 2020

by Graham Wraight BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 October 2020

Appeal Ref: APP/V2635/W/20/3255057

The Water Tower, Peddars Way, Castle Acre PE32 2FP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Dennis Pedersen against the decision of King's Lynn and West Norfolk Borough Council.
 - The application Ref 20/00094/F, dated 15 January 2020, was refused by notice dated 27 February 2020.
 - The application sought planning permission for Variation of condition 1 of planning permission 17/02168/F: Re-use and develop existing water tower structure to a two bedroom residential dwelling without complying with conditions attached to planning permission Ref 19/00442/F, dated 13 March 2019.
 - The conditions in dispute are Nos 14 and 19 which state that:
(14) The roof terrace shall be used for maintenance purposes only, and shall not be used as a balcony or viewing platform for amenity purposes.
(19) Notwithstanding details received before first occupation of the building hereby permitted the window on the south elevation that serves the Kitchen/living room closest to the western elevation of the dwelling hereby approved shall be fitted with obscured glazing in any part of the windows that is less than 1.7m above the floor in which it is installed, and it shall be non-opening. The window shall be permanently retained in that condition thereafter.
 - The reasons given for the conditions are:
(14) In order to safeguard neighbour amenity.
(19) In order to safeguard neighbour amenity.
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Decision

1. The appeal is allowed and planning permission is granted to re-use and develop existing water tower structure to a two bedroom residential dwelling at The Water Tower, Peddars Way, Castle Acre PE32 2FP in accordance with the application Ref 20/00094/F made on 15 January 2020 without complying with conditions No 14 and 19 set out in planning permission Ref 19/00442/F granted on 13 March 2019 by the King's Lynn and West Norfolk Borough Council, but otherwise subject to the conditions set out in the schedule at the end of this decision.

Main Issue

2. The main issue is whether the conditions are necessary and reasonable to protect the living conditions of the occupiers of the nearest residential properties, with particular reference to overlooking.

Reasons

3. The Water Tower is a structure of substantial height which is located within a field on the outskirts of Castle Acre. Having been converted to residential use, it is by its very nature unusual in its relationship to the dwellings located on the edge of the settlement. Vision is possible towards these dwellings from both the window in the kitchen/living area to which condition 19 refers and from the roof terrace above, to which condition 14 prevents access other than for maintenance purposes.
4. The physical distance between The Water Tower and these dwellings is however significant. Therefore, whilst vision can be taken towards the existing dwellings, the degree of separation means that it does not have an intrusive impact on the garden areas of the nearest dwellings or allow harmful overlooking into the windows of the dwellings themselves. The two conditions subject to this appeal are therefore not necessary or reasonable in the circumstances that I have identified. Therefore, they do not meet all of the six tests set out in Paragraph 55 of The National Planning Policy Framework.
5. Representations that have been received also refer to noise experienced from persons using the roof terrace in the past. However, the distances involved are again adequate to ensure that the use of the roof terrace would not cause harm resulting from noise generated by its use.
6. The appellant's submission includes details of additional railings which were not present on the roof terrace at the time of my site visit. The Planning Officer's report suggests that these were offered to attempt to mitigate against the concerns that had been raised. Based on the plans submitted, these would do little to alter the vision that is possible from the roof terrace but, as I have found that no harm would result from the unrestricted use of the roof terrace in its current form, further consideration of this matter is not necessary.
7. For the reasons I have set out, I conclude that conditions 14 and 19 are not necessary or reasonable to ensure that the development does not cause harm to the living conditions of the occupiers of the nearest residential properties. Therefore, they do not meet the six tests set out in paragraph 55 of the Framework.
8. Furthermore, in their absence, there would be no conflict with Policies CS06 and CS08 of the King's Lynn & West Norfolk Borough Council Core Strategy 2011 and Policy DM15 of the Site Allocations and Development Management Policies Plan 2016, where they seek to safeguard living conditions. There would also not be a conflict with the aims of The Framework in this respect.

Conditions

9. The advice in the Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect. As I have only limited information before me about the status of each of the other conditions imposed on the original planning permission (19/00442/F) including those requiring compliance prior to occupation, I shall impose them, although I have removed the 'tailpiece' to conditions 6, 7 and 8 in accordance with current guidance. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.

Conclusion

10. For the reasons given above, I conclude that the appeal should be allowed, as set out in the formal decision.

Graham Wraight

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans:-
 - Water Tower no. 439 103a - "Contour plan" dated 08.12.2016
 - Water Tower no. 439-104b - "Contour plan" dated 08.12.2016
 - Water Tower no. 439 102C "Block plan" - dated 08.12.2016
 - Water Tower no. 439 - 110e "Site Plan" - received 21st November 2017
 - Water Tower no. 439 200a "Proposed Ground Floor Plan" dated 07.10.2016
 - Water Tower no. 439 201a "Proposed 1st Floor and 1st Floor mezzanine proposed" dated 07.10.2016
 - Water Tower no. 439 202 "Proposed 2nd Floor and 2nd floor mezzanine" dated 07.10.2016
 - Water Tower no. 439 203h "3rd Floor Plan Proposed" received 21st November 2017
 - Water Tower no. 439 204g "Roof Plan Proposed" received 12th of March 2019
 - Water Tower no. 439 205g "Proposed North Elevation" received 12th of March 2019
 - Water Tower no. 439 206g "Proposed East Elevation" - received 12th of March 2019
 - Water Tower no. 439 207h "South Proposed elevation" received 12th of March 2019
 - Water Tower no. 439 208g "Proposed West Elevation" - received 12th of March 2019
 - Water Tower no. 439 209b "Proposed - section a-a" - dated 08.12.2016
 - Water Tower no. 439 210b "Proposed section b-b" dated 08.12.2016
 - Water Tower no. 439 211b "Proposed section c-c" dated 08.12.2016
 - Water Tower no. 439 212b "Proposed section d-d" dated 08.12.2016
 - Mechanical services PV Panels Option B - drawing no.254-E-2103(B) insofar as the cross section details only as agreed under 16/00034/disc_B
 - External Lighting 439 575C dated 08.12.2016 received 9th December 2016

- Visibility splays no.439 576a dated 08.12.2016 received 9th December 2016
 - Shipping Containers no. 439 120f received 21st November 2017
 - Security Gate 439 405b "Security Gate" dated 07.10.2016
- 2) The hard and soft landscaping works shall be carried out in accordance with the details agreed under 16/00034/DISC_B unless otherwise agreed in writing by the Local Planning Authority. The works shall be carried out prior to the occupation or use of any part of the development or in accordance with a programme to be agreed in writing with the Local Planning Authority. Any trees or plants that 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 as those originally planted, unless the Local Planning Authority gives written approval to any variation.
 - 3) The tree and hedge protection measures shall be carried out in accordance with details agreed under 16/00034/DISC_A with the exception of protecting the trees adjacent to the access road unless otherwise agreed in writing by the Local Planning Authority.
 - 4) No existing trees, shrubs or hedges within the site that are shown as being retained on the approved plans shall be felled, uprooted, wilfully damaged or destroyed, cut back in any way or removed without the prior written approval of the Local Planning Authority. Any trees, shrubs or hedges removed without such approval or that die or become severely damaged or seriously diseased within 5 years from the completion of the development hereby permitted shall be replaced with trees, shrubs or hedge plants of a similar size and species in the next available planting season, unless the Local Planning Authority gives written approval to any variation.
 - 5) The earthworks, specifically the small mound landscaping shall be carried out in accordance with the agreed details received as part of 16/00034/DISC_A.
 - 6) The erection of gates shall be carried out in accordance with details agreed under 16/00034/DISC_B.
 - 7) The installation of outdoor lighting shall be carried out in accordance with 16/00034/DISC_B.
 - 8) The development shall be carried out in accordance with the following materials:-
 - Sto render and Coverworld 13.5-3R Aluzinc 0.7mm
 - 9) The external metalwork shall be finished in RAL colour 7011 unless in accordance with the details agreed under 16/00034/DISC_B.
 - 10) Foul and Surface Water drainage shall be carried out in accordance with details agreed under 16/00034/DISC_A.
 - 11) Notwithstanding the provisions of Schedule 2, Part 1, Classes A, B and D of the Town and Country Planning (General Permitted development)(England)

Order 2015 (or any order revoking and re-enacting that Order with or without modification), the enlargement, improvement or other alteration of a dwelling house, the enlargement of a dwelling house consisting of an addition or alteration to its roof, or the erection or construction of a porch outside any external door of a dwelling house, shall not be allowed without the granting of specific planning permission.

- 12) Notwithstanding the provisions of Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), the provision within the curtilage of the dwelling house of any building or enclosure, swimming or other pool shall not be allowed without the granting of specific planning permission.
- 13) Notwithstanding the provisions of Schedule 2, Part 2, Class A of the Town and Country Planning (General Permitted Development)(England) Order 2015 (or any Order revoking and re-enacting that Order with or without modification) no fence, gate, wall or other means of enclosure shall be erected within the curtilage of any dwelling house that fronts onto a road or footpath.
- 14) Prior to the first occupation of the development hereby permitted the vehicular access shall be provided and thereafter retained at the position shown on the approved plan 439-576a received 9th December 2016 in accordance with the highway specification drawing no. TRAD 5. Arrangement shall be made for surface water drainage to be intercepted and disposed of separately so that it does not discharge from or onto the highway carriageway.
- 15) The gradient of the vehicular access shall not exceed 1:12 for the first 5 metres into the site as measured from the near channel edge of the adjacent carriageway.
- 16) Prior to the first occupation of the dwelling hereby permitted any access gate(s), bollard, chain to other means of obstruction shall be hung open inwards, set back, and thereafter retained a minimum distance of 5 metres from the near channel edge of the adjacent carriageway.
- 17) Notwithstanding details received prior to the first occupation of the development hereby permitted a visibility splays measuring 2.4m x 160m (north) and 2.4m x 90m (south) shall be provided to each side of the access where it meets the highway and such splays thereafter shall be maintained at all times free from any obstruction exceeding 1.05metres above the level of the adjacent highway carriage.
- 18) The use of the shipping containers hereby approved shall be limited to purposes incidental to the needs and personal enjoyment of the occupants of the dwelling and shall at no time be used for business or commercial purposes.

-----End of Conditions-----