



Appeal Decision

Site visit made on 3 January 2024

by S. Hartley BA(Hons) Dist.TP(Manc) DMS MRTPI MRICS

an Inspector appointed by the Secretary of State

Decision date: 17.01.2024

Appeal Ref: APP/W4325/D/23/3330678

82 Hinderton Road, Tranmere, Wirral CH41 9AE

- 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 Miss Melanie McMahon against the decision of Wirral Council.
 - The application Ref APPH/23/00042, dated 9 January 2023, was refused by notice dated 22 September 2023.
 - The development proposed is described as a lean-to at the rear of the property (wooden building with glass windows).
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Decision

1. The appeal is allowed, and planning permission is granted for a lean-to at the rear of the property (wooden building with glass windows) at 82 Hinderton Road, Tranmere, Wirral, CH41 9AE in accordance with application ref: APPH/23/00042, dated 9 January 2023 and subject to the following condition: -

Within three months of the date of this decision, all windows on the side elevation of the extension hereby permitted and facing no. 80 Hinderton Road shall be sealed shut and obscurely glazed to no less than Pilkington Glass level 4 or its equivalent in terms of opacity. These windows shall thereafter remain obscurely glazed at this scale and sealed shut for the lifetime of the development.

Procedural Matters

2. The appeal is made retrospectively for development that has already been constructed.
3. As part of this appeal, I sought clarification from the local planning authority (LPA) in respect of Wirral Local Plan 2021-2037 (Emerging WLP) which was submitted for Examination on 26 October 2022. The WLP has not yet been adopted and hence I do not afford the relevant policies full weight in decision making terms.
4. A revision to the National Planning Policy Framework 2023 (the Framework) was published on 19 December 2023. The amendments made did not have a bearing on the issues in this appeal, and it was therefore not necessary to seek comments from the main parties on it. Where I have referred to the Framework, it is that of the December 2023 version.

5. For the purposes of my site visit, I had pre- arranged to be met by the appellant so that I could view the development from the appeal site. However, the appellant was not in attendance when I visited the site. Nevertheless, I had a request to view the development from the occupant of the adjoining property at No. 80 Hinderton Road and I could see the appeal site and hence the appeal development from this property. Furthermore, I could view part of it, and its setting within the appeal property and its neighbouring dwellings, from the lane to the rear which has restricted access but which the occupant to No. 80 Hinderton Road was able to allow me access to it. It has not therefore been necessary for me to request a further site visit involving the appellant.

Main Issues

6. The main issue is the effect of the proposal upon the occupiers of No. 80 Hinderton Road in respect of outlook, light and privacy and, if harm is identified and/or conflict found with the development plan, whether any such harm and/or conflict with the development plan is outweighed by the personal circumstances of the appellant.

Reasons

7. The evidence is that there was recently an extension to the rear of the property in approximately the same position as the appeal extension. It was built utilising permitted development rights but was subsequently demolished. It is understood that such a rear extension was similar in height to the appeal development, albeit it projected 3 metres from the rear wall of the house rather than 4.4 metres.
8. The appeal extension does not accord with the Council's House Extensions SPG 2004 (SPG) or Policy HS11 of the Wirral Unitary Development Plan 2000 (UDP) which collectively require that single storey rear extensions within 1 metre of boundaries should not exceed 3 metres. The conflict with the SPG and UDP weighs against allowing the proposal.
9. Notwithstanding the above conflict, I have noted that there was previously a very similar extension in situ on the appeal site. I consider that if the planning appeal were to be refused, the appellant would seek to maximise floorspace in so far as utilising permitted development rights. Such an extension would be likely to be similar in height and appearance, albeit that it would project 1.4 metres less from the rear wall of the host property.
10. As part of my site visit, I was able to consider the appeal development in terms of its relationship with No. 80 Hinderton Road. Given the existing boundary treatment between the two properties, only some two feet of the extension including its windows, is visible from the ground floor, glazed areas of this neighbouring property. When considered against the permitted development fall-back position, I do not find that the appeal development has had a materially greater adverse impact on the outlook enjoyed by the occupiers of No. 80 Hinderton Road than would occur for development using permitted rights.
11. The rear of the terraced properties in this location face north. Hence, I consider that the development's impact in terms of any overshadowing or a

direct loss of sunlight to the neighbouring property must be constrained. Furthermore, given the low height of the extension, I do not find that there is reasonable evidence before me to indicate that it has resulted in any significant loss of natural light penetration into the glazed areas of the neighbouring property. This is despite the technical conflict with the SPG which requires extensions to comply with the '*45 degree test*'.

12. I acknowledge that when seen from the glazed patio doors of the neighbouring property, the appeal extension does project slightly further than a permitted development rear extension. However, I do not find that the relative difference in length is significant in terms of the impact of the development upon outlook and light, so as to justify refusal of planning permission.
13. I conclude that the development does not accord with the SPG in respect of the 45 degree test. It also fails to accord with the SPG and the UDP in respect of exceeding 3 metres in length. However, and for the reasons outlined above, it nevertheless accords with the amenity requirements of paragraph 130(f) of the National Planning Policy Framework 2023 in so far that, subject to the imposition of a condition, no material harm would be caused to the living conditions of the occupiers of No. 82 Hinderton Road so as to justify the dismissal of the appeal.

Other Considerations

14. I recognise that there is technical conflict with the SPG and part of policy HS11 of the UDP. However, for the reasons outlined above, I have not found that material planning harm has been caused. Furthermore, the technical conflict with the SPG and policy HS11 is in this case outweighed by the fact that the extension is needed to meet the specific needs of the appellant who is disabled. Indeed, the evidence from the Occupational Therapist dated 31 October 2022 is that the appellant is seldom able to use the stairs and that the extension is needed to house kitchen and laundry appliances displaced by the relocation of bathing facilities from the first floor to the ground floor and to store and safely charge an electric mobility scooter. The disability needs of the appellant weighs heavily in favour of allowing the appeal.
15. Given the above, I have had due regard to the Public Sector Equality Duty contained in section 149 of the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it.

Other Matters

16. I have taken into account the representations and photographs submitted by the occupier of No. 80 Hinderton Road. Many of the comments made have already been addressed in my reasoning above.
17. It is stated that the extension is '*ugly*'. The LPA raises no objection to the appearance of the rear extension, including its use of materials. In the context of the position and size of the rear extension, I do not disagree with the conclusion reached by the LPA about this matter. While the materials used on the rear extension differ from the main house, they nonetheless suitably complement it. In this regard, I do not find that the development conflicts with

the design requirements of emerging or adopted development plan policies or Chapter 12 of the Framework.

18. It is suggested that the rear extension has inadequate drainage such that water from the roof floods the neighbouring outside amenity space. However, the evidence before me is not precise or detailed and, in any event, this would be a private legal matter to be considered outside the scope of this planning application.
19. Furthermore, it is claimed that the extension has devalued No. 80 Hinderton Road. I do not know if this is the case, but the Courts have held that this is not a material planning consideration.
20. It is suggested that the side elevation windows, when open, overhang land in the ownership of the occupiers of No. 80 Hinderton Road. Given my condition relating to ensuring that these windows are kept permanently closed, I do not find that this would be an issue. In any event, this is a separate private legal matter. Finally, it is claimed that there is some artificial light spillage from the windows of the side elevation of the extension towards No.80 Hinderton Road. I do not find that this is so harmful as to justify refusing planning permission. Indeed, this is only likely to be noticeable when it is dark outside and hence at a time when curtains or blinds are more likely to be closed.
21. None of the other matters raised alter or outweigh my on-balance conclusion below.

Conditions

22. As the planning application has been submitted retrospectively, it is not necessary to impose a standard three-years commencement of development condition, or a drawing condition.
23. In the interests of the privacy of the occupiers of No. 82 Hinderton Road, it is necessary that I impose a condition requiring all windows within the side elevation of the rear extension to be finished in opaque glass and to be permanently closed. I have afforded the main parties an opportunity to comment on such a condition, including the degree of opacity of the obscure windows and where I consider this should be at the higher end of the scale in order to protect the privacy of the occupiers of the adjoining dwelling.

Planning Balance and Conclusion

24. While there is conflict with the SPG and policy HS11 of the UDP in terms of not complying with the 45-degree test, and projecting more than 3 metres from the rear wall of the house, I nonetheless find that when the permitted development fall-back position is taken into account, coupled with the requirements of the appellant who is disabled, such technical conflict is outweighed by these material considerations.
25. Furthermore, and, in any event, and subject to the imposition of a planning condition, I do not find that in this case the development has caused material harm to the occupiers of neighbouring properties in respect of outlook and light. In this regard, there is no conflict with policy 7.2 of the Emerging WDP. On balance, I conclude that any technical conflict with the adopted

development plan is outweighed by the other material considerations.
Therefore, the appeal should be allowed.

S. Hartley

INSPECTOR