



Appeal Decision

Site visit made on 2 June 2008

by Keith Turner LLB(Hons) DipArch(Dist)
RIBA MRTPI MCI Arb

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

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Decision date:
26 June 2008

Appeal Ref: APP/X0360/X/08/2064662 **253 Shinfield Road, Reading RG2 8HF**

- 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 K Hussain against the decision of Wokingham Borough Council.
- The application Ref CLP/2007/2486, dated 30 September 2007, was refused by notice dated 16 November 2007.
- 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 games/snooker room and double garage.

Summary of Decision: The appeal is dismissed.

Material Facts

1. The building proposed would be some 14.1m wide overall. The area labelled on the plan as a games and gym room would be some 10.6m deep. Appended to the front of this would be a double garage 5.9m deep and 5.7m wide. The building would be 2m from the rear boundary of the appeal site, 0.9m from one flank boundary and about 1.3m from the other. The roof would be pitched and have a ridge height no greater than 3.9m.
2. The footprint of the existing two-storey house is about 48m². The proposed single storey building would have a footprint covering 183.6m². The Council claim this to represent an increase in area of some 382%. This would be correct in terms of the footprint, but a more realistic estimate of floor area would seem to be in the order of 200% when account is taken of the upper storey of the dwelling.
3. The building would be located to the back of the rear garden and would be a substantial distance from the rear of the existing dwelling. However, the plot for the appeal premises is large and the proposed building would not occupy more than 50% of the garden.
4. The plans submitted show the building would have cavity wall construction and it would contain a room with a shower, basin and WC. No other internal partitions are shown. The elevation facing the existing dwelling would have two windows and a double entrance door in it. The rear elevation would have four windows and a glazed door. The flank elevations would also contain windows.



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5. The planning history of the appeal site indicates that an application for permission to erect a detached dwelling with internal garage and parking was made in 2003. This was refused for two reasons. First because the proposal would cause loss of light to the existing dwelling and have an overbearing impact on the neighbouring dwelling. Second, due to additional traffic manoeuvring to and from a primary distributor road.
6. Reference is made to accommodating a snooker table in the games room. The maximum size for a snooker table is 12ft long and 6ft wide. Allowing for use of the maximum permitted cue length, a space 6.5m long and 4.72m wide is needed to accommodate this.

Main Issue

7. The Council accept that the proposed building would physically fall within the parameters set out in Class E of Part 1 in Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 [GPDO]. However, they do not accept that the building can be regarded as one appropriate to Class E which deals with the provision of, amongst other things, buildings within the curtilage of a dwellinghouse required for a purpose incidental to the enjoyment of the dwellinghouse as such.
8. The main issue is, therefore, whether the proposed building comes within the intended terms of Class E of Part 1.

Reasons

9. 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 house a billiard table has been held to satisfy this requirement¹. There can be little doubt also that a garage would also come within it. The Council do not take issue with these aspects of the proposal. However, they consider that the scale of the building calls its true purpose into question.
10. The courts have held² that it is wrong to consider a proposed building could not reasonably be said to be required for a use reasonably incidental to the enjoyment of a dwellinghouse as such because it would provide more accommodation for secondary activities than the dwellinghouse provided for primary activities. Furthermore, it was held that this was not part of the test as to what buildings fell within this Class.
11. However, a building which was to be erected to provide living accommodation, even as a granny annex, cannot be considered to come within Class E because, by definition the purpose is not incidental to but integral with the enjoyment of the dwellinghouse³. In the present case the purposes stated for providing the building fall clearly into Class E.
12. Case law⁴ also indicates that whilst a curtilage building containing a study, music room, a passage hall and WC and shower facilities would not, as a

¹ Appeal decision [1987] JPL 733

² Emin v SSE [1989] JPL 909

³ Appeal decision [1987] JPL 144

⁴ Peche d'or Investments v SSE [1995] JPL B63; [1996] JPL 311

matter of law, fall outside Class E. However, it was stressed that this decision must be a matter of fact and degree in each case.

13. What is a cause for concern is the fact that the proposed building is much larger than appears necessary to accommodate use of even the largest snooker table. That purpose would be served by about 25% of the games and gym room and would provide facilities of optimal standard. Whilst gymnasium equipment can be substantial it is unlikely that there would really be a need for approaching 100m² of floor space to accommodate this activity as one incidental to a dwelling, especially when the shower room would occupy only some 5m².
14. It is this factor which led to the Council refusing the LDC. Despite that, the Appellant has not given any explanation for the unusually large size of the proposed building. No evidence at all has been given about any particular circumstances which might generate a requirement for so large a structure for the activities proposed. The purpose of Class E is to permit buildings for incidental leisure pursuits. Whilst some buildings may need to be large to accommodate these, there is no explanation given in this instance.
15. The Council may have suspicions that the size of the proposed building may be so large that it would enable a separate dwelling to be created at some point, but this is not, itself, justification for not granting a lawful development certificate. Change of the building to a separate dwelling would require planning permission and so control would be possible.
16. However, the test of what may be incidental to the enjoyment of a dwellinghouse must retain an element of objective reasonableness⁵. The entire lack of evidence as to why a building which appears to be so very much larger than its purpose normally requires indicates it to be unreasonable in the context of the GPDO. Therefore, as a matter of fact and degree I find that the proposed building far exceeds what may be reasonably considered as incidental provision of leisure activities for the dwellinghouse. It does not, therefore, come within the terms of Class E of Part 1 of Schedule 2 of the GPDO and so would not be lawful.
17. For the reasons given above and having regard to all other matters raised, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of a detached games/snooker room and double garage was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Formal Decision

18. I dismiss the appeal.

Keith Turner

⁵ Wallingford v SSW (1990) 62 P&CR 150