



Appeal Decision

Site visit made on 23 September 2013

by Katie Peerless Dip Arch RIBA

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

Decision date: 7 October 2013

Appeal Ref: APP/Z5630/X/13/2198781
20 Reynolds Road, New Malden, Surrey KT3 5NG

- 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 Rubina Chughtai against the decision of the Council of the Royal Borough of Kingston-upon-Thames.
 - The application Ref 13/14057/LDP, dated 21 January 2013, was refused by notice dated 11 April 2013.
 - 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 development of a single storey outbuilding in the rear garden.
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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.

Reasons

2. The appeal property is a detached house in a residential cul-de-sac. The original house has been extended by the addition of a single storey side extension used as a self-contained annexe, a conservatory and a single storey flat roofed extension with its roof used as a balcony to a first floor bedroom at the rear.
3. The LDC seeks confirmation that a building in the garden of the property could be erected under the permitted development rights granted under Class E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) (GPDO). This allows the erection of buildings within the curtilage of a dwellinghouse provided they do not exceed certain size limits, do not result in more than 50% of the curtilage (discounting the area of the original dwelling) being covered by development and are *'required for a purpose incidental to the enjoyment of the dwelling house as such'*.
4. The proposed building is described as a gym, snooker and games room and a swimming pool with changing facilities. There is no dispute that the building complies with the size limitations set by the GPDO and the Council agrees that the stated purposes and uses of the proposed building would, individually, normally be considered to fall within Class E but it nevertheless considers that, cumulatively, the building is overly large on the plot and could not therefore be classed as being *'incidental'*.

5. Other appeal decisions have confirmed the view that where an outbuilding is of a significant scale, it is appropriate to critically examine the reasons why the development is 'required' under Class E, otherwise there is a possibility that permitted development rights could be abused through the erection of a building for one stated purpose which is then used for another.
6. The Courts have also held that the word 'required' in the context of the GPDO should be interpreted as 'reasonably required' and that Class E does not permit the erection of outbuildings for use as additional residential accommodation of the sort which would normally be found in a house, for example as an additional bedroom or living room.
7. The Council cites the case of *Emin v SSE [1989] JPL 909* and states that this confirmed that the nature and scale of the proposed use to which a building would be put was relevant to whether that use was incidental. However, *Emin* also confirmed that it was incorrect to say that a proposed building could not be incidental because it provided more space for secondary activities than the main building had for primary residential activities. It is a matter of fact and degree in each particular case and Class E does not require the proposed building to be subordinate to the main house in terms of size as long as the size of the ancillary accommodation is reasonable in terms of the use to which it is to be put. However, the footprint area of the extended house is claimed by the Council to be about 152 sq m and that of the proposed building about 115 sqm. The proposed building is therefore, in any event, subordinate in size to the main dwelling.
8. Also, the main house has already been extended and, including the annexe, provides 5 double bedrooms, including one in the roof space. Therefore, the complex including a swimming pool, gym and snooker room could be for the use of up to 10 residents of the house. The size of the pool area is reasonable, being able to accommodate a pool of about 8m x 3.5m, allowing for a margin of about 1m all round and changing facilities that could also be used for the gym; the snooker/games room, at about 6m x 4m is not excessive for this activity and neither is the space allocated as a gym.
9. The plot coverage of the proposed building at 115 sqm would, according to the Council's figures, be about 34% of the rear garden area of about 338 sqm. The total area of the site is said to be about 585 sqm and, again, the proportion of this (not including the original dwelling) that would be taken up by the proposed building, at about 27%, does not seem to me to be excessive, given the presumption in the GPDO that 50% of the curtilage can be given over to incidental buildings permitted under Class E.
10. I note that neighbouring occupiers have raised objections to the proposal; however these are based on the planning merits of the scheme and not the criteria set for permitted development in the GPDO. As the scheme is not the subject of a planning application and the appeal is concerned only with a consideration of whether the proposal complies with these criteria, I am unable to give these objections any weight in the determination of this appeal.
11. In conclusion, I am satisfied that, provided the building is constructed as shown on the submitted plans, is physically separate from the existing dwelling and is used for the purposes described, it would fall within the limitations set by Class E of Part 1 of Schedule 2 of the GPDO and would therefore be permitted development.

12. Consequently, for the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of a single storey outbuilding in the rear garden was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Katie Peerless

Inspector

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 21 January 2013 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The development would be permitted by Class E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 (as amended).

Signed

Katie Peerless

Inspector

Date 07.10.2013

Reference: **APP/Z5630/X/13/2198781**

First Schedule

The erection of a single storey outbuilding in the rear garden as shown on plan ref: SDC/GHA/02

Second Schedule

Land at 20 Reynolds Road, New Malden Surrey KT3 5NG

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:07.10.13

by **Katie Peerless Dip Arch RIBA**

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Scale: NTS

