
Appeal Decision

Site visit made on 27 January 2021

by S Tudhope LLB (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 March 2021

Appeal Ref: APP/Z1510/W/20/3259577

The Lawn House, Felix Hall Park, Hollow Road, Kelvedon, Essex CO5 9DG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr and Mrs K Wilson against Braintree District Council.
 - The application Ref 20/00512/VAR is dated 16 March 2020.
 - The application sought planning permission for Erection of a single storey dwelling within new walled garden (replacing 1 No. apartment within Felix Hall) without complying with a condition attached to planning permission Ref 13/00811/FUL, dated 23 January 2014.
 - The condition in dispute is No 2 which states that: Notwithstanding the approved plans list above, the following elements are specifically excluded:- The proposed door and portico on the north elevation at [sic] shown on Drawing reference 25E. Details shall be submitted to and approved in writing prior to the commencement of the development.
 - The reason given for the condition is: To ensure that the work does not affect the character or setting of the listed building on the site and in the interests of the appearance of the countryside.
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Decision

1. The appeal is dismissed and planning permission for the erection of a single storey dwelling within new walled garden (replacing 1 No. apartment within Felix Hall) without complying with a condition attached to planning permission Ref 13/00811/FUL is refused.

Application for Costs

2. An application for costs was made by Mr and Mrs Wilson against Braintree District Council. This application is the subject of a separate Decision.

Procedural Matter

3. The appeal was submitted against the non-determination of the application. Had the Council determined the application the subject of this appeal it would have refused it. The Council's objections to the variation of condition 2 would have been on the grounds that the proposed variation to the design of the walled enclosure would not preserve or enhance the wider setting of Felix Hall, The Clock House or The Orangery, resulting in less than substantial harm to the setting of the heritage assets and that the harm would not be outweighed by any public benefits. I have had regard to the putative reason for refusal in my consideration of the appeal.

Background and Main Issue

4. The appeal site is situated within the grounds of Felix Hall, an eighteenth century, Grade II listed mansion. Its significance derives primarily from its physical form and fabric, its history of prominent owners and its position within the landscape. The building is undergoing restoration to return it to use as a single dwelling, having been fire damaged in 1940 and subsequently occupied as two ground floor apartments. Various planning permissions and listed building consents have been granted in relation to Felix Hall as part of this process.
5. The original grounds of Felix Hall have been subdivided into several separate ownerships and it has various buildings associated with it, including the Grade II listed buildings, The Clock House, originally part of the mansion's service and stable range, and The Orangery, originally the service wing of the mansion, both converted to houses in the twentieth century.
6. In 2014, planning permission was granted subject to a legal agreement to create a single storey dwelling within a new walled garden, to replace one of the approved apartments within Felix Hall. Following restoration, Felix Hall would revert to a single residence. It is a condition attached to this permission, ref. 13/00811/FUL, that is the subject of this appeal. The evidence states that the design concept was for a contemporary single storey dwelling, in a simple classical bay form, utilising traditional materials which would be subservient to Felix Hall. The Council considered the approved scheme to be a modern interpretation of the type of buildings and enclosures that would normally be associated with an historic country house. There is no dispute between the parties that the original permission has been implemented.
7. The proposed alterations the subject of this appeal include changes to the fenestration, an increase in internal footprint (by replacing the garden store area with additional rooms), an increase in the width and height of the flanking and central gable projections and associated changes to the internal layout. The installation of rooflights, and solar panels and alterations to the design of the boundary wall, including the installation of additional sets of gates, are also proposed. Some of the proposed changes are intended to address the concerns raised under a previously dismissed appeal¹.
8. In this context, the main issue is whether or not varying the condition to allow alterations to the approved development would preserve or enhance the significance of Felix Hall.

Reasons

9. I am required under Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act), 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.
10. The appeal site is approached via a long access road set within an open landscape. Felix Hall and the appeal site are visible in views from much of the approach road, but there would be limited public views of the proposal. Although less than substantial harm was found in relation to the erection of a

¹ APP/Z1510/W/20/3248234

dwelling at the site, permission was granted as it was considered that the public benefit of the restoration of Felix Hall, enabled by the erection of the approved dwelling, outweighed the identified harm.

11. I note there is no objection to an increase in the internal volume of the proposed dwelling and that the appeal scheme has addressed the concerns of the Inspector in the previous appeal, insofar as the covered parking area would be retained rather than be lost to additional internal accommodation. In this manner the quality of the courtyard area of the proposed dwelling would be maintained.
12. I have had regard to the concerns of the Historic Buildings Consultant in respect of the alterations to the proportions of the proposed building and the level and style of fenestration proposed. However, although the flanking and central gable widths and height would be greater than that of the extant permission, the height of the central gable has been reduced when compared to that proposed under the dismissed scheme. The overall 'H' shaped layout and main roofline height would be retained, and the position, footprint and overall scale of the proposal would be largely consistent with the extant permission. I am satisfied that the proposed increase in the proportions of the approved building would not, therefore, threaten the dominance or significance of the heritage asset.
13. In addition, although the level of glazing would decrease the solid to void ratio from that previously approved, the original design concept was accepted as a contemporary interpretation of a 'classical pavilion' or subsidiary building to Felix Hall. The glazing proposed is of contemporary style, accords with modern living expectations and would not, because of the scale of the proposal and its separation distance from Felix Hall, unacceptably compete with the grand proportions of the mansion or its six over six panel, sash windows. Particularly as the openings of the proposed dwelling would be largely screened from view by its enclosure within the boundary 'garden' wall.
14. I acknowledge that the glazing proposed to the gable ends would be apparent above the boundary wall. However, the glazing would not be excessive in height or scale, nor would it result in unacceptable levels of light pollution, especially given the many large openings, situated at a much greater height, within Felix Hall itself.
15. I consider the alterations to the chimney position, the side elevation porch, the installation of solar panels and the insertion of rooflights to be acceptable, subject, in the case of the proposed rooflights, to the imposition of a condition to ensure the installation of a 'conservation' type, to be first agreed by the Council, were the appeal allowed. The proposed insertion of three sets of gates within the boundary wall would also be acceptable, subject to the imposition of a condition to secure the precise details of the proposed gates.
16. Nevertheless, the Council has raised concerns with the alterations proposed to the design of the 'garden' wall. Although the design of the wall was not raised as an issue in the earlier appeal, and therefore did not form part of the previous Inspector's considerations, the evidence shows that the appellants were made aware of the concerns prior to the submission of this appeal.
17. It is clear from the submitted drawings that the approved design of the 'garden' wall is proposed to be changed. The approved design for the wall

utilises soft red bricks, set to an English Garden Bond, with traditional raking brick buttresses and brick coping detail. Its materials and design would be in keeping with existing walling between the nearby heritage assets and that of The Clock House and The Orangery and would be recessive within the landscape setting, ensuring the overall development would not overtly visually compete with Felix Hall which has a rendered finish.

18. The 'garden' wall is, therefore, a key element of the original design and would act as an enclosure, mimicking a traditional walled garden of the type often connected with prominent buildings like Felix Hall. The dwelling would be nestled within the confines of the wall, minimising its impact and ensuring its separation from the heritage asset.
19. The appeal scheme proposes a rendered wall with larger buttresses. In addition, no variation in height of the wall along the sides and south east of the site has been proposed. I consider that these changes would fundamentally alter the appearance of the development to its detriment. Notwithstanding the acceptability of other elements of the proposal, by virtue of the proposed use of render and the associated dilution of the carefully considered approved details of the 'garden' wall, the appeal scheme would visually compete with and distract from Felix Hall and would unacceptably erode its dominance in the landscape.
20. Given the importance of the design of the wall to the acceptability of the overall scheme, I do not consider that this is a matter which could be adequately dealt with by the imposition of a condition were I to allow the appeal. As a consequence, I conclude that the appeal scheme would result in less than substantial harm to the setting of Felix Hall and would fail to preserve or enhance its particular significance. The National Planning Policy Framework (the Framework) indicates that great weight should be given to the conservation of designated heritage assets. While the harm would be less than substantial, there are no public benefits arising from the proposed changes to the approved scheme that would outweigh the significant weight to be attached to the harm I have identified.
21. The proposal would conflict with Policies RLP90 and RLP100 of the Braintree District Local Plan Review 2005, Policy CS9 of the Braintree District Council Core Strategy 2011 and the requirements of the Framework, which together and amongst other matters seek the protection and enhancement of the historic environment, including the setting of listed buildings.
22. Although unadopted policies cannot be afforded full weight, the proposal would also conflict with the relevant sections of Policies LPP1, LPP50, LPP55 and LPP60 of the Braintree District Council Draft Local Plan 2017 which require, amongst other matters the protection and enhancement of the historic environment and the character of the countryside.
23. Condition 2 of planning permission ref: 13/00811/FUL remains valid and overall meets the tests set out in paragraph 55 of the Framework.

Conclusion

24. For the above reasons the appeal is dismissed.

S Tudhope Inspector