Planning Committee	20 July 2023	
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Reference:	Area Team:	Case Officer:	Ward:
APP/23/00495	DM	Mr K Woodward	Oxton

Location:	Cherry Cottage Wexford Road, Oxton, Prenton, Wirral, CH43 9TB
Proposal:	RETENTION OF GARAGE CONVERSION FOR USE AS A HOLIDAY LET
Applicant:	Mr JAMES O' LOUGHLIN
Agent :	

Qualifying Petition	No.	
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### Site Plan:



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designation:  Density and Design Guidelines Area.	Development Plan designation:	Primarily Residential Area Density and Design Guidelines Area.
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Planning History:	Location: Cherry Cottage, WEXFORD ROAD, OXTON, CH43 9TB
	Application Type: Full Planning Permission
	Proposal: ERECTION OF TWO BEDROOM SINGLE STOREY DETACHED DWELLING
	Application No: APP/21/00044
	Decision Date: 28/06/2021

Decision Type: Refuse

**Decision Type: Conditional Approval** 

Location: Cherry Cottage Wexford Road, Oxton, Prenton, Wirral, CH43 9TB

Application Full Planning Permission Type:

Proposal: Retrospective change of use from domestic garage to holiday let accommodation.

Application No: APP/21/02117 **Decision Date: 05-08-2022** 

Location: Cherry Cottage, Wexford Road, Oxton. L43 9TB

Application Type: Full Planning Permission Proposal: Erection of a double garage.

Application No: APP/93/06828 Decision Date: 04/02/1994 Decision Type: Approve

#### **Summary Of Representations and Consultations Received:**

#### 1. Ward Member Comments

Councillor Allan Brame shared the concerns of a number of local residents who had contacted him to express their concern about the application. Councillor Brame has requested that the application be taken out of delegation and called in for Committee determination.

#### 2. Summary of Representations

The residents of twenty-one neighbouring properties were individually notified of this application. At the time of writing this report, two representations objecting to the application have been received.

The main comments raised by the objecting representations are summarised as follows:

- Increased noise disturbance from guests and traffic.
- Present length of the fence screen is too short as it is possible to see through the hedge to the other side thus, impacting privacy and security.
- Locality is a quiet residential area not suitable for holiday
- Downgrade property values.
- There are foxes living in the bottom of the garden which are disturbed.
- Large vans and cars cause fumes and noise as well as access and egress problems on a bend.

#### Consultations

#### **Highways (Traffic and Transportation)**

No objection.

#### **Highways (Asset)**

No objection.

#### **Environmental Health**

No objection.

## 3.1 Site and Surroundings

The building is located within the curtilage of Cherry Cottage, a detached dwelling situated within a residential context of Oxton. The site falls within a Primarily Residential Area and zone 1 of the Noctorum Ridge Density and Design Guidelines Area.

The application site fronts Wexford Road and is bounded by residential properties on both sides and to the rear.

The property, and its associated detached former garage to which this application relates, are located towards the rear of the plot, the converted garage being in the northern-most rear corner of the site, which leaves a large front garden and driveway, and a small rear garden.

### 3.2 Proposed Development

This application seeks permission for the retention of a garage conversion for use a holiday let which was granted approval under APP/21/02117. As per condition 1 of APP/21/02117 permission for the holiday let expires on the 4<sup>th</sup> of August 2023.

It is noted that it is not proposed to subdivide the planning unit. Whilst the garage is detached from the main dwelling, they share the same garden space and permission is not sought for a separate dwelling.

# 3.3 Development Plan

Under the provisions of section 70(2) Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004 and the provisions of the NPPF (paragraph 2) applications

for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise.

The adopted development plan (as is relevant to this proposal) is the Wirral Unitary Development Plan (2000) (hereafter referred to as the 'UDP') and the Joint Waste Local Plan for Merseyside and Halton. WM8 Waste Prevention and Resource Management

Relevant UDP policies are:

#### **UDP Policy HS4: Criteria for New Housing Development**

Policy HS4 states that proposals for new housing development within Primarily Residential Areas will be required to:

- be of a scale which relates well to surrounding property, in particular with regard to existing densities and form of development;
- not result in a detrimental change in the character of the area;
- be capable of satisfactory access and services provision, particularly for off-street car parking areas and garages, and adequate vehicular access;
- provide appropriate landscaping and boundary treatment which relates the proposed development to its surroundings, paying particular attention to the maintenance of existing natural features and vegetation;
- provide design features which contribute to a secure environment and reduce the likelihood of crime.

#### 3.3.1 UDP Policy HS5: Density and Design Guidelines

Policy HS5 states that proposals for new residential development in Zone 1 of Noctorum Ridge in Noctorum will be subject to a maximum density of 10 dwellings per hectare in low-rise development. The conversion of existing property into self-contained flats will not be permitted.

### 3.3.2 UDP Policy HS15: Non-Residential Uses in Primarily Residential Areas

Policy HS15 states that proposals for changes of use for non-residential uses will only be permitted where the proposal will not:

- (i) be of such scale as to be inappropriate to surrounding development;
- (ii) result in a detrimental change in the character of the area; and,

(iii) cause nuisance to neighbouring uses, particularly in respect of noise and disturbance, on-street parking and deliveries by vehicle.

Proposals should make adequate provision for off-street car parking standards and servicing requirements

#### 3.3.3 UDP Policy TL1: The Protection of Urban Tourist Resources

Policy TL1 states proposals which would prejudice the continued attractiveness for tourists and visitors, or which would cause demonstrable harm to the special character of the related dockland and heritage attractions of central Birkenhead such as Hamilton Square Conservation Area, Birkenhead Park Conservation Area, Birkenhead Priory, Shore Road Pumping Station and the Pacific Road Museum will not be permitted.

#### UDP Policy TL2: Criteria for Urban Tourism

Policy TL2 states that within the urban area proposals for new tourist attractions, visitor facilities and other related uses will be permitted where:

- the siting, scale and external appearance of any buildings and/or related structures is appropriate within the surrounding area;
- the proposals would not give rise to unacceptable levels of noise or other disturbance, particularly to areas of residential property;
- provision for car parking, access and servicing arrangements is adequate; and
- the use proposed serves to enhance or complement existing tourist attractions and visitor facilities and is appropriate to the general character of the location.

Where necessary, planning permission will be subject to conditions regulating the design and operation of the proposals in order to minimise their impact upon the surrounding area.

#### 3.3.5 UDP Policy PO3: Noise

Policy PO3 states that development will only be permitted where noise arising from the proposal will not cause unacceptable intrusion or persistent nuisance. Where anticipated noise levels are considered to be within manageable proportions, the LPA may grant planning permission subject to conditions related to the siting, screening or enclosure of noise sources.

# 3.4 Other Material Planning Considerations

3.3.4

# **Supplementary Planning Guidance SPG2: Density and Design Guidelines: Noctorum Ridge**

SPG2 states that all new development should be compatible with the character of existing properties in the neighbourhood. In respect to Zone 1 SPG2 states that the zone is comprised of large detached houses with extensive gardens. The abundance of mature trees and shrubs together with the low density of development create an area of considerable environmental quality. The Council wishes to conserve this character and so only limited low density infill development will be allowed. SPG2 goes on to say that to retain the environmental quality of the area, applications for new housing should take account of existing trees and ground cover and provide for the retention of dominant natural features.

#### 3.4.1 National Planning Policy Framework

NPPF - National Planning Policy Framework (NPPF) supports sustainable development which encompasses good design. Development should and make a positive contribution to an area and use opportunities to improve the character and quality of an area.

Paragraph 130 of the revised National Planning Policy Framework (NPPF) states that planning decisions should ensure that developments will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development, are visually attractive as a result of good architecture, layout and appropriate and effective landscaping and establish or maintain a strong sense of place, using the arrangement of streets, spaces, building types and materials to create attractive, welcoming and distinctive places to live, work and visit.

Paragraph 134 of the Framework states that permission should be refused for development of poor design.

### 3.4.2 Emerging Wirral Local Plan and its status

Wirral Borough Council has submitted the Wirral Local Plan 2021-2037 for examination.

On the 21 March 2022 full council approved publication of the Draft Local Plan Under Regulation 19 of the Town and Country Planning Act (Local Planning) (England) Regulations 2012 before submission to the Secretary of State. The plan was published in May 2022 and representations were available to be submitted until 25th July 2022. The Local Plan was submitted to the Secretary of State on the 26th October 2022. The local plan and supporting evidence base can be viewed online at www.wirral.gov.uk/lpexam

As the Wirral Local Plan has been submitted for examination it (and the supporting evidence base) is a material consideration and can be afforded weight in the decision-making process. In attaching weight to individual policies, paragraph 48 of the NPPF is relevant as it states:

"Local planning authorities may give weight to relevant policies in emerging plans according to:

 the stage of preparation of the emerging plan (the more advanced its preparation, the greater the weight that may be given);

- the extent to which there are unresolved objections to relevant policies (the less significant the unresolved objections, the greater the weight that may be given); and
- the degree of consistency of the relevant policies in the emerging plan to this Framework (the closer the policies in the emerging plan to the policies in the Framework, the greater the weight that may be given)."

With this in mind, the following policies are also applicable -

#### Main policies:

- WS 3 Strategy for Housing
- WP 3 Policy for Suburban Birkenhead.
- WS 4 Strategy for Economy and Employment
- WS 6 Placemaking for Wirral
- WS 7 Principles of Design.
- WD 10 Non-Residential Uses in Primarily Residential Areas.
- WD 14 Pollution and Risk.

#### **Supporting Policies:**

- WS 3.1 Housing Design Standards.
- WS 3.2 Housing Density.
- WS 3.4 Housing Mix.
- WS 4.4 Tourism.
- WS 6.1 Placemaking Principles.
- WS 7.1 Design Principles.
- WS 7.2 Privacy and Amenity.
- WS 7.4 Parking.

#### 3.4.3 Relevant case law and planning history

Concerning whether planning permission is required or not for a change of use to short-term holiday let accommodation, in the 2012 Court of Appeal judgement in Moore v SSCLG (2012) EWCA Civ 1202, the court found that each case depends on its own unique facts, and it is a "matter of fact and degree". In the case in question, the Court found that the use of the property as part of the appellant's holiday letting business resulted in a use of the dwellinghouse that was quite different in character from that of a private family dwellinghouse i.e. the pattern of arrivals and departures, with associated traffic movements; the unlikelihood of occupation by family or household groups; the numbers of people constituting the visiting groups on many occasions; the likely frequency of party type activities, and the potential lack of consideration for neighbours. The Inspector considered this change in character had resulted in a material change of use of the property (from use class C3 -dwelling house to a sui generis use), amounting to development, which required planning permission under the provisions of Section 55(1) of the TCPA 1990.

#### 3.5 Assessment

The main issues pertinent in the assessment of the proposal are;

- Principle of development (appropriateness of a change of use from a domestic garage (use class C3) to short-term holiday let accommodation (sui generis use) in a Primarily Residential Area):
- Scale and Design;
- Amenity;
- Highways;
- Tourism/Local Economy; and
- Environmental/Sustainability.

# 3.6 Principle of Development

The application site is located within a designated Primarily Residential Area and Density and Design Guide Area and the principle of the change of use from a domestic garage (use class C3) to short-term holiday let accommodation (sui generis use) has been established as acceptable under APP/21/02117.

The proposal is subject to its impact on visual and residential amenity and to the local highway network, plus compliance with the criteria of the relevant policies.

### 3.7 Scale and Design

The pre-existing former garage, now converted to an Airbnb, is single storey in scale with a dual pitched roof. The internal arrangement remains the same from that approved under APP/21/02117, comprising a kitchen/dining/living room, a bathroom and 2 double bedrooms. Moreover, the external elevations and materials also remain unchanged from APP/21/02117 except for the front elevation window. The window has been reduced in size from the approved plans under APP/21/02117 with the lower half replaced with timber cladding.

#### 3.7.1

The relatively minor alterations which have been undertaken do not have a detrimental impact on the appearance of the former garage, the main dwelling, or on the character of the surrounding area given that the converted garage is largely out of sight in the rear corner of the plot, the external alterations are entirely characteristic of residential use and so is not adversely prominent on the street scene.

### 3.7.2

Objections were received from local residents concerning the impact on the residential character of the area resulting from the change of use of the former garage to an Airbnb. It was noted by the case Officer of APP/21/02117 during their site visit that there was no roadside signage to advertise the Airbnb. During the site visit for this application, the Officer also noted that there remains no roadside signage to advertise the Airbnb within the locality. In certain circumstances, the introduction of a commercial use in a Primarily Residential Area can negatively impact residential character, for example, where the scale of usage associated with the numbers of lets, patrons and cars are excessive and unreasonable.

3.7.3	The applicant confirmed (APP/21/02117) that the Airbnb would have modest intermittent utilisation (approximately 15-20 mainly weekend lets per year, which equates to approximately 40-60 let days per year, by single households, typically in one car). Subsequently, upon the visiting the site in June 2023, (circa 10 months after the approval of APP/21/02117), the applicant confirmed that the utilisation of the Airbnb is approximately the same as previously described. The Airbnb is expected to accommodate 18 lets throughout 2023, mainly on weekends and therefore, does not signal an over utilisation of the Airbnb from previous levels which were deemed acceptable.
3.7.4	The Airbnb is located well back from the street scene in the rear corner of the plot, with adequate boundary treatments to the side and rear, including for the full length of the driveway, the impact on residential character is negligible. The previous application considered it prudent to permit the Airbnb on a temporary 12-month unrestricted consent, to allow additional time to see if any issues arise from overutilisation which might impact residential character and so merit restrictions on use. It is acknowledged that there are present and historical concerns regarding residential character held by neighbouring residents which have been raised as objections to this application. However, it is not considered that the residential character of the area has been detrimentally undermined by the Airbnb since the temporary change of use was approved 10 months ago.
3.7.5	Objections were also received from local residents on the basis that the original single garage has been demolished and replaced with a larger structure. The approved change of use to an Airbnb does not introduce any new buildings, and it does not increase residential densities on a constant basis. Indeed, if a new dwelling were proposed on this plot, as it has been in the recent past (refused application ref: APP/21/00044), the density would be circa 8.22 dwellings per hectare which would be acceptable, as a maximum of 10 dwellings per hectare is allowed in Zone 1 of Noctorum ridge where the property is located.
3.7.6	Overall, the scale and design of the proposed conversion is not detrimental to the appearance of the former garage, host dwelling and street scene or the character of the surrounding area, and it is in compliance with Policies HS5 and HS15 of the UDP and the provisions of the revised NPPF.

#### 3.8 Amenity

Objections were received concerning overlooking/loss of privacy impacts. The Airbnb conversion is at ground level with windows facing down the driveway, into the application site and directly towards the circa 1.9m rear boundary wall which screens the rear gardens of the properties fronting Waterford Road. These windows are not at a higher level than adjoining properties, therefore, overlooking/loss of privacy is not a concern in this regard. The driveway is also flanked by a dense hedgerow which screens the rear gardens of properties fronting Budworth Road. Historically there was a gap in this hedgerow immediately adjacent to the front area of the garage conversion which was infilled by planks of wood and (on the side of Laguna) faux foliage. To prevent intervisibility

	between the Airbnb and the rear garden of Laguna, APP/21/02117 was subject to a condition requiring the installation of a 1.7m high x 1.5m deep privacy screen to provide effective permanent screening where Laguna is concerned. This fence has now been erected at the time of writing this report to the satisfaction of the Local Panning Authority.
3.8.1	Despite the introduction of the fence concerns regarding privacy remain. However, the site visit confirmed to the Officer that the hedge is of a maturity and density in which loss of privacy is not considered to occur. Therefore, it is not deemed appropriate to condition the expansion of the existing 1.7 x 1.5m fence, as the one conditioned for APP/21/02117 is considered sufficient to prevent overlooking and mitigate noise disturbance.
3.8.2	Objections were also received concerning noise and disturbance caused by the commercial use of the conversion. Environmental Health were consulted but raised no objections and confirmed no complaints from adjacent properties. If noise complaints were to have been received since the approved change of use in August 2022, then Environmental Health, could have and still impose restrictions on the use of the Airbnb as a result. No restrictions have been imposed by Environmental Health since August of last year. This indicates that noise and disturbance from the Airbnb has not reached a level, which is deemed detrimentally harmful to the amenities of surrounding residents.
3.8.3	The potential for noise and disturbance from vehicular comings and goings are addressed in section 3.9 below.
3.8.4	Furthermore, the utilisation of the Airbnb remains consistent with levels stated in the report for APP/21/02117 with circa 18, mainly weekend lets throughout 2023. As the Airbnb is typically let on weekends, noise, and disturbance from the rear garden by guests would be limited throughout the week. This situation is deemed characteristic of Primarily Residential Areas as the standard patterns of activity within rear gardens of dwellings increases on weekends, primarily throughout summer/spring months. No additional residential paraphernalia is proposed within curtilage of Cherry Cottage. Nonetheless, if any additional residential paraphernalia were to be proposed within the rear garden, it would not require consent as the Airbnb is situated within the curtilage of a residential property. Therefore, it is unlikely that persistent and/or unreasonable noise and disturbance will result from 2-4 occupants from the same household staying at the property at a time.
3.8.5	Separation distances do not apply in this instance as no first-floor habitable room windows on main elevations are proposed. The large window created on the front elevation face straight down the driveway, as opposed to the habitable room windows or a blank elevation of the host dwelling. The converted garage structure itself is pre-existing so the outlook of properties to the side and rear are not affected by the change of use. Overall, loss of outlook is not a concern.
3.8.6	Other concerns raised in objecting representations including the reduction of house value is not a material planning consideration

	and thus, is not considered as part of this assessment on residential amenity.
3.8.7	In view of the above, the garage conversion / change of use to an Airbnb is not considered to have a significant adverse impact on the amenities of neighbouring properties in terms of loss of privacy, noise and disturbance or any other amenity impact, and it is compliant with Policy HS15 of the UDP and provisions of the revised NPPF.

### 3.9 Highways

Objections were received from neighbouring residents concerning increased traffic and vehicular comings and goings to the site, and how this results in a detrimental change in the residential character of the area and harm the amenities of neighbouring properties. In terms of additional noise and disturbance generated by patrons entering the unit via the driveway, the stated usage is not of a scale significantly above the comings and goings of the occupants of Cherry Cottage i.e., one additional car over approximately 15-20 mainly weekend lets per year, which equates to approximately 40-60 let days per year. This is not an unreasonable level of additional usage, which, with guests arriving typically at 11am, returning from day trips between 6-8pm, and departing at 12 noon, could be compared to family visits at the weekend, or an additional car user emerging at the property for example due to a teenager passing their driving test. Overall, it is not deemed necessary to condition the maximum number of patrons per booking or lets per year. As mentioned, Environmental Health can impose restrictions on the use of the Airbnb as a result of future noise complaints if deemed necessary.

#### 3.9.1

Highways were consulted but raised no objections stating that the proposals are all contained within a private boundary and do not impact on the adopted highway. The level of on-site car parking remains in accordance with the SPD4 maximum standards. The loss of the Garage parking is therefore accepted as there remains satisfactory parking available within curtilage on the driveway for the two residential dwellings. The existing vehicle access remains unaffected by the proposals and is considered satisfactory to be use as a shared access. It is unlikely that the proposals will generate a significant level of traffic and it is therefore considered to have no material impact on the highway, as such there are no objections to the proposal.

#### 3.9.2

Overall, there are no highway implications relating to this proposal which is in compliance with Policy HS15 of the UDP and SPD4.

### 3.10 Tourism/Local Economy

The proposal adds to the mix of short-term accommodation options found locally within the wider Birkenhead area. This provides tourists, business people and those passing through for a few nights, whose presence is beneficial to the local economy in terms of spend in pubs, restaurants, local businesses and visitor attractions, a greater level of choice. Therefore, the proposal is also in compliance with policies TL1 and TL2 of the UDP given that no significant design, amenity or highways impacts have been identified.

3.11 Environmental/ Sustainability	There are no Environmental/Sustainability issues relating to these proposals. The site is not subject of any environmental designations or tree preservation orders. The proposal is retrospective, so a bat survey is not a requirement.
3.11.1	Environmental Health were also consulted but raised no objections surrounding the proposed change of use or flag any noise complaints. Any persistent incidents of noise and disturbance would need to be reported to Environmental Health.
3.11.2	Objections have been received regarding disturbance to foxes however, no evidence verifying their presence has been provided. Nonetheless, foxes are not a wildlife species protected by law and therefore, UDP Policy NC7 for species protection is not relevant.

Summary of Decision (Planning Balance)	Section 70(2) of the Town and Country Planning Act 1990 and section 38(6) of the Planning and Compulsory Purchase Act 2004 require that the determination of planning applications must be made in accordance with the Development Plan, unless material considerations indicate otherwise Having regards to the individual merits of this application it is considered that the application is acceptable in planning terms
	having regards to the relevant Policies and Proposals in the Wirral Unitary Development Plan (Adopted February 2000) and all relevant material considerations including national policy advice. In reaching this decision the Local Planning Authority has considered the following: -
	The proposal is an appropriate, small scale and viable use which would not harm the character of the host dwelling, streetscene or the surrounding area. The proposal complies with Policies HS4, HS5, HS15, TL1, TL2 and PO3 of Wirral's Unitary Development Plan and the National Planning Policy Framework and the draft

Recommended Decision:	Approval subject to the following conditions
Decision.	

#### **Recommended Conditions and Reasons:**

- 1. The development hereby permitted shall be carried out in accordance with the approved plans received by the local planning authority on March 29<sup>th</sup> 2023, and listed as follows:
  - Drawing Number: 2020 149 103, Revision 05, dated 27<sup>th</sup> July 2022

**Reason:** For the avoidance of doubt and to define the permission.

2. The accommodation hereby approved shall be let out as short-term stay holiday accommodation only in accordance with the terms of the application.

Reason: To ensure that no sub-division of the plot occurs.

Local Plan.

3. The 1.7m high x 1.5m deep privacy screen adjacent to the boundary shared with Laguna shall be retained as such thereafter unless otherwise agreed in writing by the Local Planning Authority.

**Reason:** In the interests of residential amenity and in accordance with Policy HS11 of the Wirral Unitary Development Plan.

Last Comments By:	07-June-2023
Expiry Date:	24-May-2023