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Appeal Decision

Rec'd. 11 APR 2001

File

Site visit made on 30 March 2001

by Denis ~~F McCoy~~ ARIBA FRTPI Dip Arch
(Oxford)

The Planning Inspectorate
Room 1404
Tollgate House,
Houlton Street
Bristol BS2 9DJ
☎ 0117 987 8927

Date

10 APR 2001

an Inspector appointed by the Secretary of State for the
Environment, Transport and the Regions

Appeal: APP/A1910/A/01/1056659

Wilton Lodge, Felden Lane, Felden, Herts, HP3 0BB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
- The appeal is made by Mr S Wharton against Dacorum Borough Council.
- The application (ref 4/00215/00/OUT) dated 4 February 2000 was granted planning permission by the Council on 4 August 2000.
- The development permitted is two detached dwellings with a new access road from Felden Lane.
- The condition in dispute is no 8 which states that: "The two dwellings hereby approved shall be of a single storey design".
- The reason given for the condition is: "To safeguard the residential amenity of the area and the setting of the listed building".

Summary of Decision: the appeal is allowed and the planning permission varied.

Preliminary Points

1. The appeal site is at the edge of Hemel Hempstead, in an area characterised by woodlands and numerous mature trees on the roadside and in the large gardens of several of the properties. Wilton Lodge had its origins in the seventeenth century, and was remodelled in the early nineteenth century and as I was shown has been further altered more recently. It is listed as being of special architectural or historic interest, and its grounds extend to about 0.6 ha. That part of the grounds which is the subject of this appeal is at a level some 5m below the ground floor level of the house, and permission has been granted on six occasions since 1963 for two dwellings to be constructed there. Trees on the site are subject to an Area Tree Preservation Order made in 1992.

Main Issues

2. I consider that the main issues in this appeal are whether the subject condition meets the tests of Circular 11/95, and in particular whether it is necessary in order to preserve the setting of the listed building or to secure appropriate standards of amenity by way of privacy at dwellings around the proposed development.

The Development Plan and other Planning Policies

3. Section 54A of the Act requires that this appeal is determined in accordance with the development plan unless material considerations indicate otherwise. For this area the plan includes the Hertfordshire County Structure Plan Review 1991-20011 and the Dacorum Borough Local Plan (adopted in 1995). Reference has also been made to a Deposit Draft Local Plan which is, or has very recently been, the subject of a local inquiry. Insofar as this appeal is concerned its policies are not materially different from those currently in place, and it continues to define the site as being within the urban area and not part of the Metropolitan Green Belt.
4. The policies on which the Council rely require every effort to be made to ensure that any new development liable to affect the character of an adjacent listed building will be of such a scale and appearance, and will make use of such materials, as will retain the character and setting of the listed building. My attention is also drawn to other adopted and emerging policies: those which seem to me of most relevance are current local plan policies 8 and 10. The former sets out criteria which all proposals must satisfy, the latter indicates circumstances where conditions and obligations will be used in controlling development.

Reasons

5. The Council point out that the outline permission granted in 1995 was also subject to the condition now being appealed against, but the fact that no appeal was made at that time does not seem to me to affect the merits of the one which is now before me.
6. The proposed houses are to be on a level area said once to have been a tennis court and overlooked from a number of windows in Wilton Lodge. Trees to the north, east and west, combined with the hillside topography, create a situation where it is clear that the condition is not necessary to secure neighbourly relationships between them and other residential properties in those directions. It is specifically the relationship with Wilton Lodge which in the Council's judgement justifies its imposition.
7. The gardens of that property are very limited on its south side, where the front door is close to the site boundary, and they are in part taken up by garaging and other outbuildings east of the house. Between it and the development site the garden slopes quite steeply down to the top of a retaining wall, which is planned to remain alongside the new shared access serving the new houses. This garden area, due to its slope and its location north of the house, seems to me to contribute less to its amenity than the much larger lawn to the west, which is further from the proposed houses. With this in mind I attach less weight than the Council to the potential difficulty of avoiding an unacceptable loss of privacy in the gardens if two-storey houses are permitted, and a desire for mutual privacy would prompt designers to avoid principal windows facing those of the existing house. To my mind concerns of this sort could in this instance be satisfactorily controlled at detail design stage.
8. I turn next to the setting of the listed building as a consideration distinct from all others. When I take into account the imposing

qualities of its twin-gabled north elevation, and its siting so significantly above that of the intended dwellings, I am not persuaded that two storey buildings would necessarily have a dominating impact as the Council believe. Moreover in my judgement it is certainly not necessary to rule out the possibility of dwellings designed with first floor accommodation wholly or partly within the volume of their roofs. Indeed in the hands of a skilled designer I can envisage dwellings of that character relating particularly well to the site.

9. Whatever form the proposed dwellings take the proposal would alter the setting of Wilton Lodge. In my judgement the condition restricting them to a single storey design is an unnecessary constraint, one likely to restrict the scope for achieving a high quality design. Moreover by tending to encourage buildings with a greater ground coverage than might otherwise result I consider the condition could itself have negative consequences. The avoidance of a cramped layout would in my judgement be difficult without the loss of several trees. After reflection, and having special regard to the desirability of preserving the setting of Wilton Lodge, I am drawn to the conclusion that the constraint upon design skills imposed by this condition is not justified by the aims of the development plan policies on which the Council rely.

Conclusion

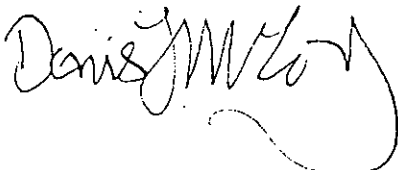
10. For the reasons given above and having regard to all other matters raised I conclude, on balance, that the appeal should succeed. I shall vary the planning permission by deleting the disputed condition.

Formal Decision

11. In exercise of the powers transferred to me I allow the appeal and vary the planning permission (ref 4/00215/00/OUT) for two detached dwellings with a new access road from Felden Lane at Wilton Lodge, Felden Lane, Feldon, Herts granted on 4 August 2000 by Dacorum Borough Council, by deleting condition no 8.

Information

12. This decision does not convey any approval or consent that may be required under any enactment, byelaw, order or regulation other than section 57 of the Town and Country Planning Act 1990.
13. Attention is drawn to the enclosed note relating to the requirements of the Chronically Sick and Disabled Persons Act 1970, as amended.
14. A separate note is attached setting out the circumstances in which the validity of this decision may be challenged by making an application to the High Court within six weeks from the date of this decision.



INSPECTOR

**Dacorum Borough Council
Planning Department**

Civic Centre Marlowes
Hemel Hempstead
Herts HP1 1HH



ROY DARBY
30 ABBEY AVENUE
ST ALBANS
HERTS
AL3 4AZ

MR S WHARTON
WILTON LODGE
FELDEN LANE
HEMEL HEMPSTEAD
HERTS
HP3 0BB

TOWN AND COUNTRY PLANNING ACT 1990

APPLICATION - 4/00215/00/OUT

WILTON LODGE, FELDEN LANE, FELDEN, HEMEL HEMPSTEAD, HERTS, HP3
0BB
TWO DETACHED DWELLINGS

Your application for outline planning permission dated 04 February 2000 and received on 08 February 2000 has been **GRANTED**, subject to any conditions set out overleaf.

A handwritten signature in black ink, appearing to read 'Robin Barker'.

Director of Planning

Date of Decision: 03 August 2000

CONDITIONS APPLICABLE TO APPLICATION: 4/00215/00/OUT

Date of Decision: 03 August 2000

1. Approval of the details of the siting, design and external appearance of the buildings, the means of access thereto and the landscaping of the site (hereinafter called "the reserved matters") shall be obtained from the local planning authority in writing before any development is commenced.

Reason: To comply with the provisions of Section 92 (2) of the Town and Country Planning Act 1990.

2. Application for approval of the reserved matters shall be made to the local planning authority before the expiration of three years from the date of this permission.

Reason: To comply with the provisions of Section 92 (2) of the Town and Country Planning Act 1990.

3. The development hereby permitted shall be begun either before the expiration of five years from the date of this permission, or before the expiration of two years from the date of the approval of the last of the reserved matters to be approved, whichever is the later.

Reason: To prevent the accumulation of planning permission; to enable the Council to review the suitability of the development in the light of altered circumstances and to comply with the provisions of Section 92 (2) of the Town and Country Planning Act 1990.

4. Details submitted in accordance with condition 3 hereof shall include:

- (a) garaging and parking facilities;
- (b) refuse collection and general storage arrangements;
- (c) boundary treatment and landscaping;
- (d) construction of drains and sewers;
- (e) full sectional details of the proposed access drive indicating details of any retaining structures, gradients and visibility splays.

Reason: To ensure a satisfactory development.

5. The development hereby permitted shall not be occupied until the items as approved in accordance with condition 4 hereof shall have been provided.

Reason: To ensure a satisfactory development.

6. Prior to the commencement of development full details of protective fencing to be erected around existing trees shall have been submitted and approved in writing by the local planning authority, and the development shall be carried out in accordance with the approved details.

Reason: In order to protect existing preserved trees.

7. The construction of the dwellings hereby approved shall not commence until the proposed access and crossover shall have been constructed in accordance with full details which shall have been submitted to and approved in writing by the local planning authority.

Reason: In the interests of highway safety and for the avoidance of doubt.

8. The two dwellings hereby approved shall be of a single storey design.

Reason: To safeguard the residential amenity of the area and the setting of the listed building.

9. No development shall take place within the proposed development site until the applicant has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted by the applicant and approved in writing by the local planning authority.

Reason: To ensure that reasonable facilities are made available to record archaeological evidence.

NOTE

The following policies of the development plan are relevant to this decision:

Hertfordshire Structure Plan Review 1991 – 2011

Policies 1 and 2

Dacorum Borough Local Plan

Part 3 General Proposals

Policies 1, 7, 8 and 9

Part 5 Environmental Guidelines

Section 3

Dacorum Borough Local Plan 1991 – 2011 Deposit Draft

Part 3 General Proposals

Policies 1, 7, 8, 9 and 10

Part 4 Area Proposals

Development in Residential Areas - Character Area HCA4 Felden West

Part 5 Environmental Guidelines

Section 3

