



APPEAL BY:
Mr Edward Delaney

AGAINST RIBBLE VALLEY BOROUGH COUNCIL'S REFUSAL TO GRANT PLANNING PERMISSION
FOR:

"A proposed conversion and extension of double garage to create a gym/home office"

AT

12 Northcote Park, Langho, Blackburn, BB6 8FB

Ribble Valley Bourgh Council Reference: 3/2024/0422

WRITTEN REPRESENTATIONS: GROUNDS OF APPEAL

September 2024

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RJS Planning. 15 Vale Court, Ealing Road, Brentford, TW8 0LN

1. Introduction

1.1 This appeal is made on behalf of Mr Edward Delaney in relation to development at 12 Northcote Park, Langho, Blackburn, BB6 8FB.

1.2 The planning application was submitted on 28 May 2024. It was given reference 3/2024/0422 and sought permission for the conversion and extension of double garage to create a gym/home office.

1.3 The development was refused on 13 September 2024 for the following reasons:

1. The proposed development, by virtue of its size, scale, and materiality, would result in the introduction of an unsympathetic and discordant cumulative level of development that would fail to take a subservient position to the host property or respond positively to its immediate context. The proposal would therefore be contrary to the aims and objectives of Policy DMG1 of the Ribble Valley Core Strategy (2008-2028) and Paragraph 135 of the National Planning Policy Framework.

2. The applicant has failed to demonstrate that the proposal would not result in an adverse impact upon highway safety within the immediate vicinity of the site due to limited on street parking. The proposal fails to address potential highway implications of the proposed development, contrary to Policy DMG1 and DMG3 of the Ribble Valley Core Strategy (2008-2028) and the National Planning Policy Framework.

1.4 This Statement addresses these reasons for refusal. It concludes that the appeal proposal would be acceptable in planning terms and accords with the Council's Development Plan. The scheme would not cause harm to the character and appearance of the area and would not prejudice highway safety or parking provision. It would therefore accord with the provisions of the National Planning Policy Framework (henceforth referred to as 'the Framework'). It is sustainable development for which the Framework advocates a presumption in favour.

2. The Site

- 2.1 The appeal site is located on the western side of Northcote Park, which forms part of a new residential estate of 42 units permitted under application Refs. 3/2018/0844 and 3/2021/0353. It accommodates No. 12, a detached, two-storey, dwelling that is set-back from the carriageway in a generous plot. Indeed, the rear garden of this property is larger than most nearby plots as a result of its irregular shape.
- 2.2 Within the plot, to the side of the main property and to its rear, is a detached, single-storey, double garage. This is constructed of rendered brickwork under a hipped roof. This is shown at Figures 1 and 2 below.



Figure 1: Front elevation of detached garage at appeal site.



Figure 2: Side elevation of detached garage at appeal site shown in large rear garden.

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- 2.3 As can be seen, to the front of this garage, as well as part of the main dwelling, is a sizeable area of hardstanding used for off-street parking. This is similar to the parking arrangements at nearby dwellings, which also provide significant areas of hardstanding for off-street parking. Consequently, the area, which does not fall within any Controlled Parking Zone, is not heavily parked and there is no evidence of parking stress.

3. The Proposed Development

- 3.1 The appeal proposal is simple in that it seeks permission to extend and convert the existing garage at the site to form a gym/office. The extension would project around 4.5m beyond the rear elevation of the existing garage with a width of around 7.6m. A hipped roof form would be created to facilitate conversion with a maximum height of around 4.8m. The proposed extension would be finished in vertical red cedar cladding under a tiled roof. Existing and proposed elevations are provided at Figure 3 below for ease of reference.

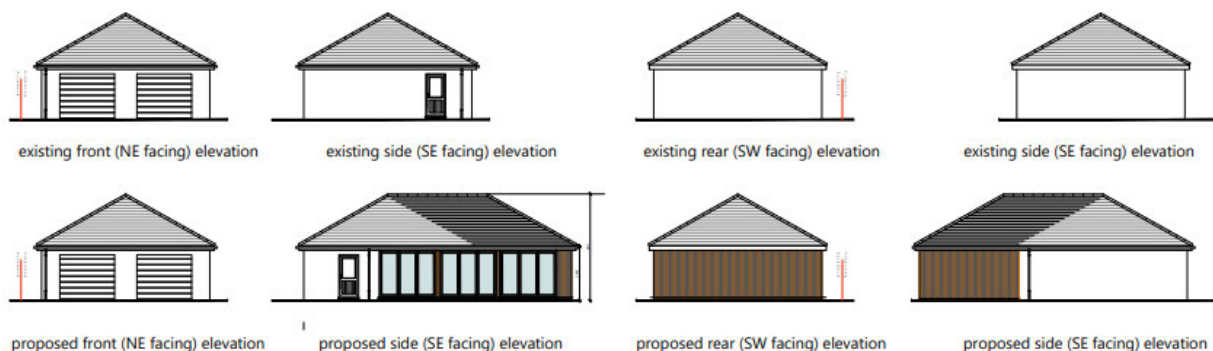


Figure 3: Existing and proposed elevations.

4. Relevant Planning Policy

- 4.1 To the extent that development plan policies are material to an application for planning permission, the decision must be taken in accordance with the plan unless there are material considerations that indicate otherwise as directed by Section 70(2) of the Town and Country Planning Act 1990 and Section 38(6) of the Planning and Compulsory Purchase Act 2004.

- 4.2 For the purposes of this appeal, the relevant part of the Council's development plan is the Ribble Valley Core Strategy (2008-2028) (CS). Other material planning policy considerations include the Framework and Planning Practice Guidance (PPG).
- 4.3 The policies referred to in the Council's decision notice, together with relevant national guidance, are outlined below.

Ribble Valley Core Strategy

- 4.4 **Policy DMG1: General Considerations** - Amongst other things, development should be of a high standard of design which is sympathetic to existing and proposed land uses in terms of its size, intensity and nature as well as scale, massing, style, features and building material.
- 4.5 **Policy DMG3: Transport and Mobility** – Amongst other things, developments should provide adequate car parking.

Relevant National Planning Policy Framework

Approach to Sustainable Development

- 4.6 **Paragraph 7** of the Framework states that the purpose of the planning system is to contribute to the achievement of sustainable development.
- 4.7 **Paragraph 8** states that achieving sustainable development means that the planning system has three overarching objectives, which are interdependent and need to be pursued in mutually supportive ways (so that opportunities can be taken to secure net gains across each of the different objectives):

a) an economic objective – to help build a strong, responsive and competitive economy, by ensuring that sufficient land of the right types is available in the right places and at the right time to support growth, innovation and improved productivity; and by identifying and coordinating the provision of infrastructure;

b) a social objective – to support strong, vibrant and healthy communities, by ensuring that a sufficient number and range of homes can be provided to meet the needs of present and future generations; and by fostering well-designed, beautiful and safe

places, with accessible services and open spaces that reflect current and future needs and support communities' health, social and cultural well-being; and

c) an environmental objective – to protect and enhance our natural, built and historic environment; including making effective use of land, improving biodiversity, using natural resources prudently, minimising waste and pollution, and mitigating and adapting to climate change, including moving to a low carbon economy.

- 4.8 **Paragraph 9** states that planning decisions should play an active role in guiding development towards sustainable solutions, but in doing so should take local circumstances into account, to reflect the character, needs and opportunities of each area.
- 4.9 **Paragraph 10** states that, so that sustainable development is pursued in a positive way, at the heart of the Framework is a presumption in favour of sustainable development. This is then detailed at **Paragraph 11**.
- 4.10 **Paragraph 38** makes it clear that decision-makers at every level should seek to approve applications for sustainable development where possible.

Design

- 4.11 **Paragraph 131** states that the creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve.
- 4.12 **Paragraph 135** seeks to ensure that developments add to the overall quality of the area.
- 4.13 **Paragraph 139** states that development that is not well designed should be refused.

Highway Safety

- 4.14 **Paragraph 114** seeks to ensure that safe and suitable access to the site can be achieved for all users.

- 4.15 **Paragraph 115** states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

5. The Appellant's Case

- 5.1 This section of the Statement addresses the Council's reasons for refusal. This will be done by consideration of two main issues which are the effect of the proposal on:

- The character and appearance of the area and;
- Parking and highway safety.

1) Character and Appearance

- 5.2 The appeal site comprises a sizeable detached residential property that falls within a modern residential estate. Set-back from the carriageway, No 12 sits within a substantial plot, with a large rear garden. Nearby development is a considerable distance away from both the main dwelling at the appeal site and its detached garage. There is therefore ample space around built form at the appeal site.

- 5.3 The proposal seeks to extend the detached garage to the rear to facilitate a change of use for an ancillary office/gym. Given the garage's set-back positioning deep within the plot, it is not a visually prominent feature within the streetscene. Indeed, the Council's own assessment confirms that:

"The proposed development would be sited to the rear of the existing detached garage and would therefore not be afforded a high level of visibility from the adjacent public realm, being screened from view by the existing built form."

- 5.4 It follows that this plot is large and the detached garage is discretely located.

- 5.5 The Council's main concern with this proposal relates to the increase in the overall footprint of the garage. While the cumulative footprint of development at the plot would be increased, this would not be to any notable degree. The modest increase in built physical permanence is illustrated in the submitted Block Plan shown at Figure 4 below.



Figure 4: Proposed Block Plan showing small increase in the size of the garage (edged in black).

- 5.6 As shown, there would still be a large gap between the garage and the rear site boundary and a gap between it and the site's flank boundary. Even when considered in conjunction with the main dwelling, there would still be a significant amount of open space remaining at the appeal site. Consequently, the ratio of soft landscaping to built form would remain acceptable.
- 5.7 On this basis, it cannot be said that the plot would be 'overdeveloped' by virtue of the physical presence of built form, nor that the garage or host building would appear cramped upon it in relation to their size. Moreover, ample distance would remain between development at the appeal site and neighbouring properties to ensure that No. 12 did not appear cramped in the wider streetscene.
- 5.8 As such, the proposal represents a modest and proportionate extension to the detached garage that would not deleteriously alter the appearance of development at the appeal site. Indeed, it is not uncommon for large, detached, properties such as this to have outbuildings of the size that would be formed.
- 5.9 In terms of the relationship that the garage would have with the host building, the proposed use would be low-level and domestic in nature. The garage, while increased in depth, would not be increased in scale. It would remain considerably lower in height compared to No. 12 and would be smaller in terms of overall footprint.

- 5.10 Accordingly, and with regard to its set-back positioning, the proposal would not result in an unduly large, bulky, feature at the plot and would not inappropriately compete with the main dwelling in terms of size. On the contrary, the proposal would clearly result in a garage that still remained as a subordinate and ancillary feature at the appeal site.
- 5.11 In any event, the Council has already confirmed that the detached garage is discretely positioned. The extension to its rear would not be readily perceptible from public vantage points. As such, notwithstanding that the proposed extension is not harmful in any sense to the character of the site, its presence would not be apparent in the streetscene. This further reinforces the assertions made that the scheme would not result in a cramped form of development or a garage that appears as a dominant element at the appeal site.
- 5.12 Lastly, the Council has raised concern with regard to the materials used for the proposed extension. Materials indicated would result in a 'soft' appearance that would assimilate successfully with the materials palette of the main property and the verdant setting.
- 5.13 That said, the appellant would accept a condition requiring details of materials to be used to be submitted and approved by the Council prior to construction above slab level. Under such a mechanism the Council would retain full control of the materials palette and could, if deemed necessary, approve materials that simply matched the existing garage. Indeed, the appellant would not object to a condition securing precisely that.
- 5.14 Accordingly, there should not have been any objection in relation to the materials palette of the proposed extension. This can simply be managed conditionally.

Overall Conclusion – Character and Appearance

- 5.15 Taking the above into account, although the proposal would marginally increase the cumulative amount of built form at the site, sufficient open space would remain to ensure that neither the garage nor the main property appeared cramped in relation to their size. Furthermore, the discretely positioned garage would not visually compete

with the main property in terms of size and would remain as an ancillary and subordinate feature. The visual relationship between No. 12 and the garage would remain unaltered. Lastly, a suitable materials palette can be managed conditionally.

- 5.16 For these reasons, the proposal would not harm the character and appearance of the area. It would accord with Policy DMG1 of the CS insofar as it seeks to promote high quality development that is sympathetic to the existing land use.

2) Parking and Highway Safety

- 5.17 The Council's second area of concern relates to parking provision and highway safety. The proposal would result in the loss of possible parking spaces within the detached garage and it is acknowledged that the original consent for the housing estate sought to keep garages in use for off-street car parking (condition 13 to the original consent).

Conditions that Fail the Tests

- 5.18 The conditions to the original consent (the main consent and its variation) removing permitted development rights for a change of use of garages are not, in the appellant's view, sound with regard to the tests at paragraph 56 of the Framework. In asserting this, the appellant is mindful that each of the 'six tests' at paragraph 56 to the Framework needs to be satisfied for each condition that a planning authority intends to apply. The PPG also advises that any proposed condition which fails to meet one of six tests should not be used. Paragraph 56 of the Framework is emphatic that 'conditions should be kept to a minimum'.

- 5.19 Firstly, it is not clear how conditions restricting the use of garages are enforceable, as one would not know what use garages at properties are being put to. On this basis alone the tests are failed.

- 5.20 Moreover, Paragraph 017 Reference ID: 21a-017-20190723, to the PPG states that:

*"Conditions restricting the future use of permitted development rights or changes of use **may not pass the test of reasonableness or necessity**. The scope of such conditions needs to be precisely defined, by reference to the relevant provisions in the Town and Country Planning (General Permitted Development) (England) Order 2015, so that it is*

*clear exactly which rights have been limited or withdrawn. **Area-wide or blanket removal of freedoms to carry out small scale domestic and non-domestic alterations that would otherwise not require an application for planning permission are unlikely to meet the tests of reasonableness and necessity.** The local planning authority also has powers under article 4 of the Town and Country Planning (General Permitted Development) (England) Order 2015 to enable them to withdraw permitted development rights across a defined area, where justified.”*

(RJS emphasis)

- 5.21 The Encyclopaedia of Planning Law and Practice, Sweet & Maxwell, ed. David Elvin QC, (Landmark Chambers) accurately summarises the position on conditions restricting certain permitted development rights at paragraph 3B-1004.8. This is as follows:
- “The PPG advises (Use of Planning Conditions, ID: 21a-017 see para.5-286.17 of the Encyclopaedia) that such conditions *“will rarely pass the test of necessity and should only be used in exceptional circumstances”* and in that event the *“scope of such conditions needs to be precisely defined, by reference to the relevant provisions”* and not drafted on a blanket basis, pointing out the availability of powers to remove permitted development rights.
- 5.22 Indeed, The Model Conditions in Appendix A of previous Circular 11/95 Nos. 50–52 suggests restrictions curtailing permitted development rights in very narrow and precise respects such as: (i) the erection of garages or (ii) construction of dormer windows, and only where such restrictions are "clearly justified" under national planning policy.
- 5.23 With regard to the above, the removal of rights to change the use of garages at this housing estate, including at the appeal site, represents an area wide blanket ban that is simply not justified. This is neither reasonable nor necessary.
- 5.24 For the above reasons, the conditions to the original housing estate consent restricting the use of garages for parking only are not enforceable, reasonable or necessary. They should have no bearing on the determination of this appeal.

Not Development

- 5.25 Notwithstanding that the original conditions restricting garages to parking use fail the tests for a sound condition, this proposal is to facilitate ancillary residential uses (an office and a gym). The question therefore arises as to whether or not this is even development in the first instance with regard to s55 of the Town and Country Planning Act 1990. To constitute development, such a change would need to be *material*.
- 5.26 While the meaning of ‘use’ is provided in s336(1) to the 1990 Act, the concept of a *material* change of use is not defined in statute or statutory instrument. The basic approach is that, for a material change of use to have occurred, there must be some **significant difference in the character of the activities from what has gone on previously as a matter of fact and degree**.
- 5.27 For example, a change in the nature of goods stored will not be material if the overall character of the activity and general implications for the area remain the same (*Snook v SSE [1976] JPL 303*).
- 5.28 Off-site effects may be relevant to whether there has been a material change of use (*Westminster CC v SSCLG & Oriol Badia and Property Investment (Development) Ltd [2015] EWCA Civ*).
- 5.29 It was held in *Richmond upon Thames LBC v SSETR [2001] JPL 84* that the extent to which a particular use fulfils a legitimate or recognised planning purpose is relevant in deciding whether there has been a material change of use. The following legal principles relevant to such a determination were laid down in *R (oao) Kensington and Chelsea RBC v SSCLG & Reis & Tong [2016] EWHC 1785 (Admin)*:
- a) A planning purpose is one which relates to the character of the use of land;
 - b) Whether there would be a material change of use or development in terms of s55(1) depends upon whether there would be a change in the character of the use of land;
 - c) The extent to which an existing use fulfils a proper planning purpose is relevant in deciding whether a change from that use would amount to a material change of use. The

need for a land use such as housing or a type of housing in a particular area is a planning purpose which relates to the character of the use of land;

d) Whether the loss of an existing use would have a significant planning consequence, even where there would be no amenity or environmental impact, is relevant to an assessment of whether a change from that use would represent a material change of use;

e) The questions are ones of fact and degree for the decision-maker and only subject to challenge on public law grounds;

f) Whether or not a planning policy addresses a planning consequence of the loss of the use is relevant but not determinative of whether the loss would have a significant planning consequence or consequences.

5.30 Lastly, the intensification of a use may amount to a material change of use only if and where that causes **the character of the use to change in a fundamental way**. In *Hertfordshire CC v SSCLG & Metal and Waste Recycling Ltd [2012] EWCA Civ 1473*, the Court held that: ‘What must be determined is whether the increase in the scale of the use has reached the point where it gives rise to such materially different planning circumstances that, as a matter of fact and degree, it has resulted in a such a change in the definable character of the use that it amounts to a material change of use’.

5.31 With regard to these legal principles, the proposal’s low-level ancillary residential use would in no way intensify the existing use of the site. There would be no alterations to the principal elevation of the garage and, as confirmed by the Council, views of the development would be highly restricted. The character of the site would not be changed in any fundamental way by the proposed use. Additionally, the proposal would not result in any net loss of dwellings and would not have any other significant planning consequences. Only generic planning policy is engaged.

5.32 For these reasons, the proposed change of use is not *material*. It does not represent development under s55 of the 1990 Act. Accordingly, notwithstanding that the restrictive conditions in relation to parking at garages fail the tests for a sound condition, they cannot control activities at the site that do not constitute development.

- 5.33 It follows that the parking use of the garages could be lawfully removed now. On this basis alone the Council's second reason for refusal falls away.

Discussion

- 5.34 Notwithstanding the technical points raised above, the existing detached garage could only reasonably accommodate two parked vehicles (although, given the size of modern vehicles, there may only be space for one car). Consequently, only a limited number of vehicles would be displaced away from the garage.
- 5.35 As shown in Section 2 to this Statement, and as will be evident to the Inspector at a site visit, the appeal property benefits from a substantial area of hardstanding to its front and side. This can comfortably accommodate a number of vehicles. Consequently, even if vehicles were displaced from the garage, they would simply be parked at off-street spaces at the site itself.
- 5.36 Furthermore, should vehicles be displaced onto the street, which would not be the case for reasons given above, the area is not heavily parked or under any notable parking stress. No Controlled Parking Zone exists. Consequently, in the event that cars were displaced onto the carriageway (which, again, simply would not occur) they could be accommodated at on-street spaces without prejudicing highway safety or inconveniencing existing residents. The proposal's acceptability in terms of highway safety is further reinforced by the absence of any objection from the Local Highway Authority (HA). That said, the suggested condition by the HA restricting the use of the garage for parking would not be reasonable for reasons given above.
- 5.37 It should also be noted that Policy DMG3 of the CS states that proposals that limit parking provision (which would not be the case here given that parking spaces would be available on hardstanding) may be acceptable where there are effective alternatives to travel by private vehicle. There are nearby bus stops along Whalley Road and Langho train station is around a 10 minute walk away from the site. As such, there are public transport alternatives that are easily accessible by foot from the appeal site. It follows that, even if the proposal limited parking availability (which is not the case) there would be policy support for it in this accessible location.

Overall Conclusion – Parking and Highway Safety

- 5.38 Taking everything together, the restrictive conditions attempting to secure the use of garages across the housing estate for parking purposes only represent blanket restrictions of rights. This is not enforceable and is unreasonable and unnecessary. The original conditions fail the tests for a sound condition set out in the Framework. They should have no bearing on this decision.
- 5.39 Additionally, the proposed change of use would not result in any change to site character and has no planning consequences. It is not a *material* change of use. As such, it is not development under s55 of the 1990 Act and the development is acceptable on this basis alone.
- 5.40 Notwithstanding this, the parking spaces that would be lost within the garage would simply be available on hardstanding to the front and side of No. 12. No cars would be displaced onto the carriageway. Even if this was not the case, a limited number of cars displaced would not result in any harm in terms of highway safety. There is also policy support for reduced parking (not that this would be the case) in this accessible area.
- 5.41 For these reasons, the proposal would be acceptable in terms of parking provision and highway safety. This is in accordance with Policy DMG3 of the CS.

Other Matters

- 5.42 It is noted that concerns have been raised from neighbours in relation to effects on living conditions. The Council has confirmed that this development would not harm the living conditions of nearby occupants in terms of access to daylight, outlook or privacy. There is no reason to conclude otherwise on these settled matters.
- 5.43 As the Council's officer report correctly identifies, the loss of views is not a material planning consideration. Concerns in this regard should have no bearing on this determination.
- 5.44 Concerns in relation to legal covenants fall outside of the remit of planning. Furthermore, the Council has addressed procedural concerns in relation to time frames to provide

comments and the notification of neighbours. Concerns in this regard have not resulted in any party being prejudiced and should not have any bearing on this appeal decision.

6. Conclusion

6.1 In conclusion, the proposal would not result in any harm to the character of the area. This would not be altered in any sense. Furthermore, the proposal would be acceptable in terms of parking provision and highway safety. No cars would be displaced away from the site onto surrounding carriageways. Even if this did occur, there would be no material planning harm.

6.2 As such, the proposal should be approved without delay as it is in accordance with the development plan as a whole and there are no other considerations which outweigh this finding.

Overall Conclusion

6.3 It is concluded that the proposal would represent sustainable development for which the Framework advocates a presumption in favour. It is therefore respectfully requested that the appeal be allowed.