



Appeal Decision

Site visit made on 13 June 2023

by K L Robbie BA (Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 July 2023

Appeal Ref: APP/X5210/W/22/3310997

232 Kilburn High Road, London NW6 4JP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission
 - The appeal is made by Mohammed Adil against the Council of the London Borough of Camden.
 - The application Ref 2022/0644/P is dated 17 February 2022.
 - The development proposed was originally described as "*the erection of a new fourth floor extension on the Kilburn High Road frontage to create 1 no. 1-bedroom apartment and erection of a new third floor extension on the Messina Avenue frontage to create 1 no. 1-bedroom apartment, with associated works*".
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Decision

1. The appeal is dismissed and planning permission for the erection of the erection of a new third floor extension on the Messina Avenue frontage to create 1 no. 1-bedroom apartment with associated works at 232 Kilburn High Road, London NW6 4JP is refused.

Preliminary Matters

2. The appeal is against the Council's failure to determine a planning application. The Council has provided a report and a draft decision notice and it is clear that the Council would have refused the application had it been able to do so within the statutory timescale.
3. Amended plans were submitted at the planning application stage. Had the Council determined the application, the evidence is that it would have done so based on the amended plans. I have therefore determined the appeal based on the same plans. As the appeal is on the basis of the non-determination of the application by the Council, I have amended the description of the development to better reflect the proposal shown on the amended plans in my formal decision above.

Main Issues

4. The main issues are:
 - the effect of the development on the character and appearance of the appeal site and the surrounding area, including the setting of the nearby Grade II listed building;
 - the effect of the proposed development on the living conditions of the existing occupiers of neighbouring properties, with regard to privacy, outlook, light and noise;

- whether the proposal triggers the need for a planning obligation in relation to car-free development; and
- whether the development would provide sufficient cycle storage facilities

Reasons

Character and Appearance

5. The appeal property is located on the corner of Kilburn High Road and Messina Avenue. It has a commercial use at ground floor and flats above. The frontage of the appeal property is a four-storey brick building with butterfly roof and stone parapet facing Kilburn High Road. Its upper floors have a pleasing rhythm in terms of architectural features and fenestration, including the parapet at roof level which, together with the banding features on the floors below, provide distinctive horizontal lines. The rear is three-storey and has a cream rendered side elevation facing Messina Avenue with a mansard-style roof. The proposal would see a fourth-floor extension on the rear to create an additional one-bedroomed flat.
6. The extension would extend the full width of the rear portion of the property and would be almost its full length, the end section being occupied by a roof terrace intended for the occupants of the proposed flat. It would be finished with a metallic cladding. The flat roof of the extension would be just below the parapet level of the main frontage building.
7. There is a reasonable degree of architectural variety in the buildings on this part of Kilburn High Road, including some modern buildings. Their scale is relatively consistent, with buildings generally laid out in terraces providing continuous street frontages. The terraced buildings on Messina Avenue are similar in height to that of the proposed extension. Whilst it is recognised that the rear of terraces host a great variation of later additions, those in the rest of this section of terrace are much lower in height than the main frontage building, which retains a character of subservience to the host building. Whilst I recognise that there are a number of taller additions on the rear of Gascony Avenue close by, the appeal proposal would not be readily observed in the context of these taller additions and would not as a consequence be visually related to them. Their presence does not persuade me that the proposal would not adversely impact the character and appearance of the appeal site and its surroundings.
8. The proposed extension, due its height in relation to the frontage part of the host building and its dark metal clad finish would, in contrast to those surrounding it, appear top heavy and awkward above the existing rear extension, especially when viewed from Messina Avenue where it would be visible above the mansard of the rear extension and would obscure the butterfly roof of the frontage building. The overall height of the proposal would diminish the subservience of the rear part of the building. Furthermore, the horizontal emphasis of the fenestration in the side elevation would not relate well to the windows below and the vertical emphasis of the windows in the main frontage part of the building.
9. The proposal would be viewed in the context of the adjacent Grade II listed cinema building (Listed as The National Club). The Cinema is listed as the largest cinema in Europe when constructed and is noted for its architectural

detailing and cinema design. I have not been provided with a heritage assessment to demonstrate that the setting of the heritage asset would not be affected by the proposal. From my observations on site, the proposal would be clearly visible within the context of the heritage asset when viewed from both Kilburn High Road and Messina Avenue. Nevertheless, in my opinion, the siting of the proposal would not adversely affect the setting of the listed building which would continue to be able to be read in its context within a busy commercial environment. The impact on its setting would therefore be neutral.

10. Although I have concluded that the proposal would preserve the setting of the listed building it would cause unacceptable harm to the character and appearance of the host building and the surrounding area. As such, it would be contrary to Policies D1 and D2 of the Camden Local Plan 2017 (CLP) which, amongst other things, require development to respect local context and character, and preserve and enhance the Borough's heritage assets. The proposal would also conflict with the Council's Planning Guidance on Design (2021) which advocates, amongst other things, that the scale and bulk of additional storeys should have regard to their local context.

Living Conditions

11. The proposal would be located on the north end of the section of a terrace facing approximately west onto Kilburn High Road. Properties within the terrace have rear windows facing approximately east. Obliquely south of the appeal site are the rears of residential properties on Gascony Avenue.
12. When sitting or standing on the proposed outdoor roof terrace, views would be directly towards the blank gable of a four-storey property on Messina Avenue. It would, however, be possible for users of the terrace to observe the rears of the properties on Gascony Terrace, in particular Nos. 1, 3 & 5, and to a lesser extent the rears of properties on Messina Avenue. Views of the rears of properties closest on Kilburn High Road would be over their rear extension roofs, which I observed on my site visit did not appear to be used for amenity purposes. Nevertheless, the appeal property is located within an urban block where a degree of overlooking already exists, therefore the position and the height of the outdoor roof terrace would mean that the users of it would not be afforded any greater view into the windows or yards of the properties of those properties than already exists from the rear windows of the appeal property. There would also be no undue overlooking of other properties on Kilburn High Road from either within the property or from the outdoor roof terrace.
13. The kitchen window of the third floor flat at 232 Kilburn High Road (No. 232) would be very close to the proposal. The proposed extension being designed with an inset to accommodate a reduced width window. I also observed on my site visit that an existing bathroom window, not shown on the existing plans would be blocked by the proposal. Whilst I acknowledge that the window facing the development from the existing flat at No. 232 serves a kitchen and therefore not a habitable room, nevertheless, the proposal would be dominant and visually overbearing when viewed from this window, which would be the only remaining window in this elevation.
14. The proposal would also be in proximity to rear windows on No. 230 Kilburn High Road (No. 230) and 228 Kilburn High Road (No. 228). Although no daylight and sunlight assessment has been submitted, due to its orientation the proposal is unlikely to cause any undue overshadowing of Nos. 228 and 230.

15. Whilst I appreciate that noise may travel further at an elevated position, I have no reason to consider that the proposed roof terrace would be used for any purpose other than as a residential outdoor amenity area and that the level of use would be restricted given its limited size. Given background noise levels in this location and the small size of the terrace, I do not consider that gatherings of any significant size would be likely to take place which would lead to unacceptable noise nuisance on a regular basis that would result in diminished living conditions for the occupiers of neighbouring properties.
16. Whilst I have found that the proposal would not unacceptably harm the living conditions of neighbouring occupiers with regard to loss of light, privacy and noise. I have found that the proposal would cause unacceptable harm to the living conditions of the occupiers of the third floor flat at No. 232 with regard to outlook. The proposal would therefore conflict with CLP Policy A1 which seeks to protect the quality of life of occupiers and neighbours.
17. Having regard to the site's context and all relevant considerations, there would not be a significant adverse impact on the occupiers of Nos. 1, 3 & 5 Gascony Avenue or Nos. 228 and 230 Kilburn High Road. The proposal, in this respect would deliver appropriate privacy and living conditions for the occupiers of those properties. In this respect the proposal would not conflict with CLP policy A1, which, amongst other things seeks to ensure that the amenity of communities, occupiers and neighbours is protected.

Planning Obligation

18. Policy T6 of the London Plan requires that car free development should be the starting point for all development proposals in places that are well connected by public transport, such as the appeal site. This is, in part, to ensure that people and businesses can move about the city as the population grows and housing delivery increases significantly. CLP Policy T2 indicates that all new residential developments should be car-free and makes it clear that this will be achieved by way of legal agreements.
19. My attention has been drawn to another appeal where the Inspector determined that a condition was necessary in order to secure car-free housing. I do not know the precise circumstances of this appeal. Whilst I recognise that this approach to securing car-free development is acceptable where the Council agrees and they have a mechanism in place to regularly update the relevant TRO, in this instance the Council have stated that it is not practical for them to update the TRO on an ad-hoc basis. I therefore consider that the appropriate mechanism would be to secure the car-free status of the development by way of a planning obligation.
20. Whilst I appreciate that in other circumstances a condition may be appropriate to secure car-free development, in this case I do not have sufficient evidence before me to support the use of a planning condition to deal with car free housing. In the absence of a completed planning obligation, I find that the proposal would conflict with London Plan Policy T6 and CLP Policies T1 and T2 in this regard.
21. No provision is made within the development for cycle parking. The appellant has not stated that it would be possible to provide cycle storage on site but points out that the existing flats within the building do not have on-site cycle storage provision. Nevertheless, CLP Policy T1 requires that developments

should provide accessible, secure cycle parking facilities at least in line with the standards set out in the London Plan. For a development of the scale proposed would be one space.

22. The appellant suggests that the Sheffield cycle racks on Messina Avenue close to the appeal building would satisfy this requirement. However, these are not secure, and it would be unlikely that a resident of the proposed flat would feel comfortable relying on this facility for permanent cycle storage.
23. In the absence of secure cycle storage on-site it is not unreasonable of the Council to require a financial contribution towards the provision of secure cycle hangars in the locality. However, the Council have failed to identify the location of such which would mitigate the absence of their provision on site. I there have no evidence that a scheme to which the development could contribute or whether it would be reasonably located to be useful to the future occupiers of the flat.
24. It would be reasonable to assume that the process of agreeing cycle storage within a development would be an iterative process between the appellant and the Council. In this instance I have been unable to conclude whether the provision could be made on-site or whether there is a suitable scheme for the appellant to contribute towards. Nevertheless, the scheme in its current form fails to provide adequate secure cycle storage in conflict with CLP Policy T1 which seeks to ensure cycle provision is provided for new developments.
25. Therefore, I have considered the Council's requirements in light of the statutory tests contained in Regulation 122 of The Community Infrastructure Levy (CIL) Regulations 2010 (the Regulations). In my judgement, both the requirements are directly related to the development and are fairly and reasonably related in scale and kind to the development. However, on the matter of cycle storage, the absence of certainty of a scheme to contribute towards leads me to conclude that it would be unreasonable to require a contribution on that basis.
26. Therefore, to conclude on this main issue, as the proposal is not accompanied by a planning obligation to deal with the car-free status of the development there would be conflict with the development plan. In its failure to provide secure cycle storage it would also conflict with the development plan. For these reasons, the proposed development would have an adverse effect on transport and parking provision in the area. Consequently, it would conflict with London Plan Policy T6 and CLP Policies T1 and T2 in this regard.

Other Matters

27. I acknowledge the appellant's concern over the handling of the application and their frustration at delays in obtaining responses from the Council during the application process. However, this is not a matter that I can consider under a Section 78 planning appeal and does not alter my findings, in which I have had regard solely to the planning merits of the proposal.

Planning Balance and Conclusion

28. On the basis of the evidence before me the Council's delivery of housing over the past three years is substantially below its target, therefore, Paragraph 11d of the National Planning Policy Framework (the Framework) requires planning permission to be granted unless the adverse impacts of doing so would

significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole.

29. The proposal would only contribute a net addition of one dwelling to the supply of housing in an area where there is housing need and occupants would have good accessibility to services, facilities and employment and close to public transport links. Given this small contribution to the overall supply of housing in the borough the benefit of providing dwellings where there is a shortfall would be extremely limited.
30. I have found harm to the character and appearance of the site and its surroundings and to the living conditions of existing occupiers of the building. with the above in mind, the adverse impacts of granting planning permission for the proposed development would significantly and demonstrably outweigh its benefits when assessed against the policies in the Framework taken as a whole. Therefore, it would not represent sustainable development for which the presumption in favour applies.
31. Consequently, there are no material considerations, individually or cumulatively, that would warrant taking a decision otherwise than in accordance with the development plan taken as a whole. I therefore conclude that the appeal should be dismissed.

KL Robbie

INSPECTOR