



Appeal Decision

Site visit made on 13 November 2023

by R Major BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 December 2023

Appeal Ref: APP/T5150/W/23/3321054

157 Kilburn High Road, Brent, London NW6 7HU

- 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 Amir Shirafkan against the decision of the London Borough of Brent.
 - The application Ref 22/3847, dated 10 November 2022, was refused by notice dated 27 March 2023.
 - The development proposed is ground floor rear extension to the existing commercial property together with minor internal alterations.
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Decision

1. The appeal is allowed and planning permission is granted for ground floor rear extension to the existing commercial property together with minor internal alterations at 157 Kilburn High Road, Brent, London NW6 7HU in accordance with the terms of the application, Ref 22/3847, dated 10 November 2022, subject to the following 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 / documents:
20221022-PL08; 20221022-PL07; 20221022-PL06; 20231027-BR01; 20231027-BR02; and the Fire Safety Form (prepared by Fire Risk Assessments Limited - dated 26/04/2023).
 - 3) The materials to be used in the construction of the external surfaces of the development hereby permitted shall match, in colour texture and design detail, those used in the existing building.
 - 4) The development hereby permitted shall be carried out in accordance with the fire safety measures detailed within the submitted Fire Safety Form (prepared by Fire Risk Assessments Limited - dated 26/04/2023). All measures shall be implemented prior to first occupation of the development hereby approved and maintained / retained as such in full working order thereafter for the lifetime of the development.

Preliminary Matter

2. The submitted floor plans show an existing external staircase to the rear of the property. This would be removed as part of the proposal. At the time of my site visit I noted that this external staircase had already been removed.

Main Issue

3. The main issue is whether or not adequate arrangements have been made in respect of fire strategy safety.

Reasons

4. No. 157 Kilburn High Road is a three-storey mid terrace property with an additional basement level below ground floor level. The property is a typical low-rise building found in this area, with commercial use at ground floor and basement levels, and residential flats above. To the rear is a small, enclosed courtyard area, which is accessed via a door in the rear elevation at ground floor level, as well as an external staircase leading from a first-floor door, as shown on the existing floor plans.
5. The proposed single storey flat roof extension would infill the rear courtyard area, and result in the removal of the external staircase. Additionally, the existing first-floor door, in the rear elevation, would be replaced by a window.
6. The external staircase provides a second means of escape from the building in the event of a fire, and this would be lost as part of the appeal proposal. However, this external staircase leads into an enclosed courtyard area to the rear of the building and therefore is not an ideal means of escape in such an emergency.
7. Upper floor flats above commercial premises are a relatively common feature of this area, as well as being a common feature in general. However, not all upper floor flats are provided with a separate external staircase for fire safety, or a courtyard to the rear, and there are other ways of ensuring fire safety for occupants.
8. Policy D12 of the London Plan (2021) requires all development proposals to achieve the highest standards of fire safety. It sets out several aspects to which consideration needs to be given. The supporting text of this policy does however acknowledge that the matter of fire safety compliance is covered by Part B of the Building Regulations, before explaining that applicants should consider fire safety before building control application stage.
9. The appeal is accompanied by a Fire Statement Form¹ (FSF) and the date of this document would suggest that it was prepared after the Council issued its refusal on the planning application. Nevertheless, the Council has had an opportunity to review this document as part of the appeal process and submit any comments as part of their appeal submissions. The Council has not provided any comments on the submitted FSF and its content.
10. The submitted FSF details how the commercial space is required to offer 60 minutes fire resistance to the above residential flats and neighbouring units. The escape routes are also required to be protected to offer a minimum of 30 minutes fire protection with all doors opening onto the escape route being Fire Doors 30S standard, with overhead door closers installed. Furthermore, the FSF states that emergency lighting and fire extinguishers are required to be installed.
11. With regard to the requirement of Policy D12 to identify a suitably positioned unobstructed outside space, access for firefighting and an evacuation strategy.

¹ Prepared by Fire Risk Assessment Limited and dated 26/04/2023

The submitted FSF details that fire personnel would access the building from the main front entrance on Kilburn High Road, and emergency vehicles can park on this highway. As such the public land to the front of the site is considered to be a sufficient unobstructed outside space. Similarly, this public area to the front of the site could be used as an evacuation assembly point.

12. In view of the above, whilst it is acknowledged that the proposal would result in the loss of a secondary means of escape from the building. Given the deficiencies of this secondary escape, in that it only provides access to a relatively small, enclosed courtyard to the rear of the appeal site, the fire safety measures that have been proposed within the submitted FSF would provide compensatory arrangements. The provision of these mitigating safety measures could be secured by way of a condition.
13. I therefore conclude that the appellant, through the submission of a Fire Statement Form as part of the appeal, has made adequate arrangements for, and satisfactorily considered, the relevant fire safety aspects of the scheme in accordance with Policy D12 of the London Plan, which requires new development to achieve the highest standards of fire safety.

Other Matters

14. I acknowledge that the appeal site is located adjacent to the Earl of Derby Public House, which is a locally listed building. The Council's Officer Report details that given the surrounding built up character of the neighbouring plots, the proposal would be in-keeping with the character and appearance of the host property and would not have an adverse impact on the character and appearance of the neighbouring locally listed public house. I agree that the proposal would not result in any harm or loss of significance to the neighbouring heritage asset.

Conditions

15. The Council has provided a list of suggested planning conditions, which I have considered against paragraph 56 of the Framework, and advice contained in the Planning Practice Guidance.
16. In addition to the standard time limit condition, I have attached a condition specifying the approved plans to provide certainty, as well as a condition requiring the use of matching materials to safeguard the character and appearance of the area. A condition is also required to ensure the fire safety measures detailed within the submitted FSF are implemented prior to occupation, and retained thereafter.

Conclusion

17. For the reasons given above, and having regard to all matters raised, the proposed development would accord with the development plan when taken as a whole and there are no material considerations that indicate it should be determined other than in accordance with it. I therefore conclude that the appeal should be allowed.

R Major

INSPECTOR