DELEGATED DECISION REPORT

SMD/2019/0654 **Valid 25/10/2019**	**COPPICE SIDE MANOR** **COPPICE LANE** **WINNOTHDALE**	**CERTIFICATE OF LAWFULLNESS FOR THE PROPOSED ERECTION OF A DETACHED OUTBUILDING.** **(CERTIFICATE OF LAWFULNESS - PROPOSED)**

MAIN ISSUES
Would the proposed development be permitted by Class E, Part 1 Schedule 2 of the GPDO 2015.

PROPOSAL
To build a 101 sq. metre L shaped detached single storey building to the side of the dwelling, approximately 14metres to the west. The plan annotations indicate that the building would be used to provide a games room, gym and sauna/hot tub.

The building would have a full pitch roof and its height would be just less than 4 metres (around 3.9m).

SITE HISTORY / RELEVANT PREVIOUS APPLICATIONS
84/13642/OLDDC Outline Permission for Dwelling. Approved
86/00264/OLDDC Reserved Matters for Dwelling. Approved

OFFICER COMMENTS

Would the development occur within the curtilage of the dwellinghouse?
It is the curtilage area and boundary which govern the tolerances under Class E, rather than the boundary of the land in the same ownership or occupation; and permitted development rights are limited to the curtilage.

The concept of the "curtilage" for the purposes of the GPDO was recently reviewed by the High Court in *Burford v SSCLG [2017] J.P.L. 1300* at [32]–[37] per Supperstone J. The judge summarised the relevant factors for determining the curtilage as: (1) the physical layout of the building and the structure; (2) their ownership, past and present; (3) their use or function, past and present. The application of those factors to a given set of facts is a matter of planning judgment for the decision taker, to be impugned only on *Wednesbury* grounds, see [46].

An area of land could not properly be described as a curtilage unless it formed part and parcel of the house or building which it contained or to which it was attached, *Dyer v Dorset CC [1989] Q.B. 346, [1988] 5 WLUK 33* applied. It was the relationship between the main dwelling and the land in question which was relevant when considering function and/or use, *Skerritts of Nottingham Ltd v Secretary of State for the Environment, Transport and the Regions (No.1) [2001] Q.B. 59, [2000]*

2 WLUK 950 applied. Determining the curtilage was a question of fact and degree: "curtilage" connoted a building or piece of land attached to a dwelling house and forming one enclosure with it: it was not restricted in size, but had to be fairly described as being part of the enclosure of the house to which it referred, *Lowe v First Secretary of State [2003] EWHC 537 (Admin), [2003] 2 P. & C.R. 24, [2003] 2 WLUK 184* applied (see paras 32-37 of judgment).

In this case the development would be carried out some 14 metres from the dwelling's side elevation on a wider area of the applicant's ownership to the west. Aerial photographs show that this area appears to be regularly mown. However they do not show that the land provides any particular 'functional' relationship with the dwelling house, unlike other land that clearly provides garages, utility building, parking areas and patios within practical proximity.

On the siting and layout plan that was approved with the planning permission to build the dwellinghouse in 1984 (Reserved matters 1986) this area of land is shown with some separation from the dwelling house on the other side of an enclosing hedgerow that was drawn running parallel to the side of the dwelling house some 4 - 5 metres from that elevation. While there is no hedgerow to speak of there is some delineation on the ground which follows that alignment, starting to the north west of the dwellinghouse with mature trees and continuing with what appear to be stumps. Even the proposed site plan submitted with the application shows a line of delineation between the areas.

While there is no physical barrier between the two areas the degree of identifiable delineation, change in character and appearance, and distance from the dwelling leads to a reasonable conclusion that this area of wider land to the side of the dwelling is separate and therefore unattached to the land that obviously surrounds the dwelling house with proximity that functions and forms one enclosure with it, *Dyer* applied.

Is the building required for a purpose incidental to the enjoyment of the dwellinghouse?

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.

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.

In this case the appellant has given little by way of any explanation for the size, which seems excessive, of the proposed building relative to the stated uses, other than to remind us that the dwelling has six bedrooms and five occupants. The proposed plan marks a 5.7m by 7.7m internal area of the building as a ‘games room’ and a 4.7m by 4.4m area as a ‘Gym’. Both areas would be connected by a not insignificantly sized passageway or corridor that would run around a room in the corner that is marked as ‘hot tub/sauna’.

The corner room would be 4.5m by 4.7m internally, the purpose of this room remains unclear the annotation suggests it will be used for one of two different purposes either to house a small hot tub in the corner, for which the size of the room seems excessive, *or* a sauna, of which a room this size would exceed that of a commercial facility provided in a large hotel. The plan also shows that the room would have two windows and an external door that wouldn’t appear to lend themselves to sauna housing.

In particular, there is no explanation why a building of this size is required to provide a dedicated ‘games room’ in a location that is some distance from the house. We are told that there are five residents by way of justification, but the evidence does not specify a particular ‘game’ that they all might play together which requires a dedicated room of this size.

The annotations “games room; hot tub/sauna; and, to some extent, gym”, with no other information, is vague, and that the applicant had failed to put forward evidence on which to base a finding that the building is reasonably required for a purpose incidental to the enjoyment of the dwellinghouse. In order to satisfy Class E it is not enough to meet the physical criteria and state that the building will be used as a games room or even a gym. It is also necessary to provide enough evidence to show, on the balance of probability, that the building is reasonably required for a use which is truly incidental and not for a primary residential use. Taking into account all the circumstances and the absence of any explanation as to why the building is required for the stated purposes, it is concluded on balance that this building is not required for a purpose incidental to the enjoyment of the dwellinghouse as such. It would not therefore be permitted development under Class E.

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. 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."

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. 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.

CONCLUSION / PLANNING BALANCE
For all of the above reasons, which in summary include a failure of the application to demonstrate:

- The building would be provided within the curtilage of the dwelling;
- A building of the proposed size and uses are reasonably 'required' for purposes incidental to the enjoyment of the dwellinghouse; and
- The proposed uses of the building amount to purposes incidental to the enjoyment of the dwellinghouse.

a refusal to grant a certificate of lawful use or development is justified.

OFFICER RECOMMENDATION : REFUSE

Case Officer: Ben Hurst
Recommendation Date: 13th January 2020

X B.J. Haywood

Signed by: Ben Haywood

On behalf of Staffordshire Moorlands District Council