The Planning Inspectorate

# Appeal Decisions

Site visit made on 4 July 2020

**by M Savage BSc (Hons) MCD MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 10 August 2020**

## Appeal A: APP/M5450/X/19/3226409
## 85 Kynance Gardens, Stanmore HA7 2QJ

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr Mahadevan Arulkumar against the decision of the Council of the London Borough of Harrow.
- The application Ref P/5629/18, dated 21 December 2018, was refused by notice dated 15 February 2019.
- The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
- The development for which a certificate of lawful use or development is sought is demolition of existing Garage, Addition of a 10.6m X 3.6m outbuilding (to be used as ancillary to the main dwelling for the purposes of storage and recreation) and addition of a front entrance porch.

**Summary of Decision: The appeal is dismissed and an LDC is not granted**

## Appeal B: APP/M5450/C/19/3236999
## 85 Kynance Gardens, Stanmore HA7 2QJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Mahadevan Arulkumar against an enforcement notice issued by the Council of the London Borough of Harrow.
- The enforcement notice was issued on 15 August 2019.
- The breach of planning control as alleged in the notice is Without planning permission:
  (1) The construction of a single storey rear extension on the Land ("the Unauthorised Single Storey Rear Extension")
  (2) The construction of an outbuilding located at the rear of the Land ("the Unauthorised Outbuilding")
- The requirements of the notice are:
  1. Demolish the Unauthorised Single Storey Rear Extension
  2. Make good any damage caused to the building as a result of the above step 1 and ensure that all materials used shall match those used in the existing building
  3. Demolish the Unauthorised Outbuilding
  4. Remove from the Land all materials and debris arising from compliance with the aforementioned requirements of the notice.
- The period for compliance with the requirements is Three (3) calendar months after the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2) a, f and g of the Town and Country Planning Act 1990 as amended.

**Summary Decision: The appeal succeeds in part and the enforcement notice is upheld as varied in the terms set out below in the Formal Decision.**

## Procedural Matters

1. In respect of the LDC appeal, the appellant submitted a householder appeal form. However, it is clear from the documentation submitted that the appellant is appealing against the refusal of a lawful development certificate application and I have dealt with the appeal on that basis.

2. The LDC application was made under S192, however, it is evident that the development has already occurred. Although it is clear from the evidence before me that the development was in situ at the time the application was determined, the application form states that the proposal had not been started at the time of the application. Lawfulness in an LDC submitted under S192 is to be determined at the time of the application, as if the operational development had begun on that date. The Council determined the application on this basis and I shall do the same.

3. Although the appellant only ticked ground (a) on the S78 appeal form, it is evident from his submission that he is also seeking to appeal under grounds (f) and (g). The Council has responded to the matters raised under these grounds of appeal and so I am satisfied that there would be no injustice to either party by my consideration of these grounds.

## The S195 Appeal (Appeal A)

### Main issue

4. The main issue of the S195 appeal is whether the Council's decision to refuse the certificate of lawfulness was well-founded.

### Reasons

5. An application under S192(1)(a) of the Act[1] seeks to establish whether any proposed use of buildings or other land would be lawful. S192(2) sets out that if on application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect. Planning merits form no part of the assessment of an application for a lawful development certificate (LDC) which must be considered in the light of the facts and the law. In an application for a LDC, the onus is on the applicant to demonstrate on the balance of probabilities that the proposed development would be lawful.

*Porch*

6. The appellant strongly argues that although the proposed porch would fall slightly short of the required height, it would not have a harmful impact on the character of the dwelling or the character of the street scene. However, as set out above, I cannot consider the planning merits of the proposal. The porch would measure up to 3450mm which would exceed the limitations set out in Schedule 2, Part 1, Class D, D.1 (c) of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)(the 'GPDO'). Failure to comply with the limitations set out within the GPDO means that the proposed development would not be permitted development failing within Class D.

[1] Town and Country Planning Act 1990 (as amended)

*Outbuilding*

7. Class E of the GPDO permits the provision within the curtilage of the dwellinghouse of – (a) any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such, or the maintenance, improvement or other alteration of such a building or enclosure. The proposed outbuilding would measure 10.6m x 3.6m and would replace a pre-existing garage located to the rear of the dwelling.

8. The Council refused the application for the outbuilding on the basis that its excessive scale, together with the absence of any justification for the necessity of the excessive large scale of the outbuilding for the uses proposed, on the balance of probabilities would not be for purposes incidental to the enjoyment of the dwellinghouse. In support of its case, the Council has drawn my attention to case law, John Emin v SSE 1989 JPL 909 where it was held that consideration of the term "incidental to the enjoyment of the dwellinghouse" there should be some connotation of reasonableness in the circumstances of each case, it should not be based solely on the unrestrained whim of a householder.

9. The test is whether the proposed building is genuinely and reasonably required or necessary in order to accommodate the proposed use or activity and thus achieve that purpose. Size is a relevant but not conclusive factor in determining whether the proposal would be incidental to the use of the main dwellinghouse. The appellant asserts that the outbuilding would be used for storage, exercise and games, which are incidental to the enjoyment of the dwellinghouse. However, the submitted drawings do not show how the building is to be laid out, nor is there any detail as to what the building would contain in terms of equipment.

10. The outbuilding would have a footprint of approximately 37.8 sqm, which would provide very spacious accommodation. The original dwellinghouse by comparison had a footprint of approximately 42sqm, or 53.34sqm as extended. Whilst the dwelling has additional floorspace at the first floor, the size of the proposed outbuilding is an indicator that its uses are unlikely to be ancillary to the main use of the building as a dwellinghouse. As a matter of fact and degree I find that the proposed outbuilding would be of significant size when compared to the host dwelling.

11. I saw that the outbuilding, as constructed, has been divided into three rooms, one of which is a bathroom. The Technical Guidance[2] advises that a purpose incidental to a house would not cover normal residential uses, such as the use of an outbuilding for primary living accommodation such as a bedroom, bathroom or kitchen. Although the appellant states that he is prepared to remove the shower and WC from the building, the inclusion of a bathroom is indicative that the outbuilding, by virtue of its size compared to the host dwelling, would not be incidental to the use of the main dwellinghouse.

12. It has therefore not been demonstrated why an outbuilding with a footprint of 37sqm is reasonably required. Accordingly, it has not been demonstrated, on the balance of probabilities that the proposed building was, on the date the LDC application was made, required for a purpose incidental to the enjoyment

[2] Permitted development rights for householders (2019)

of the dwellinghouse. Consequently, it would not be permitted development falling within Class E.

13. The Council also refused the application on the basis that insufficient information had been provided to enable it to establish whether the proposed development would comply with the limitations of Class E, E.1(b) of the GPDO. Development is not permitted by Class E if the total area of ground covered by buildings, enclosures and containers within the curtilage (other than the original dwellinghouse) would exceed 50% of the total area of the curtilage (excluding the ground area of the original dwellinghouse).

14. Since the area around the house includes the front and rear gardens, as well as the area to the side of the property, it is clear from the evidence before me, that even with the single storey rear extension the total area of ground would not exceed 50% of the total area of the curtilage. The outbuilding would therefore comply with the limitations of Class E, E.1(b) of the GPDO in this regard. Nevertheless, for the reasons set out above, I have found that the outbuilding would not be permitted development falling within Class E.

15. The appellant has drawn my attention to planning permissions have been granted at 53 and 87 Kynance Gardens, however, such schemes are not relevant to the LDC before me which is determined in light of the facts and the law. The appellant has also drawn my attention to a certificate of lawful proposed development at 87 Kynance Gardens, however, this was for a single storey rear extension and is therefore not comparable to the appeal scheme before me.

**S195 Conclusion**

16. Having regard to the above and to all other matters raised I find that it has not been shown, on the balance of probabilities, that the proposed development would be permitted development. I therefore conclude that the Council's decision to refuse to issue an LDC was well-founded and the appeal should not succeed. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

## The S174 Appeal (Appeal B)

### Ground (a) appeal

Main Issues

17. The main issues of the appeal are:

- The effect of the single storey extension and outbuilding on the living conditions of the occupants of the appeal property and the occupants of neighbouring properties; and
- The effect of the outbuilding on the character and appearance of the area.

Reasons

*Living conditions*

18. The appeal property comprises a semi-detached property with a modest rear garden in a generally residential area. The property has been extended to the

rear with a single storey rear extension which extends up to the boundary with No 83 Kynance Gardens. An outbuilding is also located to the rear which comprised a bathroom with shower, toilet and sink, a room with various stored items and a room laid out as an office, with desks and various associated equipment. The outbuilding extends up to the boundary with No 87 Kynance Gardens.

19. The appellant asserts that the single storey rear extension would satisfy the requirements of Schedule 2, Part 1, Class A condition A.4(b). However, it has been established through a previous appeal decision, reference APP/M5450/D/19/3224153, that because the works had been commenced it is not possible to grant prior approval for development that has already begun, whatever the reason behind the appellant's failure to notify. This conclusion remains relevant to the appeal before me.

20. The single storey rear extension extends well above the boundary fence and given its position relative to No 83, appears a dominant feature to occupants of No 83, creating a harmful sense of enclosure and overshadowing the rear of No 83 and part of its rear garden. This would be contrary to Policy D1 of the Harrow Development Management Policies Local Plan (HDMPLP)(2013) which seeks to ensure that proposals achieve a high standard of privacy and amenity. It would also be contrary to Policy 7.6B(d) of the London Plan (LP)(2016) which states that buildings and structures should not cause unacceptable harm to the amenity of surrounding land and buildings, particularly residential buildings, in relation to privacy and overshadowing, amongst other things.

21. The adopted Supplementary Planning Document: Residential Design Guide (SPD)(2010), advises that in order to reduce its impact on neighbouring gardens, outbuildings should be sited in the final quarter of the garden and be proportionate to the size of the original dwelling. Due to its substantial size, the outbuilding dominates the rear garden and creates what feels like an alley way between the two buildings, resulting in a harmful sense of enclosure to occupants of the appeal property, contrary to Policy D1 of the HDMPLP, Policy 7.6B(d) of the LP and the SPD, the requirements of which are set out above.

*Character and appearance*

22. Policy CS1.B of the Harrow Core Strategy (HCS)(2012) states that proposals that would harm the character of suburban areas and garden development will be resisted and Policy 7.4 of the LP seeks to ensure a high quality design response. There are limited views of the outbuilding from the public domain and whilst I have agreed that there would be harm to the living conditions of neighbouring occupants, I do not consider that there would be harm to the character and appearance of the area. There would therefore be no conflict with Policy CS1.B of the HCS or Policy 7.4 of the LP in this regard.

Conclusion on ground (a)

23. Although I have found that there would be no harm to the character and appearance of the area, for the reasons given above, I conclude that there would be harm to the living conditions of the occupants of the host dwelling and No 83 Kynance Gardens. Consequently, the appeal on ground (a) should fail.

## Ground (f)

24. An appeal under ground (f) is made on the basis that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach. It is clear from the requirements, that the purpose of the notice is remedy the breach by demolishing the unauthorised structures.

25. The appellant asserts that the steps required by the enforcement notice to demolish the extension would be excessive considering the fact that the extension is almost complete and raises concern regarding the cost of carrying out the requirements. The appellant suggests a solution is to reassess whether the developments, however, I have considered the effect of the developments under ground (a) above and have found that there is harm to living conditions from the development. No lesser steps have been put forward by the appellant and, since the requirements fall within the purpose of S173(4)(a) of the 1990 Act, they are not excessive. Consequently, the ground (f) appeal fails.

## Ground (g)

26. An appeal under ground (g) is made on the basis that any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed. The appellant requests a period of 9 months to allow the him to raise sufficient funds to employ a builder to carry out the works and to make alternative arrangements for storage space.

27. The Council advise that the enforcement notice was served in August 2019 and has therefore had sufficient time already and that 3 months is a reasonable timeframe to secure the works required by the EN. The Council points out that the Council has the power to relax the timeframe and that the appellant can engage the LPA directly if an extension is required.

28. The works would need to be carried out by a builder and would be potentially disruptive to occupants of the appeal property. Whilst I would agree that a period of 3 months is likely to be too short, I consider that extending the compliance period to 9 months would be excessive taking into account the effect of the development on the living conditions of the occupants of No 83. I consider that a period of 6 months would be a more reasonable and proportionate time period which would give the appellant sufficient time to appoint a builder to carry out the works and make any necessary arrangements in terms of the living accommodation. I shall therefore vary the terms of the enforcement notice accordingly.

## Formal Decisions

### Appeal A: APP/M5450/X/19/3226409

29. The appeal is dismissed.

### Appeal B: APP/M5450/C/19/3236999

30. The enforcement notice is varied by the deletion of 'three (3)' in relation to the time period for compliance at Schedule 6 and the substitution of 'six (6)' as the period for compliance. Subject to this variation, the appeal is dismissed and the

enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

*M Savage*

INSPECTOR