
Appeal Decision

Site Visit made on 19 October 2021

by F Cullen BA(Hons) MSc DipTP MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 25 October 2021

Appeal Ref: APP/R5510/D/21/3281302

41 Tollgate Drive, Hayes UB4 0NP

- 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 Binem Kot, BHM Property Ltd, against the decision of London Borough of Hillingdon.
 - The application Ref: 67932/APP/2021/2437, dated 15 June 2021, was refused by notice dated 12 August 2021.
 - The development proposed is erection of a ground floor rear extension.
-

Decision

1. The appeal is allowed and planning permission is granted for erection of a ground floor rear extension at 41 Tollgate Drive, Hayes UB4 0NP in accordance with the terms of the application, Ref: 67932/APP/2021/2437, dated 15 June 2021, and the plans submitted with it, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: TD.41.SP-00 Location and Site Plan; TD.41.EX-01 Existing Floor Plans; TD.41.EX-02 Existing Front and Rear Elevations; TD.41.EX-03 Existing Side Elevation and Section; TD.41.PR-01 Proposed Floor Plans; TD.41.PR-02 Proposed Front and Rear Elevations; and TD.41.PR-03 Proposed Side Elevation and Section.
 - 3) The materials to be used in the construction of the external surfaces of the development hereby permitted shall match those used in the existing building.

Preliminary Matters

2. During the course of the appeal the appellant submitted a signed statutory declaration relating to the commencement of a previous permission along with a revised appeal statement. Given the statutory declaration's relevance to the appeal in terms of a potential fallback position it was, exceptionally, accepted and the Council was given the opportunity to comment. I have taken the statutory declaration and the Council's comments into account in my determination of the appeal. I consider no parties' interests have been prejudiced by this approach.
3. As part of the appeal the appellant submitted a revised plan which was not formally submitted as part of the application. The plan shows a revised ground floor layout. As this plan was not formally considered by the Council or other

interested parties, in the interests of fairness, I have made my decision on the basis of the plans that were before the Council when it reached its decision.

4. On my site visit I observed that an extension has been erected in the same position to that shown on the plans submitted with the application¹. However, the extension on site differs to that which is the subject of the appeal in that the doors and fenestration are not the same as those illustrated on the submitted plans. On this basis and for the avoidance of doubt, I am not considering this appeal retrospectively and I have proceeded to determine the appeal on the basis of the plans submitted with the application.

Main Issue

5. The main issue is whether the proposal would provide adequate living conditions for existing and future occupiers of 41 Tollgate Drive, with regard to the provision of private outdoor amenity space.

Reasons

6. The appeal property is a mid-row, three-storey, terraced house. At the rear there is an enclosed area for use as private outdoor amenity space, which measures approximately 55m². The property possesses three bedrooms located on the ground and second floor, with the kitchen and living area located on the first floor.
7. The proposal would reduce the amount of private outdoor amenity space at the rear to about 40m² and increase the number of bedrooms to four. On this basis, the Council contend that the proposal would not comply with Policy DMHB 18 of the London Borough of Hillingdon Local Plan: Part 2 - Development Management Policies, 2020 (HLP-P2), which requires 4+ bedroom houses to have at least 100m² of private outdoor amenity space².
8. Nevertheless, Policy DMHB 18 clearly states that its requirements relate to 'all new residential development and conversions'. It does not advise that they apply to extensions and alterations to existing residential dwellings. I am also mindful that, as existing, the property fails to meet the standard set within this policy.
9. More pertinent to the proposal is Policy DMHD 1 of the HLP-P2. Part A vi) of the policy stipulates that, planning applications relating to alterations and extensions of dwellings will be required to 'ensure that adequate garden space is retained'. The policy and supporting text does not define the term 'adequate garden space'. As such, whether the garden space retained as part of any proposed development is 'adequate', is a matter of planning judgement based on the context of the site.
10. Private outdoor amenity space for the exclusive use of building occupiers is a valued asset. The provision of a satisfactorily sized area of useable private space is important to enable onsite passive recreational activity such as sitting out, for active recreational activity such as gardening, and for other outdoor requirements such as drying clothes.

¹ Plans submitted with the application: TD.41.PR-01 Proposed Floor Plans; TD.41.PR-02 Proposed Front and Rear Elevations; and TD.41.PR-03 Proposed Side Elevation and Section.

² Table 5.3: Private Outdoor Amenity Space Standards. Minimum provision Houses: 1 bedroom 40m²; 2 and 3 bedroom 60m²; and 4+ bedrooms 100m².

11. The proposal would result in a reduction in the garden space available along with an additional one or, as asserted by the Council, potentially two new bedrooms and a consequent possible increase in the number of occupants. Nonetheless, I am mindful that the plan form of the properties along the terrace are such that the extent of private outdoor amenity space to each dwelling is characteristically limited. In addition, when on site, I observed that both dwellings either side of the appeal property possess similar extensions and retain equivalent areas of private outdoor amenity space to the proposal before me. I also have no reason to question the appellant's intentions in relation to the future use of the additional space created as part of the proposal.
12. Whilst the retained garden space would be modest, given the context of the site, I am satisfied that the proposal would retain a functional garden space which would be of a satisfactory size for passive and active pursuits proportionate to this property and its use as a family home.
13. Drawing all of the above together, I conclude that the proposal would provide adequate living conditions for existing and future occupiers of 41 Tollgate Drive, with regard to the provision of private outdoor amenity space. As such, it would not conflict with Policies DMHD 1 and DMHB 18 of the HLP-P2, referred to above.
14. In its delegated report the Council also cites the proposal's failure to comply with Policy DMHB 11 of the HLP-P2. However, this policy is not included in the decision notice and reason for refusal. Policy DMHB 11 concerns the design of new development (including extensions) to which the Council raised no concerns. As such, it is not relevant to the main issue and I have not taken it into account in my determination of the appeal.
15. In coming to my decision I have also had regard to the statutory declaration. This testifies that previous owners of the appeal property commenced a planning permission for a similar extension which was granted in 2011³. On this basis the appellant declares that the previous permission is extant and forms a valid fallback position.
16. The Council has not disputed the extant nature of the previous permission and there is nothing before me which would cause me to query the validity of the statutory declaration or its contents. Whilst the permitted scheme differs in some respects to the proposal before me, the extension would be of the same dimensions and would maintain the same level of private outdoor amenity space available to existing and future occupiers of the appeal property. I am satisfied that there is a reasonable prospect of the extant permission being implemented if the appeal were to be dismissed. I therefore give the fallback position weight in favour of the appeal. Nevertheless, given my conclusion on the main issue, this matter is not determinative.

Conditions

17. I have had regard to the conditions suggested by the Council and considered them in light of the advice set out in both the National Planning Policy Framework and the Planning Practice Guidance.

³ Application Ref: 67932/APP/2011/1729.

18. Planning permission is granted subject to the standard three year time limit condition. The relevant plans are specified as this provides certainty. In the interests of the character and appearance of the existing building, a condition relating to external materials is necessary.
19. Although not included in section 11 of the Council's appeal questionnaire, the Council's Highways section suggested a condition requiring the provision of a construction logistics plan due to the restricted access to the rear of the property. Given that an extension has already been built, albeit not in accordance with the extant or proposed schemes, I consider that this condition is not necessary.

Conclusion

20. There are no material considerations that indicate that the application should be determined other than in accordance with the development plan, with which I find no conflict. Accordingly, for the reasons given and subject to conditions, the appeal is allowed.

F Cullen

INSPECTOR