



Appeal Decision

by Elizabeth Jones BSc (Hons) MTCP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 August 2021

Appeal Ref: APP/T0355/X/20/3266051

12 Walker Road, Maidenhead, Berkshire SL6 2QT

- 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 Sham Sansoy against the decision of Council of the Royal Borough of Windsor and Maidenhead.
 - The application Ref 20/01664, dated 3 July 2020, was refused by notice dated 28 August 2020.
 - 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 proposed outbuilding.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. I consider that this appeal can be determined without a site visit without causing injustice to any party. This is because I have been able to reach a decision based on the documentary evidence submitted.
3. Notwithstanding the description of development set out above, which is taken from the application form, it is clear from the submissions that development for which the LDC is sought is for a 'detached outbuilding comprising of a double garage, swimming pool, gymnasium, plant room and office area to be used ancillary to the main dwelling' as described by the Council in its decision notice. The Council dealt with the proposal on this basis and so shall I. This will not cause injustice to either side.

Main Issue

4. The main issue is whether the Council's decision to refuse an LDC was well-founded. This consideration is an issue of lawfulness which cannot take account of any matters of planning merit.

Reasons

5. Amongst other things, Class E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) sets out that the provision within the curtilage of a dwellinghouse "any building

- required for a purpose incidental to the enjoyment of the dwellinghouse as such" is permitted development (PD).
6. For an outbuilding to be PD under Class E it must be used and reasonably required for a purpose incidental to the enjoyment of the dwellinghouse – and not be for a primary residential use. Incidental connotes an element of subordination in land use terms in relation to the enjoyment of the dwellinghouse. There is no dispute that the proposed outbuilding would be within the curtilage of the dwellinghouse and that it would meet all the requirements of paragraph E.1 of Class E of the GPDO. I therefore need to consider whether, in this particular case, it has been shown that the proposed outbuilding is reasonably required for the purposes incidental to the enjoyment of the dwellinghouse.
 7. Case law establishes the need to consider whether "the nature of the activities carried out in the proposed building ensure they are incidental or conducive to the very condition of living in the dwellinghouse.... the physical sizes of buildings could be a relevant consideration in that they might represent some indicia as to the nature and scale of the activities." "When a matter is looked at as a whole, size might be an important consideration but not in itself conclusive." It was held that "incidental connoted an element of subordination in land use terms in relation to the enjoyment of the dwellinghouse." Moreover, it is established that the term 'incidental to the enjoyment of the dwellinghouse' "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."
 8. The Council submits that the footprint of the proposed outbuilding would be unreasonably sized for the stated purposes. In this case I am informed by the Council that the footprint of the proposed outbuilding would be 196.4m² compared to the footprint of the main dwellinghouse which is 140.34m². These sizes are not disputed by the appellant.
 9. In this case, a double width garage, a swimming pool with its associated changing room, a gym, office and plant room are uses not usually part of primary living accommodation. They are capable, in principle of being incidental to the enjoyment of the dwellinghouse. I acknowledge that the existing garage would be demolished. However, I consider that the spacious accommodation with a footprint of 196.4m² would be disproportionate in scale to that of the main dwellinghouse. Despite the generous garden size, the proposal would result in an unbalanced relationship between the main dwellinghouse and the proposed outbuilding.
 10. On the evidence before me and having regard to all other matters raised, I consider that, as a matter of fact and degree, it has not been shown that the proposed building is reasonably required for purposes incidental to the enjoyment of the dwellinghouse. It would not be permitted development falling within Class E of the GPDO.
 11. I note the appellant's comments that the Council could pursue enforcement action in the future should the use of the building be used in a manner not incidental to the main dwelling. However, this would be a matter for the Council and is not relevant to my decision.

Conclusion

12. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the proposed outbuilding was well-founded and that the appeal should fail. I will exercise the powers transferred to me under section 195(3) of the 1990 Act as amended.

Elizabeth Jones

INSPECTOR