DELEGATED DECISION REPORT

SMD/2018/0625 **Valid 13/11/2018**	**CLEWLOW BANK HOUSE** **HILL TOP** **BROWN EDGE**	**LAWFUL DEVELOPMENT CERTIFICATE APPLICATION FOR THE CONSTRUCTION OF A GARDEN ROOM TO INCORPORATE A CINEM A AREA/OFFICE/GYM/BATHROM AND WORKSHOP/GARDEN STORE.** **(CERTIFICATE OF LAWFULNESS - PROPOSED)**

MAIN ISSUES

The application seeks a legal determination as to whether the proposed operations detailed in the submitted drawings would have been immune from enforcement action had they been carried out on the date of the application. Where operations would be immune from enforcement action, either because they don't constitute development or they are permitted by the General Permitted Development Order 2015, they shall be considered 'lawful' for the purposes of the Act.

- Would the operations be 'development' for the purposes of the Act
- If the operations were to result in 'development' would it be permitted by any Part of the GPDO.

DESCRIPTION OF SITE

Adjoining land approximately 25 metres to the north of the applicant's dwelling house. The land is the other side, and beyond, existing outbuildings and hedgerow that have a much closer relationship to the house. The land has historically been overgrown and unmaintained.

THE APPLICATION

The erection of a brick and tile building, 4 metres high with a footprint of 75 sq metres. The floor plan indicates that the building is required for the provision of a gym, office, kitchen, cinema room and bathroom.

It is apparent that some excavation would be carried out to build the building on a land level that is similar to adjacent road level.

SITE HISTORY / RELEVANT PREVIOUS APPLICATIONS

None

CONSULTATIONS

Public Comments

None Received

Town / Parish Comments

Awaited

OFFICER COMMENTS

Would the operations be 'development' for the purposes of the Act?

The operations would apparently involve relatively extensive excavations, at least 0.6metres over some area, to reduce the land level on which the building would be erected. The building itself would be permanent, sizeable (a footprint that exceeds that of the original dwelling) and affixed to the ground. It would be of substantial construction. The operations would indeed be considered to be 'development' for the purposes of the Act with ref. to the meaning set out at s.55.

If the operations were to result in 'development' would it be permitted by any Part of the GPDO?

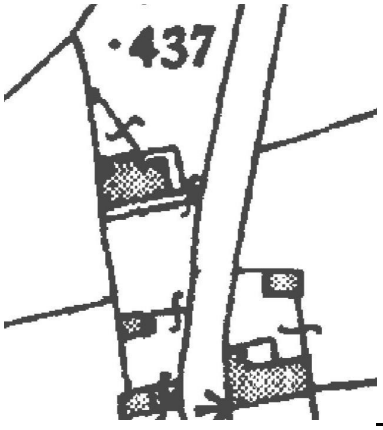
Presumably, the applicant seeks confirmation that his development would be permitted specifically by Class E, Part 1 of Schedule 2 of the GPDO which permits, on land within the curtilage of a dwellinghouse, the construction of buildings that are required for purposes that are incidental to the enjoyment of a dwellinghouse. However, that Class of Part 1 does not permit excavations or engineering operations.

Is the land within the curtilage of the dwelling?

However, the land on which the building would be built is 25 metres from the dwelling, the other side and beyond existing outbuildings and a line of bushes. The land has over the years been overgrown and unmaintained, see 2015 aerial photograph below.



The area of land does not form a small piece of ground attached to the dwelling that serves a purpose of the house in some reasonably useful way. Moreover, historic O.S. maps put an enclosure boundary containing ground attached to the dwelling as being quite tightly drawn, see below.



OS. 1937-1939

I conclude therefore, relying on the recognised court judgements of *Dyer v Dorset [1988], Sinclair Lockhart's Trustees v Central Land Board [1950], Collins v S.O.S [1989], James v S.O.S. [1991]; and McAlpine v S.O.S. [1994]*, that the land is not within the curtilage of the dwellinghouse.

Is the building required for purposes incidental to the enjoyment of the dwellinghouse?

Following the decision of court judgement and appeal decisions, the technical guidance that accompanies the GPDO clarifies that:

A purpose incidental to a house would not, however, cover normal residential uses, such as separate self-contained accommodation nor the use of an outbuilding for primary living accommodation such as a bedroom, bathroom, or kitchen.

The Courts have also established that the term 'required' should be interpreted as meaning 'reasonably required'.

In this case the proposed building would have a larger footprint than that of the original dwelling, a provision of relatively extensive accommodation and habitable floor area. The building would be remote from the dwelling and access between the two would not be easy or casual and this would limit the extent of its usefulness to the purpose of the dwelling. Specifically the floor plans show that the building is to be purposed as a cinema room (in effect, an extension to the primary accommodation, very much like an additional lounge, as opposed to an incidental use) a gym, office, kitchen and bathroom – the purpose of the building very much akin to normal residential uses or the provision of primary living accommodation, and the building quite capable of being occupied independently or in a way that is self-contained and independent of the dwellinghouse. I can only conclude therefore, relying on the technical guidance and a number of appeal and court decisions, that the building is not *reasonably* required and would not provide for purposes that are incidental to the enjoyment of the dwellinghouse.

Other Observations

Measured from the submitted plans the building is 4metres high and within 2 metres of the land boundary. Where a building is provided within the curtilage of a dwelling for incidental purposes, it is not permitted if it exceeds 2.5metres in height and is within 2 metres of the curtilage boundary.

CONCLUSION / PLANNING BALANCE

The development would not be permitted by the GPDO, it would have required planning permission and had it occurred on the date of the application it would not have been immune from enforcement action. The proposed development is not lawful therefore within the meaning of the Act.

OFFICER RECOMMENDATION : REFUSE

Case Officer: Ben Hurst
Recommendation Date: 10/12/2018

X B.J. Haywood

Signed by: Ben Haywood

On behalf of Staffordshire Moorlands District Council