

Appeal Decisions

Hearing Held on 2 December 2020

Site visit made on 3 December 2020

by H Butcher BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 December 2020

Appeal A: APP/M5450/W/19/3224655

143-145 Eastcote Lane & 172a Alexandra Avenue, Harrow, London HA2 8RW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Rakesh Raithatha of K & R Estates Limited against the decision of the Council of the London Borough of Harrow.
 - The application Ref P/1180/18, dated 21 March 2018, was refused by notice dated 14 September 2018.
 - The development proposed is redevelopment of the site to provide 31 residential flats comprising 1 x studio, 8 x 1 bed, 18 x 2 bed and 4 x 3 bed units with associated vehicular parking, landscaping and amenity space.
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Appeal B: APP/M5450/W/19/3243513

143-145 Eastcote Lane & 172a Alexandra Avenue, Harrow, London HA2 8RW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Rakesh Raithatha of K & R Estates Limited against the decision of the Council of the London Borough of Harrow.
 - The application Ref P/2156/19, dated 10 May 2019, was refused by notice dated 22 October 2019.
 - The development proposed is redevelopment of the site to provide 26 residential flats comprising 7 x 1 bed, 17 x 2 bed and 2 x 3 bed units with associated vehicular parking, landscaping and amenity space.
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Decisions

1. The appeals are dismissed.

Preliminary Matter

2. As set out above there are two appeals. They differ mainly in respect of the scale of development proposed. Although I have considered each appeal on its individual merits, to avoid duplication, I have dealt with the two schemes together, except where otherwise indicated.

Main Issues

3. A main issue in both appeals is:
 - The effect of the development on the character and appearance of the surrounding area.
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4. In Appeal A there are also the main issues of:

- Whether the proposed development constitutes 'garden land development', and;
- Whether the proposal makes adequate provision for affordable housing.

Finally, in Appeal B there is a further issue of:

- The effect of the proposed parking arrangements on highway safety.

5. A fourth reason for refusal relating to car parking in respect of Appeal A is no longer being pursued by the Council following the submission of further information. There is no need, therefore, for me to take this matter further.

Reasons

Appeals A and B: Character and appearance

6. The appeal site is located on the junction of Alexandra Avenue and Eastcote Lane and is formed by the amalgamation of three plots, each containing a bungalow. The overriding characteristic of development surrounding the junction is of one or two storey properties, be that solely residential or mixed-use development. This type of development occupies three of the four corners of the junction. The exception to this is the remaining corner of the junction where there is a four-storey residential development; namely The Matrix.
7. In addition to my observations above, it can also be said that development on the north side of the junction, where The Matrix and a parade of shops with residential accommodation above are located, is of a broadly higher density than the residential development located on the southern side of the junction.
8. Both appeals are for a four-storey residential development. Development of this scale would be out of character with the overriding context of the site which is predominantly two storeys or lower. Added to this is that the side of the junction on which the site is located (the south) is arguably less dense and more suburban in character than the north side, which would further add to the incongruity of a four-storey development here. In design terms there is nothing before me in either proposal that would overcome my concerns in this respect.
9. The Matrix is a similar development to that proposed in terms of it being four storeys and of a similar design aesthetic. The Matrix is, however, a prominent development given it is the only four-storey building in the immediate vicinity of the junction. That being said, it occupies a bigger site than the appeal site. The Matrix is also chamfered on the junction with a wide pedestrianised area to the front which creates space between the building and the highway. The proposals before me, however, both propose four storeys in far closer proximity to the highway.
10. Overall, therefore, I consider that a four storey development on the appeal site would be overly dominant given its context; more dominant than The Matrix, and, as a result, sufficiently dominant so as to amount to harm to the character and appearance of the area. For these reasons the proposal would conflict with Policies 7.4 of the London Plan 2016 and DM1 of the Harrow Development Management Policies 2013, both of which require consideration of the scale of surrounding buildings and pattern of development.

11. Whilst I accept local character evolves over time, the presence of The Matrix does not, for the reasons set out above, justify the development. Furthermore, the appearance of the bungalows currently and street scene in general provides little justification for the proposals given the harm I have found. Furthermore, the limited opportunities for landscaping in both schemes would not mitigate the visual dominance I have identified.

Appeal A: Garden land

12. Policy CS1 B of the Harrow Core Strategy (CS) sets out that garden development will be resisted. This is consistent with the National Planning Policy Framework (the Framework) which at para 70 sets out that plans should consider the case for setting out policies to resist inappropriate development of residential gardens. Appeal A proposes the development of the gardens of three residential properties therefore it would logically follow that it was garden development and in conflict with Policy CS1 B.
13. My finding in this respect is supported by The Garden Land Development Supplementary Planning Document (GLDSPD) which provides more detail on this policy and defines garden land as including *'the gardens of houses'* plural (para 3.1 a). There is nothing further in this GLDSPD to lead me to conclude that garden development in this context applies only to the garden of a house, singular. I am therefore satisfied that Appeal A comprises garden development for the purposes of Policy CS1 B.
14. There are, however, exceptions to the blanket restriction of garden development set out in Policy CS1 B provided by the GLDSPD which include: *'the redevelopment of an existing dwelling or group of dwellings to provide multiple dwellings or flats on the same building footprint plus any appropriate enlargements.'* The GLDSPD then goes on to explain what constitutes appropriate enlargements.
15. The appellant's statement sets out a calculation to demonstrate that the proposal would result in only a marginal increase above the GLDSPD definition of an appropriate enlargement. However, this calculation is somewhat flawed. Firstly, it includes an outbuilding which is specifically excluded under para 3.7 i of the GLDSPD. Secondly, both the footprint of *'any permitted extensions that could be exercised for the dwelling(s)'* and *'the footprint of an extension that would be consistent with Harrow's Residential Design Guide Supplementary Planning Document'* have been added together, but para 3.7 i/ii is clear that an appropriate enlargement would be the larger of either of these, not a combined total.
16. All of this means that the increase above the GLDSPD definition of appropriate enlargements in Appeal A would be greater than that calculated by the appellant. It is clear, therefore, that Appeal A would not constitute an 'appropriate enlargement' as per the GLDSPD. Consequently, there remains a conflict with Policy CS1 B of the CS.
17. At the hearing the latest version of Policy H2 of the emerging London Plan, was tabled. This supports additional housing on small sites (below 0.25 hectares in size) which the appeal site would fall within. I give this policy moderate weight given the advanced stage of adoption of the new London Plan. However, it does not diminish the weight I give to the GLDSPD, which similarly encourages the redevelopment of groups of dwellings to provide multiple dwellings or flats

whilst attempting to also provide guidance on what might constitute an acceptable increase in footprint. Whilst it may be some 7 years old this does not, of itself, reduce the weight I afford to the GLDSPD as a material consideration.

18. It is true that to fully interpret the intention of Policy CS1 B requires consultation of the GLDSPD. Perhaps, as put to me by the appellant, the detail of the GDLSPD could be in the policy itself. That is not, however, a matter for me to determine in the context of a S78 appeal. Notwithstanding this, the GDLSPD sets out to explain what may or may not constitute inappropriate development of residential gardens, and this is broadly consistent with the Framework at para 70. Therefore, this matter does not sufficiently reduce the weight to be afforded to the GDLSPD so as to alter my findings above.
19. My attention is drawn to two appeal decisions at 2 Boxtree Road, Harrow¹, which found that material considerations outweighed the conflict with the development plan in respect of Policy CS1 B. I do not have full details of these cases, but it is clear that the site in question was occupied by outbuildings and a large area of hardstanding, therefore the extent of quality existing garden land was limited. In those cases, the proposals represented an enhancement of green space.
20. That is not so in Appeal A where three, good sized and well-proportioned gardens forming the appeal site would be lost, to be replaced with terraces, a modest playground, a green roof and some very limited planting. This would not be an enhancement in terms of green space. I therefore afford these appeals limited weight in my consideration of garden land policy. In any event, each appeal must be determined on its own merits.

Appeal A: Affordable Housing

21. Policy CS1 J of the CS states that the Council will aim for a borough wide affordable housing target of 40% of the housing numbers delivered from all sources of supply. However, it also states that the maximum reasonable amount of affordable housing on all development sites, with a capacity to provide ten or more homes, will have regard to, amongst other things, development viability.
22. The appellant submitted a viability assessment concluding no affordable housing could be provided with Appeal A. This was independently reviewed on behalf of the Council which found that 5% on-site affordable housing along with a payment in lieu of the remaining surplus of £10,590 would be fairly and reasonably related in scale and kind to the development in light of the viability evidence.
23. The appellant has, however, produced a counteroffer of four shared ownership tenure units which amounts to 13% affordable housing provision. The appellant is able to do this, he says, by lowering his profits, and is essentially seeking to provide an additional benefit, above and beyond what is deemed fair and reasonable, to add merit to the scheme. An obligation to this effect is before me for Appeal A.
24. Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 states that a planning obligation may only constitute a reason for granting

¹ APP/M5450/W/18/3205143 & APP/M5450/W/18/3213211

planning permission for a development if it is necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development. The evidence before me which has been tested and shown to meet these tests is that of the 5% provision of affordable housing. The offer of 13% has not been shown to meet the tests in the same way.

25. Accordingly, I find that 5% affordable housing provision should be provided for Appeal A in order to comply with Policy CS1 J and meet the relevant tests. The obligation before me in respect of Appeal A does not, however, provide for this, but given that I am dismissing for other reasons, it is not necessary for me to consider this matter in any further detail.

Appeal B: Highway safety

26. In Appeal B 13 parking spaces are to be provided for the 26 residential units. Having regard to the submitted Transport Assessment the Council consider the development in Appeal B would amount to a need for 15 car parking spaces. Therefore, there would be an undersupply of two car parking spaces, which it is anticipated would overspill onto on-street parking.
27. At the time of my site visit, in the middle of a weekday, I had no trouble parking, but this was only a snapshot of local parking conditions. Based on representations received from local residents I have no doubt there is pressure for on-street parking in the area surrounding the appeal site. However, parking surveys carried out in 2017, and more recently in October 2020 when The Matrix was partially occupied, indicate a parking stress of between 77% and 73% respectively. This indicates, therefore, that there is capacity for some further on-street parking and given the very modest amount of on-street parking the development could generate, this would not give rise to any significant highway safety concerns. I also note that Highway Officers raised no objection to the level of parking proposed.
28. Taking the above points together I therefore find that the proposed parking arrangements would not result in any harmful impacts on highway safety. It follows, therefore, that I find no conflict with Policies 6.13 of The London Plan, and DM42 of the Development Management Policies Local Plan which seek to balance appropriate parking provision with promoting the use of alternative modes of transport, whilst resisting harm to highway safety as a result of inappropriate on-site parking provision.

Other matters

29. Obligations have been submitted for both appeals which deal with various matters other than affordable housing which has been dealt with above. However, as the appeal is to be dismissed on other substantive issues it is not necessary for me to look at these in detail given that the proposals are unacceptable for other reasons.
30. Whilst officer's recommended approval in respect of Appeal B this does not diminish my findings above in respect of this appeal.

Conclusion

31. I have found harm to the character and appearance of the surrounding area in both Appeal A and Appeal B and as a result, conflict with the development plan.

In Appeal A I have also found harm in terms of conflict with the development plan in respect of garden land policy. Individually I give these harms significant weight.

32. I have had regard to all other matters raised including the benefits arising from the creation of housing, which are modest due to the scale of development proposed. I have also taken into account the appellant's willingness to provide some affordable housing in Appeal A, albeit the amount I have found to meet the relevant tests is not secured by an obligation which significantly reduces the weight I can afford it. Any improvements in biodiversity I find to be modest in light of the overall loss of garden space. Consequently, even taken together, these benefits do not outweigh the harm I have found in either Appeal A or Appeal B.

33. The appeals are dismissed.

Hayley Butcher

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Rakesh Raithatha	Appellant
Constanza Bell	Kings Chambers
Max Plotnek	Maddox Planning
Georgia Barrett	Maddox Planning
Ian Stuart	HEDC
Kathryn Backhouse	Yes Engineering
Paul Willis	Yes Engineering
Claire Browne	HCUK Group

FOR THE LOCAL PLANNING AUTHORITY:

Orla Murphy	Harrow Council
Sushila Bhandari	Harrow Council
Selina Hotwani	Harrow Council
Kimry Schlacter	Harrow Council
David Hughes	Harrow Council
Krishan Nathaniel	Harrow Council
Baljit Bhandal	Harrow Council
Victoria Simms	BNP

INTERESTED PERSONS:

Cllr Jerry Miles	Roxeth Ward
Myrtle Martin	Neighbour
Bob and Debbie Fletcher	Neighbour
Harpreet Castleton	
Nasreen Visram	