
Appeal Decision

No site visit

by Simon N Hand MA

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 22 December 2016

Appeal Ref: APP/J0350/X/16/3158125
40 Spencer Road, Slough, SL3 8RT

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Gurvinder Gidar against the decision of Slough Borough Council.
 - The application Ref P/16301/004, dated 25 May 2016, was refused by notice dated 15 August 2016.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is a proposed detached outbuilding.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed operation which is considered to be lawful.

Main Issue

2. Whether the proposed outbuilding is required for purposes that are ancillary to the use of the main dwelling at 40 Spencer Road.

Reasons

3. There is no dispute that the proposed building would comply with the requirements of Class E of the General Permitted Development (England) Order 2015 except that the Council are not convinced it would be used for purposes incidental to the enjoyment of the dwellinghouse as required by that Class.
4. The original plans just showed an outbuilding and when the Council queried the use a second plan was submitted which showed the outbuilding internally divided, so that about a third was sectioned off and labelled "DIY storage, lawn mower & garden furniture". The larger space was labelled "snooker table". The appellant told the Council in an e-mail that he wished to use it for storage of tools, ladders and bicycles, and for a snooker table as his wife didn't want a table in the house and he and his children enjoyed playing the game.
5. The Council point out that the test is whether the structure is genuinely required for purposes incidental to the dwellinghouse and is likely to remain in that use. They say, correctly, the use is not just the whim of the appellant, but

has to be reasonable in the circumstances of the case. They go on to say where there is doubt the use cannot be incidental and in this case the "use is not explained beyond doubt".

6. It is not clear why there is any doubt in the mind of the Council. The use of a large shed for domestic storage and a snooker table seems entirely reasonable to me. It is not clear what else the appellant could say to demonstrate beyond "doubt" that those were his intended uses. In any event the correct test is not "beyond doubt" but on the "balance of probabilities". There is no evidence the appellant might have other uses in mind, or has a history of making inaccurate claims so I have no reason to doubt his word that the uses are intended to be as described and that such uses are incidental to the enjoyment of the dwellinghouse. I shall issue a lawful development certificate as requested.

Simon Hand

Inspector

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 25 May 2016 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason: The proposed outbuilding would fulfil the criteria of Class E of Part 1 of Schedule 2 of the General Permitted Development (England) Order 2015 .

Signed

Simon Hand

Inspector

Date: 22 December 2016

Reference: APP/J0350/X/16/3158125

First Schedule

Proposed detached building

Second Schedule

Land at 40 Spencer Road, Slough, SL3 8RT

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.