
Appeal Decision

Site visit made on 8 August 2017

by David Murray BA (Hons) DMS MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 29th August 2017

Appeal Ref: APP/K3415/W/17/3174949

Yew Tree Lodge, Chester Close, Lichfield, WS13 7SX.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Netherstowe House (Mr B Heathcote) against the decision of Lichfield District Council.
- The application Ref. 16/00806/FUL, dated 17 July 2016, was refused by notice dated 14 November 2016.
- The application sought planning permission for the change of use of dwelling to form 7 en-suite bedrooms to be used in conjunction with adjacent boutique hotel (class C1) without complying with four conditions attached to planning permission Ref. 16/00129/COU, dated 29 April 2016.
- The conditions in dispute are No's 3, 4, 5 and 6 which state that:
 - 3- Before the development hereby approved is commenced, full details, consisting of sections at a minimum scale of 1:5 and elevations at 1:20 of all external joinery including fenestration and doors and exterior finish. The development shall thereafter be implemented in accordance with the approved details;
 - 4- Before the development hereby approved is commenced, the existing access to Yew Tree House from Chester Close shall be permanently closed to all traffic both vehicular and pedestrian. The details of the method in which the access is to be closed shall be first submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be implemented in accordance with the approved details and thereafter retained for the life of the development;
 - 5- Before the development hereby approved is commenced, full details of the proposed surface and foul water drainage system shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be undertaken in accordance with the approved details prior to the first use of the development;
 - 6- The development hereby approved shall not be brought into use until the access, parking and turning areas have been provided in accordance with the approved plan 4339.01A. The approved access, parking and turning areas shall thereafter be retained for the life of the development.
- The reasons given for the conditions are:
 - 3-To ensure the satisfactory appearance of the development and to safeguard the special character and appearance of the adjacent Grade II listed building in accordance with the requirements of Core Policy 14 and Policy BE1 of the Local Plan Strategy;
 - 4-To safeguard the amenities of nearby residents in accordance with the requirements of Policy BE1 of the Local Plan Strategy;
 - 5-To ensure that the development is provided with a satisfactory means of drainage as well as to reduce the risk of creating or exacerbating a flooding problem and to

minimise the risk of pollution, in accordance with the requirements of Policy BE1 of the Local Plan Strategy;

6-In the interests of highway safety and in accordance with the requirements of Policies ST1 and ST2 of the Local Plan Strategy.

Decision

1. The appeal is allowed and the planning permission Ref. 16/00129/COU for the change of use of dwelling to form 7 en-suite bedrooms to be used in conjunction with adjacent boutique hotel (class C1), at Yew Tree Lodge, Chester Close, Lichfield, WS13 7SX granted on 29 April 2016 by Lichfield District Council, is varied by deleting conditions 3, 4, 5 and 6 and substituting for them a new condition 4 as follows:

The hotel accommodation use hereby approved shall not commence until a permanent physical barrier in the form of a close boarded timber fence of not less than 1.5m high and not more than 2m high has been erected across the entranceway between Yew Tree Lodge and Chester Close so as to prevent the passage of vehicular and pedestrian traffic and this fence shall be retained thereafter for so long as the use of Yew Tree Lodge remains in such use.

Main Issue

2. It is apparent from the Council's representations at this appeal stage, that on reflection the Council does not object to the deletion of conditions 3, 5 or 6. I will therefore allow the appeal as far as these conditions are concerned so that they are deleted from the original planning permission. The outstanding matters only concern condition No.4.
3. The main issue is whether condition No.4 is reasonable and necessary in the interests of safeguarding the living conditions of the occupiers of neighbouring properties.

Reasons

Background

4. Yew Tree Lodge comprises a detached building which is sited in the north-west corner of the grounds of Netherstowe House a large listed building, which has an access via a long driveway to Netherstowe Lane. The House is in use as a hotel and there is parking and circulation space around it.
5. To the north of the site is Chester Close a cul-de-sac serving some 14 detached houses and this road also provides an access to Yew Tree Lodge. This property was previously a dwelling but the planning permission referred to in the bullet points above permitted the conversion of the building to use as 7 en-suite bedrooms for use in conjunction with the hotel. The permission was subject to conditions of which No's 3, 4, 5 and 6 are the subject of the appeal, although 3, 5 and 6 are not now required by the Council.
6. At the time of my site visit, the access between the overall Netherstowe House site and Chester Close had been closed off by the construction of a solid timber fence fixed between the gate posts.

Effect on living conditions

7. It is apparent that when Yew Tree Lodge was occupied as a single dwelling its residents enjoyed a right of access onto Chester Close. However, when planning permission was granted to use Yew Tree Lodge as hotel accommodation, condition No.4 was imposed to ensure, in summary, that this access was permanently closed off to vehicular and pedestrian traffic in the interests of safeguarding the amenity (living conditions) of residents living there.
8. To my mind the character and nature of a hotel use is materially different to that of a single dwelling and is likely to give rise to a higher degree of traffic generation. Further, I noted at my site visit that the internal circulation space around the hotel is such that other traffic stemming from the large hotel could make use of the Chester Close access as this would not be physically limited to just the activity from the 7 en-suite hotel bedrooms. Whilst a condition can only relate to the development being permitted, as the use permitted is one to be run in conjunction with the principal use on site, and would result in an increase in the extent of the overall planning unit and the way in which this functions, it is reasonable to take into consideration the wider implications of the use permitted.
9. The scale and nature of the traffic generation that could arise from the 7 bedrooms would be likely to have a significantly greater adverse impact on the relatively low key residential environment of the short cul-de-sac of Chester Close, even taking account of the traffic likely to be associated with Yew Tree Lodge as a single dwelling. Further to my mind there is clear possibility of other hotel complex traffic using this access as an alternative to the existing main access. I am therefore satisfied that a form of permanent barrier to restrict access from the hotel complex to Chester Close is reasonable and necessary in the interest of safeguarding the residential amenity of the residents living in the Close.
10. The appellant's agent proposes different options to resolving condition 4, however, I note questions over the form of a barrier have been overtaken by events in that a fence has been erected which is said to accord with a condition on a different permission for residential development. Nevertheless, I have concerns over option c) to vary the condition to allow access for emergency vehicles and refuse collection vehicles only, as it would be difficult to enforce such an operation but restrict access by other service vehicles, staff and hotel residents. Having regard to the tests of planning conditions set out in paragraph 206 of the National Planning Policy Framework, I am satisfied that there is a need for a permanent physical barrier separating the hotel complex site from Chester Close. As the fence that has been erected is acceptable in terms of its visual appearance, I will delete the original form of condition no. 4 but impose a new condition to state that:

The hotel accommodation use hereby approved shall not commence until a permanent physical barrier in the form of a fence of not less than 1.5m high and not more than 2m high has been erected across the entranceway between Yew Tree Lodge and Chester Close so as to prevent the passage of vehicular and pedestrian traffic and this fence

shall be retained thereafter for so long as the use of Yew Tree Lodge remains in such use.

Conclusion

11. For the reasons given above I conclude that the appeal should succeed. I will vary the planning permission by deleting the disputed conditions 3, 4, 5 and 6 but substitute a new condition No.4 as set out above.

David Murray

INSPECTOR