

Appeal Decision

Site visit made on 17 June 2024

by G Powys Jones MSc FRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 July 2024

Appeal Ref: APP/R1845/D/24/3342218
228 Marlpool Lane, Kidderminster, DY11 5DL

- 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 Jonathan Hiorns against the decision of Wyre Forest District Council.
 - The application Ref is 23/0861/HOU.
 - The development is the conversion of outbuilding to residential annex.
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Decision

1. The appeal is dismissed.

Preliminary matters

2. In the interests of accuracy, I have adopted the description of the development used by the Council in its decision notice rather than that contained in the application form, albeit with a minor variation for clarification.
3. The former garage serving the property on an incidental basis has been converted. The external works involved in the conversion are substantially complete and internally the former garage is furnished and used. I shall therefore proceed on the basis that the appellant seeks to retain the use of the outbuilding as a residential annex.

Main issues

4. The main issues are: (a) whether the principle of development is acceptable having regard to development plan policy and other material considerations; (b) the risk of flooding, and (c) car parking provision and highway safety.

Reasons

Principle of development

5. The former garage stands at the end of the garden serving 228 Marlpool Lane and has been converted to provide primary living accommodation. This includes a bed, sitting area and a bathroom, and the accommodation resembles a modest studio. An initially installed kitchenette has been removed. The original garage doors which faced Marlpool Court, a private road to the rear of the appeal property, have been replaced by a window and door providing pedestrian access to Marlpool Court.
6. No 228's garden is attractively laid out and well maintained. A slightly meandering path leads from the main house to the garage. Along the way it

passes other garden furniture/equipment including a glasshouse and a summer house, also used for storage. A hot tub is also present. Although the main house and former garage are separated by the fairly lengthy rear garden, I saw no physical or other evidence suggesting that No 228's curtilage had been fragmented or divided. The garden is clearly available for the joint use and enjoyment of the occupants of both structures and there is unrestricted access between them.

7. The Council's officer report on the application says:

The development must be assessed against Policy SP.13¹, which states that annex accommodation should be provided by way of an extension which is physically linked to the existing dwelling, and that the dwelling and annex should share the same vehicular and pedestrian access.

8. The reasoned justification clarifies that this aspect of the policy is directed to a range of potential users including the '*..elderly, sick or disabled relatives or children returning to the parental home.*' The grounds of appeal clarify that the annex accommodation is intended for use by the appellant whose mother owns the house and garage.
9. The Council says that the accommodation fails to meet the two governing criteria set out in the policy. The first criterion provides that annex accommodation '*should*' be provided by way of an extension which is physically linked to the main dwelling. I highlight the word '*should*' since it suggests to me that the decision-maker is permitted a degree of flexibility in the application of the policy in comparison with the compulsion evident had the word '*must*' have been used instead.
10. The first policy criterion is justified '*..to ensure that annexes do not become physically separate dwellings where new dwellings would not normally be permitted.*' However, the Council make no suggestion that the extant annex has been or is used as a separate dwelling or that the former garage has become a separate planning unit divorced from the host property. I saw no evidence that separation had taken place.
11. That the converted garage has a pedestrian door providing access to Marlpool Court is at odds with the second criterion of LP policy SP.13 requiring that the dwelling and annex should share the same vehicular and pedestrian access. The door leads to a parking space outside, and anecdotal evidence from local residents suggests that the access is separately used and that food deliveries are made here, including at night. The separate pedestrian access makes it more likely that the former garage could be used independently as a separate dwelling unit than if it did not exist. The appellant's reason for the need for the door is noted, but I do not find that convincing or persuasive.
12. Genuine residential annexes, physically divorced from the host property and governed by appropriate occupancy conditions, exist the length and breadth of the country. That being the case I would be prepared to apply the first criterion of LP policy SP.13 with some flexibility. However, the presence of a second access, and the apparent regular use of that access, increases the likelihood that the accommodation could or would become separately used and

¹ Of the Wyre Forest District Local Plan (LP)

occupied. The door's removal would satisfy me on this score, but since the appellant is clearly minded to retain it, it would be inappropriate to impose a condition on any permission granted requiring its removal.

13. Accordingly, I conclude that the development fails to satisfy the terms of the second criterion of LP policy SP.13 in respect of residential annexes, and thus the principle of development is unacceptable for this reason.

Flood risk

14. Taking account of specialist advice received during the consultation process on the application, the Council refused permission on the basis that insufficient information had been provided to satisfy itself that the occupants of the converted garage would be safe from the risk of flooding.
15. National policy provides that '*Applications for some minor development and changes of use should not be subject to the sequential or exception tests but should still meet the requirements for site-specific flood risk assessments...*'²
16. The applicant's appeal submissions do not satisfy me or the terms of national policy that the converted property is safe from the risk of flooding. Taking account of the vulnerable nature of the use, more detailed information would have been necessary than the submission of a diagrammatic plan, with no stated provenance.
17. Accordingly, I conclude that a clear conflict arises with that provision of LP policy SP.31 requiring applicants to confirm by means of a properly carried out assessment that the development is safe from flooding for its lifetime, taking into account all forms of flooding.

Car parking and highway safety

18. The Council considers that the car parking requirement for what it describes as an 'intensification of use' by the addition of a bedroom in the converted garage has risen to 3 spaces. I saw room for 2 cars to park comfortably in the space created in the appeal property's front garden fronting Marlpool Lane. An additional space exists in Marlpool Court, although I recognise that this does not appear to fall within the appellant's ownership.
19. To my mind, however, even if the latter space did not exist or was unavailable, I do not share the Council's concern on this subject. Marlpool Lane in the vicinity of the appeal property is developed on one side only. On the other side of the road are extensive fenced off recreational fields.
20. There are no parking restrictions outside the site on either side of the road, and I saw examples of on-street parking, which took place safely without affecting highway safety. Accordingly, even if the two spaces available at the front of the property proved insufficient at times (and there is no firm evidence to support such a proposition), ample on-street parking space exists which could be used without harming highway safety.

² National Planning Policy Framework, paragraph 174

21. I therefore conclude that the development would not harm highway safety, and no conflict arises with those provisions of LP policy SP.27 requiring development proposals to address road safety issues.

Other matters

22. I note the references to other development plan policies, but those to which I have referred are considered the most relevant in this case. I have also noted the various references to the *National Planning Policy Framework*.
23. The objections raised by the Parish Council and several local residents have been considered, and I have already addressed the main planning-related issues raised. Many of the objections relate to the alleged antisocial episodes arising during the construction period, but that is complete. The Council did not support the 'amenity' objections raised by residents, and I share the Council's view on this matter for similar reasons. However, I support the residents' points made in respect of use of the separate pedestrian access provided at the rear of the appeal property.
24. No other matter raised is of such strength or significance as to outweigh those considerations that led me to my overall conclusions.

Overall conclusions

25. I find for the appellant in respect of the appellant in respect of the car parking/highway safety issue and in the application of the first criterion of LP policy SP.13 relating to residential annexes. However, I find against him in respect of the flood risk issue and on the failure to comply with the second criterion of LP policy SP.13 relating to residential annexes. These are sufficient reasons to dismiss the appeal.

G Powys Jones

INSPECTOR