

Planning Committee

Reference:
APP/21/02117

Area Team:
**Development
Management Team**

Case Officer:
Mr G Roberts

Ward:
Oxton

Location: Cherry Cottage, WEXFORD ROAD, OXTON, CH43 9TB
Proposal: Retrospective change of use from domestic garage to holiday let accommodation.

Applicant: Mr J O'Loughlin
Agent :

Qualifying Petition: No

Site Plan:



© Crown copyright and database rights 2022 Ordnance Survey 100019803 You are not permitted to copy, sub-licence, distribute or sell any of this data to third parties in any form.

Development Plan designation:

Primarily Residential Area
Density and Design Guidelines Area

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

Location: Land (Adj) to, Cherry Cottage, Wexford Road, Oxton, Wirral CH43 9TB

Application Type: Outline Planning Permission
Proposal: Erection of a dormer bungalow and garage in front garden.
Application No: OUT/04/05611
Decision Date: 13/05/2004
Decision Type: Withdrawn

Location: Land (Adj) to, Cherry Cottage, Wexford Road, Oxton, Wirral, CH43 9TB
Application Type: Full Planning Permission
Proposal: Erection of a dormer bungalow and detached garage in front garden.
Application No: APP/04/05080
Decision Date: 10/03/2004
Decision Type: Returned invalid

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

Appeal Details

Application No APP/21/00044
Appeal Decision Dismissed
Appeal Decision Date 13/01/2022

Summary Of Representations and Consultations Received:

1.0 WARD MEMBER COMMENTS

1.1 Councillor Allan Brame shared the concerns of a number of local residents who had contacted him to express their concern about the application. No request to remove the case from delegation was received.

2.0 SUMMARY OF REPRESENTATIONS

2.1 REPRESENTATIONS

In total, 15no. objections and 19no. statements of support were received. The planning issues raised in the objections were as follows:

- 1 Impact on residential character of area - the stated utilisation levels are reasonable and so are not a concern in terms of potential harm to residential character
- 2.Layout and Density of Buildings - No new buildings or continual residential uses are introduced
- 3.Overlooking/Loss of privacy - Newly introduced windows are not at a higher level than neighbouring properties, nor is the driveway, so overlooking is not a concern
- 4.Noise and disturbance - It is unlikely that persistent and/or unreasonable noise and disturbance will result from the physical use of the Airbnb or from vehicular comings and goings
- 5.Traffic issues - Highways confirmed that traffic issues are not a concern
- 6.Effect on trees and wildlife/nature conservation - No environmental designations affect the site and no new construction activities are proposed

2.2 CONSULTATIONS

Highways - No objections;
Environmental Health - No objection;
Merseyside Fire and Rescue Service - No objections

3.1 Reason for referral to Planning Committee

3.1.1 The application has received 15 individual objections and under the current scheme of

delegation requires consideration at Planning Committee.

3.2 Site and Surroundings

3.2.1 Cherry Cottage in Oxtan is a detached property located in a Primarily Residential Area and zone 1 of the Noctorum Ridge Density and Design Guidelines Area.

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

3.2.3 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.

3.3 Proposed Development

3.3.1 The proposal is retrospective for the change of use of a domestic garage (use class C3) to short-term holiday let accommodation (sui generis use). The converted garage comprises 2 double beds which allows up to 4 guests per stay.

3.4 Development Plan

3.4.1 The following Wirral UDP policies and guidance have been considered in the determination of this planning application:

1. HS4: Criteria for New Housing Development;
2. HS5: Density and Design Guidelines;
3. HS15: Non-Residential Uses in Primarily Residential Areas;
4. TL1: The Protection of Urban Tourist Resources;
5. TL2: Criteria for Urban Tourism; and
6. PO3: Noise.

3.4.2 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.

3.4.3 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.

3.4.4 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.

3.4.5 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.

3.4.6 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.

3.4.7 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.

3.5 Other Material Planning Considerations

3.5.1 The revised National Planning Policy Framework section 12: Achieving well designed places is a material planning consideration in the determination of this planning application.

Paragraph 126 states that the creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities.

Paragraph 130 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;
- are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities); and
- create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users; and where crime and disorder, and the fear of crime, do not undermine the quality of life or community cohesion and resilience.

3.5.2 Wirral's Emerging Local Plan

Wirral Borough Council is in the process of submitting a new local plan 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 has been published and representations can be submitted until 25th July 2022. In attaching weight to

emerging plans such as Wirral's para 48 of the NPPF is relevant as it states:
"Local planning authorities may give weight to relevant policies in emerging plans according to:

- a) the stage of preparation of the emerging plan (the more advanced its preparation, the greater the weight that may be given);
- b) 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
- c) 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)."

As the Wirral Local Plan is at an early stage it is a Material Consideration and can be afforded limited weight in the decision-making process.

3.5.3 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 Act. The Inspector's approach was endorsed by the Court of Appeal.

- 3.5.4 Recent planning refusal for the erection of a two-bedroom single storey detached dwelling in the front garden area of the application site (ref: APP/21/00044) and associated dismissed appeal (ref: APP/W4325/W/21/3278030) are also material planning considerations in the determination of this retrospective change of use application. The Inspector in the case concluded that the proposal to build a bungalow in the front garden area as part of a tandem style development, involving the removal of trees and vegetation, would cause considerable harm to the character and appearance of the area which would significantly and demonstrably outweigh the benefits of providing a single housing unit. As a result, the Inspector deduced that the presumption in favour of sustainable development did not apply. Supplementary Planning Guidance 2: Density and Design Guidelines: Noctorum Ridge is not an extant part of the Development Plan but is nevertheless a material planning consideration. This 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.

3.6 **Assessment**

3.6.1 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);
- Neighbour Representations;
- Scale and Design;
- Amenity;
- Highways;

- Tourism/Local Economy; and
- Environmental/Sustainability.

3.7 Principle of Development:

- 3.7.1 The pre-existing converted garage, the use of which was changed to an Airbnb as of October 2021, is single storey in scale with a dual pitched roof. In terms of design, the conversion has introduced new openings at the rear (1 window) south side (2 windows) and front (1 large window and entrance door to replace the previous garage door). A canopy roof over the entrance has also been introduced and wood composite cladding to the right of the front door. Other alterations to the fabric of the building include the removal of the garage door, and partitioning of the interior into 4 rooms comprising a kitchen/dining/living room, a bathroom and 2no. double bedrooms. The materials utilised, including wood composite cladding, wood composite front door and window frame, white UPVC windows, and concrete tiles to the canopy are acceptable.
- 3.7.2 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, and so is not adversely prominent on the street scene.
- 3.7.3 Objections were received from local residents concerning the impact on residential character resulting from the change of use to an Airbnb. It was noted by the case officer during his site visit that there is no roadside signage to advertise the Airbnb, and the external alterations to the former garage are entirely characteristic of residential use. In certain circumstances, the introduction of a commercial use in a primarily residential area can negatively impact residential character. An example of this is where the scale of usage associated with the numbers of lets, patrons and cars is excessive and unreasonable. However, in this instance, the impact on residential character is negligible for two reasons. The first reason is the the modest intermittent utilisation of 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. The second reason is the fact that 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. It is nevertheless considered prudent to permit this Airbnb on a temporary 12-month unrestricted consent, to allow time to see if any issues arise from overutilisation which might impact residential character and so merit restrictions on use.
- 3.7.4 Objections were also received from local residents on the grounds of layout and density of buildings. The proposed 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.
- 3.7.5 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 UPD and Paragraph 130 of the revised NPPF.

3.8 Design:

- 3.8.1 The pre-existing former garage, now converted to an Airbnb, is single storey in scale with a dual pitched roof. In terms of design, the conversion has introduced new openings at the rear (1 window) south side (2 windows) and front (1 large window and entrance door to replace the previous garage door). A canopy roof over the entrance has also been introduced and wood composite cladding to the right of the front door. Other alterations to the fabric of the building include the removal of the garage door, and partitioning of the interior into 4 rooms comprising a kitchen/dining/living room, a bathroom and 2no. double

- bedrooms. The materials utilised, including wood composite cladding, wood composite front door and window frame, white UPVC windows, and concrete tiles to the canopy are acceptable.
- 3.8.2 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. The converted garage is largely out of sight in the rear corner of the plot, and so is not adversely prominent on the street scene.
- 3.8.3 Objections were received from local residents concerning the impact on residential character resulting from the change of use to an Airbnb. It was noted by the case officer during his site visit that there is no roadside signage to advertise the Airbnb, and the external alterations to the former garage are entirely characteristic of residential use. 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 is excessive and unreasonable. However, in this instance, given the modest intermittent utilisation stated by the applicant (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), and the fact that 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. It is nevertheless considered prudent to permit this Airbnb on a temporary 12-month unrestricted consent, to allow time to see if any issues arise from overutilisation which might impact residential character and so merit restrictions on use.
- 3.8.4 Objections were also received from local residents on the grounds of layout and density of buildings. The proposed 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 Nocturn ridge where the property is located.
- 3.8.5 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 Paragraph 130 of the revised NPPF.
- 3.9 Highways:
- 3.9.1 Objections were received from neighbouring residents concerning the potential for increased traffic and vehicular comings and goings to the site, and whether this would result in a detrimental change in the residential character of the area or 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, whilst it is not deemed necessary to condition the maximum number of patrons per booking, or lets per year, it is considered prudent to permit this Airbnb on a temporary 12-month unrestricted consent, to allow time to see if any issues arise from overutilisation which might impact residential character or neighbouring amenity.
- 3.9.2 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 the curtilage on the driveway for one residential dwelling and an Airbnb. The existing vehicle access remains unaffected by the proposals and is considered satisfactory to be used 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.

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

3.10 Ecology/Sustainability

3.10.1 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.

3.10.2 Environmental Health were also consulted but raised no objections surrounding the proposed change of use. Any persistent incidents of noise and disturbance would need to be reported to Environmental Health.

3.11 Amenity:

3.11.1 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. There is a gap in this hedgerow immediately adjacent to the front area of the garage conversion which has been infilled by planks of wood and (on the side of Laguna) faux foliage. This is a temporary fix rather than a permanent one to the potential for intervisibility between the Airbnb and the rear garden of Laguna. This recommendation is therefore 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. Overall, considering this mitigation, overlooking/loss of privacy is not a concern.

3.11.2 Objections were also received concerning the potential for noise and disturbance caused by the commercial use of the conversion. Environmental Health were consulted but raised no objections as the use is still in essence a residential use despite the commercial aspect. The applicant advised that the residential rear garden is not shared with users of the Airbnb, who tend to use the property purely as a base to visit the likes of Liverpool, Chester and the north of Wales. There is not, for example, a hot tub which is sometimes a characteristic of Airbnb properties. 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. If such issues occurred then this would also affect the amenity of the occupiers of Cherry Cottage, who presumably would ask for any noisy or inconsiderate activities to be minimised or stopped. Furthermore, neighbours could report any frequent or unreasonable noise or disturbance to Environmental Health, who might themselves impose restrictions on the use of the Airbnb as a result. The privacy screen which has been conditioned to prevent potential intervisibility between the Airbnb and the rear of neighbouring Laguna, will also go some way to minimising noise transmission from both inside and the area immediately outside the accommodation. The potential for noise and disturbance from vehicular comings and goings are addressed in section 3.9.1 above..

3.11.3 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 faces 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 insofar as this proposal is concerned.

3.11.4 In view of the above, the garage conversion / change of use to an Airbnb is unlikely 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 paragraph 130 of the revised NPPF.

3.12 Tourism/Local Economy

3.12.1 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 given that no significant design, amenity or highways impacts have been identified.

Summary of Decision:

Having regards to the individual merits of this application the decision to grant Planning Permission has been taken 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 proposed change of use is an appropriate, small scale and viable use which would not harm the character of the host dwelling, street scene or the surrounding area. The proposal complies with Policies HS4, HS5, HS15, TL1, TL2 and PO3 of Wirral's Unitary Development Plan and section 12, paragraphs 126 and 130 of the National Planning Policy Framework.

Recommended Decision: **Approve**

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 25th July 2022 and listed as follows:
Drawing number: 2020 149 103 Rev.05, dated: 25 July 2022.

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

2. This planning permission shall be for a limited period of 1 year, expiring on 04 August 2023, after which a new permission will be necessary.

Reason: To assess the effect of unrestricted use / there being no maximum limit on the number of lets/let days per year, on the amenity of the neighbouring area and on residential character.

3. 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.

4. A 1.7m high x 1.5m deep privacy screen shall be installed adjacent to the boundary shared with Laguna within 3 months of the date on the decision notice. This screen shall extend back from the northern-most corner of the principal elevation of the conversion parallel to the direction of the hedgerow and 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.

Further Notes for Committee:

Last Comments By: 01/01/2022 10:55:13
Expiry Date: 29/12/2021