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Departments of the Environment and Transport

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16 MAY 1991

CHIEF EXECUTIVE OFFICER

16 MAY 1991

File no.

Refer to *DP 16/5*

Cleared

Received

Comments

Your reference

Our reference

Date APP/A1910/E/90/805937

Messrs Faulkners
49 High Street
King's Langley
Herts
WD4 9HU

15 MAY 1991

Gentlemen

PLANNING (LISTED BUILDING & CONSERVATION AREAS) ACT 1990 - SECTION 20
TOWN AND COUNTRY PLANNING ACT 1990 - SECTION 78(1)
APPEAL BY JAMES ARMSTRONG
APPLICATION NOS. 4/2098/89LB AND 4/1929/89

1. I am directed by the Secretary of State for the Environment to refer to your client's appeals against the decisions of Dacorum Borough Council:

- A) Under Section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990, to refuse listed building consent for the dismantling and relocation of the main gate entrance to Markyate Cell, Cell Park, Markyate, Hertfordshire.
- B) Under Section 78(1) of the Town and Country Planning Act 1990, to refuse planning permission for the rebuilding and relocation of the main gate entrance to Markyate Cell, Cell Park, Markyate, Hertfordshire.

2. An officer of the Department has visited the site and has considered the written representations made in support of the appeals, together with those of Dacorum Borough Council. A copy of his report is appended to this letter.

3. The Secretary of State has carefully considered all the arguments for and against the appeals proposals, and the officer's appraisal. On the question of whether the entrance gates, gate piers and associated walls which are the subject of these appeals should properly be regarded as part of the Grade II* listed Cell Park (formerly Markyate Cell), the Secretary of State takes the view that the appeal structure is within the curtilage of the listed building and forms part of the land and is therefore covered by the statutory listing.

4. The Secretary of State notes the argument on behalf of your



client that the existing entrance which it is proposed to relocate was constructed in 1921, long after the main buildings on the estate were built and subsequently altered, and that the wrought iron entrance gates and stone statues were moved from the original gate entrance at that time, so that the position of the appeal structure is not of great historical significance and its relocation would not be detrimental to whatever historical interest it has. However, the Secretary of State shares his officer's view that the appeal structure possesses intrinsic historical interest and architectural merit and is important nationally as well as regionally and locally. Furthermore, he agrees that the dismantling and re-erection elsewhere of the brick walls and piers would result in the loss of the original structure, in terms of its historical and architectural associations, and would therefore conflict with the presumption in favour of preserving a listed building.

5. On the condition of the appeal structure and the likely economic burden of its repair, the Secretary of State accepts the officer's view that up to three quarters of the walls could be preserved in situ, without any unacceptable loss of trees, if appropriate repairs were to be carried out. In the absence of any estimate of the cost of such repairs or indication of the availability and value of historic buildings grants, which make it impossible to assess whether the preservation of the existing entrance would be economically feasible, the Secretary of State is not persuaded that there is a compelling need to demolish and rebuild the entrance in another location in order to preserve it.

6. With regard to the traffic hazards caused by the existing access to the A5 trunk road, the Secretary of State accepts that the new entrance proposed by your client would be a significant improvement. However, as the officer points out, this improvement would only be effective if the existing access were to be closed, and it is clear from the evidence submitted that this is not your client's intention. In this circumstance, the Secretary of State can give little weight to the need to overcome the traffic dangers as a reason for providing a different access point.

7. With specific reference to the planning appeal (B) for the rebuilding and relocation of the entrance further south on the A5 than the existing entrance, the Secretary of State accepts the officer's view that the proposed design would not detract from the setting and character of Cell Park, provided that it did not necessitate the demolition of the existing entrance gate piers and flanking walls. However, this point is considered to be academic, since your client's proposal specifically involves the dismantling of the existing entrance.

8. All other matters have been taken into account, but, for the reasons given above, the Secretary of State hereby dismisses your client's appeals.

9. A separate note is attached to this letter setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by the making of an application to the High Court.

I am Gentlemen
Your obedient Servant

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

Tollgate House
Houlton Street
BRISTOL
BS2 9DJ

To the Right Honourable Michael Heseltine MP
Secretary of State for the Environment

Sir

I have the honour to report that on 20 September 1990 I made an accompanied site visit into appeals by J Armstrong Esq made a. under Section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against the refusal of the Dacorum Borough Council to grant listed building consent for the dismantling and relocation of the entrance so that it has a direct frontage onto the A5, Markyate Cell, Markyate, Hertfordshire; and b. under Section 78 of the Town and Country Planning Act 1990 against the refusal of the Dacorum Borough Council to grant planning permission for the rebuilding and relocation of the main entrance to Markyate Cell, Markyate, Hertfordshire.

1. The structures which are the subject of this appeal lie within the park of Markyate Cell, a country house on the site of a suppressed priory of Benedictine Nuns, which was added to a list of buildings of special architectural or historic interest in grade II* on the 22 October 1952. The list description of the house does not include the walls and gate piers, or the adjoining and contemporary lodge.
2. This report contains a description of the walls and gate piers, their surroundings including the park and the house, the A5 trunk road in this vicinity, and my appraisal of the likely impact of the proposed development. (A list of persons present at the site visit follows.)

THE APPEAL BUILDING AND ITS AREA

3. The appeal structures comprise entrance gates, gate piers, and associated walls. The carriage gates, when in-situ, are hung between two capped brick piers surmounted by heraldic beasts. Each of these piers is linked by a segmental brick arch to a similar brick pier, also surmounted by a heraldic beast. Under each of the side arches, which form pedestrian entrances, is an iron gate. A brick and clunch wall, with a brick coping, is attached to each of the outer piers. Each of these walls curves in a quarter circle, and together they enclose a semi-circular cour-de-honneur, that is partly paved, and partly grassed. Each wall is terminated by a pier that is surmounted by a stone ball. This ensemble was built in 1921, when the drive at the southern end of the park was closed, and a new lodge and drive formed at the northern end. Behind the eastern wall there is a thatched lodge, a symmetrical building with simple windows, and plain rendered walls.
4. The central gate piers are structurally sound. The walls to each side of them exhibit severe distress. They lean to a considerable degree, show fractures,

cracking and displaced masonry, and one section of the western wall has collapsed. The walls are close to the roots of several trees, but there is also evidence of distress at points well removed from the trees. A number of buttresses appear to have been erected shortly after the wall was built.

5. The entrance is parallel to the A5. In order to pass through the gates, a vehicle must turn off the A5 into the access adjoining Red Cow Farm. This access is set at right angles to the A5. The farm buildings screen traffic approaching the access from the north. The gates are set alongside this access, with a cour-de-honneur to their fore. The drive at first runs through the outer lane of a double aisled avenue of trees, this avenue running parallel to the A5. It then swings to the east, and heads towards Markyate Cell, which is set on a prominence above the park. A short distance from the existing access, there is a layby serving the A5. The new drive would be formed a short distance to the south of this lay-by. At this point, the A5 is virtually straight in both directions for a considerable distance. The boundary between the A5 and the park is marked at this point by a mature hedge, behind which is the aforementioned double avenue of trees.

6. Markyate Cell was built in 1539, adjoining the priory church. It was much altered and enlarged in the 17th. century and the 18th. century. However, its existing appearance is mainly attributable to remodellings of 1825 and circa 1900. Its park is contemporary, and together with the house constitutes an interesting example of a small Great House Estate. Until 1921, the main drive ran from the lodge at the southern end of the site. At that date, the drive was closed, and the present lodge, gates and drive constructed. They are a consciously designed ensemble, in the tradition of a small number of works of a period that reputedly saw the last flowering of the English Country House.

APPRAISAL

7. I first turn to appeal a. The dismantling of the brick walls and piers, and their re-erection to an identical pattern elsewhere, would result in the total loss of the existing structure. Only a part of the materials out of which they are built would survive, namely the bricks and the stone. The rebuilt walls and gate piers would be a copy of the original structure which utilises the original materials, but they would not be the original structure, as their fabric would be lost due to the act of demolition. The outcome is the total demolition of, rather than the moving of, the structure.

8. Paragraph 90 of Circular 8/87 sets down criteria for the consideration of applications to demolish listed buildings. The first of these is the importance of the building. Its historical interest lies in it representing a change to the form of the park which resulted in amendments to the layout of the environs of the house. Further, it is a rare example of a development on a Great House Estate during a period which saw little development on such estates. It is thus of historical importance. Its architectural merit derives in part from the shape of the entrance, which provides a cour-de-honneur at the entrance to the park, and in part from the form of the walls, and the design of the gate piers, which are of a significant quality in their own right, and by their simplicity, speak of the new architectural fashions that were starting to challenge the then prevalent classicism. The appeal structures are therefore intrinsically important because of their historical interest and architectural merit. In the national context, they

are significant because they represent a rare type of building for their date. They also provide a key element in the setting of the lodge. This, too, is a significant building, as its thatch looks back to 19th. century romanticism, whilst its severely unadorned form and simple openings look forward to the Modern Movement. Hence the appeal walls and gatepiers are of considerable significance, and not just in a local or regional context.

9. The second relevant ~~criticon~~ criterion is the condition of the building, and the economic burden it would pose on the appellant. The gate piers are sound, but all of the walls show evidence of distress. This distress is mainly due to the presence of tree roots, although away from these, uneven settlement and collapse demonstrates that the foundations have failed. The appellants engineer argues that the walls would have to be rebuilt in their entirety, and even then, the trees would subsequently cause problems. The Council's engineer pointed to areas of wall where he considers that repairs would be practicable. The presence of buttresses suggests that some of the movement is long established, and some of the cracks and areas of failure appeared to be of considerable age. It appears that substantial parts of the wall will not move further, and should survive if the cracks are stitched, and the open brickwork repointed in a soft lime mortar. Where movement is still taking place, it appeared to me that about half the run of walling could be stabilised by underpinning and repair, whilst the remainder would need to be rebuilt, as it is too distressed, and too close to the tree roots, to survive underpinning. Hence between half and three quarters of the wall could be preserved in-situ if repairs take place. The abutting trees would need to be removed to prevent further damage, but this is not an unacceptable loss in the context of this well wooded area of the estate.

10. No estimate has been provided for the cost of repair, which would be considerable. However, the appellant has spent very substantial sums of money upon the restoration of Markyate Cell. In addition, the gate piers and walls, if preserved, would have no economic worth to the appellant. On the other hand, there is no evidence that historic buildings repairs grants have been sought from local or national sources. Without an estimate of the cost of repairs and an indication of the availability and the value of historic buildings grants, it is not possible to assess whether the preservation of the appeal structures would place an intolerable economic burden upon the owner.

11. Paragraph 91 of Circular 8/87 points out that the number of buildings of special architectural and historic interest are limited, which sets a presumption in favour of preservation. As the date when the appeal structures were built results in them being a rare type of building, this presumption is particularly strong in this instance, even if one takes into account the uncertainty as to whether repairs would impose an unreasonable economic burden upon the appellant.

12. I now turn to appeal b. The appellant's agent indicates that the right hand sight line has a vision splay of 36.6 metres when the minor road distance is 4.5metres. Planning Policy Guidance Note No. 13 indicates that for a road subject to the national speed limit, the vision splay should be 215 metres. The major road distance is so far below the preferred distance that the use of this access represents a significant hazard to the safety of the traffic using the A5. That the access is frequently used by slow and large farm machinery further exacerbates the extent of the hazard. The proposed access would comply with the specification for sight lines laid down in the Planning Policy Guidance Note except when vehicles are parked in the lay-by. However, in this circumstance, the northern sight line

is some 96.5 metres, and hence is significantly superior to the sight line enjoyed by the existing access. The proposed access would therefore enhance the safe movement of vehicles along this stretch of the A5 so long as the existing access were to be closed.

13. The Council proposed that an access could be taken from a point adjoining the lay-by, and then run parallel with the A5 until it meets the existing access at a point just behind its junction with the A5. Vehicles using this access would conflict with traffic parked upon, or entering, or leaving, the lay-by. Further, vehicles running parallel to, but just off, the A5 could, at night, lead to a dangerous confusion in the mind of drivers as to the extent of the carriageway. Details of the objections to the Council's proposal are explained in detail by an officer of the Department of Transport in a letter dated the 19 October 1990.

14. The existing complex of gatepiers and walls is visually very attractive. For structures of an identical design to front onto the A5 as proposed by the appellant would not harm the appearance of the area. Further, they would form an architecturally appropriate introduction to Markyate Cell, even if they are constructed either of new bricks, or second hand bricks from a source other than the existing gatepiers. In addition, the link to the existing drive would not result in harm to the existing trees, and its surface would not damage the appearance of the park so long as it matched that of the existing drive. The proposed design would therefore not detract from the setting and character of the park to Markyate Cell, so long as it does not necessitate the demolition of the existing entrance gate piers and the flanking walls.

15. Of the conditions proposed by the Council, all are necessary to ensure the proper implementation of the development and highway safety.

I have the honour to be
Sir
Your obedient Servant,



GEOFFREY S S LANE, DiplArch DiplTP RIBA MRTPI
Inspector

February 1991

Persons present at the site visit:

Mr Armstrong	-Representing the Appellant
Mr Bromley	-Representing the Appellant
Miss Bochuachi	-Dacorum Borough Council



Under the provision of Section 284 and 288 of The Town and Country Planning Act 1990, 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 six 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 288 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 orders, 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 1988 (SI 1988 No.944), 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.

TOWN & COUNTRY PLANNING ACTS, 1971 and 1972



DACORUM BOROUGH COUNCIL

To Mr J Armstrong
Cell Park
Markyate Cell
Markyate
Herts
Faulkners
49 High Street
Kings Langley
Herts WD4 9HU

.....Formation of vehicular access.....
.....
at.....Markyate Cell.....
..... Watling Street., Markyate

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 dated21. October. 1989..... and received with sufficient particulars on23. November. 1989..... and shown on the plan(s) accompanying such application.

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

The gateway structure is related to the existing lodge and avenue of trees and therefore forms an intrinsic part of the entrance to the grounds of this Grade II* listed building. The demolition of the gateway structure would have a seriously detrimental effect on the historic character of this important country house and on its parkland setting.

Dated24th..... day ofJanuary..... 1990

Signed.....*Wm Barnard*.....

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.