

Appeal Decision

Site visit made on 12 August 2024

by L Clark BA(HONS) DIPTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 October 2024

Appeal Ref: APP/T5150/W/24/3338871

170 Ealing Road, Wembley, Brent HA0 4QD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
- The appeal is made by Mr A Ohbrai against the decision of the Council of the London Borough of Brent.
- The application Ref is 23/2101.
The development proposed is erection of single-storey rear extension to ground-floor retail unit and connection with existing garage; proposed conversion of existing garage space into retail space; proposed division of ground floor retail unit into two units; proposed erection of two storey rear addition to provide access to the first floor flat.

Decision

1. The appeal is dismissed.

Preliminary Matter

2. The proposal is for works to the front and rear of the existing retail unit. The Council has, in its statement, outlined the matters which are in dispute. This does not refer to the proposed first-floor rear extension or the new shop frontages. Based on the evidence, I have no reason to take a different view. I shall therefore focus my assessment on those elements of the proposed development outlined in the decision notice.

Main Issues

3. The main issues are:
 - the effect of the proposed development on the living conditions of No 1 Eagle Road (No 1) with particular regard to outlook;
 - whether suitable measures to manage flood risk can be provided;
 - whether the proposed development would make adequate provision for biodiversity and urban greening; and
 - the effect on highway safety, with particular regard to servicing.

Reasons

Living Conditions

4. No 1 is set at right angles to the appeal property (No 170), with its rear elevation and garden abutting the side boundary and the flat-roofed section of the garage of No 170. The height of the existing wall is approximately 2.39 metres and provides the occupants of No 1 with an open aspect to the rear. The rear garden of No 1 shares side boundaries with a narrow passageway associated with the retail units on Ealing Road and 3 Eagle Road.
5. The Council contend that the proposed rear extension would contravene the 45-degree guidance as set out in the Brent Design Guide SPD1 2018 (SPD1). Neither party have provided me with any evidence to demonstrate the extent to which the proposed rear extension would contravene the 45-degree line and, as such, an assessment of the impact upon the living conditions of existing occupants of No 1 comes down to matters of planning judgement.
6. The purpose of SPD1 is, amongst other matters, to ensure that the size and siting of buildings avoid having an overbearing visual impact upon the living conditions of occupants when viewed from within neighbouring buildings or amenity spaces. The thrust of SPD1 is reflected in Policy DMP1 of the Brent Local Plan 2019-2041 (Local Plan) which seeks to ensure, amongst other matters, that development is proportionate to the siting and scale; and provides high levels of external amenity.
7. From observations on site, I do not agree with the appellant that an increase from the existing height to approximately 3.1 metres would be modest. The proposed rear extension would likely increase the height of the rear boundary higher than the other boundaries No 1 shares with its immediate neighbours. It would therefore result in a taller and more visually prominent form of boundary treatment, which would result in an increased sense of enclosure for the occupants of No 1 when within the rear garden. The proposal would therefore appear overbearing and detract from the outlook of the occupiers of No 1.
8. I conclude that the proposed rear extension would not provide the occupants of No 1 with acceptable living conditions with particular regard to outlook. The proposed extension would therefore be contrary to Policy DMP1 of the Local Plan which seeks, amongst other matters, for development to ensure high levels of external amenity. There would also be conflict with the general guidance set out within SPD1 which seeks to ensure, amongst other matters, adequate amenity for existing residents.

Flood Risk

9. From the evidence before me, the rear of No 170 falls within Flood Zone 3a for surface water. Given this zone has a high probability of flooding, the Council contend a Flood Risk Assessment (FRA) is required.
10. Policy BSUI3 of the Local Plan states that proposals requiring an FRA must demonstrate that the development will be resistant and resilient to all relevant sources of flooding including surface water.

11. The appellant contends that the proposed development would not result in significant alteration to the coverage of impermeable surfacing and as such, no additional surface water would infiltrate the ground. However, the rear of No 170 currently contains a mix of flagstones and concrete, with gaps between each flag and an area of broken flagstones. Together, these features would incorporate an element of permeability. In contrast, the proposed rear extension would cover approximately the whole of the rear yard. No FRA has been submitted alongside the appeal and no drainage has been shown on submitted plans to demonstrate that the proposed development would not increase flood risk elsewhere as a result.
12. Notwithstanding this, I have considered the use of a condition to secure a scheme for sustainable water management. However, it is unclear whether or not the proposed development could accommodate such measures. As such, the use of a condition would therefore not be reasonable.
13. For the reasons given above, I conclude that from the limited evidence available to me, I am unable to reach a firm finding on the scheme's impacts on flood risk. As such, the proposed development would fail to comply with Policy BSUI3 of the Local Plan which seeks to ensure proposed developments make use of sustainable drainage measures.

Biodiversity and Urban Greening

14. Policy BGI1 of the BLP requires all developments to achieve a net gain in biodiversity, avoid any detrimental impact on the geodiversity of the area; and meet an Urban Greening Factor (UGF). Policy G5 of the London Plan 2021 stipulates, amongst other matters, that in the absence of local targets, the Mayor's recommended target score of 0.3 for predominately commercial developments is relevant.
15. No biodiversity measures (BNG) or UGF measures were submitted with the planning application. The appellant has suggested the installation of a green roof to the rear single-storey flat roof section, which they contend would achieve a UGF of 0.1 and provide a habitat for insects and birds. The appellant acknowledges that this would be lower than the recommended 0.3 but contends that this would be an improvement on the existing situation. However, no details of the green roof have been provided.
16. I have considered the use of a condition to secure UGF and BNG. However, it is unclear whether the inclusion of a green roof could be accommodated on the proposed rear extension without compromising the proposed internal height or resulting in an increase in its overall height. As such, the use of a condition would not be reasonable.
17. For the above reasons, I conclude that the proposed development fails to demonstrate adequate provision for BNG and urban greening. Accordingly, there would conflict with Policies DMP1 and BGI1 of the Local Plan, and Policies G5 and G6 of the London Plan insofar as they require all developments to achieve a BNG and meet UGF.

Highway safety

18. No 170 is located within a Primary Shopping Frontage of Ealing Road Town Centre. Ealing Road is a local distributor road and bus route. The area

immediately to the front of No 170 has double-yellow line restrictions, with a loading bay located nearby.

19. Vehicle access to the rear is via Bowrons Avenue, a single-track private lane set between the gable of 2 Bowrons Avenue and the rear of 192 Ealing Road. While the overall area of the existing yard associated with No 170 could accommodate a transit-type van, the entrance into the yard is constricted by the existing garage and boundary fence, restricting vehicle access.
20. The appellant states that servicing only takes place from the front due to site constraints. Whilst a roller shutter door was visible at the ground floor within the rear yard, the submitted Existing & Proposed Ground Floor plan shows no apertures direct from the rear into the retail unit. I therefore have nothing before me to indicate that servicing is currently taking place from the rear, and I see no reason to reach a different view from that of the appellant.
21. I concur with the Council that an additional retail unit would result in an intensification of servicing, however, the proposed development would provide access from the rear into each retail unit. This would now permit servicing to take place from within the private lane which would result in a betterment of the existing situation.
22. I observed that the loading bay close to No 170 is subject to time restrictions of 30 minutes between the hours of 10:00 and 16:00 and no return within 2 hours. At the time of my visit, it was in use by a number of vehicles. Despite restrictions, the Council have not provided me with any substantive evidence to demonstrate that the on-street loading bay could not accommodate the additional need or that the proposed development would lead to conditions detrimental to highway safety.
23. For the reasons given above, I conclude that the proposed development would not lead to an increased demand for servicing on-street and would therefore not adversely impact the functioning or safety of the highway. Accordingly, there would be no conflict with Policies DMP1 and BT3 of the Local Plan.

Other Matter

24. Whilst I am sympathetic to the fact that the appellant submitted the proposal following pre-application advice, I have determined this appeal on its individual planning merits and based on the information before me.

Planning Balance and Conclusion

25. The proposed development would increase the number of retail units within the Ealing Road Town Centre, which would offer additional benefits to the economy. Whilst I have found no harm to highway safety, this would not be the case with regard to the living conditions of the occupiers of No 1. I have also not been provided with sufficient evidence to demonstrate the effects of the risks associated with surface water flooding or to demonstrate adequate provision of BNG and urban greening, to which I attach significant weight. Therefore, the benefits of the development would not outweigh the harm identified.

26. On balance, I find that the proposal conflicts with the development plan taken as a whole, and material considerations do not indicate the decision should be made other than in accordance with the development plan. For the reasons given above, I conclude that the appeal should be dismissed.

L Clark

INSPECTOR