



Appeal Decisions

Hearing held on 6 December 2022

Site visit held on 7 December 2022

by Martin Allen BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 March 2023

Appeal A - Ref: APP/M5450/Q/21/3275231

John Lyon School, Middle Road, Harrow HS2 0HN

- 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 The Keepers & Governors of the Possessions Revenues & Goods of the Free Grammar School of John Lyon against the decision of London Borough of Harrow
 - The application Ref P/1813/19, dated 4 April 2019, was refused by notice dated 24 November 2020.
 - The development proposed is the redevelopment to provide four storey teaching block; hard and soft landscaping; parking (demolition of existing building).
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Appeal B - Ref: APP/M5450/Q/21/3281359

John Lyon School, Middle Road, Harrow HA2 0HN

- The appeal is made under Section 106B of the Town and Country Planning Act 1990 against a refusal to modify a planning obligation.
 - The appeal is made by The Keepers & Governors of the Possessions Revenues & Goods of the Free Grammar School of John Lyon against the decision of London Borough of Harrow.
 - The development to which the planning obligation relates is the construction of a Part Single, 2, 3 and 4 storey building to provide sports hall, swimming pool and library and ancillary areas, alterations to existing building and parking.
 - The planning obligation, dated 23 June 1995, was made between London Borough of Harrow, The Keepers & Governors of the Possessions Revenues & Goods of the Free Grammar School of John Lyon and National Westminster Bank Plc.
 - The application Ref P/2504/19, dated 29 May 2019, was refused by notice dated 25 May 2021.
 - The application sought to have the planning obligation modified by amending the defined building envelope, and inserting a clause to require demolition of existing Oldfield House.
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Appeal C - Ref: APP/M5450/W/21/3281360

John Lyon School, Middle Road, Harrow HA2 0HN

- The appeal is made under Section 106B of the Town and Country Planning Act 1990 against a failure to determine that a planning obligation should be discharged.
 - The appeal is made by The Keepers & Governors of the Possessions Revenues & Goods of the Free Grammar School of John Lyon against London Borough of Harrow.
 - The development to which the planning obligation relates is the construction of a Part Single, 2, 3 and 4 storey building to provide sports hall, swimming pool and library and ancillary areas, alterations to existing building and parking.
 - The planning obligation, dated 23 June 1995, was made between London Borough of Harrow, The Keepers & Governors of the Possessions Revenues & Goods of the Free Grammar School of John Lyon and National Westminster Bank Plc.
 - The application Ref P/2092/21 is dated 10 May 2021.
 - The application sought to have the planning obligation discharged.
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Decisions

1. Appeal A is dismissed.
2. Appeal B is dismissed.
3. Appeal C is dismissed.

Preliminary Matters

4. Following amendments during consideration of the planning application, the scheme was amended to omit the below ground basement level. However, the description as shown on the Council's decision notice retains reference to the basement. For clarity, I have considered the scheme as amended, not including the basement.
5. At the hearing, the Council raised that there was an error on the decision notice, in respect of the quoted policies. The Council clarified which policies should have been referred to and I have had regard to these when making my decision.

Main Issues

6. In each of the appeals, the main issue is as follows:
 - Appeal A - The effect on the character and appearance of the area, with particular regard to the sites location within the Harrow on the Hill Village Conservation Area.
 - Appeal B - The acceptability of the proposed modification of the planning obligation, to amend the defined building envelope.
 - Appeal C - Whether the planning obligation continues to serve a useful purpose.

Appeal A

Reasons

7. The appeal site comprises an area of land to the north of a road junction where Middle Road, Crown Street and Byron Hill Road converge. It is currently occupied by a two-storey building and accompanying car parking and hardstanding areas, associated with the John Lyon School. A vehicular access leads off Middle Road. The existing building rises to two-storey in height, with brick elevations under a tiled roof.
8. The site itself lies within the Harrow on the Hill Conservation Area (the CA). I observed that the significance of this designated heritage asset lies, in part, in the tightly packed grain of buildings that are positioned along the intricate network of roads. Buildings are generally of a residential scale, positioned close to the road, imparting a sense of enclosure when travelling through the area and reflecting the historic origins of the locality. The enclosure of the streets limits the availability of views through the area, which are generally views along the street.
9. This arrangement diminishes within the immediate vicinity of the appeal site, where there is a greater sense of openness. From my observations, this is

- primarily due to the positioning and scale of the existing Oldfield House building, which is set back from the road. Furthermore, the building is not overly prominent within views from the street, with only the roofscape visible above the existing boundary wall. The existing building within the site also reinforces the hierarchy of buildings visible within the immediate locality.
10. From the two and three storey buildings further along Crown Street, the height of buildings steps down to Oldfield House, which further emphasises the sense of openness at this location, at the edge of the CA. Moreover, for the reasons above, the appeal site comprises an attractive transition between the tightly arranged residential development and the institutional buildings of the adjacent school. This is also reflected in comments of the Appellant's Townscape and Visual Appraisal, which identifies that the site lies within an area where there is a relatively loose urban grain.
 11. The site, while within the CA, also lies directly adjacent to another conservation area, the Roxeth Hill Conservation Area. The main school building to the west lies within this designated area. However, there is a degree of visual distinction between this larger school building and the Oldfield House site, which is due to the lower height of Oldfield House and the sense of openness that exists, in terms of relief from built development. This is particularly imparted by the separation that exists between buildings, coupled with the presence of vegetation and the lower overall height of the existing building within the appeal site.
 12. The proposed development would result in the demolition of the existing Oldfield House and its replacement with a new structure. The new building provides four floors of accommodation, which due to the change in levels within the site, would present as a three-storey building to the south towards Crown Street and four-storeys in height to the north, towards the undeveloped area of the school's cricket ground. The elevations of the building would be of brick, under a tiled mansard-design roof.
 13. The construction of the proposed building would result in the introduction of a greater scale of built development at this location than currently exists. The building would be positioned further back within the site and as a result of this, coupled with the expanse of elevation that would be visible, the proposal would appear as a new, overly assertive and dominant feature when viewed from the street. It would not benefit from the screening that is currently afforded to Oldfield House by its siting in closer proximity to the road and boundary wall.
 14. On the contrary, the location of the new building would emphasise its scale and height at this sensitive location. Moreover, the scale of the building would be such that it would appear to project substantially above the boundary wall, with a ridge height above that of the existing Oldfield House. As a consequence, due to the setback from the road away from screening afforded by the wall, the building would be a visually overly dominant feature. This would be at odds with the generally residential scale of other development within the CA, most notably that extending along Crown Street. Thus, notwithstanding the presence of the large, main school building in the adjacent Roxeth Hill Conservation area, the building would appear as a discordant feature, out-of-scale with other townscape features in the CA. I also note that the intention of the proposed location was to move the massing of the building away from the street.

However, buildings positioned in close proximity roads are a characteristic of the surrounding area.

15. In views from the adjacent road, as the building would appear as an overly large feature, it would diminish the openness that is characteristic of this location. This would most notably be due to the lessening of the extent of the gap that currently exists between the school buildings and Oldfield House, which in my view acts as an area of transition between the two conservation areas.
16. From Lower Road to the north, there are currently long-distance views of the appeal site, where the existing Oldfield House is visible, albeit that these are filtered views through trees. Nonetheless, the existing building appears as a subservient feature, which sits comfortably between the mass of the school buildings to the right and other buildings that are visible to the left of the site. These views therefore provide an attractive vista and provide a somewhat softening transition between development within the CA and that within the adjacent Roxeth Hill Conservation Area.
17. By contrast to this, the proposed building would present a significant and intrusive mass within these views. The new building would appear substantially larger than Oldfield House from vantage points to the north, with an overall height greater than the existing building and positioned further towards the north. As a result, it would appear to compete with the existing school buildings in terms of height and would eliminate the transitional appearance of the site by removing any sense of openness or subservience, as well as any visual separation between the two conservation areas.
18. While I accept that the building would not be positioned within the identified key views into and out of both of the conservation areas, this does not dissuade me of the adverse visual effect that I have identified above and thus it also does not diminish the importance attached to the harm. The appellant's submitted Heritage Statement identifies that this is a sensitive location and that the height and massing of any new building would need to ensure that open views across the countryside and up the hill from the cricket pitches are maintained, as they are considered significant to the setting and character of both of the conservation areas. I agree with this stance and find that the proposed scheme would fail to achieve this objective.
19. I am also conscious that there is development nearby which has been contended to comprise a negative feature of the CA, as well as that it has also been contended that the existing Oldfield House does not contribute positively to the CA. However, they are existing features of the area which comprise part of the baseline for my consideration. The residential development alleged to be a negative feature is located some distance away along Crown Street and has little, if any, influence on the appeal site. In terms of the existing Oldfield House, given its low-level appearance and that it is not prominent in views from the street, I would agree that it has a neutral impact. This view is reflected in the appellant's own Heritage Statement that was submitted in support of the planning application (paragraph 3.22).
20. At this location within the CA and the adjoining Roxeth Hill Conservation Area, the presence of the John Lyon School site and the buildings it contains undoubtedly influences the character of the area, due to the distinct educational character of the development. However, this does not mean that

any building with an educational purpose, character or appearance would be acceptable on this site. As I have set out, the specific characteristics of the appeal scheme as proposed are not acceptable.

21. I am also conscious that the design of the building has been scrutinised by the Harrow Council Design Review Panel. While I find no basis for objecting to the appeal scheme on the basis of the detailed design of the proposal building, in terms of its architectural features and detailing, this does not diminish my findings in respect of the effect the building would have on its context and the local area, as I have set out.
22. Accordingly, I find that the proposal would have a harmful effect on the character and appearance of the area, including the Harrow on the Hill Village Conservation Area. Thus, the scheme conflicts with policies CS1 and CS3A of the Harrow Council Core Strategy (adopted February 2012) and policies DM1, DM6 and DM7 of the Harrow Council Development Management Policies (adopted July 2013). There would also be conflict with policies D4 and HC1 of the London Plan (adopted March 2021). Together, and amongst other things, these policies seek to ensure that development responds positively to the local and historic context, preserves or enhances the character of conservation areas, achieves a high standard of development and protects the historic environment.
23. Policy D1 of the London Plan has been referred to. However, this specifically refers to undertaking area assessments and to requirements when preparing development plans. As such, I do not find this policy directly relevant to the consideration of a specific development proposal.
24. In identifying the harm above, I find that the proposal would result in less than substantial harm to a designated heritage asset. In accordance with paragraph 202 of the National Planning Policy Framework, I am required to have regard to the public benefits of the proposal, which I will return to in the planning balance below.

Planning Balance and Findings

25. In assessing the less than substantial harm, I find that this cannot be defined as negligible or slight, as contended by the appellant. However, neither do I consider that it lies at the upper extent of less than substantial harm. To my mind, the harm lies within the mid-range of less than substantial harm. It is against this that the public benefits of the scheme must be weighed.
26. I note that the existing John Lyon School is an important institution within the area and that the local plan, through policy DM47, seeks to support the redevelopment of education facilities that secure enhanced provision. However, such support must be considered within the context of other planning considerations.
27. There would be public benefits in terms of an enhanced, specific educational offer and facilities as well as general benefits of supporting the school, bolstering the education of pupils, including local children.
28. There would be economic benefits through the provision of quality education facilities that would support the economy, together with the contribution made through the construction phase through expenditure on materials and labour, although these would be limited in duration.

29. Given my finding above, that the scheme would result in harm to the character and appearance of the area, including a designated heritage asset, there would be no environmental benefits. I note that there is reference to repairing two gate piers that are located along Church Street. While this would offer some improvement to the localised street environment, overall, the scheme would result in harm. As such, this matter has little bearing on my decision. I am also conscious that there would be additional landscaping within the site. However, there would also be the loss of trees. As such, this landscaping would mitigate loss, rather than provide enhancement.
30. There is reference to the development allowing the school to remain competitive within its marketplace. However, in my view, this is a private, commercial benefit to the operation of this private school and does not add positive weight to public benefits to balance against the harm I have identified, particularly as I have given weight to the general benefit to the provision of educational facilities.
31. Therefore, in my judgement, while together the public benefits of the proposal carry significant weight, they are insufficient to outweigh the great weight that must be accorded to the harm to the significance of the designated heritage asset that I have identified.
32. I am conscious that the Council accepts that there is a need to provide new floorspace at the school and based on what I have seen I have no reason to find otherwise. Additionally, the appellant has sought to explore other options for the location of the new teaching block and information has been submitted to demonstrate this, this includes relocating the building and engagement with the public, both pre and post decision. However, even accepting that any new building is likely to be within the general vicinity of that which is proposed, in light of my findings above, this matter does not persuade me in favour of allowing the appeal.
33. Furthermore, it has been contended that the redevelopment of the site is constrained by the need to retain the existing building whilst the proposed building is constructed. This matter is noted, however in light of the sensitivity of the location, within the CA, I find that the acceptability of any proposed scheme must be of primary importance. As such, the arguments made in this respect do little to convince in favour of allowing the appeal.
34. In relation to Appeal A, I therefore find that the proposed building would result in harm. None of the benefits advanced, or other arguments in favour of the scheme, are of sufficient weight to outweigh this harm.
35. The proposal would conflict with the development plan as a whole and there are no other considerations, including the provisions of the Framework, which outweigh this finding. Therefore, for the reasons given above, the appeal should be dismissed.

Appeals B and C

Background and Context

36. Both Appeals B and C are made under Section 106B of the Town and Country Planning Act 1990, against a refusal to modify and failure to give notice of decision on an application to discharge, respectively, a planning obligation. Such applications were made under Section 106A.

37. The original obligation dates from 1994 and has been subject to a number of deeds of variation since. As far as the matters before me are concerned, the obligation, as amended, provides that development shall only take place within a prescribed area within the grounds of the school ('the building envelope'), requirements in regard to travel plans, as well as limiting the number of pupils that the school is able to accommodate.

38. S106A provides that:

(3) A person against whom a planning obligation is enforceable may, at any time after the expiry of the relevant period, apply to [the appropriate authority] for the obligation—

(a) to have effect subject to such modifications as may be specified in the application; or

(b) to be discharged.

34. In relation to appeals, section 106B states:

(1) Where [an authority] [(other than the Secretary of State)] —

(a) fail to give notice as mentioned in section 106A(7); or

(b) determine [under section 106A] that a planning obligation shall continue to have effect without modification,

the applicant may appeal to the Secretary of State.

(2) For the purposes of an appeal under subsection (1)(a), it shall be assumed that the authority have determined that the planning obligation shall continue to have effect without modification.

35. Subsections (6) to (9) of Section 106A apply in relation to appeals under Section 106B. Subsection (6) set out the relevant options that are available to the decision maker in these cases:

(6) Where an application is made to an authority under subsection (3), the authority may determine—

(a) that the planning obligation shall continue to have effect without modification;

(b) if the obligation no longer serves a useful purpose, that it shall be discharged; or

(c) if the obligation continues to serve a useful purpose, but would serve that purpose equally well if it had effect subject to the modifications specified in the application, that it shall have effect subject to those modifications.

36. Appeal B relates to subsection 6(c), in that a modification of the obligation was proposed by the application.

37. Appeal C relates to subsection 6(b) as the application proposed that the obligation be discharged in its entirety. As set out above, Section 106B (2) states that, as the Council failed to make a determination on the application, it

shall be assumed that the Council have determined that the planning obligation shall continue to have effect without modification.

Reasons - Appeal B

38. The scheme for consideration under Appeal B sought to modify the planning obligation, principally to amend the building envelope defined within it, to allow construction of the proposed new teaching block in replacement of Oldfield House.
39. It was agreed at the hearing that, should I find the proposed new teaching block unacceptable, under Appeal A, that Appeal B would necessarily fail. As I have set out above, I have deemed that the proposed new development of the teaching block would not be acceptable.
40. As a result, it is not necessary for the building envelope as set out within the planning obligation to be amended. Therefore, the purpose of the obligation would not be equally well served by its modification. Thus, I consider that the planning obligation should continue to have effect without modification and Appeal B fails.

Reasons - Appeal C

41. Appeal C is in relation to an application to discharge the existing planning obligation in its entirety. As such, the test I am required to address in my consideration is whether the obligation continues to serve a useful purpose.
42. A principal view relied on by the appellant is that the contents of the planning obligation can be effectively controlled by the imposition of conditions attached to any planning permission that would be forthcoming, should I be minded to allow Appeal A. Furthermore, I am conscious of the guidance of the Planning Practice Guidance, which sets out that planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition. However, as set out above, I have determined that Appeal A should be dismissed and thus there is no opportunity to "transfer" any requirements from the obligation to planning conditions. The requirements of the obligation must therefore remain and, in the absence of a further mechanism imposing such requirements, the obligation continues to serve a useful purpose in this regard.
43. The appellant has also put forward arguments in respect of the ability to interpret the obligation, together with its enforceability. In respect of the interpretation, it is clear to me that the obligation has been in place for a considerable period of time and that the appellant has sought to amend it from time to time. These amendments were to increase the school roll cap in 2007, to allow the implementation of additional classrooms in 2007 and to allow an extension to the main school building in 2011. There was also a proposed modification, dismissed at appeal, to increase the pupil number cap.
44. With this in mind, there is a clear understanding of what is required by the obligation in terms of the defined building envelope and the limit on pupil numbers. I find it persuasive that if this were not the case, the appellant would not have sought to modify the requirement previously to allow for additional classrooms and an extension, as well as to increase the number of pupils.

45. In respect of enforceability, while the appellant has contended that the obligation is unenforceable, I have not been provided with any cogent evidence that this is the case. The obligation has been in place for a number of years and has been amended when necessary to allow development to take place. Moreover, I am conscious of a previous appeal decision¹ where the Inspector considered an appeal under Section 106B for a proposed modification to allow an increased number of pupils to attend the school. At that time, the Inspector considered that there was no reason to conclude that requirements of the obligation, in particularly those in respect of travel plans, will not be complied with. I therefore find it difficult to reconcile the appellant's claims with respect to enforceability.
46. Furthermore, there has not been any allegation by the Council that the appellant has not complied with its commitments within the obligation. In any event, the obligation places a cap on the number of pupils that can be accepted at the school and this requirement is clear and unambiguous. As such, there is a clear reason to retain this cap, in the interests of the living conditions of nearby residents and highway considerations.
47. The appellant has also contended that the obligation should be discharged as it does not accord with the tests of Regulation 122(2) of the Community Infrastructure Levy Regulations 2010, which states that a planning obligation may only constitute a reason for granting planning permission for a development if the obligation is:
- (a) necessary to make the development acceptable in planning terms;
 - (b) directly related to the development; and
 - (c) fairly and reasonably related in scale and kind to the development.
- These tests are also reflected in paragraph 57 of the National Planning Policy Framework.
48. However, as I have determined that planning permission should not be granted for the new development under Appeal A, the existing planning obligation does not form a reason for granting planning permission within my considerations. Additionally, as the obligation has been in place for a considerable period and was entered into in respect of a previously permitted development at the site, I see no reason to conclude that the obligation fails these tests or that this should motivate me to determine that the obligation should be discharged.
49. There was the contention made by the appellant at the hearing that the existing obligation is a "clamp" on further development. However, I do not consider this to be case. There have been previous amendments to the obligation to allow for development to take place, indicating that development is able to occur subject to consideration of its effects. As such, this does not persuade me the requirements within the obligation are unreasonable.
50. Thus, I find that the obligation, as it stands, continues to serve a useful purpose and accordingly it should not be discharged. Appeal C therefore fails.

¹ APP/M5450/Q/16/3160672

Other Matters

51. Concerns were raised by interested parties in respect of Appeal Scheme A, over light pollution and the effect of the proposal on the living conditions of nearby residents. However, as I have found that the proposal for the new building would be unacceptable in regard to the main issue identified above, I have no need to consider these matters further. I note that no concerns have been raised by the Council in respect of highway safety. However, this is a neutral matter in consideration of the appeal.
52. Since the close of the hearing, the appellant has provided a signed and completed Unilateral Undertaking, in respect of a school travel plan, which was intended to replicate some of the controls contained within the existing planning obligation, that would then be retained should I have considered that the discharge of the existing obligation was appropriate. The Council has had the opportunity to comment on this and has raised a number of concerns. However, as I am dismissing both Appeals A and C (as well as Appeal B), there is no need for me to further consider the contents of this undertaking.
53. There was some discussion at the hearing in respect of the order in which the three appeals should be considered. In any event, I have firstly considered Appeal A as it is from the decision on this appeal that those on Appeals B and C would flow. Given that I have found, on balance, that Appeal A is such that it should be dismissed, it matters not in which order I consider the remaining appeals.

Conclusion on all appeals

54. For the reasons given above, and having regard to all other matters raised, I conclude that all of the appeals should be dismissed.

Martin Allen

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

John Steel KC	Of Counsel
Gareth Mawdsley	Appellant, John Lyon School
Jason Lowes	Town Planning Consultant, Rapleys
Paddy Pugh	Heritage Consultant, Conservation Planning
Simon Bumstead	Architect, Curl la Tourelle Head Architecture
Katy Neaves	Townscape and Visual Impact Consultant, Neaves Urbanism

FOR THE COUNCIL:

Meyric Lewis	Of Counsel
Nik Smith	Director, Nexus Planning
Sophie Hamilton Grey	Heritage Consultant, Hamilton Grey Heritage
Sushila Bhandari	Area Team Leader, London Borough of Harrow
Mrinalini Rajaratnam	Solicitor, London Borough of Harrow
Catriona Cooke	Senior Planning Officer, London Borough of Harrow

INTERESTED PARTIES:

Paul Catherall	Harrow Hill Trust
Ted Allett	Residents Group
Ashley Vickers	Local Resident
Graham King	Local Resident
Joanna Nixon	Local Resident
Tony Violaris	Local Resident
Marilyn Ashton	Chair of Planning Committee
Neil Stansbury	Local Resident

DOCUMENTS SUBMITTED AT OR AFTER THE HEARING

1. Appellant's timeline of events and outcomes
2. Signed Unilateral Undertaking
3. Draft planning conditions in respect of Appeal A
4. Draft wording for modification of obligation, under Appeal B
5. Land Registry documents
6. Correspondence from appellant and Council following submission of 2-5 above.