

TOWN & COUNTRY PLANNING ACTS, 1971 and 1972



DACORUM BOROUGH COUNCIL

To Prudential Property Services
73 High Street
Burnham
Bucks

Edgington Spink and Hyne
8 Park Street
Windsor
Berkshire

..... Demolition of wall (part) and alteration to
..... forecourt
at ... 53 Marlowes, Hemel Hempstead
.....

Brief
description
and location
of proposed
development.

In pursuance of their powers under the above-mentioned Acts and the Orders and Regulations for the time being in force thereunder, the Council hereby refuse the development proposed by you in your application dated Undated and received with sufficient particulars on 29 September 1987 and shown on the plan(s) accompanying such application..

The reasons for the Council's decision to refuse permission for the development are:—

1. The proposal involves an unacceptable and unnecessary extent of demolition which would detract from the setting, character and special interest of the Grade II* Listed Building.
2. The proposal for forecourt alterations would be unsympathetic to the character and setting of the Grade II* Listed Building.

Dated 12 day of November 19 .. 87 ..

Signed *W. B. B. B. B.*

SEE NOTES OVERLEAF

P/D. 15

Chief Planning Officer

NOTE

1. If the applicant is aggrieved by the decision of the local planning authority to refuse permission or approval for the proposed development, or to grant permission or approval subject to conditions, he may appeal to the Secretary of State for the Environment, in accordance with s.36 of the Town and Country Planning Act 1971, within six months of receipt of this notice. (Appeals must be made on a form obtainable from the Secretary of State for the Environment, Tollgate House, Houlton Street, Bristol, BS2 9DJ). The Secretary of State has power to allow a longer period for the giving of a notice of appeal but he will not normally be prepared to exercise this power unless there are special circumstances which excuse the delay in giving notice of appeal. The Secretary of State is not required to entertain an appeal if it appears to him that permission for the proposed development could not have been granted by the local planning authority, or could not have been so granted otherwise than subject to the conditions imposed by them, having regard to the statutory requirements, to the provisions of the development order, and to any directions given under the order.
2. If permission to develop land is refused, or granted subject to conditions, whether by the local planning authority or by the Secretary of State for the Environment and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, he may serve on the Borough Council in which the land is situated, a purchase notice requiring that Council to purchase his interest in the land in accordance with the provisions of Part IX of the Town and Country Planning Act 1971.
3. In certain circumstances, a claim may be made against the local planning authority for compensation, where permission is refused or granted subject to conditions by the Secretary of State on appeal or on a reference of the application to him. The circumstances in which such compensation is payable are set out in s.169 of the Town and Country Planning Act 1971.



Departments of the Environment and Transport

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26591

CHIEF EXECUTIVE
OFFICER

21 SEP 1988

File ref.

Refer to

Cleared

Your reference

CAL/EG

Our reference

(a) APP/A1910/E/87/802838

(b) APP/A1910/E/87/802838

Date

DACORUM DISTRICT COUNCIL

19 September 1988

Act

C.P.O.

D.P.

D.C.

S.C.

Admin.

File

Received

21 SEP 1988

Comments

1. LISTED BUILDING

Gentlemen

TOWN AND COUNTRY PLANNING ACT 1971

APPEALS UNDER SCHEDULE 11 AND SECTION 36

53 MARLOWES, HEMEL HEMPSTEAD, HERTFORDSHIRE - GRADE

1. I am directed by the Secretary of State for the Environment to say that consideration has been given to the report of the Inspector, Mr J L Gray Dip Arch MSc, Registered Architect, who held an informal hearing into the appeals by your clients, Prudential Property Services.

(a) under paragraph 8 of Schedule II to the Town and Country Planning Act 1971, against the decision of Dacorum Borough Council to refuse listed building consent for works to the front area, including the boundary wall, of 53 Marlowes, Hemel Hempstead; and

(b) under Section 36 of the same Act, against the decision of the same Council to refuse planning permission for the same development at the same site.

2. A copy of the Inspector's Report is enclosed. He recommended that, in view of the considerations expressed in paragraphs 23-28 of his report, both appeals should be dismissed.

3. The Secretary of State notes from the Inspector's report that the advertising drums indicated on drawing No. 2729/02 were not intended to be part of the planning or listed building consent applications, even though they were shown on the plans submitted as part of the applications. He has therefore formed no opinion on the merits of the proposed advertising drums and has not taken the drums themselves into account in determining the planning and listed building consent appeals. However, he notes the Inspector's comment, in paragraph 24 of his report, that if no advertising were proposed, it is very likely that a different set of proposals would have emerged.

4. As indicated in paragraph 22 of his report, the Inspector took the view that the proposed works for the paving and planting of the garden area might not require planning permission or listed building consent and that the proposed alterations to the wall did not require planning permission. The Secretary of State considers that listed building consent is required for the works to the boundary wall as they constitute demolition and alteration of the listed building affecting its character, but that consent is not required for the proposed paving and planting as it does not constitute works for the alteration or extension of the listed building. With regard to the need for planning permission, in the Secretary of State's opinion, whilst some elements of the scheme, if

considered in isolation, might qualify as permitted development, the proposals must be considered as submitted as a whole, and since planning permission is required for the proposed widening of the access and the laying of a brick paved terrace it is required for the scheme as a whole.

5. Turning to the merits of the proposed alterations to the wall and garden area fronting the listed building, the Secretary of State agrees with the Inspector's conclusion that the complete loss of about a 6 metre length of the wall would seriously harm the setting of the building, altering the character of the garden into that of a forecourt. Despite your claim on behalf of your clients that the proposed opening up of the frontage to the listed building would be in accordance with the general guidance given in the Department's Circular 8/87, the Secretary of State considers that the provisions of Circular 8/87 have been largely satisfied by the change in use of the building from residential to offices many years ago and there is no justification in either commercial or aesthetic terms for the works of demolition and alteration now proposed, since, in his opinion, they would have a detrimental effect on the character and appearance of the Grade II* listed building.

6. The Secretary of State therefore accepts the Inspector's recommendation and hereby dismisses your clients' appeals.

7. A separate note is attached to this letter, setting out the circumstances in which the validity of the Secretary of State's decisions may be challenged by the making of an application to the High Court, and explaining the rights of certain persons to inspect documents attached to the Inspector's report.

8. A copy of this letter is being sent to Dacorum Borough Council

I am Gentlemen
Your obedient Servant

R A SANDERSON
Authorised by the Secretary of State
to sign in that behalf.

ENCS

DACORUM DISTRICT COUNCIL

APPEAL

by

PRUDENTIAL PROPERTY SERVICES

Inspector: John L Gray DipArch MSc Registered Architect

Date of Hearing: 4 May 1988

File Nos: APP/A1910/A/87/082959
APP/A1910/E/87/802838

Tollgate House
Houlton Street
Bristol
BS2 9DJ

16 May 1988

To The Right Honourable Nicholas Ridley MP
Secretary of State for the Environment

Sir

I have the honour to report that on 4 May 1988 I conducted an informal hearing at the Civic Centre, Hemel Hempstead, into appeals by Prudential Property Services under Section 36 of and Schedule 11 to the Town and Country Planning Act 1971. These are against the refusal of the Dacorum Borough Council to grant planning permission for alterations to the front boundary wall and front garden area at 53 Marlowes, Hemel Hempstead, and to grant listed building consent for the partial demolition of and alteration to the same front boundary wall.

1. The Reasons for Refusal of planning permission are:

1. The proposal involves an unacceptable and unnecessary extent of demolition which would detract from the setting, character and special interest of the Grade II* Listed Building.

2. The proposal for forecourt alterations would be unsympathetic to the character and setting of the Grade II* Listed Building.

2. The Reason for Refusal to grant listed building consent is precisely the same as Reason No. 1 for the refusal of planning permission.

3. No. 53 Marlowes was included in a list of buildings of special architectural or historic interest on 18 June 1948. In the 9th list for the District of Dacorum, dated 17 February 1977, it is included in grade II* with the description:

"Circa 1650 remodelled C18. Until 1678 the dower house of The Bury, then sold by Combes family. Stucco front, low pitched roof. 2 storeys. 4 sash windows with glazing bars. Fine doorway: 8 fielded panel door, architrave surround, open broken pediment on consoles, tympanum contains armorial roundel in wreath surround.

Interior retains fine mid C17 staircase with Corinthian newel posts, turned balusters, moulded handrail. Ovolo panelled hall with panelled round arch on Doric pilasters. Finely carved chimney piece in ground floor room."

4. This report includes a description of the appeal site and its surroundings, the gist of the representations made at the informal hearing and my findings of fact, conclusions and recommendations.

THE SITE AND SURROUNDINGS

5. The appeal site is on the eastern side of Marlowes, in the south-eastern angle of the mini-roundabout junction with Midland Road. Marlowes is the principal shopping street in Hemel Hempstead town centre, although the area immediately to the north and south of no. 53 is given over mainly to financial and professional services.

6. The external appearance of no. 53 Marlowes is still very much as in the list description. In addition to the main house, there is also a lower 2-storey extension to the north, again with stuccoed walls and a hipped slate roof. The building looks out over a garden about 8 m wide but tapering down almost to a point at the northern corner. A brick and flint wall, around 1.8 m high, separates the garden from the footway of Marlowes. The garden is mainly lawned, with some shrubs growing inside the boundary walls. A gravelled footpath leads directly to the front door from a gateway about 1 m wide.

7. The buildings to the north and south of no. 53 date from the 18th and 19th centuries, 2-storey detached and semi-detached houses now converted to a variety of commercial uses. All originally had front gardens but some have been built on, some are now paved forecourts and the majority are open to the street, separated from it only by low walls. The boundary wall of no. 53 continues along the frontage of no. 55 but has been partially lowered in a manner not dissimilar to the proposals subject of these appeals.

8. On the opposite side of Marlowes, which here is a dual carriageway, there are a number of much larger buildings, the most prominent being the Civic Centre and the Pavilion.

THE CASE FOR THE APPELLANT

— The material points were:

9. The appellant company wished to open out the front garden area of no. 53 Marlowes by removing part of the boundary wall, reducing the height of other parts and laying a broader paved approach to the building which would include advertisement displays in a landscaped setting. This would enable the company the better to advertise its presence and at the same time give the general public more opportunity to appreciate one of the most elegant listed buildings in the town centre. The proposals involved no alterations to the building itself.

10. Conservation for its own sake was wrong. This scheme was a sensitive adjustment of the curtilage of the building to reflect its new use within a buoyant commercial area. The proposals did not run counter to the Council's policies for either shopping or listed buildings, even though their aims could be conflicting.

11. The boundary wall dated from as recently as the early 1950s, having been built in association with improvements to Midland Road and its junction with Marlowes. The use of the building was still residential at that time, which could explain why such a high wall had been built. The new use of the building did not require such privacy and the wall now only served to obscure much of the attractive facade from public view. By contrast, most of the buildings to the south had only low boundary walls, over which a variety of unsympathetic alterations and advertisements could be clearly seen.

12. Though the brick and flint construction of the wall was not unattractive, its height and form were out of keeping with the mellow character of the listed building. Also, the building was rather cramped behind the wall, especially where the depth of the garden had been reduced to make way for the road junction improvement. The

proposed wall would retain the essential features of the existing wall but would no longer be a visual break in the street scene. It would enhance the appearance of the listed building in the same way as the lowering of the wall in front of no. 55.

13. The advertising drums and display board were not intended to be part of the planning application but part of a subsequent application for consent to display advertisements. Nevertheless, free-standing displays would be much more appropriate and less damaging than advertisements on the facade of the building and advertising drums had been indicated because their shape would be less intrusive in front of the building.

14. There were insufficient objections to justify refusals of listed building consent or planning permission, especially if the advertising drums and display board were not part of the applications. The conditions suggested by the Council in the event of the appeals being allowed were appropriate.

THE CASE FOR THE LOCAL PLANNING AUTHORITY

The material points were:

15. The proposed scheme was not in accord with Policy 13 of the approved Dacorum District Plan, which seeks to ensure that alterations and extensions to buildings of special architectural or historic interest are designed in such a way as to preserve their character.

16. The age of the boundary wall was not in dispute, nor was the fact that there had been a reduction in the depth of the northern part of the garden at the time the wall was built.

17. This was the only grade II* listed building in Hemel Hempstead and probably the most elegant building in the town centre. It was built as a house and it was important that something of its domestic character and setting should be preserved even though its use had changed. There had already been many changes at the rear and now the front of the building was threatened as well. The garden and boundary wall formed an important private buffer between the building and the street and its retention was more important than opening out views of the building for the general public.

18. Though fairly recent, the boundary wall was simple, attractive and harmonious. The proposed scheme would be fussier in appearance, contrasting with the clean and elegant proportions of the building. Also, the angled approach of the new paving would be less appropriate than the direct line of the existing path.

19. The advertising drums and display board were taken to be part of the application for planning permission as they were included on the application plans. Any free-standing external advertising would be wholly inappropriate in front of a listed building of this II* quality. To be acceptable, advertising would have to be much more sensitively designed and discreetly located.

20. If the appeals were to be allowed, then listed building consent should be subject to a condition ensuring the re-use of existing materials in the construction of the modified wall; planning permission should be subject to the same condition plus others requiring samples of the brick pavers, the design and materials of the advertising drums and display board and details of the landscaping to be submitted to the Council for its prior approval.

FINDINGS OF FACT

21. I find the following facts:

1. No. 53 Marlowes is included in a list of buildings of special architectural or historic interest in grade II*.
2. The front boundary wall was built around 35 years ago and is part of the curtilage of the listed building.
3. Part of the north-west corner of the front garden was lost at the time when improvements to Midland Road were made and the boundary wall was built.
4. The building was still in use as a house when the boundary wall was built.
5. The proposals subject of these appeals would not affect the fabric of the building itself, only the front garden and boundary wall.
6. The proposed wall would retain the materials and detailing of the existing.
7. The nearby buildings on the east side of Marlowes are mainly in financial and professional service uses, generally with open frontages and varying amounts of advertising.
8. There have been numerous changes at the rear of the building as a result of planning permissions and listed building consents granted in the past.

CONCLUSIONS

22. Whether or not the advertising drums and display board require planning permission or listed building consent is a matter of law. It may also be that the works for the paving and planting of the garden area do not require planning permission or listed building consent and that the proposals for the wall do not require planning permission; these too are matters of law. However, my views are as follows.

Bearing in mind the facts in paragraph 21:

23. Advertising in this prominent position, and especially using structures of this size and form, would be totally out of keeping with and damaging to the still essentially domestic character of this important listed building. Irrespective of the materials and colours involved, the drums would be an incongruous modern feature in front of a building whose main facade has otherwise seen little change.

24. The layout of the paving and planting has been largely determined by the provision of the advertising structures. Without them, there is little logic to the design, which would be unrelated to, and elaborate compared with, the clear cut and elegant proportions of the listed building. If no advertising were proposed, it is very likely that a different scheme would have emerged.

25. If planning permission or listed building consent is required for these parts of the scheme, and if either were to be granted, conditions would be necessary to safeguard the setting of the listed building. These should control the design, materials and colours of the advertising structures, the type of paver to be used and the details of the landscaping.

26. Though attractive in its own right, the boundary wall does not have the architectural or historic interest that would warrant its preservation as an integral part of the setting of the listed building. In my view, neither the partial demolition nor the alterations to the wall would be out of keeping with the street scene and they would have the benefit of exposing the listed building to greater public appreciation. Nevertheless, the complete loss of about a 6 m length of the wall would seriously harm the domestic setting of the building, altering the character of the garden into that of a forecourt. The damage would be considerably more than from a simple reduction in the height of part of the wall, which could at least maintain the appearance of a semi-private garden.

27. I do not consider that the asymmetric relationship between the wall and the building would be particularly harmful, especially in view of the street corner location and the diagonal alignment of part of the existing wall. If consent were granted, however, it would be important for the detailing of the altered lengths of wall to be a precise match with the remaining original wall, as is in fact proposed. This could best be achieved by salvaging and re-using the existing bricks and flints.

28. The loss at the rear of much of the building's domestic character does not, in my opinion, have any significant bearing on the proposals subject of these appeals. The rear curtilage is substantially enclosed by boundary walls and other buildings and is not open to clear public view. Although there would be a further cumulative loss, the changes at the rear would not be seen in conjunction with this scheme and have not influenced my judgement of its merits.

RECOMMENDATION

29. On the assumption that planning permission is required for part or all of the works proposed, I recommend dismissal of the appeal under Section 36.

30. Irrespective of whether listed building consent is required for the erection of the advertising structures, or for the paving and planting works, I recommend dismissal of the appeal under Schedule 11.

I have the honour to be
Sir
Your obedient Servant

John L Gray

JOHN L GRAY DipArch MSc RegArchitect
Inspector

APPEARANCES

FOR THE APPELLANT

| | |
|-----------------------------|--|
| Mr J Milbank FRICS | - of Prudential Property Services |
| Mr M H Carter BA MRTPI | - of C A Lennon Associates, Chartered Planners & Local Government Consultants |
| Mr G A H Neil DiplArch RIBA | - of Edgington Spink & Hine, Chartered Architects |

FOR THE PLANNING AUTHORITY

| | |
|---------------------------------------|--|
| Mr J Doe | - of Dacorum Borough Council Planning Department |
| Mrs B Crawford DipArch DipAA MRTPI | - of Hertfordshire County Council Planning Department |

DOCUMENTS

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|------------|--|
| Document 1 | List of persons present at the enquiry. |
| Document 2 | Letter of notification of inquiry and distribution list. |
| Document 3 | Planning history of no. 53 Marlowes, reproduced from the Council's pre-hearing statement. |
| Document 4 | Copy of Policy 13 of the Dacorum District Plan, reproduced from Mr Carter's pre-hearing statement. |
| Document 5 | Reproduction of the report to Committee relating to the lowering of the boundary wall of no. 55 Marlowes, submitted by Mr Carter. |

PLANS

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| Plan A | Drawings nos. 2729/02 and 03, being the application plans. |
| Plan B | Location plan, scale 1:1250, submitted by Mr Doe. |

RIGHT TO CHALLENGE THE DECISION

Under the provisions of Section 245 of the Town and Country Planning Act 1971 a person who is aggrieved by the decision given in the accompanying letter may challenge its validity by an application made to the High Court within 6 weeks from the date when the decision is given.

The grounds upon which an application may be made to the Court are:-

1. that the decision is not within the powers of the Act (that is, the Secretary of State has exceeded his powers); or
2. that any of the relevant requirements have not been complied with, and the applicant's interests have been substantially prejudiced by the failure to comply.

"The relevant requirements" are defined in Section 245 of the Act: they are the requirements of that Act and the Tribunals and Inquiries Act 1971 or any enactment replaced thereby, and the requirements of any order, regulations or rules made under those Acts or under any of the Acts repealed by those Acts. These include the Town and Country Planning (Inquiries Procedure) Rules 1974 (SI 1974 No 419), which relate to the procedure on cases dealt with by the Secretary of State.

A person who thinks he may have grounds for challenging the decision should seek legal advice before taking any action.

RIGHT TO INSPECT DOCUMENTS

Under the provisions of Rule 13(3) of the Town and Country Planning (Inquiries Procedure) Rules 1974 any person entitled to be notified of the decision given in the accompanying letter may apply to the Secretary of State in writing within 6 weeks of the notification to him of the decision, or the supply to him of the Inspector's report, whichever is the later, for an opportunity of inspecting any documents, photographs and plans appended to the report. Such documents etc are listed in an appendix to the report. Any application under this provision should be sent to the address from which the decision was issued, quoting the Department's reference number shown on the decision letter and stating the date and time (in normal office hours) when it is proposed to make the inspection. At least 3 days' notice should be given, if possible.