



Appeal Decision

Site visit made on 8 October 2019

by JP Roberts BSc(Hons) LLB(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 December 2019

Appeal Ref: APP/Y3615/X/19/3222050

1 Snelgate Cottages, Old Epsom Road, East Clandon, Guildford GU4 7RL

- 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 Spencer Venn against the decision of Guildford Borough Council.
 - The application Ref 18/P/02368, dated 18 December 2018, was refused by notice dated 31 January 2019.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is the erection of a double garage and workshop to keep two cars and several motorcycles.
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This decision is issued in accordance with Section 56(2) of the Planning and Compulsory Purchase Act 2004 (as amended) and supersedes the decision issued on 31 October 2019.

Decision

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

Procedural matter

2. The description of the proposed development given on the application form is discursive and runs to six sentences. I have used only the first sentence, which is the nub of what is proposed and have treated the other text as supporting information.
3. The application forms contain a question "Does the proposal consist of, or include, a change of use of the land?" to which the applicant has marked "Yes". However, the supportive text I have referred to above makes it clear that the appellant considers the proposal is to be used for purposes incidental to the use of the dwellinghouse as such. I shall therefore treat the proposal as one for operational development only, albeit that the use to which it is intended to be put will form a critical part of the decision.
4. The application and appeal have been made in the name of Mr Spencer Venn, and the application form indicates that he is the owner. However, the owner is Mr Steve Turner, on whose behalf Mr Venn has acted as applicant and agent. The application refers to the circumstances of "the applicant", when it is clear

that they should refer to those of the owner. I have proceeded with the appeal on this basis.

Main Issue

5. Whether the Council's decision to refuse to certify the proposed garage as lawful was well founded.

Reasons

6. The matter in dispute is whether the proposed garage and workshop is permitted under Class E of Part 1 to Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015. This class of development permits the provision within the curtilage of a dwellinghouse of any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such. The Council accepts that the building would meet the technical criteria of Class E. What is at issue is whether the proposal would be used for a purpose incidental to the enjoyment of the dwellinghouse as such, and whether the development would be reasonably required for that use.
7. The appeal site is occupied by a modest semi-detached house set in a long and wide garden. There are 5 outbuildings, three close to the dwelling, including a small greenhouse, and two small sheds near the rear of the garden. It is proposed to remove the two larger buildings and to replace them with a larger garage workshop building. The building would be substantial in size, measuring some 15m by 7m. It is proposed that it would provide garaging for two cars and storage space for 11 motorcycles, and benches for working on a further two bikes.
8. The owner is a motorcycle enthusiast. He has a large collection of bikes, mainly dating from the 1970s, but some are older. He has owned some of the bikes for many years, whilst others were acquired over the last 5 years or so. I saw on my visit that some, kept in the largest outbuilding, appeared to be in fully restored condition, whilst others, kept in the smaller outbuilding near to the house, were in need of considerable work. The latter building contains the workshop where most of the tools and equipment used to carry out the tooling work needed to make parts for the bikes. I saw that one bike was kept in the living room of the house, and parts were stored in the greenhouse. Altogether I noted about 15 bikes on the property.
9. The leading case on the scope of buildings used for purposes incidental to the enjoyment of the dwellinghouse as such is *Emin v Secretary of State for the Environment and Mid-Sussex District Council (1989)*. Whilst the Court acknowledged that such questions are largely a matter of fact and degree, some key principles were set out. The Court held that the nature and scale of the activities are important as there must be a prospect that they could go beyond a purpose merely incidental to the enjoyment of the dwelling house as such and constitute something greater than a requirement related solely to that use. Thus, the physical size could be a relevant consideration, but it is not by itself conclusive.
10. The Court also acknowledged that the fact that such a building has "to be required for a purpose associated with the enjoyment of a dwelling house cannot rest solely on the unrestrained whim of him who dwells there but

connotes some sense of reasonableness in all the circumstances of the particular case". It also reinforces that incidental uses should remain at all times ancillary or subordinate to the use of the dwelling house, and that it is necessary to determine whether the proposed building is genuinely and reasonably required or necessary in order to accommodate the proposed use or activity and thus achieve that incidental purpose.

11. Also of relevance is the decision of *Wallington v the Secretary of State for Wales & Montgomeryshire District Council* [1991] JPL 942, in a case involving the keeping of 44 dogs as a hobby. The Court rejected the proposition that because a use is a hobby therefore it must follow that it is incidental to the enjoyment of a dwellinghouse.
12. Dealing firstly with the size, whilst it would be a large outbuilding, the footprint of which would exceed that of the dwelling, it would be less than its overall floorspace. I have no doubt that the size is genuinely and reasonably required to accommodate the owner's cars and to facilitate his hobby, having regard to the way in which the existing collection is stored. About a third of the floorspace would be devoted to the garaging of two cars, with the remainder devoted to the storage and restoration of motorbikes. Although large, the building would not appear disproportionate having regard to the extensive garden area of the property.
13. Collecting as a hobby can often involve owners possessing many more examples of their subject of interest than might be found in a normal home. The relevant question in this case is whether the hobby in this case remains ancillary to the residential use of the dwellinghouse and is reasonable in the circumstances. Despite the extensive collection of bikes, and the paraphernalia in connection with their maintenance and restoration, I consider that the hobby use is nevertheless subordinate to the main use of the property as a dwellinghouse. Compared to cars, the bikes are relatively small, especially those in a disassembled state. There is no suggestion that anyone other than the owner would use the workshop, or that a commercial enterprise is involved.
14. Whilst the floorspace would be fairly extensive, the intensity of the use would be unlikely to be considerable in relation to the primary use as a residential dwelling. The restoration of motorbikes would only be carried out in the owner's spare time, and even though he no longer works, it is clear from the condition of many of the bikes which have been owned for some time, that the restoration projects are long term endeavours or "labours of love". I consider that it would not be unreasonable for an owner to wish to house his collection of vintage bikes in a secure manner, and in conditions where he could carry out their restoration with a degree of convenience.
15. Looking at matters in the round, I am satisfied on the balance of probabilities that the purpose to which the building is intended to be put would be reasonably required for a purpose incidental to the enjoyment of the dwellinghouse as such, and that the building would be permitted under Class E.

Conclusion

16. I find that the proposed development would be one permitted under Class E of the Order, and that the Council's decision to refuse to issue a certificate was not well-founded. The appeal is therefore allowed.

JP Roberts

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 18 December 2018 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and cross-hatched in black 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 development would benefit from the deemed permission granted under Article 3 and Class E of Part 1 to Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015.

Signed

JP Roberts

Inspector

Date 3 December 2019

Reference: APP/Y3615/X/19/3222050

First Schedule

The erection of a double garage and workshop to keep two cars and several motorcycles as shown on plans ref: Sheet Titles: Ground floor plan, Elevations and roof plan.

Second Schedule

Land at 1 Snelgate Cottages, Old Epsom Road, East Clandon, Guildford GU4 7RL



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.