
Appeal Decision

Site visit made on 7 March 2022

by T J Burnham BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 April 2022

Appeal Ref: APP/R5510/W/21/3285383
38 Hazeldene Gardens, Uxbridge UB10 9DJ

- 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 Mr Bharadia against the Council of the London Borough of Hillingdon.
 - The application Ref 57039/APP/2021/811, is dated 1 March 2021.
 - The development proposed is a 2 storey 2bed dwelling.
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Decision

1. The appeal is allowed. Planning permission is granted for 2 storey 2bed dwelling at 38 Hazeldene Gardens, Uxbridge UB10 9DJ in accordance with the terms of the application Ref 57039/APP/2021/811 dated 1 March 2021 subject to the following conditions:
 - 1) The development hereby permitted shall be begun before the expiration of three years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 1982_PL01, 1982_PL02, 1982_PL03, 1982_PL04 & 1982_PL05.
 - 3) The materials to be used in the construction of the external surfaces of the development hereby permitted shall match those used on the existing dwelling.
 - 4) The dwelling hereby permitted shall not be occupied until the first-floor bathroom window within the side elevation has been fitted with obscured glazing, and no part of this window that is less than 1.7 metres above the floor of the room shall be capable of being opened. Details of the type of obscured glazing shall be submitted to and approved in writing by the local planning authority before the windows are installed and once installed the obscured glazing shall be retained thereafter.
 - 5) The dwelling hereby permitted shall not be occupied until details of step free access via the principal entrance and all other points of entry and exit have been submitted to and approved in writing by the Local Planning Authority. Step free access shall be in place prior to the first occupation of the dwelling and shall remain in place for the lifetime of the development.
 - 6) The dwelling hereby permitted shall not be occupied until the reconfiguration of No.38 Hazeldene Gardens has been carried out in accordance with the details provided on drawings 1982_PL04 & 1982_PL05. This arrangement shall thereafter be retained for the lifetime of the development.

Procedural Matters

2. The appeal was submitted on the basis of the failure of the Council to determine the planning application within the prescribed period. The Council has submitted a statement which sets out its putative reason for refusal. This constitutes the matter of disagreement with the appellant, and therefore forms the main issue in this case.
3. The description of the proposal has been altered from the application form to the letter of acknowledgement of the application from the Council. However, the description on the application form adequately describes the proposal and I have determined the appeal on that basis. I acknowledge that the proposed dwelling is attached and that associated parking and amenity space are included within the proposal.
4. At the time of my visit some development had commenced on the site of this proposal. However, the evidence indicates that this is associated with a separate planning consent at the site Ref 57039/APP/2018/664 relating to an extension to the existing dwelling.

Application for costs

5. An application for costs was made by Mr Bharadia against the London Borough of Hillingdon. This application is the subject of a separate Decision.

Main Issue

6. The main issue therefore is the effect of the proposal on the living conditions of the occupiers of 38 Hazeldene Gardens (No.38) with particular regard to overdominance, overshadowing, visual intrusion, loss of light and loss of outlook.

Reasons

7. The proposed dwelling would incorporate a two storey off shoot to its rear elevation and this would be set only a short distance along the rear elevation from one of the rear bedroom windows on the first floor of the existing dwelling. It is the effect on this window as a result of the off shoot in relation to overdominance, overshadowing, visual intrusion, loss of light and loss of outlook which is of concern to the Council.
8. However, the proposal seeks to address these concerns by proposing a reconfiguration of No. 38 such that this bedroom and its window would be reconfigured to provide and serve two en-suite bathrooms. The window would no longer serve a habitable room and would rather be obscure glazed to serve the bathrooms.
9. Were this reconfiguration to occur the rear off shoot would not harm the living conditions of the occupiers at No.38 with regard to overdominance, overshadowing, visual intrusion, loss of light and loss of outlook. The proposal would be in line with the requirements of Policy DMHD1 (vi) of the Local Plan Part 2 Development Management Policies (2020) (DMP) where it relates to the 45-degree rule.
10. The proposal would accord with policies DMHD1 and DMHB 11 of the DMP. Amongst other things these policies require that proposals do not result in any unacceptable loss of outlook to neighbouring occupiers and should not adversely impact on the amenity, daylight and sunlight of adjacent properties and open space.

11. I have not identified conflict with the Hillingdon Strategic Policies (2012) that have been put before me, and the same is the case for the London Plan (2021) policies that have been drawn to my attention.

Other Matters

12. Concern has been raised in relation to the effect of the proposal on the living conditions of other nearby occupiers. However, the Council has no concerns in this regard and having considered the plans and visited the site I have no reason to disagree. The same is the case with regard to concerns surrounding highways matters, and the Highway Authority have not raised concerns with regard to the proposal.
13. I am aware of a recent appeal decision Ref APP/R5510/W/21/3268811 which related to the demolition of existing garage and construction of a 2 storey 2 bedroom home at this site which was dismissed. The previous inspector found that there would be harm to the character and appearance of the area and harm to the living conditions of the occupiers at No.38. However, unlike that proposal, this one includes a set down from the ridgeline and set back at first floor level along with the reconfiguration of No.38 detailed above. The scheme before me is therefore different and I afford this previous appeal decision limited weight.

Conditions

14. A number of conditions have been suggested by the Council. In addition to the standard three-year time limit for commencement, I have imposed a condition requiring the development to be carried out in accordance with the submitted plans. A condition requires the external materials to match No. 38 in the interests of the character and appearance of the area. The only window that I would consider it necessary for obscure glazing to be provided to would be the first-floor bathroom window looking towards 40 Hazeldene Gardens and I have added a condition to that effect in the interests of the living conditions of nearby occupiers. A condition is necessary relating to step free access to ensure that the dwelling is accessible to as many people as possible. A condition is also necessary to secure the internal re-arrangement of No. 38, in the interests of the living conditions of the occupiers.
15. I do not consider that a condition requiring details of hard or soft landscaping is necessary given the modest scale of the proposal relating to a single dwelling and a standard arrangement is indicated on the plans. Planning conditions should not be used to restrict permitted development rights unless there is clear justification to do. That clear justification is not before me and the imposition of conditions to this effect would not be reasonable in this instance. There is nothing to indicate that the small flat roof section would be used as balcony or other such area and a condition is not necessary in this regard.

Conclusion

16. Taking all relevant matters into account, the proposal accords with the development plan and there is no indication that a decision should be made other than in accordance with it. The appeal is therefore allowed and planning permission is granted.

T J Burnham

INSPECTOR