Appeal Decision

Site visit made on 19 February 2010

by D Roger Dyer **BA, DipArch, RIBA, FCIArb, Barrister**

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

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Decision date:
18 March 2010

Appeal Ref: APP/X0360/X/09/2112801
41 London Road, Wokingham RG40 1YA

- 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 lawful development certificate (LDC).
- The appeal is made by Mrs T Shimizu against the decision of the Wokingham Borough Council.
- The application (Ref CLP/2009/1503), dated 20 July 2009, was refused by notice dated 11 September 2009.
- The development relates to "Building a playhouse in the garden."

Summary of Decision: The appeal is dismissed.

1. The application has been made on the grounds that the proposed new development meets the provisions of the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008 (referred to in this decision as the GDPO). The appellant's case is that Class E of the Order applies and that the proposed new building would not exceed the heights and sizes set out therein, in particular it is less than 50% of the total area of the curtilage excluding the ground area of the original dwellinghouse.

2. The new building would house a playroom, a gym, a sauna, a workshop and a store. The playroom would house a full size snooker table while the appellant regards the rest of the accommodation as a scale that is suitable for all the occupants of the dwelling. It is also said on her behalf that the store is of a reasonable size for "leisure/ garden/ maintenance equipment" because the house itself has four double bedrooms.

3. The appellant has an unusually long, but relatively narrow garden at the rear of her terrace house. From the plans submitted with the application to the Council the new building would be 6.4 m wide and 41.4m long. It would be a little over 2m from each side boundary and 2.5 to 3.5m from the rear boundary. It would lie about 15m from the rearmost part of the existing house. The roof would be pitched with a ridge height of 3.8m.

4. The plans show that the footprint of the existing house is about 100m² while the new single storey building would have a footprint of 285 m². Other houses in the row have shorter gardens while on one side the lower half of the appellant's garden adjoins a Council car park.

5. The Council accepts that the development would fall within the provisions of the GPDO. However it says that the excessive size of the new outbuilding compared to the existing dwelling would take the proposals outside the reasonable definition of a building reasonably required for a purpose incidental to the enjoyment of the dwellinghouse and, as such, cannot be permitted development by virtue of Class E.

The main issue

6. The principal consideration in this case is whether the proposed building falls within the intended terms of Class E of Part 1 of the GPDO.

Reasons

7. Purposes incidental to the enjoyment of a dwellinghouse have been held to include those connected with the running of the dwellinghouse or with domestic and leisure activities of the persons living in it. Specifically, a games room to accommodate a billiards table has been held (in an appeal decision reported at [1987] JPL 733) to satisfy that objective. In *Emin v SSE* [1989] JPL 909 the High Court accepted that it would be wrong to consider that the proposed buildings could not reasonably be said to be required for a use reasonably required for the enjoyment of the dwellinghouse simply because it would provide more accommodation for secondary activities than the house provided for primary activities; that was not part of the test as to which buildings fell within this class.

8. Two principles have emerged from the cases. First that something which is 'incidental' cannot be a dwellinghouse nor, therefore, can it be for something for the provision of a dwellinghouse purpose, such as a bedroom or kitchen. Secondly, a "purpose incidental to the enjoyment of the dwellinghouse as such" is a broad concept. It is a matter of fact and degree in each case. The building must be "required" for the incidental purpose, it is a matter primarily for the occupier to demonstrate what incidental purposes he intends to enjoy.

9. In this case the appellant has given little by way of any explanation for the unusually large size of the proposed building. Although the appellant says the store is 'adequate' for hobby equipment, garden furniture, garden maintenance equipment and recreational equipment, a room of 11m x 6m appears to be excessive for what would become a much smaller garden. Similarly although it is said on behalf of the appellant that the gymnasium is required to accommodate running, rowing, multifunctional weight training equipment and floor space for exercises, 7.5m x 6m again appears to be excessive. It appears that the snooker room is likely to have a bar area. There is also some reference to the need to take into account wheelchair and disability cart movements although nothing in the submissions made on behalf of the appellant indicates that occupants of the house are disabled.

10. In *Wallington v SSW* (1991) 62 &CR 150, the Court of Appeal held that the words "as such" in the Act must mean "of and incidental to the enjoyment of the dwellinghouse *as a dwelling-house*." The mere fact that the occupier may genuinely regard the relevant activity as a hobby could not suffice to prove that the purpose was incidental to the enjoyment of the dwellinghouse as a dwellinghouse. An objective standard had to be applied in considering the relevance or otherwise of the provisions of the GPDO.

11. In *Emin* it was said that "the fact that such a building had to be required for a purpose associated with the enjoyment of the dwellinghouse could not rest solely on the unrestrained whim of him who dwelt there. It connoted some sense of reasonableness in all the circumstances of the particular case…..the word 'incidental' connoted an element of subordination in land use terms in

relation to the enjoyment of the dwellinghouse itself." The judge also said "...the question as to whether a building qualifies for the purpose of the order would raise questions of fact and degree which are quintessentially appropriate for consideration by a planning authority or the Secretary of State or his Inspector, who were well practised in the problem of resolving sometimes difficult and finely balanced issues of fact in the field of land use planning."

12. Having regard to this judicial advice and the circumstances of this case, the proposed new building exceeds what may be reasonably considered as incidental to the enjoyment of the dwellinghouse. The building would be much larger than the house itself, even including the upper floors. Although the activities designated on the plans of the new building fall into categories that, individually, may be acceptable as incidental to the enjoyment of the dwelling house, taken together they occupy an unreasonable amount of space. Thus as a matter of fact and degree the proposals do not come within the terms of Class E of Part 1 of GPDO.

13. For all the above reasons, the Council's refusal to grant a certificate of lawful use or development is justified and the appeal fails. I shall exercise the powers transferred to me in section 195(3) of the Act as amended. In reaching my decision I have taken account of all other matters referred to me in writing but I have found nothing that outweighs the main planning issues that arise in this case.

Formal Decision

14. The appeal is dismissed.

D Roger Dyer
INSPECTOR