



Appeal Decision

Site visit made on 10 January 2024

by D Boffin BSc (Hons), DipTP, MRTPI, DipBldg Cons (RICS), IHBC

an Inspector appointed by the Secretary of State

Decision date: 18/03/2024

Appeal B Ref: APP/N4720/W/23/3331969

Cliff Oaks, Fawcett Lane, Wortley, Leeds LS12 4FG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the 1990 Act) against a refusal to grant planning permission under section 73A of the 1990 Act 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 Priestley Homes (Cliff Oaks) Ltd against the decision of Leeds City Council.
 - The application Ref: 23/02622/FU, dated 19 May 2023, was refused by a notice dated 24 July 2023.
 - The application sought planning permission for seven houses with car parking and landscaping without complying with a condition attached to planning permission Ref: 16/08004/FU, dated 28 June 2017.
 - The condition in dispute is No 5 which states that: No building works shall take place until details and samples of all external roofing materials have been submitted to and approved in writing by the Local Planning Authority. The roofs shall be constructed from the approved materials.
 - The reason given for the condition is: In the interests of visual amenity.
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Decision

1. The appeal is allowed and planning permission is granted for seven houses with car parking and landscaping at Cliff Oaks, Fawcett Lane, Wortley, Leeds LS12 4FG in accordance with the application Ref 23/02622/FU, without compliance with condition number 5 previously imposed on planning permission Ref: 16/08004/FU dated 28 June 2017 and subject to the conditions in the attached schedule.

Preliminary Matters and Background

2. Section 73A applications are commonly said to be seeking to vary or remove conditions to which an existing planning permission is subject. However, that is not strictly the case. If such applications (or appeals against their refusal) succeed, a completely new planning permission is created that stands alongside the original one. As the original permission, 16/08004/FU (the 2016 permission), was for the erection of seven houses with car parking and landscaping I have used this description in the formal decision and banner heading.
3. Condition 5 of the 2016 permission was discharged¹ on the 3 June 2020. The appellant has stated that the roofing material submitted to and approved by the Council was Spanish slate in dark grey. Planning permission was granted on 3 November 2021 (the 2021 permission) for '*variation of condition 2No.*

¹ Ref: 20/01136/COND

(Approved Plans) to previously approved planning application 16/08004/FU for alterations to the approved plans'. Condition 2 of the 2021 permission stated that 'the external walling and roofing materials of the proposals shall match those as approved via condition discharge Ref: 20/01136/COND, including natural stone and Spanish slate.'

4. The dwellings have been constructed and the appellant has stated that Marley Edgemere Interlocking Slate in Anthracite has been used as the roofing materials rather than Spanish slate. A breach of condition notice² was issued by the Council on the 14 December 2022 relating to the roofing materials installed on the seven houses.
5. An adjacent building, Cliff House, is grade II listed and therefore section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act) is relevant in the determination of this appeal. It requires the decision maker, in considering whether to grant planning permission for development which affects a listed building or its setting, to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest.

Main Issue

6. The main issue is the effect of retaining the existing roofing materials on the character and appearance of the surrounding area taking into account the special regard to the desirability of preserving the setting of Cliff House and the contribution that setting makes to its significance.

Reasons

7. The dwellings have been constructed within the generous grounds associated with Cliff House. Those dwellings are set back an appreciable distance from and on a higher ground level than Fawcett Lane, as is Cliff House. Within the grounds of Cliff House there are also former outbuildings/stables and an entrance lodge. Surrounding those grounds on this side of Fawcett Lane is Western Flatts Cliff Park. The combination of the grounds to Cliff House, the park and the mature landscaping within them imparts a verdant and open character and appearance to the area surrounding Cliff House.
8. According to the official list entry Cliff House dates from the early 19th Century. It is built of ashlar with a hipped slate roof and when constructed it was a large house. It is now in use as several apartments after being repaired and refurbished following extensive damage caused by a fire. Based on my observations and the evidence before me I consider that the significance/special interest of Cliff House largely derives from its age, the quality of its architectural features, plan layout and historic fabric.
9. It is the central element of its generous grounds, and it is experienced in views from Fawcett Lane, from the access drive approaching it and from within the grounds. It is located on higher ground and due to the sloping topography, it appears to have been designed to take advantage of views across the wider landscape. Moreover, the lodge and access drive appear to have been designed to impress any visitors with a sense of arrival to this large house. As a result, the setting provided by the grounds makes a positive contribution to the overall special interest/significance of Cliff House.

² Ref: 22/00467/NCP3

10. The terrace of seven dwellings is seen in views from Fawcett Lane and the access drive with Cliff House. It is apparent that the terrace has been designed as contemporary and modern dwellings using stone facing for the front elevation and dark framed windows. The dark grey/black colouring and relatively flat surface of the tiles on the terrace roof gives them a similar appearance to Spanish slate when seen from a distance. However, in closer views it is apparent that the leading edge of the tiles are thicker than slate and that they do not possess the subtle variations in colour and texture found in Spanish slate.
11. Nevertheless, the terrace is located in a position where it is set back from Fawcett Lane and there are mature trees and some landscaping between the terrace and that lane. Moreover, due to the height, design and location of the roof of Cliff House that roof is not visible with the terrace roof in views from Fawcett Lane. In addition, it is clearly apparent that whilst the terrace's design and materials are sympathetic to and inspired by Cliff House, they are contemporary and modern. The side elevation of the terrace facing Cliff House is constructed from buff-coloured bricks rather than stone. In that context the roofing tiles do not appear incongruous on the terrace.
12. Furthermore, when approaching Cliff House, from either direction, on Fawcett Lane a combination of the topography, the outbuildings/stables, the lodge and the boundary treatments ensures that Cliff House is largely screened in medium distance views. Nevertheless, when close to the access drive entrance Cliff House and the terrace are visible. Yet due to its size, age and sense of grandeur Cliff House attracts and remains the focus of attention in views when approaching on the access drive. In addition, the retention of the tiles has no impact on the verdant and open character and appearance of the surrounding area.
13. Taking into account all of the above, the ability of the viewer to understand and appreciate the listed building's special interest/ significance is unaffected by the retention of the tiles. Therefore, there is no impact on the contribution that setting makes to the significance/special interest of Cliff House. Consequently, in my judgment, the significance/special interest of the listed building and the character and appearance of the surrounding area are preserved. It follows that the non-compliance with condition 5 of the 2016 permission does not conflict with Policy GP5 of the retained Unitary Development Plan (UDP) which states, amongst other things, that development proposals should resolve detailed planning considerations. Nor does it conflict with Policies P10 and P11 of the Core Strategy which state, amongst other things, that new development for buildings and spaces, should provide good design that is appropriate to its location, scale and function and the historic environment will be conserved and enhanced. It also complies with chapters 12 and 16 of the National Planning Policy Framework.

Other Matters

14. The Council's Decision Notice cites UDP Policy N19 but this policy relates to new buildings and extensions within or adjacent to conservation areas and I have no evidence to indicate that there is a conservation area on or adjacent to the appeal site. As a result, it is not relevant to the appeal before me.

Conditions

15. Planning Practice Guidance (PPG) makes clear that decision notices for the grant of planning permission under section 73 should restate the conditions imposed on earlier permissions that continue to have effect. With the development now being occupied, some previous conditions attached to the 2016 permission are no longer relevant. The evidence before me indicates conditions 3, 4, 7, 9, 10, 13, 15 and 16 the 2016 permission have been discharged by the Council. Conditions 6, 7, 8, 9, 11, 13, 16, 17, 18 and 19 were not imposed on the 2021 permission and therefore in my judgment they are unnecessary, and I have deleted them.
16. I have deleted Conditions 1, 3, 7, 9, 13, 15 and 16 on the 2016 permission, as neither the standard time limit condition nor the pre-commencement conditions which have been discharged are necessary. Nevertheless, conditions 10 and 15 on the 2016 permission appear to have ongoing management implications and were reimposed on the 2021 permission. I have amended the wording of these conditions to require compliance with the approved details/management plans as ongoing compliance with them is necessary.
17. The 2021 permission amended condition 2 with regard to the approved plans therefore I have amended the wording of condition 2, on the 2016 permission, to take that into account. I have reimposed conditions 12 and 14 to ensure the protection of wild birds during the breeding season and to ensure that the Council have control over extensions, alterations and outbuildings given the sensitivity of the site being within the setting of Cliff House.

Conclusion

18. For the reasons given above I conclude that the appeal should succeed. I will grant a new planning permission without the disputed condition and restating those undisputed conditions that are still subsisting and capable of taking effect.

D Boffin

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: 19113-140; 19113-142; 19113-701; 19113-702.
- 2) The landscape management plan, approved on 9 February 2021 by the discharge of condition approval Ref: 20/08390/COND, shall be implemented as approved.
- 3) The surface water drainage works, approved on 30 November 2020 by the discharge of condition approval Ref: 20/07584/COND, shall be implemented as approved.
- 4) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any Orders revoking or re-enacting that Order with or without modification) planning permission shall be obtained before any development contained in Classes A-E of Part 1 of Schedule 2 of that Order is carried out.
- 5) No site clearance or removal of any trees, shrubs or other vegetation shall be carried out during the period 1 March to 31 August inclusive unless otherwise agreed in writing with the Local Planning Authority.