STAFFORDSHIRE moorlands DISTRICT COUNCIL
ACHIEVING · EXCELLENCE

Staffordshire Moorlands District Council
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Part 1

Application for a Lawful Development Certificate for a Proposed use or development. Town and Country Planning Act 1990: Section 192, as amended by section 10 of the Planning and Compensation act 1991. Town and Country Planning (General Development Procedure) Order 1995

SMD/2008/0943/CL/PRO 29 APR 2008 - SMD

Publication of planning applications on council web sites
Please note that with the exception of applicant contact details and Certificates of Ownership, the information provided on this application form and in supporting documents may be published on the council's website.
If any other information that is provided as part of the application which falls within the definition of personal data under the Data Protection Act and is not to be published on the council's website, please contact the council's planning department.

1. Applicant Name, Address and Contact Details

Title: Mr | First name: Richard | Surname: Buxton

Company name:

Street address: Barnswood Bungalow, Rudyard

Town/City: Leek

County: Staffordshire

Country:

Postcode: SK11 0RA

	Country Code	National Number	Extension Number
Telephone number:			
Mobile number:			
Fax number:			

Email address:

Are you an agent acting on behalf of the applicant? (●) Yes ( ) No

2. Agent Name, Address and Contact Details

Title: | First Name: Emery Planning | Surname: Emery Planning

Company name: Emery Planning Partnership Ltd

Street address: 4 South Park Court, Hobson Street

Town/City: Macclesfield

County: Cheshire

Country:

Postcode: SK11 8BS

	Country Code	National Number	Extension Number
Telephone number:		01625 433881	
Mobile number:			
Fax number:		01625 511457	

Email address: info@epp-planning.com

3. Site Address Details

Full postal address of the site (including full postcode where available)

House: 0 Suffix:

House name: Barnswood Bungalow

Street address:

Rushton Spencer

Town/City: MACCLESFIELD

County:

Postcode: SK11 0RA

Description of location or a grid reference
(must be completed if postcode is not known):

Easting: 394506

Northing: 360185

Description:

4. Pre-application Advice

Has assistance or prior advice been sought from the local authority about this application? ○ Yes ◉ No

5. Interest in Land

Please state the applicant's interest in the land: ◉ a) Owner ○ b) Lessee ○ c) Occupier ○ d) Other

If No to a), b), or c), please give the names and addresses of anyone who has an interest in the land and state the nature of their interest (if known):

Have they been informed of the application? ○ Yes ○ No

If No, why have they not been informed?

6. Council Employee / Member

Is the applicant or agent related to any member of staff or elected member of the council? ○ Yes ◉ No

7. Grounds for Application

Information about the existing use(s)

Please explain why you consider the existing or last use of the land is lawful, or why you consider that any existing buildings, which it is proposed to alter or extend are lawful:

It is considered that the development is permitted development by virtue of Class E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development Order) 1995, which sets out the nature and scale of development that can be carried out without the need for planning permission.
Please see attached supporting planning statement

Please list the supporting documentary evidence (such as a planning permission) which accompanies this application:

Supporting planning statement and appendix
Plans:
Location plan
Proposed site plan
Proposed floor plan and
Proposed elevations

If you consider the existing or last use is within a 'Use Class' in the Town and Country Planning (Use Classes) Order 1987 (as amended) state which one:

If you consider the proposed use is within a 'Use Class' in the Town and Country Planning (Use Classes) Order 1987 (as amended), state which one:

Is the proposed operation or use: ◉ Permanent ○ Temporary

Why do you consider that a Lawful Development Certificate should be granted for this proposal?

The accommodation to be provided would be incidental to the enjoyment of the dwelling house in terms of its scale and purpose.
Please see attached supporting planning statement

8. Description of Proposal

Does the proposal consist of, or includes the carrying out of building or other operations? (●) Yes ( ) No

If Yes, please give detailed descriptions of all such operation and indicate on your plans (includes describing any proposal to alter or create a new access, layout or any new street; construct any associated hardstandings; means of enclosure; or draining the land/building)

A Certificate of Lawfulness of Proposed Use or Development for the erection of a detached building within the domestic curtilage for purposes incidental to the enjoyment of the existing dwelling house

Does the proposal consist of, or include, a change of use of the land or building(s)? ( ) Yes (●) No

Has the proposal been started? ( ) Yes (●) No

9. Site Visit

Can the site be seen from a public road, public footpath, bridleway or other public land? ( ) Yes (●) No

If the planning authority needs to make an appointment to carry out a site visit, whom should they contact? (Please select only one)

(●) The agent ( ) The applicant ( ) Other person

10. Declaration

I/we hereby apply for a Certificate of Lawfulness as described in this form and the accompanying plans/drawings and additional information. ☒ Date: 29/04/2008

18/00943/CL/PRO 29 APR 2008 - S M D

Notes of Cases

08/00943/ BLARRD 29 APR 2008 - S M O

Reports by Genevieve Kirkwood, LL.B., Senior Lecturer at Essex Institute of Higher Education, Chelmsford, Comments by Michael Purdue, LL.M., Solicitor

Section 53 determination—use incidental to enjoyment of a dwelling-house—buildings—pottery, archery, billiards—substantial size of buildings—The Deputy Judge held, allowing the appeal: (1) indoor archery albeit unusual was similar to other indoor sports; (2) the physical size of the buildings might be indicative of the scale of the activities and as such was relevant; (3) the Secretary of State had erred in applying the "incidental" test solely by reference to the physical size of the relevant buildings.

Emin v. Secretary of State for the Environment and Mid-Sussex District Council (Queen's Bench Division, Sir Graham Eyre sitting as Deputy Judge, February 3, 1989)[1]

The local planning authority made a section 53 determination that the erection of two buildings on land within the curtilage of a dwelling-house for use as a pottery, utility room and games/garden room or use for archery, billiards and pottery constituted development requiring planning permission. The proposed buildings were substantial in size, but could fall within the criteria set down in Class 1.3 of the General Development Order 1977, which dealt with development within the curtilage of a dwelling-house "required for a purpose incidental to the enjoyment of the dwelling-house as such."

Following an Inquiry, the Secretary of State in his decision letter set out some of the Inspector's conclusions.

Paragraph 9 stated:

> "Bearing in mind the foregoing facts, it seems to me that as far as both Proposal A and Proposal B are concerned the determining issue is whether or not the erection of the proposed buildings for utility and amenity purposes can be regarded as development which, by nature and scale, is incidental to a dwelling-house as such. Regarding Proposal A, I consider that the provision of accommodation for a hobby, in this case pottery, for playing indoor games such as billiards and table tennis, for the storage of household and garden paraphernalia and for doing the family washing cannot be regarded as other than purposes which, by nature, are part and parcel of the everyday life of many a normal household and features of an ordinary domestic environment. Turning to Proposal B, I am of the opinion that the foregoing conclusions apply equally where the uses of the proposed buildings are identical but, in the latter case, I consider that archery falls into a different category and cannot be seen as a pursuit which is compatible in any way with the use of domestic buildings or the indoor life of a family home. It has the

[1] *M. Monk* (Messrs. Weedon & Co. London SE13). *D. Ousely* (the Treasury Solicitor, London SW1). *Rhodri Price Lewis* (the Solicitor, Mid-Sussex District Council).

characteristics of a sport, in my opinion, which needs space and the open air and has none of the features of a pastime ordinarily practised within the confined area of a walled and roofed enclosure and even less identity with a domestic profile and the purposes for which household accommodation is set aside or specifically provided. In the light of these conclusions, I consider that the nature of the purposes for which the buildings under Proposal A are required are not unusual or exceptional and that, from this point of view only, the provision of accommodation for them could not be said to be other than incidental to the enjoyment of a dwelling-house as such. Proposal B, however, widened by the inclusion of archery, cannot pass the same test, in my opinion, and it would not result in a building for purposes incidental to the enjoyment of a dwelling-house as such.

Turning to the question of scale, I am of the opinion that an entirely different picture emerges from the proposals when it is seen that they would provide vastly more accommodation for subordinate or secondary purposes than that which exists for the primary residential use of the property. It might be considered reasonable in certain circumstances to make some provision for utility and amenity facilities in outbuildings but I am of the opinion that the expansion which would result from Proposal A and Proposal B far exceeds, as a matter of fact and degree, what could reasonably be said to constitute development for purposes incidental to the enjoyment of a dwelling-house within the tolerance of permitted development under the terms of the GDO. Both proposals provide floorspace on a lavish, almost institutional scale with separate rooms for purposes which are generally combined in the average household and, bearing in mind that the occupiers reside elsewhere during the working week, that the surroundings are such that it would not be unreasonable to expect the outdoor pursuits would occupy part of their time, that the dwelling extends to sufficient accommodation to provide each member of the family with a private room and that existing and authorised outbuildings include as much floorspace as the dwelling, I am unable to accept that the proposed developments could be properly regarded or necessarily maintained as an adjunct to the dwelling-house. On the contrary, I consider they are on a scale which falls well outside the type of development envisaged by the GDO as being incidental to the enjoyment of a dwelling-house and, with time and usage, it is improbable that the original purposes for which the buildings were said to be required would survive and problems could arise as to how such a range of outbuildings could be used unless converted to some other purpose. In reaching my conclusions I have not lost sight of the fact that the atomic shelter complex is purpose designed but consider it unrealistic to maintain that it has no peacetime use whatsoever and am of the opinion that it could fill a limited storage role."

The Secretary of State had then gone on to consider that the provision of accommodation for a hobby use, such as pottery, billiards or table tennis, could normally be regarded as incidental to the enjoyment of a dwelling-house. A hobby in this respect would be defined as being a favourite occupation pursued for amusement and would be for the domestic enjoyment of the occupants of the dwelling-house. Such uses had to be capable of being regarded as being ancillary to the main use of the property as a dwelling-house, and only in this way would it not amount to any material change of use. The Secretary of State then continued:

". . . [whether the] buildings can properly be regarded as incidental to the enjoyment of Keepers Cottages, must concern the 'incidental use,' which in this context, must be a use which occurs together with something else but nevertheless remains at all times subordinate to it. The view is also taken that the test to be applied is whether the uses of the proposed buildings, when considered in the context of the planning unit, will remain as ancillary or subordinate to the main use of the property as a dwelling-house. Thus, it is necessary to consider the scale of these incidental uses, both in respect of the area of land involved and the intensity of the uses. It is accepted that uses of the buildings for hobbies such as those envisaged by your client can, when taken individually or on a scale appropriate to the occupation and size of a dwelling-house, be properly considered as "incidental" to the enjoyment of that dwelling-house. In this respect, however, it is agreed with the Inspector that the provision and use of a building for the express purpose of archery would fall within a different category. For the reasons expressed by the Inspector, which are accepted, it is not considered that the use of a building for such a purpose can be considered to be a use incidental to the enjoyment of Keepers Cottages, in all the circumstances described.

There the Secretary of State identified a general test of approach and then specifically went on to deal with the archery constituent in proposal B. He then considered another important aspect in relation to both proposals:

"On the question of intensity and scale of the proposed uses and buildings, it is noted from the calculation provided by the Council—which were not contested—that the gross floorspace created under proposals A and B, when taken together with other buildings either proposed or existing within the curtilage of Keepers Cottages, would produce 149 square metres for Proposal A and 188 square metres from Proposal B whereas the floor area of the dwelling-house itself, which represents the primary use of the site, provides just 185 square metres. It is further agreed with the Inspector that at this level of provision, both proposals A and B would provide floorspace on a highly generous and almost institutional scale. A point can therefore be reached where, as a matter of fact and degree, the uses by their very nature and scale no longer remain as 'incidental' to the dwelling-house use."

He then went on to dismiss the appeal and gave a formal decision. The applicant appealed to the High Court.

THE DEPUTY JUDGE said that the Secretary of State's decision was challenged on a number of grounds:

"That, on the facts as found, the Secretary of State misdirected himself in deciding the two appeals in having regard to

(1) The size of the proposed buildings

(2) The relative size of the dwelling-house

(3) The fact that at some unascertainable point in the future Mr. Emin or his successors in title might not wish to use the buildings or some of them for the proposed purposes

(4) The fact that Mr. Emin and his family had also a residence in London which they normally used except at weekends and holidays

(5) The fact that archery was not normally practised in a purpose built building or as a hobby within the curtilage of a dwelling-house."

This case was unusual, although not unique, in that the Secretary of State acknowledged in Court that an error of law was made and that the matter should be remitted, whereas the second respondent, the local planning authority, sought to uphold the Secretary of State's decision in its totality.

Grounds 3 and 4 raised questions which were mentioned by the Inspector in expressing his conclusions but were clearly not relied on by the Secretary of State. If the attack on the decision were restricted to those two grounds the appeal in this court would fail.

As to ground 5, the Secretary of State conceded that the fact that archery was not normally practised was nothing to the point and, in so far as the Secretary of State relied on what he conceived to be an alleged recreational abnormality in the decision, there was an error of law. He (the Deputy Judge) accepted that submission because, as a matter of principle, indoor archery, although perhaps unusual could be sensibly distinguished from other indoor recreational activities such as snooker and the like.

As to grounds 1 and 2, the concessions made on behalf of the Secretary of State proceeded on the basis of some caution. In so far as the decision rested on a consideration of the physical size of the proposed building alone, and its size by itself and in relation to the sheer physical size of the dwelling-house, that, it was acknowledged on behalf of the Secretary of State, would not suffice to deprive the appellant of his permission under the order. It was accepted that the only constraints on mere physical size were imposed within the terms of the order itself in paragraphs (c) and (d).

In relation to size of building, the concession accords with his (Graham Eyre's) own view, and it would be surprising if the mere size of the dwelling could dictate the physical size of a facility within a building and the size of the building itself whereas the owner of a small dwelling might want a larger facility for his enjoyment the owner of a larger house may not. It was clear that, in order to attract the planning permission granted by the order, the erection or construction of a building must be required for a purpose incidental to the enjoyment of a dwelling-house as a dwelling-house and not for extraneous purposes. It was equally clear (and this was also transparently manifest in the argument before the court) that the multiplicity of examples, many of an engaging nature, canvassed on the question as to whether a building qualifies for the purpose of the order would raise questions of fact and degree which were 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. Matters of judgment and fact were commonplace for the purpose of making such decisions but they were not practised by the courts, who were concerned only with errors of law and not matters of judgment on the facts of a particular case.

The arbiter of the facts in a case such as this would need to concern himself with the nature of the activities carried on in the proposed buildings so as to ensure that they were incidental or conducive to the very condition of living in the dwelling-house and, in that sense, further that condition. In that connection the scale of those activities was obviously an important matter because there had to be a prospect that the nature and

scale of such activities could go beyond a purpose merely incidental to the enjoyment of the dwelling-house as such and constitute something greater than a requirement related solely to that purpose. In that context the physical sizes of buildings could be a relevant consideration in that they might represent some indicia as to the nature and scale of the activities.

The fact that such a building had to be required for a purpose associated with the enjoyment of a dwelling-house could not rest solely on the unrestrained whim of him who dwelt there but connoted some sense of reasonableness in all the circumstances of the particular case. That was not to say that the arbiter could impose some hard objective test so as to frustrate the reasonable aspirations of a particular owner or occupier so long as they were sensibly related to his enjoyment of the dwelling. The word "incidental" connoted an element of subordination in land use terms in relation to the enjoyment of the dwelling-house itself. He (the Deputy Judge) would endorse the general approach adopted by the Secretary of State in the present case. He was correct in stating that the overriding factor in deciding the question as to whether uses of the proposed buildings could properly be regarded as incidental to the enjoyment of the dwelling-house had to concern the incidental use, which, in that context, had to be a use which occurred together with something else but nevertheless remained at all times subordinate to it. The view was also taken by the Secretary of State, and he agreed, that the test to be applied was whether the uses of the proposed buildings, when considered in the context of the planning unit, were intended and would remain ancillary or subordinate to the main use of the property as a dwelling-house.

It was noteworthy that, in identifying the correct approach and the test itself, regard was being had to the use to which it was proposed to put a building and to considering the nature and scale of that use in the context of whether it was a purpose incidental to the enjoyment of the dwelling-house. That reflected a correct approach.

However, when the test was subsequently applied in this case it was clear that its application was *solely* by reference to the sheer physical size of the proposed buildings and the relationship between their physical size and the physical size of the dwelling-house also within the curtilage. Therein was the flaw, as the Secretary of State acknowledged. However, he (the Deputy Judge) would not wish to be taken as saying that size and comparable sizes were irrelevant. When a matter was looked at as a whole, size might be an important consideration but not by itself conclusive. In all the circumstances the matter should be remitted to the Secretary of State in order that he should apply the test, having regard to all the relevant circumstances, with the aim of identifying the purpose and the incidental quality in relation to the enjoyment of the dwelling and answer the question as to whether the proposed buildings were genuinely and reasonably required or necessary in order to accommodate the proposed use or activity and thus achieve that purpose. Accordingly this appeal succeeded on the limited ground conceded by the Secretary of State in the particular circumstances that obtained in this case.

Comment. The new General Development Order 1988 retains the term "required for a purpose incidental to the enjoyment of the dwelling-house" and so the reasoning behind this judgment of Sir Graham Eyre is equally applicable to the new order. Class 1.3 of the 1977 Order is difficult to separate from Class 1.1 but Ministerial decisions make a distinction between new buildings or extensions which are to be used for normal living accommodation (which comes within Class 1.1)

and buildings required for a purpose incidental to the enjoyment of the dwelling-house: see [1983] J.P.L. 683. In this present case it was quite clear that the proposed activities were not normal dwelling-house uses and the question was whether they came within Class 1.3.

The first main issue was whether indoor archery could be regarded as a use incidental to the enjoyment of a dwelling-house. In so far as it is a game or sport which can be carried on indoors, the answer must be that it is capable of being incidental to the enjoyment of a dwelling-house and the Deputy Judge so concluded.

The next issues related to the size of the proposed building and the existing dwelling-house. It would seem only rational that the question of whether a building was *required* for a use *incidental* to the enjoyment of a dwelling-house, should turn to some extent on the size of both the proposed building and the dwelling-house itself. A use cannot be incidental if the extent of the use is far greater than the dominant use to which it is supposed to relate. Similarly it is hard to see how a building can be required if it is far bigger than is necessary to carry on the proposed use. This was accepted by Sir Graham Eyre who said that the Secretary of State or his Inspector had to be satisfied that the building was required and that the proposed use was intended and would remain ancillary or subordinate to the main use of the property as a dwelling-house. However in the present case Sir Graham Eyre concluded that the Secretary of State had relied solely on the issue of size and scale and so had erred in law. This must be right as a matter of law but it must be said that from the decision letter the Secretary of State does seem to have had regard to other factors so far as he considered them to be relevant. Indeed grounds 1 and 2 of the motion of challenge simply alleged that the Secretary of State had misdirected himself by having regard to size and scale. In effect Sir Graham Eyre held that he had not misdirected himself in so doing and the deputy judge was raising a different issue of whether the Secretary of State had misdirected himself by *solely* relying on size and scale.

Established Use Certificate—storage site within a waterworks complex—identification of planning unit—ancillary uses—primary uses—the Deputy Judge held that it was inappropriate on the facts to treat the whole site as waterworks simpliciter. Two independent land uses of a different character were accommodated within the one site. Commonality of occupation was not an overriding factor. The uses were functionally and sufficiently physically separate to enable an established use certificate to be granted for the storage component.

Essex Water Company v. Secretary of State for the Environment and Thurrock Borough Council (Queen's Bench Division, Sir Graham Eyre sitting as Deputy Judge, February 3, 1989)[2]

The applicant applied for an established use certificate for use of land as a "storage site." The Council refused to grant the certificate, and this refusal was upheld by the Secretary of State, who accepted his Inspector's conclusions, that the "storage site" was ancillary to the main use of a larger area, that of waterworks. Also an established use certificate could only be granted for a main use of land and not an ancillary use.

The applicant appealed under section 245 of the 1971 Act.

THE DEPUTY JUDGE said, that the Secretary of State had accepted the Inspector's conclusions and described the position he had reached in the following terms:

[2] *J. Howell* (Messrs. Redmayne Wyatt & Kershaws, Chelmsford, Essex). *D. Ousley* (the Treasury Solicitor, London SW1).

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29 April 2008

Planning Service
Staffordshire Moorlands District Council
Moorlands House
Stockwell Street
Leek
Staffordshire Moorlands
ST13 6HQ

EPP ref: L7-7387-LD-co't

Contact: Louise Dowd
Direct dial: 01625 442781
LouiseDowd@epp-planning.com

Dear Sir or Madam

RE: CERTIFICATE OF LAWFULNESS OF PROPOSED USE OR DEVELOPMENT FOR ERECTION OF BUILDINGS FOR PURPOSES INCIDENTAL TO THE ENJOYMENT OF THE EXISTING DWELLING HOUSE
SITE: BARNSWOOD BUNGALOW, RUDYARD, LEEK, STAFFORDSHIRE, SK11 0RA

With reference to the above, we confirm that we have electronically submitted a Certificate of Lawfulness of Proposed Development which seeks confirmation that construction of a detached building within the curtilage of the dwelling house does not require express planning permission prior to implementation.

The application is accompanied by the application form, planning statement, location plan and proposed site plan, proposed floor plans and elevations.

The application fee in the sum of £150.00 will be paid directly by the client using the card payment system over the telephone.

If you have any queries, please do not hesitate to contact this office and we look forward to receiving acknowledgement in due course that the application is valid and has been duly registered.

Yours faithfully
EMERY PLANNING PARTNERSHIP LTD

Christine O'Toole
Professional Support

Enc:

Copy to: Client

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PLANNING STATEMENT

TO ACCOMPANY APPLICATION FOR

A CERTIFICATE OF LAWFULNESS OF PROPOSED USE OR DEVELOPMENT FOR ERECTION OF BUILDINGS FOR PURPOSES INCIDENTIAL TO THE ENJOYMENT OF THE EXISTING DWELLING HOUSE

for Mr Richard Buxton at
Land at: Barnswood Bungalow, Rudyard, Leek, Staffordshire, SK11 0RA

EPP reference: ST3-7387-LD-je

April 2008

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1. INTRODUCTION

1.1 This statement supports an application for a Certificate the Lawfulness of Proposed Development. It seeks confirmation that construction of the detached building, as shown on the accompanying plans, within the curtilage of the dwelling known as Barnswood Bungalow, is development permitted by Class E of Schedule 2 to the Town and Country Planning (General Permitted Development Order) 1995. Accordingly the development would not require express planning permission prior to implementation.

2. CONTEXT

Site location and description

2.1 The site is located to the west of the A523, which runs between Leek and Macclesfield at Rudyard. The site is set 80m downhill from the main road, approximately 80m east of Rudyard Lake. The site contains an existing 3 bedroom bungalow, which has been extended with a conservatory. The application site is shown on the attached plans.

Relevant planning history

2.2 Planning permission no: 98/00659/FUL for a two bedroom extension was approved with conditions on the 25th September 1998.

2.3 Planning permission no 01/00659/FUL for a conservatory was approved with conditions on 16th October 2001.

2.4 Planning Permission no: 03/000702/NOT for agricultural building – approval required 25/07/03

2.5 Planning Permission no: 07/00138/FUL for erection of replacement dwelling with detached garage was submitted on 23/02/07

2.6 Planning permission no: 07/00295/FUL for erection of replacement dwelling and garage was withdrawn 30/04/07

2.7 Planning permission no: 07/01376/FUL for stable block with tack room was approved with conditions 29/02/08

3. PROPOSED DEVELOPMENT

3.1 It is proposed to construct a detached building within the curtilage of the dwelling at Barnswood Bungalow, Rudyard, Leek, Staffordshire. Details of the proposed building and its siting are shown on the attached plans.

3.2 It is considered that the development is permitted development by virtue of Class E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development Order) 1995, which sets out the nature and scale of development that can be carried out without the need for planning permission i.e. is permitted development. Class E is reproduced below:

Class E Permitted development

The provision within the curtilage of a dwelling house of any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwelling house as such, or the maintenance, improvement or other alteration of such a building or enclosure.

Development not permitted

E.1 *Development is not permitted by Class E if—*

(a) it relates to a dwelling or a satellite antenna;

(b) any part of the building or enclosure to be constructed or provided would be nearer to any highway which bounds the curtilage than—

(i) the part of the original dwelling house nearest to that highway, or

(ii) any point 20 metres from that highway,

whichever is nearer to the highway;

(c) where the building to be constructed or provided would have a cubic content greater than 10 cubic metres, any part of it would be within 5 metres of any part of the dwelling house;

(d) the height of that building or enclosure would exceed—

(i) 4 metres, in the case of a building with a ridged roof; or

(ii) 3 metres, in any other case;

(e) the total area of ground covered by buildings or enclosures within the curtilage (other than the original dwelling house) would exceed 50% of the total area of the curtilage (excluding the ground area of the original dwelling house); or

(f) in the case of any article 1(5) land or land within the curtilage of a listed building, it would consist of the provision, alteration or improvement of a building with a cubic content greater than 10 cubic metres.

Interpretation of Class E

E.2 *For the purposes of Class E—*

"purpose incidental to the enjoyment of the dwelling house as such" includes the keeping of poultry, bees, pet animals, birds or other livestock for the domestic needs or personal enjoyment of the occupants of the dwelling house.

3.3 None of the exclusions of Class E apply in this case

- The development relates to the provision of an outbuilding; it is not an extension to the existing dwelling nor does it relate to the provision of a satellite antenna.
- The proposed development would be forward of the forward most point of the dwelling but over 20 metres away from the highway, as can be seen from the enclosed drawings.
- The building would be located more than 5 metres away from the dwelling at its nearest point.
- The height of the building (which would have a ridged roof) would be no more than 4 metres.
- The curtilage of the dwelling is extensive and more than 50% of the total area (minus the footprint of the dwelling) would remain undeveloped following construction of the buildings.
- The property is not within Article 1(5) land nor is it a listed building.

3.4 The building complies with the criteria set out in paragraphs (a) to (e) of Class E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995. The remaining issue is whether the proposed building would be "incidental" to the use of the dwelling house.

3.5 The proposed building would consist of a games room, gym (including hot tub), shower room and sauna, the use of which would be incidental to the enjoyment of the dwelling.

3.6 The case of Emin v Secretary of State for the Environment and Mid-Sussex District Council (copy attached) addressed the issue of what uses are incidental to a dwelling. Two issues were identified:

(i) the physical size of the building; and

(ii) the proposed uses.

3.7 It was found that the size of the building alone could not be a determining factor as the only constraints on physical size were those set out in the GPDO 1995 (paragraphs (c) and (d)). If it had been intended that other considerations should affect the permitted size of a building, further limitations would have been set within the Order. Under the GPDO, the only size constraints relate to the height of the building and the proportion of the curtilage of the dwelling covered by buildings or enclosures. The size details for the proposed development meet these criteria. It therefore remains to demonstrate that the proposed accommodation is required for purposes incidental to the enjoyment of the dwelling house.

3.8 The decision maker has to make a judgment as to whether the activities being carried out within the proposed building are incidental or conducive to the condition of living in the dwelling, both in terms of the uses proposed and the scale of accommodation proposed for those uses.

3.9 The scale of accommodation proposed is entirely reasonable and justified and does not go beyond what could be considered to be incidental to the enjoyment of the dwelling as such. The description of development that is permitted by Class E of the Town & Country Planning (General Permitted Development) Order 1995 makes specific reference to *"swimming or other pool required for a purpose incidental to the enjoyment of the dwelling house as such"*. The house itself provides all the main living elements of the site and the accommodation within the outbuilding would remain subordinate to that provided in the main house. The size of the building is commensurate and reasonable when seen against the requirements of the dwelling and the occupiers of the dwelling. The proposed accommodation does not constitute primary living accommodation.

3.10 The games room would allow the applicant's children and their friends to have space to "let off steam" and to practice musical instruments whilst maintaining quietude and privacy for other family members. A games room is not a room normally found in a main dwelling. The hot tub, sauna and gym would cater for leisure time activities for the applicant and his family. These again would not be expected to be found in a house as part of everyday living requirements. Rather they are facilities that are incidental to the enjoyment of the dwelling and in terms of scale are appropriate for family use.

3.11 In conclusion, the accommodation to be provided would be incidental to the enjoyment of the dwelling house, in terms of its scale and purpose and in a way that would be reasonable and appropriate given the need for the accommodation.

4. SUMMARY

In summary therefore, we conclude that the development as proposed and shown on the plans accompanying this application is permitted by virtue of Class E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995 Express planning permission is therefore not required. A Certificate of Lawfulness of Proposed Use or Development (CLOPUD) should be granted in respect of the development as proposed in this application.

5. APPENDIX

EPP1 Case of Emin v Secretary of State for the Environment and Mid-Sussex District Council