



The Planning Inspectorate

Appeal Decision

by Anthony J Wharton BArch RIBA RIAS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 November 2021

Appeal Ref: APP/Z3635/X/21/3279230

91 Manor Lane, Sunbury-on-Thames TW16 6JE

- 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 Mrs Ann Sinclair against the decision of Spelthorne Borough Council
 - The application Ref 21/00583/CPD, dated 12 April 2021, was refused by notice, dated 7 June 2021.
 - 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 a *'proposed rear ancillary building'*.
-

Decision

1. The appeal is allowed and a Lawful Development Certificate is attached to this decision for the proposed rear outbuilding.

Matters of clarification

2. Further to the case officer's letters to the parties, I consider that this appeal can be determined without the need for a physical site visit. This is because I have been able to reach a decision based on all of the submissions and all submitted photographs. The appellant and the Council have agreed to the appeal proceeding without a site visit and I am satisfied that, in dealing with it in this manner, no injustice is caused.

3. The description of the development as set out above is taken from the LDC application form. Clearly, an *'ancillary'* building would require planning permission. However, it is now evident that the previous agent had been unaware that *'there was a difference between the wording 'ancillary' and 'incidental'*. The current agent confirms that the application is for a building which would be *'incidental to the enjoyment of the dwellinghouse'* at No 91, as opposed to it being *'ancillary'*. This is how the appellant's case has been set out in the appeal and I have dealt with the appeal on that basis.

4. The LPA is aware of this from the Appellant's appeal statement. In dealing with the appeal on the basis that the proposed building is contended to be '*incidental to the enjoyment of the dwellinghouse*', as opposed to it being '*ancillary*', again I am satisfied that no injustice will be caused. As a consequence, I have, therefore, changed the title of what has been granted a LDC to '*a proposed rear incidental outbuilding*'.

Background information

5. The appeal site comprises a two-storey dwellinghouse situated on the north side of Manor Lane. It has a rear lawned garden 35m long and, from the submitted photographs, it is clear that there is an area of timber decking and an existing outbuilding. The photographs also indicate children's play equipment at the far end of the garden.

6. A previous application (21/00135/CPD), for a LDC for the erection of an outbuilding in the rear garden, was refused on 25 March 2021 and planning permission was also refused (21/00590/HOU) on 7 June 2021, the same date as the refusal of the LDC, now the subject of this appeal. This appeal scheme differs from the previous LDC application in that the floor area has been reduced; the annotated uses have been changed and a toilet has been removed. The proposed building would measure 11m in width by 6.9m in length, thereby having an area of around 77m² in total.

7. The proposed building would extend across the back of the rear garden. The plans indicate that the outbuilding would be divided in the same manner as the previously refused application. However, as referred to above, the annotated uses for the rooms are different to the previous scheme and now comprise a study, a garden room, a gym and storage. A toilet shown in the previous scheme has been omitted. As for the previous scheme, the outbuilding would have a flat roof.

8. There is no dispute that in terms of its overall size, the building would meet all of the relevant permitted development (PD) criteria and conditions. It would be located within 2m of the boundary of the site; it would not exceed 2.5m in height and would not take up more than 50% of the garden area. However, the Council still consider that due to its size and scale the proposal would not be for a use '*incidental to the enjoyment of the main dwelling house*'

9. Thus the Council refused this application on the 7 June 2020 under delegated powers for the following reason: '*The proposal does not constitute permitted development under the terms of Class E, Part 1, Schedule 2 of the Town and County planning (General Permitted development) Order 2015 in that the size and scale of the proposal would not constitute development that is incidental to the enjoyment of the dwellinghouse*'.

Main Issue

10. The main issue in this appeal, therefore, is whether or not the appellant has demonstrated, on the balance of probability, that the proposal would be for a use which is incidental to the use of the dwellinghouse at 91 Manor Lane.

Reasons

11. An appeal relating to a Certificate of Lawful Use or Development (LDC) is confined to the narrow remit of reviewing the Local Planning Authority's (LPA) reason for refusal and then deciding whether the reasons are well-founded. The planning merits of the case do not fall to be considered and the relevant test, relating to the submitted evidence, is *'the balance of probability'*.

12. Planning Practice Guidance (PPG) indicates that an applicant is responsible for providing sufficient information to support a LDC application and that, without sufficient, precise and unambiguous information (my underlining), an LPA may be justified in refusing to grant a certificate. However, PPG also indicates that if an LPA has no contrary evidence itself and there is none from others to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application.

13. Despite the reduction in size and the fact that the building would meet the size, height and location limitations set out in the GPDO, the Council remains of the view that, due to its size and scale, it would not be *'incidental to the enjoyment of the dwellinghouse'* and would not, therefore, constitute permitted development under the terms of Class E, Part 1, Schedule 2 of the Town and County planning (General Permitted Development) Order 2015 (GPDO). At 5.1 of its statement the Council refers to the description of the application as being for an *'ancillary'* building which is not *'incidental'* as required by the GPDO.

14. However, I have dealt with that point above and now will now go on to consider the Council's main objection with regard to the size and scale of the building and whether or not, as a matter of fact and degree, it can be considered to be *'incidental to the enjoyment of the dwellinghouse'*.

15. The Council refers to case law and the finding that the sheer extent of buildings/uses proposed, while complying with the physical limitations laid down by the Order, may be considered to take the development out of the definition of being *'incidental'*. Given the size of the outbuilding (77m²) it is considered that the proposed building would be comparable in size to a two-bedroomed bungalow and would not be incidental to the enjoyment of the dwelling house, therefore being contrary to Class E of the GPDO.

16. On behalf of the appellant it is indicated that proposal is to demolish the existing outbuilding (25sqm); to remove the garden paraphernalia and to build the outbuilding which would be almost full width of the garden: 11m x 6.9m x 2.5m high. The Council do not dispute that the outbuilding would meet the

height and location limitations in paragraphs E.1 to E.3 of Class E of the Town and Country Planning (General Permitted Development).

17. The relevant caselaw is *Emin v SSE & Mid Sussex DC [1989] JPL 909*. In that case it was held that regard should be had to the use that a building would be put and of the nature and scale of that use, in the context of whether it is a purpose '*incidental*' to the enjoyment of the dwelling. In terms of the requirement for such a building it was held that the word '*required*' meant '*reasonably required*' and that, whether this is the case, is a matter of objective fact and degree judgement.

18. It was held that the physical size of a building in comparison to the dwellinghouse can be an important consideration but would not, by itself, be a conclusive or determinative factor. It was found to be necessary to consider the nature of the activities proposed to be carried out, so as to ensure that they were genuinely and reasonably required as being '*incidental*' or conducive to the very nature of the residential occupation. The word '*incidental*' connotes an element of subordination and thus the use of such a building would have to be seen to remain subordinate to the main use as a dwellinghouse.

19. In this case the activities within the building are as set out in detail in the statement and plans submitted. The proposed outbuilding would be divided into different spaces for a study, a garden room, a gym and two storage rooms. The storage would be a room (3.8m²) for garden tools lawnmower and bicycles and a second room (4.3m²) would be used for the storage of various family items. There would be a gym (20.5m²) for equipment which is currently stored in the house; a garden room (21.7m²) which compares in size to the current garden structure and a study (14.7m²).

20. As indicated above this amounts to around 75m², which is approximately 35% of the gross internal area of the dwellinghouse. On the basis of the submitted plans showing the various uses, I consider that the outbuilding would be clearly subordinate to the main house. I do not consider that the overall footprint of the proposal, in comparison with the existing property (80.5sqm compared to 182.40sqm), is particularly large. Nor has the Council provided me with any information which can persuade me that the proposed uses/activities would not be '*incidental*.'

21. In my view, the activities and uses proposed can all be generally regarded as being genuinely subordinate and reasonable activities connected with the residential use of this property. None can be described as being primary living accommodation. I agree with the view put forward on behalf of the appellant that the small study or garden office can be considered to be reasonably '*incidental*', as opposed to it being an addition to the primary living spaces of the kitchen, bathroom(s), bedrooms and living spaces of the main house. None of these proposed spaces could be described as being absolutely vital to enable No 91 Manor Lane to function as a dwellinghouse.

22. In this particular case, I do not share the Council's concerns about the size and scale of the proposal. At only just over one third of the overall area of the house and despite the fact that it could be compared to a small bungalow, I do not consider the overall size to be excessive. In any case, it is clear from the general sizes of No 91 and the surrounding dwellings that they are of much greater scale than any small bungalow.

Formal Decision

23. For the above reasons I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the proposed erection of an outbuilding not well-founded and that the appeal should succeed.

24. The appeal is allowed and I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended and a LDC is attached below.

Anthony J Wharton

Inspector



The Planning Inspectorate

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 2010: ARTICLE 35

IT IS HEREBY CERTIFIED that on 12 April 2021, the development described in the First Schedule hereto, in respect of the property specified in the Second Schedule hereto, was lawful within the meaning of section 192 of the Town and Country Planning Act 1990 (as amended), for the following reason: the operations were permitted by the Town and Country Planning (General Permitted Development) Order 1995 under Schedule 2, Part 2, Class E.

Signed

Anthony J Wharton Inspector

Date: 15 November 2021

Appeal Reference: APP/Z3635/X/21/3279230

First Schedule

'proposed rear incidental outbuilding'

Second Schedule

91 Manor Road, Sunbury-on-Thames TW16 6JE

Notes:

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

It certifies that the development described in the First Schedule, at the property specified in the Second Schedule, was lawful on the certified date and, thus, was not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the development described in the First Schedule; to the property specified in the Second Schedule and to the plans submitted with the LDC application as follows: plan reference numbers DN 01 rev A; DN 02 rev A; DN 03 rev A; DN 04 rev A; DN 05 rev A and Site Location Plan.

Any other development which is materially different from that shown on the above plans may result in a breach of planning control which is liable to enforcement action by the local planning authority.