
Appeal Decision

Site visit made on 2 February 2021

by Peter Mark Sturgess BSc (Hons), MBA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: Friday, 19 February 2021

Appeal Ref: APP/D0515/W/20/3258800

44-46 Market Street, Whittlesey, PE7 1BD

- 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 R Karaoglan against the decision of Fenland District Council.
 - The application Ref F/YR20/0232/F, dated 6 February 2020, was refused by notice dated 11 May 2020.
 - The development proposed is for change of use from storage building to C3 residential house. The development also will include a new roof, windows, and a new porch to provide the entrance to the unit.
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Decision

1. The appeal is allowed, and planning permission granted for the change of use from storage building to C3 residential house. The development also will include a new roof, windows and a new porch to provide the entrance to the unit, on land to the rear of 44-46 Market Street, Whittlesey, PE7 1BD in accordance with the terms of the application Ref: F/YR20/0232/F dated 6 February 2020 and subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this permission.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: P100, existing ground floor plan, dated 23/01/2020; A101, existing first floor plan, dated 23/01/2020; A102 existing elevations, dated 23/01/2020; A102, proposed elevations, dated 23/01/2020; A103, proposed ground floor plan, dated 23/01/2020; A104, proposed first floor plan, dated 23/01/2020; A107, block plan, Rev1, dated 16/06/2020.
 - 3) The development shall not commence until the applicant or their successors in title has secured the implementation of a programme of building recording in accordance with a written specification and timetable which has been submitted to and approved in writing by the local planning authority. No development shall take place unless in complete accordance with the approved specification.
 - 4) The developer is required to submit a scheme demonstrating how any contamination found during the course of construction shall be dealt with to the local planning authority. No further development shall take place following the submission of the scheme unless it is approved in writing by

the local planning authority. The development shall than be carried out in accordance with the approved scheme, including any remediation strategy.

- 5) Notwithstanding the details shown on the plans hereby approved, prior to the first occupation of the development details of the proposed parking space, pedestrian routes and on-site turning area shall be submitted to and approved in writing by the local planning authority. The proposed turning and parking area and pedestrian routes shall be fully completed in accordance with the approved scheme prior to the occupation of the dwelling hereby approved and thereafter retained in perpetuity for the sole use of the dwelling hereby permitted.
- 6) Prior to the commencement of the development hereby approved, a scheme detailing measures designed for the mitigation of noise and odour within the dwelling shall be submitted to and agreed in writing by the local planning authority. The approved scheme shall be implemented prior to the occupation of the dwelling and shall thereafter be retained in perpetuity.
- 7) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any other Order revoking or re-enacting that Order), no additional windows other than those shown on the plans hereby approved shall be placed in the flank wall of the dwelling facing 44-46 Market Street.
- 8) Before the development hereby approved is first occupied, the proposed first floor windows in the flank wall of the proposed dwelling facing 44-46 Market Street shall be glazed with obscure glass and fixed shut to a height of no less than 1.7 metres above the floor level of the room within which it is installed and so maintained in perpetuity thereafter.

Preliminary Matter

2. I note that there is a slight discrepancy between the description of development used by the Council and that shown on the application form. In the interests of clarity, I have used the description of development given on the application form in this decision.

Background and Main Issues

3. The appeal site lies within Whittlesey Conservation Area (CA) and the building has been identified as a non-designated heritage asset by the Cambridgeshire Historic Environment Team (HET).
4. Whilst these factors have been referred to in the officer's report and the appellant's statement of case they have not featured as a reason for refusal, nor have they formed a principal part of the case made by the applicant as to why planning permission should be granted. Nevertheless, the building is within the CA and has been identified as a non-designated heritage asset by the HET during the course of the decision-making process. The Government through the National Planning Policy Framework (the Framework) considers that great weight should be given to the conservation of designated heritage assets.
5. Consequently, the position of the site in the CA should form a main issue at this appeal, along with the designation of the building as a non-designated heritage asset.

6. Therefore, the main issues are:

- the effect of the development on the living conditions of the occupiers of neighbouring residential properties and the potential occupiers of the proposed dwelling;
- the effect of the development on highway safety at the entrance to the site from Market Street; and
- the effect of the development on the character and appearance of Whittlesey Conservation Area and its effect on the non-designated heritage assets.

Reasons

Living conditions

7. The building proposed to be converted is situated in the centre of Whittlesey which is one of the principal market towns of the District. It is closely surrounded by development and lies to the rear of a parade of vacant retail units and an estate agency. There are tall buildings to the rear of the site which appear to be in some type of storage or warehouse use. This building has high level windows facing the appeal site. Other sites around the appeal premises appear to be in some form of commercial use.
8. Above the retail units, between the appeal site and Market Street, are recently developed flats which are accessed via an open stair and landing to the side of the appeal building. The stair and landing together with windows in the flats overlook the garden of the proposed dwelling.
9. The site is not in a typical residential location, being located in a town centre, where a certain amount of overlooking from neighbouring premises could normally be expected. Moreover, anyone living in the appeal proposal would balance the loss of privacy against the advantages of living in a town centre location, such as access to services and public transport.
10. The Fenland Local Plan (FLP), adopted in May 2014, sets out a positive approach to the consideration of development proposals that are sustainable at Policy LP1. This approach is expanded upon at LP2 which, amongst other things, recognises the importance to health and wellbeing of access to local services, accessible locations, and healthy transport choices. Whilst the policy refers to promoting a '*high standard of residential amenity*' this can be construed as including all the factors that contribute to health and wellbeing referred to in the policy.
11. With regard to private amenity space Policy LP16 offers more specific guidance by stating that sufficient private amenity space suitable to the type and amount of development proposed should be provided. The Policy offers guidance which states that, depending upon the local character of the area, a minimum of a third of the curtilage should be set aside for private amenity space.
12. The area is characterised by a dense pattern of development in a town centre location. In such areas it is reasonable that a smaller area of private amenity space is acceptable, bearing in mind that this part of the policy is defined as guidance.

13. In terms of the privacy of the space the policy seeks to protect the privacy of neighbours from development which might harm them. However, it does not specifically seek to protect the privacy of the garden space of new development from overlooking. Moreover, in a town centre location the occupants of new development would reasonably expect the probability of greater overlooking and therefore less privacy than on new housing developments. This loss of privacy can be offset against the convenience of the location. I therefore do not consider the loss of privacy to the garden area in this location to be unacceptable.
14. With regard to the proximity of the windows in the proposed converted building to the neighbouring flats, I consider that any loss of privacy brought about by this relationship can be addressed by a condition requiring the windows to be obscure glazed and fixed shut. The window to the bedroom in the appeal proposal is a secondary window and the bedroom would still have an outlook over the proposed parking area to its front. The other window would serve a bathroom where it is common practice for the window to be obscure glazed.
15. Consequently I find that the appeal proposal is consistent with Policies LP2 and LP16 of the FLP as it would, by reason of its location in the centre of Whittlesey, contribute to the health and wellbeing of the potential occupiers of the dwelling and this would not be outweighed by the loss of privacy that would occur.

Highway Safety

16. The proposal that was considered by the Council showed two carparking spaces to be provided on the site. Whilst two cars could be parked on the site following the completion of the development there would be insufficient space remaining for them to turn around and leave the site in a forward gear.
17. The entrance to the site lies in a well-used part of Market Street and it is opposite the library and adjacent to shops and other uses appropriate to a town centre. Furthermore, the access is also close to a bend in Market Street.
18. However, from my observations it was clear that the existing access is capable of being used by vehicles and that there was scope within the appeal site for a single vehicle to turn around.
19. As part of the appeal process the appellant has submitted a plan with his statement which shows the provision of one parking space on the site and that a vehicle occupying this space can turn around and leave the site in a forward gear.
20. Normally should the appellant wish to change the scheme from that which was considered by the Council a new planning application should be submitted. However, I have to have regard to whether anyone would be prejudiced by this proposed change and whether the change could be addressed through the use of an appropriate condition, including whether any condition would meet the tests set out in the Framework. Moreover, I have had regard to the full response of the County Highway Authority (CHA) to the original planning application.
21. It appears to me that whilst the CHA had concerns about a lack of turning space on the site should two parking spaces be provided, they did not object to the principle of the development. Of the other people or organisations who

commented on the proposal one referred to the provision of parking spaces without being specific about the likely problems two spaces might cause.

22. Moreover, the proposed reduction in parking provision would reduce the intensity of vehicular use on the site and therefore lessen the harm of the development in this respect. Furthermore, it would not change the fundamentals of the proposal, it still being the conversion of an existing building to create 1 dwelling. I therefore do not consider that any of the people consulted on the original planning application would be prejudiced if the amount of on-site parking were reduced from two to one.
23. The Council has referred in its statement to the harm that could be caused by the provision of the vehicular access to the site to pedestrians accessing the appeal property and the flats. Whilst I have had regard to this issue in the decision, I do not consider the limited use of the access by a single vehicle would unreasonably harm the safety of pedestrians also using the access.
24. Therefore, provided a condition is imposed which provides for one vehicular parking space together with a manoeuvring space and adequate separation of vehicles and pedestrians, where achievable, I do not consider that the proposal is in conflict with Policy 15 of the FLP.

Effect on the designated and non-designated heritage assets

25. The appeal building is located in the Whittlesey CA. It lies to the rear of a vacant parade of shops and an estate agent and has no visibility from the wider street scene. The CA covers the whole of the town centre of Whittlesey and is characterised by frontage development of a commercial and residential nature with some development to the rear.
26. At the current time the entrance to the site presents a blank gate to Market Street. The appeal proposal would open up the view into the site thereby adding interest and character to this part of the CA. Moreover, the activity associated with the proposed use of the site would contribute to the vitality of the CA. I therefore consider that the appeal proposal would positively contribute to the character and appearance of Whittlesey CA.
27. The HET has identified the building as a non-designated heritage assets. The Framework describes a heritage asset as including designated heritage assets and assets identified by the local planning authority.
28. The Planning Policy Guidance (PPG) expects Council's to identify non-designated heritage assets based on sound evidence and make clear and up to date information available to the public on these assets. However, the PPG does recognise that in some cases Council's may also identify non-designated heritage assets as part of the decision-making process on planning applications.
29. The Council has not provided any information on the publicity it gives to the recording of non-designated heritage assets. However, it has shown during the course of the planning application and appeal process that it has had regard to the evidence of the HET in terms of the asset's significance and the effect of the proposal on that significance.
30. Policy LP18 of the FLP seeks, amongst other things, to protect, conserve and enhance the historic environment of the District. It will achieve this through

things such as the consideration of planning applications. The appeal proposal will assist in the conservation of a non-designated heritage assets by finding a new use for it and have a positive effect on the character and appearance of the CA by adding interest and vitality. In these respects, it is consistent with Policy LP18 of the FLP.

Planning Balance

31. The appeal proposal would have a garden which would be overlooked by windows, a stair and an access way serving neighbouring flats. However, the existing flats would not be overlooked by the new dwelling or its garden.
32. The occupants of the dwelling would have good access to local services by sustainable means and access to local public transport. Therefore, any loss of privacy to their garden area is offset by the benefits to their health and wellbeing brought about by access to local services and public transport. I give this matter moderate weight in this decision.
33. I regard the potential overlooking between the appeal proposal and the neighbouring flats is capable of being addressed through a condition requiring the windows on the flank wall of the appeal property facing the flats to be obscure glazed and fixed shut.
34. With regard to access it is clear that if the amount of onsite parking is reduced from 2 spaces to 1, a turning area can be provided which will allow cars to enter and leave the site in a forward gear. I therefore consider that this matter can be overcome with an appropriately worded condition.
35. The appeal proposal would reuse a currently vacant non-designated heritage asset. Its use would open up the site and add to the vitality of the Whittlesey CA, thereby enhancing the character of the CA. I therefore give this factor moderate weight in the determination of this appeal.
36. In conclusion I find that the appeal proposal has clear benefits to the character of the CA, the health and wellbeing of the potential occupants and to a non-designated heritage asset, sufficient to outweigh the loss of privacy the potential occupants would experience in the garden.

Conditions

37. The Council has suggested a list of conditions it would like to see imposed on any grant of planning permissions should I be minded to allow the appeal.
38. In addition to the standard time limit condition and a condition referencing the approved plans, the Council has requested a condition requiring the recording of features of historic significance present in the building prior to the commencement of development.
39. I note that this is phrased as a pre-commencement condition and as such requires the written agreement of the appellant. However, I also note that the appellant has agreed in writing to all the conditions suggested by the Council, including those pre-commencement conditions.
40. Therefore, and bearing in mind the response of the HET to the planning application and the status of the building as a non-designated heritage asset, I conclude that the condition is necessary to ensure that the historic significance of the building is properly recorded.

41. I have concluded that the dwelling can function with the provision of 1 on-site parking space provided an adequate turning space is created within the site. It is necessary therefore, notwithstanding the details shown on the approved plans, that a condition to ensure that this is provided before the occupation of the dwelling is imposed in order to ensure the safety of the users of the public highway.
42. The proposed dwelling is located in a town centre where other uses might cause problems to the occupiers due to noise or odour. A condition is therefore necessary to mitigate the effects of surrounding uses on the occupiers of the dwelling.
43. The building might have been in use for purposes other than as a dwelling during the course of its existence. Some of these uses might have caused contamination. Therefore, it is necessary for a condition to ensure that any contamination found during the course of its conversion is dealt with appropriately.
44. The elevation of the proposed dwelling which faces the neighbouring flats has the potential to overlook those flats at close proximity. Therefore, a condition which precludes the creation of new windows in that wall, to protect the privacy of the occupiers of the flats is necessary. Furthermore, a condition is also necessary to ensure that the windows which are proposed in this elevation are obscure glazed and fixed shut for the same reason.

Conclusion

45. I therefore conclude that the appeal should be allowed.

Peter Mark Sturgess

INSPECTOR