

Planning Committee

1 June 2020

Agenda Item 4

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Report of the Head of Economic Growth and Development

LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT, 1985

All documents and correspondence referred to within the report as History, Consultations and Letters of Representation, those items listed as 'OTHER BACKGROUND DOCUMENTS' together with the application itself comprise background papers for the purposes of the Local Government (Access to Information) Act, 1985.

Other consultations and representations related to items on the Agenda which are received after its compilation (and received up to 5 p.m. on the Friday preceding the meeting) will be included in a Supplementary Report to be available at the Committee meeting. Any items received on the day of the meeting will be brought to the Committee's attention. These will also be background papers for the purposes of the Act.

FORMAT OF REPORT

Please note that in the reports which follow

- 1 'Planning Policy' referred to are the most directly relevant Development Plan Policies in each case. The Development Plan comprises the Lichfield District Local Plan Strategy 2008-2029 (2015), Lichfield District Local Plan Allocations 2008-2029 (2019), any adopted Neighbourhood Plan for the relevant area, the Minerals Local Plan for Staffordshire 2015-2030 (2017) and the Staffordshire and Stoke on Trent Joint Waste Local Plan 2010-2026 (2013).
- 2 The responses of Parish/Town/City Councils consultees, neighbours etc. are summarised to highlight the key issues raised. Full responses are available on the relevant file and can be inspected on request.
- 3 Planning histories of the sites in question quote only items of relevance to the application in hand.

ITEM 'A' Applications for determination by Committee - **FULL REPORT**

ITEM 'B' Lichfield District Council applications, applications on Council owned land (if any) and any items submitted by Members or Officers of the Council.

ITEM 'C' Applications for determination by the County Council on which observations are required (if any); consultations received from neighbouring Local Authorities on which observations are required (if any); and/or consultations submitted in relation to Crown applications in accordance with the Planning Practice Guidance on which observations are required (if any).

AGENDA ITEM NO. 4

ITEM A

APPLICATIONS FOR DETERMINATION BY COMMITTEE: FULL REPORT

1 June 2020

CONTENTS

Case No.	Site Address	Parish/Town Council
20/00230/FUH	31 Yew Tree Avenue Lichfield	Lichfield

LOCATION PLAN

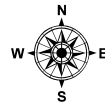
20/00230/FUH
31 Yew Tree Avenue
Lichfield

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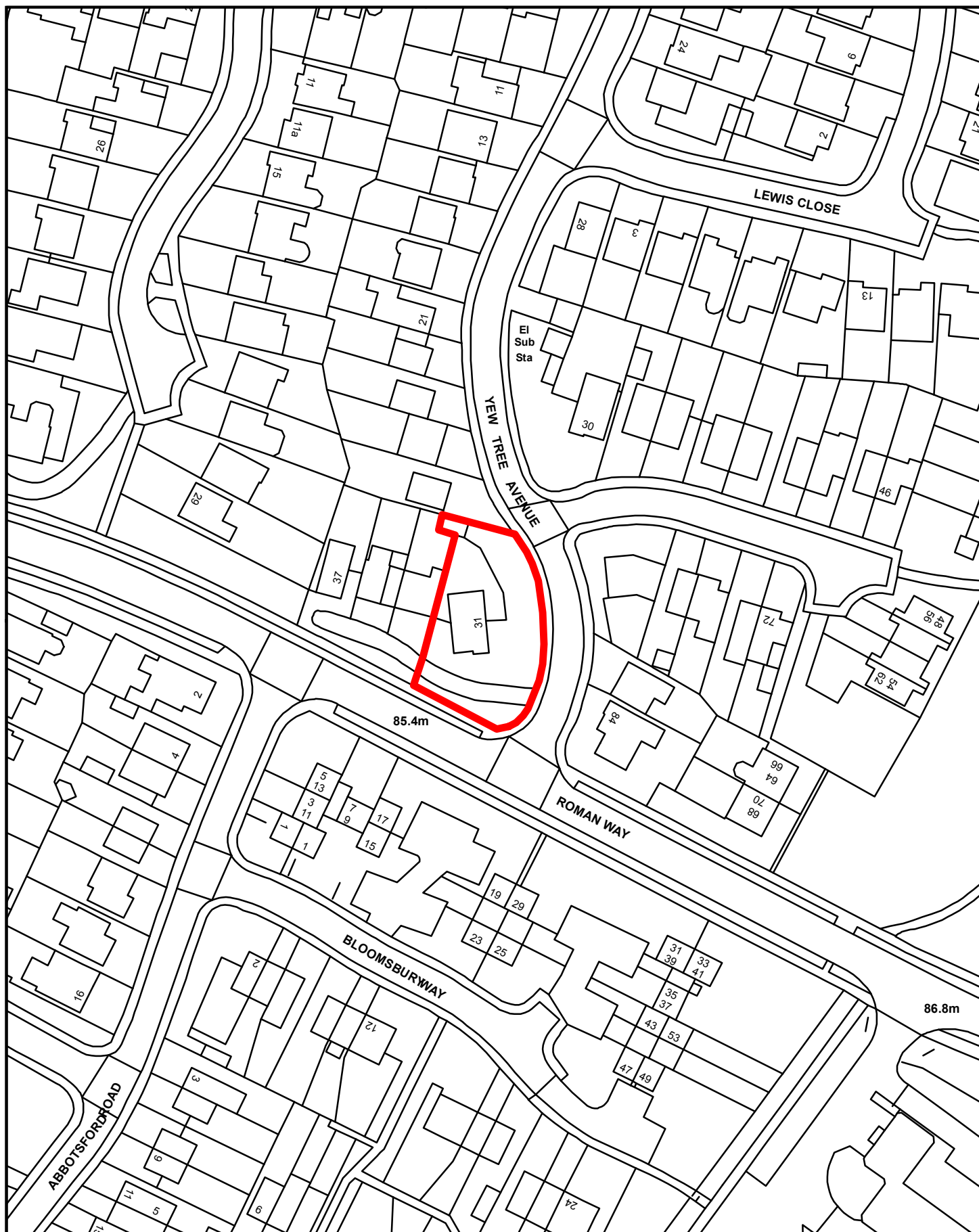
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20/00230/FUH

Retention of 2no boundary fences

31 Yew Tree Avenue, Lichfield, Staffordshire, WS14 9UA

FOR Mrs L Keatley

Registered **03/03/2020**

Parish: Lichfield

Note: This application is being reported to the Planning Committee due to a call-in request by the Ward Councillor (Councillor Mark Warfield) on the grounds that:

- The fence obscures the highway and view from the driveway of No. 29, making it dangerous to highway safety.
- The fence is excessive in height and incongruous in the street scene. Notes that the estate is open plan with no fences and walls and no hedges over 1 metre high.
- Considers the fence has been erected on land not owned by the applicant.

RECOMMENDATION: Approve, subject to the following conditions:

CONDITION

- 1 The development authorised by this permission shall be retained in complete accordance with the approved plans and specification, as listed on this decision notice, except insofar as may be otherwise required by other conditions to which this permission is subject.

REASONS FOR CONDITION

- 1 For the avoidance of doubt and in accordance with the applicant's stated intentions, in order to meet the requirements of Policy BE1 of the Local Plan Strategy and the National Planning Practice Guidance.

NOTES TO APPLICANT:

1. The Development Plan comprises the Lichfield District Local Plan Strategy (2015), Lichfield District Local Plan Allocations (2019) and the Lichfield City Neighbourhood Plan (2018).
2. The applicant's attention is drawn to The Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2017, which requires that any written request for compliance of a planning condition(s) shall be accompanied by a fee of £34 for a householder application or £116 for any other application including reserved matters. Although the Council will endeavour to deal with such applications in a timely manner, it should be noted that legislation allows a period of up to 8 weeks for the Local Planning Authority to discharge conditions and therefore this timescale should be borne in mind when programming development.
3. The development is considered to be a sustainable form of development which complies with the provisions of paragraph 38 of the NPPF.

PLANNING POLICY

National Planning Policy

National Planning Policy Framework

Local Plan Strategy

Policy BE1 - High Quality Development

Policy CP2 - Presumption in Favour of Sustainable

Policy CP3 - Delivering Sustainable Development

Policy NR3 - Biodiversity, Protected Species & their habitats

Supplementary Planning Document

Biodiversity and Development SPD

Sustainable Design SPD

Other

Lichfield City Neighbourhood Plan (2018)

Local Plan Review: Preferred Options (2018-2040)

RELEVANT PLANNING HISTORY

77/04144/FUL Development for residential and associated purposes Approve 01/12/1977

CONSULTATIONS

Staffordshire County Council (Highways) - There are no objections on Highway grounds to this proposal.

No.29 has only ever had a maximum of 22m of clear visibility achievable under land under their control and within adopted highway. This new boundary fence has not reduced that historic splay. Given the nature of Yew Tree Avenue (residential and unclassified) and the likelihood of vehicles not travelling at excessive speeds due to the proximity of a road junction with Roman Way, do not see a legitimate reason within the NPPF for refusal (23.3.2020 & 7.5.2020).

Lichfield City Council - No objections. (6.3.2020)

LETTERS OF REPRESENTATION

5 letters of representation have been received in respect of this application.

One of these letters of representation objects to the development. The comments made are summarised as follows:

- Highways and visibility, with regards to the safety of road users and pedestrians and the fencing creating a blind drive way for the neighbouring dwelling.
- Character and appearance within the surrounding street scene, with regards to the open appearance and frontages within the surrounding area. It is felt that the development encloses and impacts the character of the street scene.
- Concerns regarding land ownership have been raised. The objector feels that the development is on land within their ownership.

Four letter of representation have been received which support the development. The comments made are summarised as follows:

- Both fences are within the permitted height and distance from the highway.
- The development appears to comply with the General Permitted Development and therefore does not required planning permission.
- The fences blend in with the surrounding street scene.
- The fence provides enhanced security for the residents of 31 Yew Tree Avenue.

- The process has caused great stress to the applicant, and as the development is Permitted Development and should not require planning permission, it is felt that the applicant should be reimbursed for all costs involved with the planning process.

OTHER BACKGROUND DOCUMENTS

N/A

PLANS CONSIDERED AS PART OF THIS RECOMMENDATION

Site Location Plan
Block Plan
Post and Rail Fence
Concrete Posts.

OBSERVATIONS

Site and Location

The application site relates to a detached bungalow located on the western side of Yew Tree Avenue, in Lichfield. The property is a corner plot with Yew Tree Avenue to the east and Roman Way to the south. The property has a driveway off a shared access to the south which comes from Yew Tree Avenue and also a second driveway to the north between No. 31 and 29 Yew Tree Avenue, which provides access to a detached garage in the applicant's ownership.

The front door of the property is located in the east facing elevation of the bungalow which faces onto Yew Tree Avenue and a path across the frontage leads on to Yew Tree Avenue to the east. The nearest neighbouring properties are two storey dwellings with bungalows also present within the general vicinity.

A low level hedgerow forms the boundary along Yew Tree Avenue to the east of the property. Hedgerows and planted boundaries form the main boundary treatment, however there is the occasional close boarded fence running back from the highway also present.

Proposals

This application seeks permission for the retention of 2no. boundary fences.

The fences are located to the side of the existing dwelling, set to the front and rear of the property. The fences are labelled on the submitted plans as Fence A and B.

Fence A is located on the northern boundary of the dwelling and forms the boundary along the driveway to the garage with the neighbouring property to the north (29 Yew Tree Avenue). Fence A measures a height of 1.83m and a length of 8.38m. The fence is set back from the public footpath by 1.2m and 3.03m back from the highway.

Fence B is located to the east of the dwelling, adjacent the footpath which runs to the front door, and runs up to an existing wall which encloses the rear garden area. Fence B measures a maximum height of 1.83m and a length of 5.94m. The fence is set back from the public footpath by 1.2m and 3.03m from the public highway.

Fence A is constructed of timber posts and rails with feather edge boarding. Fence B is constructed of concrete posts, concrete gravel boards and feather edge boards. The fences have been stained brown.

The fences are linked by the established low level boundary hedge that runs adjacent to the public footpath.

Determining Issues

1. Policy & Principle of Development
2. Design and Impact upon the Character and Appearance of the Surrounding Area
3. Access and Highway Safety
4. Other Issues
5. Human Rights

1. Policy & Principle of Development

- 1.1 Section 38 (6) of the Planning and Compulsory Purchase Act (2004) sets out that the determination of applications must be made in accordance with the development plan, unless material considerations indicate otherwise. The Development Plan for Lichfield District comprises the Lichfield District Local Plan Strategy 2008-2019, and the Allocations Document (2019) and the adopted (made) Lichfield City Neighbourhood Plan.
- 1.2 The proposal relates to the retention of 2No. boundary fences situated within the curtilage of an existing residential property in a residential area of Lichfield. The principle of householder developments such as extensions and alterations including fencing within residential areas is considered acceptable.

2. Design and Impact upon the Character and Appearance of the Surrounding Area

- 2.1 The NPPF attaches great importance to design of the built environment and sets out that high quality and inclusive design should be applied to all development, including individual buildings, private spaces and wider area development schemes. It also states that development should respond to local character and history, and reflect the identity of local surroundings. This sentiment is echoed in Policy BE1 of the Local Plan Strategy which requires new development in terms of layout, size, scale, design and public views. The Policy continues to expand on this point advising that good design should be informed by “appreciation of context, as well as plan, scale, proportion and detail”.
- 2.2 The character of the surrounding area is formed by single and two storey properties with landscaped frontages and driveways. The two storey properties adjacent and to the north, are of a higher density as in general bungalows tend to take up a greater footprint and larger plot. The applicant’s property is also set on a corner plot which results in a wide frontage to Yew Tree Avenue with the hedgerow forming the boundary and linking the two fences sought to be retained through this application.
- 2.3 Whilst hedging and vegetation is the main boundary treatment, the boundary between No 29 and No. 27 has timber fencing that is visible within the surrounding street scene, and this also runs in a direction perpendicular to the footpath and highway and as such doesn’t form a prominent screen from the street scene.
- 2.4 Representation made against the application raises concern about the appearance of the fencing and that the fences will cause harm to the open character and appearance of Yew Tree Avenue, as the area is characterised by wide side gardens. Concerns have also been raised that should the development be approved, then further applications will follow suit and would cause further harm to the area.
- 2.5 The fencing in situ in both instances is set back from the footpath by 1.2 metres (and 3.03 metres back of the highway) and as such is not considered to be adjacent the footpath or highway. The fencing in both instances also runs back from the street scene and does not form a perceivable barrier too it, which would be the case were the fencing to run directly adjacent the footway and parallel too it and in effect enclosing the frontage. Both fences are set back of the hedgerows position, with fence B set directly behind it.

- 2.6 The fencing due to its siting and the way it is orientated perpendicular rather than parallel to the street scene is not considered to result in any significant or incongruous impact on the character of the area and is considered of acceptable design.
3. Access and Highway Safety
- 3.1 The NPPF states in paragraph 102 that transport issues should be considered from the earliest stages of plan-making and development proposals. Also, in paragraph 109 the NPPF states that any development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.
- 3.2 Representations received raise concerns that the fencing limits the visibility from the neighbouring dwelling when accessing their driveway and limits the visibility of those using the public footpath.
- 3.3 The matter of visibility and impact on highway safety has been considered by the Highway Authority (Staffordshire County Council) as a consultee. The Highway Authority have stated,
- "No.29 has only ever had a maximum of 22m of clear visibility achievable under land under their control and within the adopted highway. The fencing has not reduced that historic splay. Given the nature of Yew Tree Avenue (residential and unclassified road) and the likelihood of vehicles not travelling at excessive speeds due to the proximity of a road junction with Roman Way, the Highway Authority has no valid reason for refusal."*
- 3.4 The fencing is not therefore considered to restrict visibility for the applicants at No. 31, the neighbouring driveway No. 29, or in general to other road users and as such is not considered to result in any significant impact on highway safety as a result. It is therefore considered the proposals are acceptable on highway grounds.
- 4 Other Issues
- 4.1 Representations have raised concern regarding the location of the fence, as it is felt by the neighbour that the fencing which has been installed is not located on land that is owned by the applicant/No. 31. As a result the applicant was asked to confirm land ownership and they did so by providing a location plan of their deeds for the property. The Local Planning Authority have therefore addressed this matter in terms of the ownership certificate submitted and it is considered that the matter of land ownership and trespass, if still disputed should be pursued as a civil matter outside of the consideration of this application.
- 4.2 It is noted that the fencing was put in situ with the presumption that due to the size and location, it fell under Permitted Development rights. An Enforcement Officer of the Local Planning Authority invited a planning application due to concerns regarding the potential impact on highway safety and the development not complying with paragraph 3 (6) of the General Permitted Development Order. Paragraph 3 (6) of the General Permitted Development Order states, *"that any permissions granted by Schedule 2 does not, except in relation to development permitted by Classes A, B, D and E of Part 9 and Class A of Part 18 of that Schedule, authorise any development which requires or involves the formation, laying out or material widening of a means of access to an existing highway which either a trunk or classified road, or creates an obstruction to the view of persons using any highway used by vehicular traffic and is likely to cause danger to such persons."*
- 4.3 However, following the submission of a planning application, and consultation to the Highway Authority, they have raised no objections to the development, and consider there is not any obstruction to vehicular traffic that would result in a situation likely to cause danger.

- 4.4 Representations have been received in support of the application stating that the development falls within the parameters of Permitted Development. The General Permitted Development Order states that a fence can be erected using Permitted Development rights subject to there being no adverse impacts upon highway safety and the fence being no higher than 2 metres when not adjacent to a footpath or highway.
- 4.5 As the Highways Authority have not raised any objections to the development, the fencing that has been erected could therefore now be considered as permitted development as they both measure 1.8m in height (under 2 metres) and are set back from the public footpath by 1.2 metres and highway by 3m and as such are not considered to be adjacent.
5. Human Rights
- 5.1 The proposals set out in the report are considered to be compatible with the Human Rights Act 1998. The proposals may interfere with an individual's rights under Article 8 of Schedule 1 to the Human Rights Act, which provides that everyone has the right to respect for their private and family life, home and correspondence. Interference with this right can only be justified if it is in accordance with the law and is necessary in a democratic society. The potential interference here has been fully considered within the report in having regard to the representations received and, on balance, is justified and proportionate in relation to the provisions of the policies of the development plan and national planning policy.

Conclusion

The fencing is located within a residential area where householder development and boundary treatment is acceptable in principle. Given the fencing is set back of the footpath by 1.2 metres and runs in a direction perpendicular too it, it is not considered overbearing or detrimental to the character of the area. The existing frontage hedgerow is retained which runs parallel to the footpath and highway and encloses the front garden area.

The Highway Authority have considered that the retention of the fencing would not have an adverse impact upon highway safety, as the development does not impede the visibility of the applicants, neighbouring properties or other road users and as such does not result in any significant detriment to highway safety.

As such, retention of the fencing is considered to accord with the requirements of the Local Plan and the NPPF. Accordingly, the application is recommended for approval.