
Appeal Decision

Site visit made on 30 January 2020

by Andrew McGlone BSc MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 February 2020

Appeal Ref: APP/X5990/W/19/3241176

350 Kilburn Lane, London W9 3EF

- 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 Umar Farooq against the decision of City of Westminster Council.
 - The application Ref 19/01939/FULL, dated 14 March 2019, was refused by notice dated 25 September 2019.
 - The development proposed is a first floor part rear extension and second floor full rear extension.
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Decision

1. The appeal is allowed and planning permission is granted for a first floor part rear extension and second floor full rear extension at 350 Kilburn Lane, London W9 3EF in accordance with the terms of the application, Ref 19/01939/FULL, dated 14 March 2019, subject to the conditions in the attached schedule.

Main Issues

2. The main issues are the effect of the proposed development on: (i) the character and appearance of the area; and (ii) the health and wellbeing of the protected Sycamore tree.

Reasons

Character and appearance

3. The appeal site comprises of a three-storey, mid-terraced building on the south side of Kilburn Lane, close to its junction with Ashmore Road. The building is constructed from brick and it has a butterfly roof hidden behind a parapet. The building has a two-storey rear outrigger with a mono-pitched roof and a further small flat-roofed projection at second floor. A single storey ground floor extension is at the end of the outrigger. Neighbouring properties within the terrace at 338, 340, 342 and 344 Kilburn Lane each have closet wings at ground first and second floor levels. Rear extensions have also been granted at 346 and 348 Kilburn Lane¹. Two and three storey closet wings are to the rear of properties within the terraces on Portnall Road and Ashmore Road.
4. Saved Policy DES 5 of the Unitary Development Plan (UDP), among other things, says that permission may be refused for development involving the alteration or extension of buildings where an extension rises above the

¹ Council Refs: 17/04218/FULL and 18/04008/FULL

penultimate storey of the existing building (excluding roof storeys). The proposal would, on face value, conflict with this aspect of the policy. However, in September 2018, planning permission was granted by the Council at the appeal property for the "*erection of mansard roof extension and rear extensions at ground, first and second floors in connection with increase in size of shop unit at ground floor level and use of upper floors as 3 self-contained flats (Class C3)(1xstudio, 1x1bedroom, 1x2bedroom)*".² ('the approved scheme') The differences between the approved scheme, which has not been implemented, and that proposed is the additional depth of the second floor extension, the omission of the ground floor infill extension and the mansard roof extension.

5. The proposal would increase the scale and massing of the existing built form at second floor to the rear of the terrace compared to the approved scheme. As a result, the existing stepped arrangement would change, but the proposal would be subservient to the host property. However, a good number of buildings in the area have been altered or extended to the rear. Overall, these lack a degree of uniformity and the inconsistent extent of these alterations or extensions form part of the character of the terrace, and the neighbouring terraces on Portnall Road and Ashmore Road. While there are limited views of the rear part of the site from the public realm, and even if the proposal is more likely to be experienced from private views, I consider that the proposal would be of an appropriate scale and massing. The proposal's appearance would respond to the design of the terrace and the nearby area.
6. I have considered the appeal scheme on its own merits having regard to the site's surroundings. This leads me, in respect of this issue, to conclude that the proposed development would accord with Policy S28 of the Westminster City Plan (WCP) and saved UDP policies DES 1 and DES 5; which collectively seek, development involving the extension or alteration of buildings to be to the rear of the existing building; be in scale with the existing building and its immediate surroundings; and its design to reflect the style and details of the existing building taking account of local character and distinctiveness.

Protected tree

7. A Sycamore tree protected by a Tree Preservation Order (TPO) is located within the rear garden of the site. The ground between the tree and the existing built form of the appeal property is hardsurfaced. Pruning works have been approved³ by the Council to the Sycamore, but it is unclear if they have been carried out or not.
8. Saved UDP Policy ENV 16 explains that all trees subject to TPOs will be safeguarded unless dangerous to public safety or, in rare circumstances, when felling is required as part of a replanting programme. The policy also says that planning permission will be refused for development likely to result in the loss of or damage to a tree which makes a significant contribution to the ecology, character or appearance of the area. Policy 7.21 of the London Plan states that existing trees of value should be retained. While WCP Policy S38 says that biodiversity and green infrastructure will be protected and enhanced.
9. The Sycamore tree is part of the green infrastructure in the area. However, due to its siting and nearby built form, there are limited views of the tree from the

² Council Ref: 18/06410/FULL

³ Council Ref: 19/02861/TPO

public realm, principally from parts of Ashmore Road. The tree does, however, enhance the local environment by softening the urban area, and by providing shading, privacy and reducing surface water runoff. Added to this, the site is located in an Area of Wildlife Deficiency.

10. The proposed development would not project any further into the rear garden than either the existing built form or the approved scheme. Although the proposal does not include parts of the approved scheme, the scale of development would, however, be different.
11. No tree assessment specific to the appeal scheme has been submitted by the appellant. However, the report prepared in support of a previous scheme⁴, categorised the Sycamore tree as a C1 specimen accounting for its canopy spread. The Council say that this is ungenerous but offer no contrasting assessment. Thus, I have no reason to disagree with the appellant's assessment of the tree in this regard.
12. The appellant's assessment details the Root Protection Area (RPA) and includes a Tree Constraints Plan. Having regard to these, the proposed development would fall outside the extent of the RPA. However, the Council contend that the roots of the Sycamore tree are likely to be constrained by the boundary walls. Sycamore trees typically have shallow roots. The Council may also be right about the tree not rooting for the same distance in each direction and from its stem. This may well result in the tree's roots favouring the ground between the tree and the existing extent of built form. Nevertheless, if I were to take the Council's approach as true, even though it is not supported by any substantive evidence, the RPA of the Sycamore would need to extend for a couple of extra metres, which would be some way beyond the tree's crown spread.
13. The Council's concern with the proposal is with the effect of the works needed to support the proposed development below the ground on the Sycamore tree. Although these issues may not have been raised as part of the approved scheme, they have been raised in relation to the scheme that is before me. The proposal's additional scale is central to the Council's concern.
14. A Structural Design report has been submitted by the appellant. Although this principally relates to the approved scheme, the report explains that the beams and columns have been designed to take the load of the proposed second floor. Despite the Council saying that the proposal's extra height may require the existing ground floor to be rebuilt, new foundations and/or new or replacement underpinning, the Council do not explain what this may entail or why the appellant's structural engineer is incorrect in saying that "the increased depth at second floor would not be likely to require more intrusive works." This view is expressed in comparison to the works granted by the approved scheme.
15. So, while I am not convinced that the RPA of the Sycamore tree is potentially to the extent suggested by the Council, the evidence before me does not rule it out either. However, in the context of the existing and approved built form and the Structural Design report, the effect arising from the proposed development having regard to the RPA from the appellant's assessment, is not likely to occur. Even so, given the TPO status of the tree and its role as part of the area's green infrastructure, it is necessary and reasonable to impose a planning condition to secure a method statement so that the health and wellbeing of the

⁴ Council Ref: 18/09684/FULL

Sycamore is protected and retained. On this basis, there would be no adverse biodiversity impacts arising from the proposed development.

16. I therefore conclude that the proposed development would, in respect of this issue, accord with WCP Policy S38, saved UDP policies DES 1(A), ENV 16 and ENV 17; which together, among other things, seek, sustainable inclusive urban design that protects and enhances biodiversity and green infrastructure such as protected trees and the habitat that they provide.

Other matter

17. I note the points raised by residents about a loss of privacy and loss of light, but I agree with the Council that the effect caused would not be harmful enough to warrant refusing planning permission in respect of these matters.

Conclusion and conditions

18. I have had regard to the planning conditions suggested by the Council. I have imposed an approved plans condition in the interests of certainty. A condition controlling the hours of building works is necessary in the interests of neighbour's residents living conditions. A condition about materials, the method of construction and the appearance of the extension are necessary due to the character and appearance of the area. For the same reason, and to protect and retain the TPO Sycamore, a method statement is required to set out the measures to be used before and while any works take place.
19. For the reasons set out above, I conclude that the appeal is allowed.

Andrew McGlone

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan; SD1837(P)24; SD1837(P)25; and SD1837(P)26.
- 3) You must carry out any building work which can be heard at the boundary of the site only: between 08.00 and 18.00 Monday to Friday; between 08.00 and 13.00 on Saturday; and not at all on Sundays, bank holidays and public holidays. Noisy work must not take place outside these hours.
- 4) All new work and improvements inside and outside the building must match existing original adjacent work in terms of the choice of materials, method of construction and finished appearance. This applies unless differences are shown on the approved plans or are required in conditions relating to this permission.
- 5) Prior the commencement of the development hereby permitted, a method statement must be submitted to and approved by the Council writing explaining the measures that will be taken to protect the Sycamore tree on the site. The method statement should include details of a construction exclusion zone, the location and type of barrier fencing, ground protection, the location of material storage, and have been devised having regard to the results of a trial hole or holes which shall have been first dug to assess the extent of, and dimension of roots relating to the Sycamore tree near to the development hereby permitted. No equipment, machinery, materials, demolition, site clearance or building work shall be brought onto the site or commenced until the method statement has been approved in writing. Nothing shall be stored or placed within any fenced area, and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the prior written consent of the local planning authority. The development shall be carried out in accordance with the approved method statement until the development is completed.

END OF SCHEDULE