



Appeal Decisions

Site visit made on 17 July 2024

by I A Dyer BSc (Eng) FCIHT

an Inspector appointed by the Secretary of State

Decision date: 14th August 2024

Appeal A: APP/A1910/W/23/3334767

New Lodge, Dunstable Road, Markyate, St. Albans, Hertfordshire, AL3 8QJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Adrian Mateas against the decision of Dacorum Borough Council.
 - The application reference is 23/02168/RET.
 - The development is retention of existing boundary fence.
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Appeal B: APP/A1910/Y/23/3334769

New Lodge, Dunstable Road, Markyate, St. Albans, Hertfordshire, AL3 8QJ

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) against a refusal to grant listed building consent.
 - The appeal is made by Mr Adrian Mateas against the decision of Dacorum Borough Council.
 - The application reference is 23/02373/LBC.
 - The works are retention of existing boundary fence.
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Appeal C: APP/A1910/D/24/3340265

New Lodge, Dunstable Road, Markyate, St. Albans, Hertfordshire, AL3 8QJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Adrian Mateas against the decision of Dacorum Borough Council.
 - The application reference is 23/02858/RET.
 - The development is retention of storage containers.
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Decisions

Appeal A

1. The appeal is dismissed.

Appeal B

2. The appeal is dismissed.

Appeal C

3. The appeal is dismissed.
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Preliminary Matters

4. As the proposal relates to a listed building I have had special regard to sections 16(2) and 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) (the Act).
5. There is no dispute that the site lies within the Chilterns National Landscape, which is a protected landscape. I have, therefore had special regard to section 85(A1) of the Countryside and Rights of Way Act 2000 (as amended) (the CRWA).
6. The address of the site differs slightly between the three application forms. So as to achieve consistency in the identification of the site I have used the address as it appears on the Decision Notices for the applications in my banner heading for all three.
7. At the time of my site visit the fence had been erected and the containers were present within the site. The proposals seek their retention and are, therefore, retrospective. I have determined these appeals on this basis.

Main Issues

8. The main issues in these appeals are: -
 - The effect of the proposal on the character and appearance of the site and the surrounding area, including any effect on the landscape character and scenic beauty of the Chilterns National Landscape (the CNL) including any effects on trees; (Appeal A and C only) and: -
 - Whether the proposal would preserve a Grade II registered park and garden "Markyate Cell Park" (Ref: 1000915) (the park), and any of the features of special architectural or historic interest that it possesses and preserve the setting or any features of special architectural or historic interest of the nearby Grade II* "Cell Park" (Ref: 1173939) listed building (the LB). (Appeals A, B and C)

Reasons

Character and appearance (Appeals A and C only)

9. The site lies adjacent to the busy Dunstable Road, the A5183 (the road). The site is well-treed and is screened from the road by a mature hedge. A footway runs alongside the road adjacent to the hedge. There is no disagreement between the parties that the development lies outside of any defined settlement and within the countryside as defined by the development plan.
10. From the road the hedge softens the border of the highway and gives the area a verdant, rural appearance. From within the site the treed nature of the appeal site provides additional verdancy. The tree belt within the site and the hedge provide a screening buffer between the rural landscape of Markyate Cell Park and the busy highway. Overall, I find that this verdancy makes a significant contribution to the character and appearance of the area.
11. From the road the hedge provides a partial visual barrier to screen the fence and containers. The hedge is, however, at least in part deciduous and the degree of screening provided will vary with the seasons. The speed of traffic

and need to control their vehicle is likely to reduce the awareness of drivers of a fence and the containers behind the hedge. However, pedestrians and cyclists who would be passing more slowly close by to the fence and passengers within the cars would have views of the structures. The visibility of the storage containers, although currently screened by the hedge and fence, would be increased were either of these to be lost.

12. The fencing is distinctly industrial in its appearance and stretches over a significant length of the roadside. Given the rural character and appearance of the area the stark, industrial appearance of the fence appears visually incongruous and undermines the otherwise verdant, bucolic character of the area. The storage containers, which are box-like metal structures and again of harsh, manufactured appearance have a similar, though more localised effect. From within the site the structures are clearly visible and, again, incongruous and harmful features in the verdant, rural landscape.
13. Further, many of the trees in the vicinity are within the ownership of the appellant. These have no specific protection by virtue of Tree Protection Orders or an encompassing Conservation Area. As such they could be removed by the landowner. This would result in the stark and urbanising industrial type fence and containers being located in a visually prominent frontage in the countryside.
14. Further afield the fence and containers are effectively screened by existing planting and the lie of the land and have no effect on general views of the landscape. Thus there is no wider effect on the CNL.
15. No arboricultural statement or report accompanied the installation of the fence. During my site visit I observed that trees within the hedge were, in places, exhibiting signs of stress and die-back, albeit that this was not limited solely to the area alongside the fence. Nonetheless the fence is founded on a concrete base.
16. Whilst the appellant says that the wall footings were installed with due care, insufficient evidence has been provided to assess if there has been any significant impact on the hedge along the road and the trees and shrubs therein. As I have identified above, this planting provides a visual buffer between the appeal site and the busy road.
17. In the absence of a full method statement for the works I cannot be satisfied that the fence has been installed without damage to the root systems. Furthermore, as the works have already occurred, it is not possible to secure tree protection through a planning condition.
18. The positioning of the storage containers is close to existing mature trees within the site. Their installation has not, however, involved any excavation of the ground or significant foundations. From the evidence before me the containers have been in the same position for several years. The ground around the containers is open and would allow percolation of water and transmission of gasses freely. During my site visit I did not observe any significant impact on the adjacent trees. I therefore find that the containers will not affect the health and wellbeing of the mature trees near them which contribute to the screening belt between the site and the road.

19. Whilst, at the time of my site visit, the inside face of the fence was painted black and the outside grey, the appellant has stated his intention to paint the panels green. It is argued that the fence is more environmentally friendly than a wooden fence that would require constant repainting and re-staining. The containers have been painted black, seeking to mitigate their visual impact. At the time of my site visit the painting of the containers was incomplete and some parts of them remained in a visually prominent and incongruous orange colour.
20. Whilst the choice of colour of the fence and containers may, to a degree, reduce their visual impact, and this could be controlled by a suitably worded planning condition, the overall harmful urbanising effect that I have identified above would remain. A timber fence could be preserved and maintained using more ecologically friendly substances. Further, not all paints used to finish metal structures are necessarily more ecologically friendly. I thus give no weight to the argument put forward regarding reduced harm to the environment through the material used in the fencing.
21. Section 85(A1) of the CRWA places a statutory duty upon me to have regard to the purpose of conserving and enhancing the natural beauty of the CNL. However, I have found that the development does not harm the landscape and scenic beauty of the CNL and thus its scenic beauty is conserved. The development thus accords with the aims of policy CS24 of the Dacorum Borough Council Core Strategy (2013) (the Core strategy) which seeks to conserve the special qualities of the CNL.
22. Thus, with regard to Appeal A, I conclude that whilst the development does not have an adverse effect on the landscape character and scenic beauty of the CNL, it has a harmful effect on the character and appearance of the site and the surrounding area. The development is, therefore, contrary to policies CS7, CS11, CS12 and CS25 of the Core Strategy and Policy 99 of the Dacorum Borough Local Plan 1991-2011 (2004) (the Local Plan) in as much as jointly these seek, amongst other things, to conserve and enhance Dacorum's natural landscape, ensure that development has no significant impact on the character and appearance of the countryside, integrates with the streetscape character and respects adjoining properties in terms of materials, and preserves important trees, hedgerows and woodlands.
23. For similar reasons the development is contrary to paragraph 135 of the National Planning Policy Framework (the Framework) which seeks to ensure that developments will add to the overall quality of the area, are visually attractive and are sympathetic to local character, including the surrounding landscape setting.
24. In regard to Appeal C I find that whilst the development does not have an adverse effect on the landscape character and scenic beauty of the CNL, or the longevity of any trees in the vicinity, it nonetheless has a harmful effect on the character and appearance of the site and the surrounding area. It is, therefore, contrary to policies CS7, CS11 and CS12 of the Core Strategy which seek, amongst other things, to ensure that development has no significant impact on the character and appearance of the countryside and respects adjoining properties in terms of materials.

Heritage (Appeals A, B and C)

25. The LB is a large isolated mansion set on a terraced hillslope. The earliest part of the LB dates from 1539-40 and stands on the site of Markyate Priory, founded in the 12th century. Following the dissolution of the monasteries the building passed through several owners who, over time, built several additions and remodelled the building. Nonetheless much of the historic fabric remains from the various phases of the building's remodelling. Its significance for the purposes of this appeal is as an example of the country house of a prominent family set within its landscaped country park and the evolution, over time, of the house and its estate.
26. New Lodge is an early twentieth century lodge house built in a cottage orné style with a thatched roof and rendered elevations. It is located in the north-west corner of the park, built to create a new entrance and driveway to the house from the north-west corner of the park linking to a new entrance on the north elevation of Cell Park.
27. The appellant identifies that the park has been divided up and New Lodge is now in its own separate plot and not within the same ownership as the LB. Further they identify that it has no national or local listing status.
28. For the purposes of the Act, a listed building includes any structure that is within its curtilage which has existed since before 1st July 1948. As structures within the curtilage that have a principal and accessory relationship to the main building, the outbuildings are also consequently listed. Whilst not in the list description, listings are primarily for identification purposes and do not provide an exhaustive or complete description of the special interest.
29. New Lodge is identified by the Council as a curtilage listed structure associated with the LB. From the date of its construction, New Lodge was in the same ownership as Cell Park and it remained in the same ownership at the time of listing in 1952. New Lodge was built before 1st July 1948 and it sits within the designed Markyate Cell Park, now a grade II registered park and garden. The lodge's function when first built was ancillary to the main house and provided accommodation. For all these reasons I find New Lodge to be curtilage listed and, on the evidence before me I see no reason to disagree with the Council's view.
30. The significance of New Lodge in so far as it relates to these appeals is derived from its architectural and historic interest connected to its role and association with the LB to which its location, form and historic fabric all contribute. The nature of the building signifies the presence and status of the LB confirming its history. Therefore, it has significance in its own right but also contributes positively to the special interest of the LB through its historical and functional association with it and its presence in its setting.
31. The park was laid out in the 19th century around the LB and was remodelled in the early 20th century to add a formal garden. During the 1910s and 1920s further alterations were made to the garden and drives accessing the LB and its park.
32. The historic context of the LB would have been a substantial country house set within its own park. The current context in which it is experienced comprises

the listed park and garden which provides a tranquil rural setting to the LB. I find that the verdant parkland contributes to its special interest because it provides an appealing landscaped setting to it and testifies to the position of occupiers of the building in society. Whilst a later access and realigned drive now serve the LB, the positioning of New Lodge as a gatehouse and the tree lined track provide a legible narrative of the phasing of development of the LB.

33. Given the above, I find that the special interest of the park, insofar as it relates to these appeals, and the contribution that the park makes to the setting of the LB, to be primarily associated with its aesthetic value as a landscaped setting for an important country house and the legibility of the phased development of the LB and its park. This directly contributes to its special interest for the reasons given.
34. The development and works add distinctly modern structures with an industrial appearance to the edge of the park. As I have identified above their appearance is visually incongruous and undermines the otherwise verdant, bucolic character of the area harming the landscaped setting of the LB. Whilst screened to a degree, by the hedge, as discussed above, they are nonetheless noticeable to passers-by and clearly visible within the site.
35. Further, the fence returns back from the road, cutting across the track. Given the solid nature of the fence, views along the drive from the gates at New Lodge are suddenly curtailed and any appreciation of the New Lodge as a gatehouse and the track as a former drive serving the LB are lost, harmfully eroding the legibility of the phased development of the park and the LB.
36. The appellant identifies that the park, New Lodge and Cell Park are privately owned and not accessible to the public. However, listed buildings and registered parks and gardens are safeguarded for their inherent architectural and historic interest irrespective of whether or not public views of the land, building or any of their curtilage structures can be gained.
37. The appellant argues that the development and works lie some distance from the principle building and other structures within its grounds and that these are screened from each other by intervening topography. However, the setting of a LB is not determined by distance or lines of site, but by the contribution that it makes to the significance of the LB.
38. It is argued that the fence provides a boundary to the edge of the park. However, there is no evidence before me of the existence of any hard boundary in this location, the line of the fence lying behind a mature hedge.
39. I have identified above that, whilst it may mitigate the visual impact of the proposal to a degree, painting the structures will not eliminate their visual harm.
40. I note that the Council did not consider that the containers would harm the LB, but identified harm to the park by virtue of their visual incongruity with the verdant scene. This notwithstanding, I have a duty to consider impact on the setting of the LB, and, as will be seen above, the landscaped verdancy of the park, which contributes towards the setting of the LB, contributes to its important features.

41. Given the above, I find that each of the developments and the works fail to preserve the special interest of the registered park and garden and the listed building.
42. Paragraph 205 of the National Planning Policy Framework (the Framework) advises that when considering the impact of development on the significance of designated heritage assets, great weight should be given to the asset's conservation. Paragraph 206 goes on to advise that significance can be harmed or lost through the alteration or destruction of those assets and that any such harm should have a clear and convincing justification.
43. Given the scope of the works and that they do not alter any building or endanger any of the existing mature trees lining the drive, but alter how the park and LB are experienced, I find, in this instance, the harm to be less than substantial but nevertheless of considerable importance and weight. Where a proposal would lead to less than substantial harm to the significance of designated heritage assets, paragraph 208 of the Framework advises that this harm should be weighed against the public benefits of the proposal, including, where appropriate, securing its optimal viable use. The continued use of the appeal property as a residential dwelling is not dependent on the proposals as New Lodge has an ongoing residential use that would not cease in its absence.
44. It will be seen above that I have not been swayed by arguments that the maintenance of the fence would have environmental benefits.
45. The appellant argues that the fence and containers are needed for security purposes as he has experienced trespass on his land and theft. The Framework identifies, at paragraph 135(f) that planning decisions should ensure that developments create places that are safe and where crime and disorder, and the fear of crime, do not undermine the quality of life. Nonetheless, this security could be provided by other, less visually intrusive structures. I therefore give negligible weight to the public benefit to the community of discouraging or preventing crime resulting from the development and works.
46. The appellant further postulates that the fence is needed to reduce noise and pollution from traffic. However, there is no evidence before me to demonstrate that current traffic noise or fumes are at unacceptable levels. Further, such nuisance could, again, be addressed by other designs of fence that may be less visually intrusive. This would in any case be a private benefit.
47. Thus, I do not find that, in this instance, the public benefits are sufficient to outweigh the harm that I have identified.
48. Given the above and in the absence of any public benefits that has been brought to my attention that would outweigh the harm that would be caused, I conclude that, on balance, the development and works fail to preserve the special historic interest of the Grade II registered park and garden and the Grade II* listed building. This fails to satisfy the requirements of the Act, paragraph 206 of the Framework and conflicts with policies CS12 and CS27 of the Core Strategy and policy 119 of the Local Plan. This is because these policies seek, among other things, to ensure that development proposals respect adjoining properties, favour the conservation of heritage assets and protect, conserve and if appropriate enhance their integrity, setting and distinctiveness.

49. I find no conflict with Policy 120 of the Local Plan, as this relates to conservation areas and the appeal site lies outside of any identified conservation area.

Other Matter

50. The appellant has identified that a tall industrial boundary fence has been erected opposite the appeal site. I do not have the full planning history of that fence. However, it surrounds a business premises, and its context is not directly comparable to the open, landscaped park of the appeal site.

Conclusion

51. The proposed development would be contrary to the development plan and there are no other considerations which outweigh this finding. Given the above and considering all other matters raised, the appeals should be dismissed.

I A Dyer

INSPECTOR