



Appeal Decision

by Alexander Walker MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 May 2020

Appeal Ref: APP/J0350/X/20/3244396

3 Mina Avenue, Slough, SL3 7BY

- 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 Balwant Singh against the decision of Slough Borough Council.
 - The application Ref P/07240/008, dated 28 September 2019, was refused by notice dated 25 November 2019.
 - 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 detached outbuilding to be used as a games room, gymnasium and store room.
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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.

Procedural Matter

2. As the appeal relates to the lawfulness of a proposed outbuilding, views were sought from the parties as to whether it would be necessary for me to visit the site. No objections to this course of action were received and I do not consider that injustice to the parties would arise from determining the appeal on the basis of the written evidence and plans before me.

Main Issue

3. The main issue is whether the proposed outbuilding would be incidental to the enjoyment of the dwellinghouse.

Reasons

4. There is no dispute between the parties that the proposed building would meet the conditions and limitations set out in paragraph E.1, Class E, Part 1 of Schedule 2 of the Town and Country (General Permitted Development) (England) Order 2015 (the GPDO). The Council's reason for refusal was on the grounds that the building would not be incidental to the enjoyment of the dwellinghouse as its footprint would be larger than the original dwellinghouse and therefore would not satisfy the requirements of paragraph E.(a) of the GPDO.

5. The drawings submitted by the appellant identify that the proposed building would comprise three rooms including a games room, a gymnasium and a storeroom. The proposed uses for the building in themselves would be uses incidental to the enjoyment of the dwellinghouse. The drawings submitted with the application include references to a kitchen, bathroom, cloakroom and utility room. However, the appellant confirms that these references were made in error and the proposal does not include any of these facilities.
6. There is no evidence before me of any limitations or conditions within Class E of the GPDO that require the building to be related to the footprint of the host dwellinghouse in its original, or current, form. The case of *Emin v SSE and Mid-Sussex District Council [1989] 58 P & CR 416* established that whilst the size of the building may be an important consideration when determining if a building is to be used incidental to the enjoyment of a dwellinghouse, it is not by itself conclusive. *Wallington v Secretary of State for Wales [1991] 1 PLR 87* established that a purpose incidental to a dwellinghouse should not rest on the whim of person who dwelt there.
7. The overall floor area of the building would be approximately 66.87sqm. This would be significantly larger than the footprint of the original dwellinghouse, which the Council confirms was approximately 49sqm. However, the original dwellinghouse has been extended at ground and first floor levels and currently has a floor area of approximately 145sqm, as confirmed by the appellant. There is no evidence before me that these additions are unlawful. The proposal should be considered on the basis of whether it would be genuinely and reasonably required for a purpose incidental to the enjoyment of the existing dwellinghouse as it would be associated with that dwellinghouse rather than the original one. I note that this is a similar approach taken by the Inspector in the appeal referred to me by the appellant¹, whereby he considered whether the floor space attributed to the use was genuinely and reasonably required for a purpose incidental to the enjoyment of the dwelling as such and whether the space would fulfil its intended purpose and nothing more.
8. The Council raises no objection to the size of the proposed gymnasium and storeroom. Based on the evidence before me, I find no reason to conclude otherwise. Its primary concern is the size of the proposed games room, which itself would be approximately 40.1sqm. The appellant confirms that the games room would contain a medium snooker table (9') and has provided evidence regarding the minimum room dimensions required for various sized snooker tables and cue sizes. The minimum requirements for a 9' snooker table are approximately 5.8m x 4.5m when used with a full-size cue. The proposed games room would be 6.8m wide and 5.9m deep. The appellant states that this would allow for players and family members to spectate without interfering with play and allow access to the gymnasium and storeroom. I consider that this is a reasonable requirement and on this basis the games room would not be excessively large for its intended purpose.
9. Taking the above into account, having regard to the proposed use of the building and its comparison to the size of the existing host dwellinghouse, I find on the balance of probabilities that the proposed building would be used

¹ Appeal Decision APP/R5510/X/18/3213915

incidentally to the enjoyment of the dwellinghouse, and therefore would be permitted development.

Other Matters

10. I note that the building could possibly be reconfigured to accommodate the proposed uses with a smaller footprint. However, my consideration of the appeal has been based on the proposal before me and I have determined it on this basis.
11. The Council have referred me to two appeal decisions. In the Elmwood Avenue decision², the Inspector found that it had not been demonstrated that the function of the outbuilding was reasonable, having regard to the accommodation offered by an extant permission to extend the host dwellinghouse. He went on to state that *'the proposed outbuilding is simply intended to maximise the potential permitted development rights for the property, and can therefore be categorised as resulting from the 'unrestrained whim' of the Appellant.'*
12. In the Cains Lane decision³, the proposal was for an outbuilding with a similar footprint to the host dwellinghouse. The Inspector found that the appellant had failed to justify the use as genuinely and reasonably required.
13. I note that there are similarities between these two appeals and the appeal before me, in terms of the nature of the proposed development and the matters in dispute. However, I have found that the appellant has demonstrated that the proposed building is genuinely and reasonably required for a purpose incidental to the enjoyment of the dwellinghouse and, whilst on the face of it the building would be relatively large, it does not result from the 'unrestrained whim of the appellant'.

Conclusion

14. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate was not well founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me under section 195(2) of the 1990 Act as amended.

Alexander Walker

INSPECTOR

² Appeal Decision APP/N1920/X/18/3213578

³ Appeal Decision APP/F5540/X/18/3217388



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 28 September 2019 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and hatched in black on the plan attached to this certificate, would have been lawful within the meaning of section 192 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed operations would constitute permitted development within the terms of Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended.

Signed

Alexander Walker

Inspector

Date 12 May 2020

Reference: APP/J0350/X/20/3244396

First Schedule

Detached outbuilding to be used as a games room, gymnasium and store room in accordance with drawings SINGH/PLAN/001, Block Plan and Site Location plan.

Second Schedule

Land at 3 Mina Avenue, Slough, SL3 7BY

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.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 12 May 2020

by **Alexander Walker MPlan MRTPI**

Land at: 3 Mina Avenue, Slough, SL3 7BY

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Scale: Do not scale

