



Appeal Decisions

Site visit made on 27 January 2025

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH JP

an Inspector appointed by the Secretary of State

Decision date: 12 February 2025

Appeal A: Ref APP/M5450/X/23/3316617

147 Eastcote Lane, South Harrow, Harrow HA2 8RR

- 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 Qasim Gulamhusein (Marlpark 71 HA4 LIMITED) against the decision of the Council of the London Borough of Harrow.
 - The application Ref P/3740/22, dated 29 October 2022, was refused by notice dated 23 December 2022
 - 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 new outbuilding comprising garage, gym and home office.
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Appeal B: Ref APP/M5450/W/23/3318356

147 Eastcote Lane, South Harrow, Harrow HA2 8RR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Qasim Gulamhusein (71 HA4 Ltd) against the decision of the Council of the London Borough of Harrow.
 - The application Ref P/3693/22, dated 25 October 2022, was refused by notice dated 20 December 2022.
 - The development proposed is demolition of existing house and erection of 3 storey block of flats.
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Appeal C: Ref APP/M5450/W/23/3331336

147 Eastcote Lane, South Harrow, Harrow HA2 8RR

- 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 Qasim Gulamhusein (Marlpark 71HA4 Ltd) against the decision of the Council of the London Borough of Harrow.
 - The application Ref P/2255/23, dated 2 August 2023, was refused by notice dated 28 September 2023.
 - The development proposed is described in the application form as a single storey side extension.
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Decisions

1. Appeal A is allowed and attached to these Decisions is a certificate of lawful use or development describing the proposed operation which is considered to be lawful.
2. Appeal B is dismissed.

3. Appeal C is allowed and planning permission is granted for a single storey side extension and external alterations at 147 Eastcote Lane, South Harrow, Harrow HA2 8RR in accordance with the terms of the application Ref P/2255/23 dated 2 August 2023, and the plans submitted with it, subject to conditions:
- 1) The development hereby permitted shall begin not later than 3 years from the date of this Decision.
 - 2) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no windows/dormer windows other than those expressly authorised by this permission shall be constructed on the western elevation of the property. All such authorised windows constructed on the western elevation are to be fitted with obscured glazing, and no part of any such window less than 1.7 metres above the floor of the room in which it is installed shall be capable of being opened. Details of the type of obscured glazing shall be submitted to and approved in writing by the local planning authority before the window is installed and, once installed, the obscured glazing shall be retained thereafter.

Applications for costs

4. Applications for costs were made by the appellant in Appeals A, B and C against the Council of the London Borough of Harrow. These applications are the subjects of separate Decisions.

Appeal A

Main Issue

5. The main issue in this appeal is whether the Council's decision to refuse the LDC application was well-founded.

Reasons

6. General planning permission for a building within the curtilage of a dwellinghouse incidental to its enjoyment is given by reason of Article 3(1), Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 ('the Order') subject to exceptions and limitations (E1, E2, E3).
7. According to the delegated report on the application, the Council does not dispute that the proposal would meet all the exceptions and limitations in respect of Class E *were* the building considered to be incidental to the enjoyment of the dwellinghouse on the site. I have seen no evidence which contradicts or conflicts with this agreed position between the parties, and accordingly find it to be the case as a matter of fact.
8. The Council's basis for refusing the LDC is an argument that the development would not be incidental to the enjoyment of the dwellinghouse because its proposed size is said to be excessive and therefore more than is genuinely and reasonably required for that purpose. However, established case-law (such as *Emin v SSE & Mid Sussex DC* [1989]) confirms that regard should be made to the use to which it is proposed that the outbuilding would be put and of the nature and scale of that use in the context of whether it is a purpose incidental to the enjoyment of the dwelling.

9. The development proposes to replace an existing double garage (35m²) with a new outbuilding housing a new garage (45m²) and additional space (84m²) for a gym/games room, shower room, home office and connecting corridors.
10. As a matter of fact and degree, the modestly expanded garage space is genuinely and reasonably required to comfortably accommodate 2 modern cars (utilising as it does redundant space behind the existing garage). The layout and use of the family-sized host dwelling does not include either a home office or a dedicated area for the communal playing of games (such as table tennis and billiards, as proposed) or a gym with fitness equipment and weights. In this particular context I find that provision of such in the new outbuilding would be genuinely and reasonably required, as would the modest shower room associated with the exercising activities, and that the amount of space would not be excessive in these regards taking into account room for the equipment and the necessary surrounding playing and circulation space required.
11. Accordingly, the new outbuilding proposed would be incidental to the enjoyment of the dwellinghouse on the site and would benefit from general planning permission afforded by Class E.

Conclusion

12. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of a new outbuilding was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Appeal B

Procedural Matter

13. The application associated with this appeal was made in outline, with all matters reserved for future consideration, except for scale.

Main Issues

14. The main issues in this appeal are the effect of the development upon:
 - the character and appearance of the area and streetscene;
 - the living conditions of the neighbouring occupiers at 149 Eastcote Lane (No 149); and
 - trees.

Reasons

Character and appearance

15. Consistency in the planning system is important. The courts have established that like cases should be decided in a like manner.
16. A previous appeal decision is capable of being a material consideration where the previous decision is sufficiently closely related to the issues that regard should be had to it. This is not limited to proposals for the same or for the same type of development on the same site.

17. I place significant weight on (and agree with) the 2020 findings of the Inspector who determined appeals¹ relating to 2 different proposals to build a 4 storey residential development at 143-145 Eastcote Lane & 172a Alexandra Avenue, Harrow, London HA2 8RW (being the plot of the land facing the appeal site in the appeals before me, across Alexandra Avenue at its junction with Eastcote Lane). Accordingly, my comments below are consistent with the Inspector's findings in those appeals.
18. The overriding characteristic of development surrounding the junction is of 1 or 2 storey properties, be that solely residential or mixed use development. This type of development occupies three corners of the junction, with the fourth occupied by a 4 storey residential development known as The Matrix.
19. 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 – which is the location of the appeal site in the appeal before me.
20. The current appeal proposal is for a 3 storey residential development (with stepped-in 'shoulders' on its upper storey). Development of this scale would be out of character with the overriding context of development in the locality of the appeal site which is predominantly 2 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 3 storey development which by reason of its overall massing, bulk and scale would be particularly and deleteriously harmful when viewed across the adjacent green verge closest to Alexandra Avenue. There is nothing before me in the proposal that would overcome my concerns in this respect, even taking into account that there would be further consideration of landscaping (a reserved matter) and the possibilities of vegetative screening notwithstanding the scale and height of the building.
21. For these reasons, the appeal scheme constitutes an incongruous and out-of-scale development which is incongruous with the prevailing character of the area and in particular the prevailing local pattern of development in the streetscene on the southern side of Eastcote Lane. Significant harm would be caused in these respects. Accordingly, the proposal is in conflict with Policy CS1 of the Harrow Core Strategy (2012) (CS), Policy DM1 of the Harrow Development Management Policies (2013) (LP) and Policy D3 of the London Plan (2021) (LONP) which together seek to protect character and appearance. For the same reasons, there would also be conflict with the design principles of the National Planning Policy Framework (the Framework).

Living conditions of occupiers of No 149

22. No 149, a 2 storey dwelling house, is set back from the front elevation of the 2 storey appeal property by approximately 5m. This results in a current relationship between the 2 properties whereby the occupiers of No 149 look out at fairly short distance from their rear windows upon a substantial amount of the flank wall of the appeal property.

¹ APP/M5450/W/19/3224655; APP/M5450/W/19/3243513

23. The appeal development would move the built form even closer to the boundary, and the massing of the 3 storey block of flats (though progressively stepped in away from the boundary and similar in height when compared to the ridge line of the current pitched roof) would extend further beyond the rear elevation of No 149.
24. Taking together, these features of the appeal scheme would cause significant harm to the outlook from the appeal property and cause an oppressive sense of enclosure to its occupants. As such, it is contrary to Policy DM1 of the LP and Policy D3 of the LONP which together seek to protect living conditions through a high standard of design. For the same reasons, there would also be conflict with the design principles of the Framework.

Trees

25. The Council appears to have accepted that there would not be an unacceptable impact on existing trees on the site, and the appellant has provided information during the appeal process to satisfactorily justify that the development would be sufficiently distant from street trees. The Council had an opportunity during the appeal process to rebut or otherwise comment upon those submissions. Accordingly, the proposal would cause no harm on this issue and there would be no policy conflict.

Other Matters

26. The appeal scheme would increase housing supply (in providing 6 homes² in place of the single dwellinghouse) on a small, previously developed site which would arguably make efficient use of the land. However, these benefits of the appeal scheme do not outweigh the harm caused or the conflicts with the development plan as a whole.

Conclusion

27. The proposal does not accord with the development plan as a whole, and there are no other considerations which outweigh that finding. Further, there are no conditions I could reasonably impose which would make the scheme acceptable. Consequently, I will not grant planning permission and the appeal does not succeed.

Appeal C

Procedural Matters

28. Notwithstanding the description of development set out in the banner heading above, which is taken from the application form, it is clear from the plans that the development comprises a single storey side extension and external alterations. The Council used this description in its decision notice, as did the appellant in the appeal form, and so shall I.
29. The appellant has asked me to accept amended drawings which did not form part of the application considered by the Council. They do not appear, however, to have been submitted together with that request. Never the less it is explained in the statement that they concern changes to the width and height of the proposed extension, and show windows differently to the initial plans.

² 4 of which would be family-sized dwellings

30. The Procedural Guide for Planning Appeals advises that the appeal process should not be used to evolve a scheme. Due to the nature and extent of the changes proposed to the appeal scheme, to grant it would deprive those who should have been consulted on the changed development of the opportunity of such consultation. Therefore, to avoid procedural unfairness, I have considered the appeal on the basis of the scheme and the plans which were before the Council when it made its decision.

Main Issue

31. The main issue in this appeal is the effect of the development on the character and appearance of the area.

Reasons

32. Consistency in the planning system is important. The courts have established that like cases should be decided in a like manner.
33. A previous appeal decision is capable of being a material consideration where the previous decision is sufficiently closely related to the issues that regard should be had to it. This is not limited to proposals for the same or for the same type of development on the same site.
34. I place significant weight on (and agree with) the very recent October 2024 findings of the Inspector who determined the appeal concerning outline planning permission for a single storey detached building on the appeal site (APP/M5450/W/24/3341507). Notably, that single storey detached building was proposed in a similar location to the proposed single storey side extension in the appeal before me. The main differences however are that the former development – given planning permission by the Inspector – is significantly greater in width and occupies more of the eastern plot (referred to as ‘green verge’ by the Council) than the side extension I am tasked to consider.
35. Significantly, I agree with the earlier Inspector that *‘...Alexandra Avenue to the south is generally characterised by single elongated strips of grass next to each side of the principal carriageway. Given that the appeal site forms a separate parcel of land behind a wide, tree-lined verge, that spatial pattern and alignment would not be affected by this scheme’*. I also agree that a single storey structure – such as the extension in the proposal before me (notwithstanding a higher roof line compared to the structure in the approved appeal) – would not be at odds with the scale of the bungalows on the opposite side of Alexandra Avenue, and the limited single storey scale would have a limited effect in the sense of openness around the junction.
36. For these reasons, the appeal development would cause no harm to local character and appearance. As such it would accord with Policy CS1 of the CS, Policy DM1 of the LP and Policy D3 of the LONP which together seek to protect character and appearance. For the same reasons, there would be no conflict with the design principles of the Framework.
37. Re-iterating the earlier Inspector’s findings, Policy DM23 of the LP recognises the importance of grass verges to the character of the borough. Whether or not the appeal site constitutes a grass verge is debateable. But, even if it is, that policy does not specifically prohibit development on it. Rather, in broad terms, it seeks to ensure that the area’s character would not be harmed. For the above reasons, the scheme would not conflict with that approach.

Conclusion

38. The appeal scheme accords with the development plan as a whole, and there are no other considerations which outweigh that finding. The appeal succeeds and I will grant conditional permission.
39. The proposed fenestration shown on the plans on the western flank elevation of the appeal building would be unacceptable in terms of overlooking, given the relationship with No 149 I have described in dealing with Appeal B³. Therefore, to make the development acceptable, I am attaching a condition to remedy such harm. I am also attaching the standard commencement condition.

Andrew Walker

INSPECTOR

³ The existing fenestration on the western flank elevation is fitted with obscured glazing.



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 29 October 2022 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The development benefits from general planning permission afforded by Article 3(1), Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015.

Signed

Andrew Walker

INSPECTOR

Date 12 February 2025

Reference: APP/M5450/X/23/3316617

First Schedule

New outbuilding comprising garage, gym and home office.

Second Schedule

Land at 147 Eastcote Lane, South Harrow, Harrow HA2 8RR

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 12 February 2025

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH JP

Land at: Land at 147 Eastcote Lane, South Harrow, Harrow HA2 8RR

Reference: APP/M5450/X/23/3316617

Scale: Do not scale

