
Appeal Decision

Site visit made on 26 March 2019

by Simon Warder MA BSc(Hons) DipUD(Dist) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 April 2019

Appeal Ref: APP/X5210/W/18/3207403
328 e-h Kilburn High Road, London NW6 2QN

- 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 Brondesage Ltd (Mr Brian Mannion) against the decision of the Council of the London Borough of Camden.
 - The application Ref 2017/5455/P, dated 29 September 2017, was refused by notice dated 15 May 2018.
 - The development proposed is the demolition and redevelopment with a 4 storey building to provide a commercial unit (to be used for A1, A2, A3 or A4) at ground floor; and 8 self-contained flats (4 x 1 bed, 3 x 2 bed and 1 x 3 bed) at first, second and third floor levels; cycle and refuse storage.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council's statement accepts that reason for refusal 3 could be overcome by the use of a condition to secure cycle parking for the commercial element of the scheme. I agree and consider that a suitably worded condition could meet the tests set out in the Planning Practice Guidance.
3. Reasons for refusal 4, 5, 6 and 7 concern the absence of a legal agreement dealing with, respectively, car free development, a construction management plan and monitoring contribution, a highways contribution and an affordable housing viability re-assessment. A legal agreement dealing with all of these matters, signed by the appellant and sealed by the Council, has been submitted subsequently. The matters in reasons for refusal 3, 4, 5, 6 and 7 are, therefore, no longer in dispute. I have framed the main issues accordingly.

Main Issues

4. The main issues are the effects of the proposal on:
 - the character and appearance of the terrace adjoining the appeal site and the surrounding area;
 - the bio-diversity value of the site.

Reasons

Character and Appearance

5. The appeal site fronts onto Kilburn High Road and is flanked by a Victorian three storey plus loft terrace to the north and an elevated railway bridge to the south.
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The terrace is well proportioned and its façade is detailed to form three bays with a strong sense of rhythm. It is locally listed and the appeal site forms an important component of its setting. The appeal site currently accommodates a single storey building used as a bar/restaurant together with open storage to the rear.

6. There is a reasonable degree of architectural variety in the buildings lining this part of Kilburn High Road, including modern buildings immediately opposite and to the south of the railway bridge. However, all are fairly consistent in scale and are positioned to provide terraces with continuous street frontages. This pattern continues around the corner into Iverson Road, albeit at a slightly smaller scale.
7. The front part of the proposed building would follow the line, height, proportions and three bay rhythm of the adjoining terrace. I agree with the parties that it would offer an appropriate response to the site and its surroundings. It would read as a respectful continuation of the adjoining terrace.
8. The rear part of the building would take the form of a four storey projection. At ground floor level it would be stepped in from the southern boundary but would still take up most of the width of the site. The upper floors would be stepped in from the northern and southern site boundaries. The recessed balconies would also provide the rear projection with a degree of articulation. Nevertheless, the upper floors would span more than half the total width of the site. Moreover, the top floor, although in places taking the form of a sloping mansard roof, would sit above the eaves level of both the front part of the new building and the adjoining terrace.
9. The overall width of the rear projection would be comparable with the front element of the proposed building and the bulkiness of the top floor would draw attention to its height. As such, the rear projection would not be subservient in scale or form to the front element of the new building or the adjoining terrace. This would be apparent in the open views from the railway and the rear windows and external areas of the buildings to the north and east of the site. The blank southern wall of the rear projection, which rises significantly higher than the eaves level of the front of the building would also be seen clearly in views from Kilburn High Road to the south, notwithstanding the partial screening provided by the railway bridge.
10. The appellant argues that the building should be regarded holistically and disputes the Council's description of the rear projection as an extension and its reference to the advice on extensions in the Camden Planning Guidance 1 - Design 2018 (CPG). Whichever way the rear projection is described, it would occupy a secondary position in the townscape and the hierarchy of built form. That should be reflected in its scale and form. Other projections, or closet wings, to the rear of nearby terraces are, fittingly, significantly smaller in scale. Even the modern block to the south of the railway bridge does not extend as far back as the proposed rear projection.
11. The rear wing would be positioned roughly centrally within the rear elevation of the building. However, given its width, and unlike the closet wing projections to the rear of the adjoining terraces, its positioning would not correspond to the strong sub-division of their facades.
12. Mansard roofs are not characteristic of the adjoining terraces or their rear projections. Whilst there are dormers in the pitched main roofs of the terraces,

the steeply sloping roof of the proposed rear projection would be at odds with the prevailing roof forms and the junction where this steep pitch meets the shallower pitch of the main roof of the building would serve to emphasize this awkwardness. The appellant refers to paragraph 5.14 of the CPG which advises that mansard roofs are a traditional means of terminating a building. However, it goes on to say that this form is acceptable where it is the established roof form in a group of buildings. That is not the case in this instance and, therefore, the CPG does not support the proposed roof form.

13. Consequently I find that, by virtue of the lack of subservience, inappropriate positioning and awkward roof form of the rear projection, the proposal would be significantly harmful to the character and appearance of the locally listed adjoining terrace, the appeal site and the surrounding area. As such, it would conflict with Camden Local Plan 2017 (LP) Policies G1 and D1. Together, these policies require development to achieve a high quality of design which respects local context and character, including in its detailing, and to preserve or enhance the historic environment. It would also conflict with LP Policy D2 which seeks to protect non-designated heritage assets (such as locally listed buildings), subject to balancing any harm with the public benefits of the proposal. This requirement is consistent with paragraph 197 of the National Planning Policy Framework (the Framework) and I undertake the exercise in the Planning Balance below.

Bio-diversity

14. Some 145sqm of the appeal site is designated as a Grade 1 Site of Importance for Nature Conservation (SINC). This designation continues east along the railway line. The proposal would result in the loss of around 81sqm of the designated land to built development. Policy A3 of the LP seeks to protect and enhance SINC's and, among other things, states that planning permission will be granted for development unless it would directly or indirectly result in the loss or harm to designated sites. Framework paragraph 170 also seeks to protect and enhance sites of biodiversity value, minimise impacts on, and provide net gains for, biodiversity. However, it also distinguishes between the hierarchy of international, national and local designations. The SINC is a local designation.
15. Part of the designated area within the appeal site has been disturbed. The Council does not dispute the appellant's finding¹ that the area affected by the proposal has no potential to support protected species, has no suitable habitat for nesting birds or bats and does not support common invertebrates or reptiles. Of the plant species cited in the Council's Supplementary Planning Document Sites of Nature Conservation Importance in Camden 2006, only bramble and sycamore tree arisings were present within the appeal site.
16. The proposal includes new ground level planting and green roof planting totalling 201sqm. This would provide a net gain in habitat area. The proposal also includes provision for bird and bat boxes and 'bug hotels'. The Council argues that there is a policy requirement for bio-diversity enhancement, including the provision of green roofs, in any development and that the ecology proposals simply meet that requirement, rather than mitigate the loss of the designated area. Further that the proposed planting would not be contiguous with the remainder of the designated habitat.

¹ Ground Control Ecology and Landscape Report July 2017

17. Notwithstanding that the requirement for green roofs appears in the supporting text, rather than the wording of Policy A3, I consider that the ecology proposals amount to enhancements rather than like-for-like mitigation for the loss of the designated area. As such, they would be necessary to comply with local and national policies regardless of the effect of the proposal on the SINC. That said, the size of the area lost would be fairly small and its bio-diversity value is very limited. Moreover, there is no substantive evidence to suggest that the proposal would adversely affect the integrity of the remainder of the SINC. As such, whilst the proposal would conflict with LP Policy A3 in principle, the scale of the harm would be minor. Taking into account the proposed ecology enhancements therefore, I consider that the effect of the proposal on bio-diversity would be neutral.
18. The Council also refers to Policy G6 of the emerging London Plan which emphasizes the need for SINC's to be protected. However, the examination of the emerging Local Plan has not been completed and I can give this policy limited weight.
19. Reason for refusal 2 also states that the proposal would be contrary to LP Policy A2 and London Plan Policy 7.18, both of which deal with the protection of open spaces. However, there is no firm evidence in the Council's submissions to show how the proposal would conflict with these requirements. The appeal site does not include publicly accessible open space and has no value as recreational open space. As such, I do not find conflict with these policies.

Planning Obligations

20. Since the appeal is to be dismissed for other substantive reasons, it is not necessary to consider whether the obligations on car free development, the construction management plan and monitoring contribution or the highways contribution meet the tests set out in the Community Infrastructure Levy Regulations 2010 (the CIL Regs).
21. The obligation dealing with affordable housing viability re-assessment has the potential to deliver affordable housing which would be a benefit in favour of the proposal to be weighed in the planning balance. Policy H4 of the LP seeks to maximise the supply of affordable housing. Amongst other things, the policy allows for a payment to be made in lieu of affordable housing on sites of less than 10 units and takes into account the financial viability of the development in considering whether provision should be sought. It also allows for payment to be deferred where the viability of the development shows that the payment would fall significantly short of the target, but that viability may improve prior to completion. The Framework also supports the provision of affordable housing.
22. The parties have agreed that the appeal proposal generates a payment of £214,968 based on its floor area. However, the viability assessment shows that the development cannot make a contribution. The obligation would allow for a re-assessment of the viability of the scheme and the payment of a deferred contribution if appropriate. It, therefore, accords with the requirements of Policy H4 and offers the potential to deliver a contribution towards affordable housing that would not otherwise occur. The viability re-assessment would ensure that any contribution would be directly related to the development and fairly related in scale and kind. As such, I am satisfied that the obligation meets the tests at CIL Reg 122.

Other Matters

23. I have had regard to the other concerns expressed locally, but none has led me to a different overall conclusion.

Planning Balance and Conclusion

24. The proposal would be significantly harmful to the character and appearance of the site and the surrounding area, including the setting of a non-designated heritage asset. It would also infringe on a Grade 1 SINC, although the harm to the bio-diversity value of the site would be minor and ecology enhancements are proposed. Nevertheless, the proposal would be contrary to the development plan as a whole and to relevant policies of the Framework.
25. The proposal would deliver eight new residential units. The Framework, the London Plan and the LP all seek to boost the supply of new homes. That said, there is nothing to suggest that the Council does not have a five year supply of housing land and the scale of provision would be modest. The proposal also has the potential to deliver a contribution to affordable housing, although that is not certain. Consequently, I give moderate weight to the housing benefits of the proposal.
26. The appellant argues that the flexible use of the ground floor unit would potentially improve the retail function. However, there is nothing to suggest that the existing unit is not contributing to the vitality of the area. Indeed, I note the value placed on it by a number of objectors to the proposal. Consequently, I give little weight to this benefit. The proposal would introduce a mix of uses on the site and increase the density of development compared with the existing building. These outcomes are supported by LP Policy G1 and the Framework, although paragraph 117 of the Framework is clear that the environment should also be safeguarded and improved. I have found that the proposal would not meet this requirement and, therefore, I can give limited weight to the optimisation of the site's potential.
27. The appellant also refers to the provision of car-free housing and cycle parking. However, these are policy requirements necessary to ensure that the proposal accords with sustainable travel policy objectives. As such, they carry minor weight in favour of the proposal.
28. There would be benefits through expenditure and employment at the construction phases, although these would apply to all new built development and would be short-term.
29. Overall therefore, I find that the benefits of the proposal do not outweigh the harm I have identified and the conflicts with the development plan. As such, the proposal does not amount to sustainable development.
30. For the reasons set out above, the appeal should be dismissed.

Simon Warder

INSPECTOR