

High Peak Borough Council - Planning
Development Services
Municipal Buildings
Glossop
Derbyshire
SK13 8AF

21 November 2023
EP ref: 23-463

Dear Sir or Madam

Re: Planning Portal Reference 12608691

Certificate of Lawful Proposed development for free standing outbuildings at Quarry Bank, Lanehead, Road, Taxal, Whaley Bridge, SK23 7DZ.

Please find enclosed an application for a Lawful Development Certificate for a Proposed Use or Development in relation to the construction of a single-storey detached orangery, utility/boot room and store room building and a single-storey outbuilding at the above property.

The application consists of this letter and the following:

- Application form
- Location plan - drawing number SW358LD-001
- Existing and proposed site plan - drawing SW358LD-002
- Existing ground floor plan - drawing number SW358LD- 003
- Existing elevations - drawing number SW358LD-004
- Proposed orangery (building 1) and outbuilding (building 2) - drawing number SW358LD - L005
- Proposed house elevations with building 1 – orangery, utility/boot and store room - drawing number SW358LD-006
- Proposed elevations – building 2 – drawing number SW358LD - 007

The application fee of £164.00 has been paid by BACS transfer.

Site and Surroundings

The application site is located outside the settlement boundary of Whaley Bridge. The property is a three storey split level dwelling built into the surrounding land form which as the name suggests was a former quarry. The property is accessed off Lanehead Road, Taxal. Lanehead Road forms the boundary with the Peak District National Park Authority but the application site falls within the boundaries of High Peak Borough Council. The building is constructed in natural stone with a tiled roof.

The applicant is proposing to erect two Class E outbuildings in the grounds of the property as follows:

- Building 1 – Construction of a single storey free standing building immediately to the rear of the property to form an orangery, utility/boot room and storage area for the dwelling. This extension will wrap around the north and east elevations of the existing dwelling and will be completely detached from the dwelling.
- Building 2 – Construction of a single storey outbuilding to form a home gym and home office to the west of the dwelling.

This application for a Lawful Development Certificate seeks to confirm that the above two proposals can be lawfully constructed under Permitted Development Rights.

Planning History

The property has a limited planning history, the recent planning applications for previous extensions to the property read as follows:-

Application Ref	Description	Decision
HPK/2021/0373	Three storey side extension, single storey side extension and single storey rear extension. Appeal submitted against decision ((APP/H1033/D/21/3284946)	Refused 1 st October 2021. Dismissed 17 th March 2022
HPK/2022/0439	Two storey rear and side extension with a single story lean too to form extended living accommodation	Approved 16 th January 2023

Proposed development

Building 1 – proposed orangery, utility/ boot room and storage

Class E of the GPDO 2015 allows:

“the provision within the curtilage of the dwellinghouse of (a) any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such, or the maintenance, improvement or other alteration of such a building or enclosure”.

In this instance the proposed building (Building 1) is to form a free-standing orangery, utility/ boot and storage room at the rear of the building. The following table shows how this proposed building complies with the relevant criteria of Class E.1.

E.1 Development is not permitted by Class E if:-	
(a) permission to use the dwellinghouse as a dwellinghouse has been granted only by virtue of Class G, M, MA, N, P, PA or Q of Part 3 of this Schedule (changes of use);	Not applicable.
(b) the total area of ground covered by buildings, enclosures and containers within the curtilage (other than the original dwellinghouse) would exceed 50% of the total area of the curtilage (excluding the ground area of the original dwellinghouse);	The proposed footprint of the outbuilding will measure 48.24sqm and will not exceed 50% of the total area of curtilage.
(c) any part of the building, enclosure, pool or container would be situated on land forward of a wall forming the principal elevation of the original dwellinghouse;	The proposed building will not project forward of the principal elevation of the original dwelling.
(d) the building would have more than a single storey;	The building will be single storey.
(e) the height of the building, enclosure or container would exceed:- (i) 4 metres in the case of a building with a dual-pitched roof, (ii) 2.5 metres in the case of a building, enclosure or container within 2 metres of the boundary of the curtilage of the dwellinghouse, or (iii) 3 metres in any other case;	The proposed building has been designed with a flat roof which will measure 2.5m in height.
(f) the height of the eaves of the building would exceed 2.5 metres;	The eaves of the building will not exceed 2.5m.
(g) the building, enclosure, pool or container would be situated within the curtilage of a listed building;	The proposed building is not within the curtilage of a listed building.

(h) it would include the construction or provision of a veranda, balcony or raised platform; (i) it relates to a dwelling or a microwave antenna;	The proposal will not create the provision of a veranda, balcony or raised platform relating to a dwelling or a microwave antenna.
(j) the capacity of the container would exceed 3,500 litres.	Not applicable.
(k) the dwellinghouse is built under Part 20 of this Schedule (construction of new dwellinghouse)	Not applicable.
E.2 In the case of any land within the curtilage of the dwellinghouse which is within:- (a) an area of outstanding natural beauty; (b) the Broads; (c) a National Park; or (d) a World Heritage Site, development is not permitted by Class E if the total area of ground covered by buildings, enclosures, pools and containers situated more than 20 metres from any wall of the dwellinghouse would exceed 10 square metres.	Not applicable.
E.3 In the case of any land within the curtilage of the dwellinghouse which is article 2(3) land, development is not permitted by Class E if any part of the building, enclosure, pool or container would be situated on land between a wall forming a side elevation of the dwellinghouse and the boundary of the curtilage of the dwellinghouse.	Not applicable.

The proposed outbuilding (Building 1) would be for purposes incidental to the enjoyment of the dwelling and provide accommodation that is not available in the dwelling. There would be no conflict with any of the criteria set out above and would therefore be lawful under the GPDO 2015, Part 1, Class E.

Building 2 - Construction of single storey home office and gym building

As with building 1 above, Class E of the GPDO 2015 allows:

“the provision within the curtilage of the dwellinghouse of (a) any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment

of the dwellinghouse as such, or the maintenance, improvement or other alteration of such a building or enclosure”.

The table below show how the proposal for the outbuilding (Building 2) which is to be used for home office and gym, complies with the relevant criteria of Class E.1:

E.1 Development is not permitted by Class E if:-	
(a) permission to use the dwellinghouse as a dwellinghouse has been granted only by virtue of Class G, M, MA, N, P, PA or Q of Part 3 of this Schedule (changes of use);	Not applicable.
(b) the total area of ground covered by buildings, enclosures and containers within the curtilage (other than the original dwellinghouse) would exceed 50% of the total area of the curtilage (excluding the ground area of the original dwellinghouse);	The proposed footprint of the outbuilding will measure 53.94sqm and will (including the combined size of proposed building 1) not exceed 50% of the total area of curtilage.
(c) any part of the building, enclosure, pool or container would be situated on land forward of a wall forming the principal elevation of the original dwellinghouse;	The proposed building will not project forward of the principal elevation of the original dwelling.
(d) the building would have more than a single storey;	The building will be single storey.
(e) the height of the building, enclosure or container would exceed:- (i) 4 metres in the case of a building with a dual-pitched roof, (ii) 2.5 metres in the case of a building, enclosure or container within 2 metres of the boundary of the curtilage of the dwellinghouse, or (iii) 3 metres in any other case;	The proposed building has been designed with a dual pitch roof which will measure 4m in height. The eaves of the building will measure 2.4m.
(f) the height of the eaves of the building would exceed 2.5 metres;	The eaves of the building will not exceed 2.5 m.

(g) the building, enclosure, pool or container would be situated within the curtilage of a listed building;	The proposed building is not within the curtilage of a listed building.
(h) it would include the construction or provision of a veranda, balcony or raised platform; (i) it relates to a dwelling or a microwave antenna;	The proposal will not create the provision of a veranda, balcony or raised platform relating to a dwelling or a microwave antenna.
(j) the capacity of the container would exceed 3,500 litres.	Not applicable.
(k) the dwellinghouse is built under Part 20 of this Schedule (construction of new dwellinghouse)	Not applicable.
E.2 In the case of any land within the curtilage of the dwellinghouse which is within:- (a) an area of outstanding natural beauty; (b) the Broads; (c) a National Park; or (d) a World Heritage Site, development is not permitted by Class E if the total area of ground covered by buildings, enclosures, pools and containers situated more than 20 metres from any wall of the dwellinghouse would exceed 10 square metres.	Not applicable.
E.3 In the case of any land within the curtilage of the dwellinghouse which is article 2(3) land, development is not permitted by Class E if any part of the building, enclosure, pool or container would be situated on land between a wall forming a side elevation of the dwellinghouse and the boundary of the curtilage of the dwellinghouse.	Not applicable.

The proposed outbuilding would be located within the residential curtilage to the west of the existing dwelling, but not forward of the front elevation. It would not conflict with any of the criteria set out in E.1.

To clarify, the proposed outbuilding would have a dual pitched roof and its overall height would not exceed 4 metres (the eaves would not exceed 2.5 metres) as measured from the highest part of the ground immediately adjacent to it. It would not therefore conflict with height criteria.

The outbuilding would be used for a home office and home gym and provide accommodation that is not available in the dwelling.

Having regard to the above guidance and case law, the proposed buildings – building 1 and 2 would both be for purposes incidental to the enjoyment of the dwelling. There would be no conflict with any of the criteria set out above and would therefore be lawful under the GPDO 2015, Part 1, Class E.

Other considerations

The proposed development is required for purposes incidental to the enjoyment of the dwellinghouse

There is no definitive definition of what is considered to be incidental to the purpose of the dwellinghouse and this a matter that has been examined on many occasions by the courts.

Emin v SSE [1989] (Westlaw summary and transcript of the judgment attached at Appendix EP1), *Holding v FSS* [2004] and *Peche D'or Investments v SSE* [1996] are landmark cases which establish that (amongst other things):

- there is no direct correlation between the size of a dwelling and the size of a building permitted by Class E; however,
- there must be some objective reasonableness in determining whether the size of such a building is incidental to the primary living accommodation available within the dwelling; also
- the sizes of buildings could be a relevant consideration in being representative of the nature and scale of the activities, and
- the purpose for which the building is to be provided must be sensibly related to the enjoyment of the dwelling by the occupiers.

The above establish that both size and function form part of the assessment of whether a building would be considered incidental in the context of Class E; and there must come a point where both, or either, the scale and nature of potential activities go beyond what could be perceived to be reasonably required in that context. The relevant considerations and legal test are set out in the first 3 (full) paragraphs of page 6 of the Westlaw extract (*Emin*) at Appendix EP1.

It was held in *Emin*:

The fact that such a building has to be required for a purpose associated with the enjoyment of a dwelling-house cannot rest solely on the unrestrained whim of him who dwells there but connotes some sense of reasonableness in all the circumstances of the particular case. That is not to say that the arbiter can impose some hard objective test so as to frustrate the reasonable aspirations of a particular owner or occupier so long as they are sensibly related to his enjoyment of the dwelling. The word “incidental” connotes an element of subordination in land use terms in relation to the enjoyment of the dwelling-house itself.

It was held that the test to be applied is:

“whether the uses of the proposed buildings, when considered in the context of the planning unit, are intended and will remain ancillary or subordinate to the main use of the property as a dwelling-house.”

In identifying the purposes and incidental quality in relation to the enjoyment of the dwelling, the following should be considered:

“whether the proposed buildings are genuinely and reasonably required or necessary in order to accommodate the proposed use or activity and therefore achieve that purpose.”

There is no suggestion that Class E requires buildings to be the *minimum* size to accommodate the specified uses, however this does not imply that there is no limit to the size of what could be built; rather that they should be *reasonably* required or necessary to accommodate the proposed use(s).

In this case, the development proposed would provide a new external utility/boot and storage room (Building 1) and home office and gym (Building 2), which are currently not available in the dwelling.

The proposed outbuildings are considered subservient to the existing dwelling. The proposed outbuildings are not considered unusual in the context of the size of the dwelling. Having regard to the above the proposed outbuildings are considered to comply with the criteria outline within Class E of the GPDO.

Summary and conclusions

This application seeks a positive Certificate of Lawful Proposed Development to confirm that the following proposals would be lawful and do not require planning permission. They are:

- free standing orangery, utility/boot room and storage (building 1),
- free standing home office and gym building (building 2).

It has been demonstrated that the above proposal would constitute permitted development under The Town and Country Planning (General Permitted Development) (Amendment) (No2) (England) Order 2008, under classes E of part 1, schedule 2. A positive certificate should therefore be issued.

If you require any further information or wish to discuss the proposal, then please do not hesitate to contact me.

Yours sincerely
Emery Planning

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Senior Consultant

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Appendices

EP1 – Westlaw extract of Emin case

***416 Emin v Secretary of State for the Environment and Mid-Sussex County Council**

Queen's Bench Division

3 February 1989

(1989) 58 P. & C.R. 416

(Sir Graham Eyre, Q.C. sitting as a deputy judge):

February 3, 1989

Town and country planning—Permitted development—Use incidental to the enjoyment of dwelling-house—Test for determining incidental—Proposal to erect buildings for hobbies—Secretary of State accepted that use for hobbies could be incidental—In view of physical size of buildings and relative size of dwelling-house these buildings could not be incidental—Whether physical size relevant to determination of incidental—Article 3 of Town and Country Planning (General Development) Order 1977

The appellant, Emin, submitted two proposals for erecting buildings on land at Keepers Cottages in Balcombe, West Sussex. Proposal A involved erecting two buildings for use as a pottery and utility room and proposal B involved erecting two buildings for use for archery, billiards and pottery. The second respondent, the local planning authority, determined that both these proposals involved development for which planning permission was required. The appellant appealed to the first respondent, the Secretary of State for the Environment, on the grounds that the proposed development constituted permitted development within Class 1.3 of Schedule 1 to the Town and Country Planning (General Development) Order of 1977 since they constituted development within the curtilage of the house which was reasonably incidental to the enjoyment of the house. The Secretary of State dismissed the appeals in respect of both proposals on the grounds that although the provision of accommodation for hobbies could be regarded as incidental to the enjoyment of a dwelling-house, the use could not be regarded in this case as incidental to the enjoyment of the house in view of the physical size of the proposed buildings and the relative size of the house. Further the Secretary of State considered that archery could not be regarded as a pursuit which could ever be compatible with the use of domestic buildings. The appellant appealed to the High Court under section 247 of the Town and Country Planning Act 1971.

Held, allowing the appeal, in order for a use to be capable of being incidental to the enjoyment of a dwelling-house, the use of the proposed buildings had to be subordinate to the enjoyment of the dwelling-house itself. The nature of the activities to be carried on in the proposed buildings and the scale of those activities had to be considered in order to determine whether they were subordinate to the enjoyment of the dwelling-house. The physical size of the buildings could be a relevant consideration in that it might provide some indicia as to the nature and scale of the activities. However, the Secretary of State erred in law in the present case by regarding the physical size of the buildings and the relative size of the dwelling-house as the sole test of whether a use of incidental. The appeal would therefore be allowed and the matter remitted to the Secretary of State in order that he might apply the correct test.

It was accepted, by the Secretary of State, that indoor archery could not sensibly be distinguished from other indoor recreational activities.

Appeal by John Emin under section 247 of the Town and Country Planning Act 1971 against a decision of the first respondent, the Secretary of State for the Environment, whereby he dismissed an appeal against a determination by the second respondent, the Mid-Sussex District Council, that proposed development on land within the curtilage of Keepers Cottages, Crawley Lane, Balcombe, West Sussex constituted or involved *417 development for which an application for planning permission was required under Part III of the Town and Country Planning Act 1971. The facts are set out in the judgment of Sir Graham Eyre.

Representation

M. Monk for the applicant.

D. Ouseley for the first respondent.

Rhodri Price Lewis for the second respondent.

Sir Graham Eyre.

This is an appeal under section 247 of the Town and Country Planning Act 1971 against the decision of the Secretary of State whereby he dismissed appeals against certain determinations made by the second respondent, the local planning authority, under section 53 of the Act.

An inspector appointed by the first respondent held an inquiry and made a report dated May 7, 1988 in which he described the site and surroundings, recorded the gist of the evidence and representations, made certain findings of fact and expressed his conclusions which, in summary, were adverse to the appellant. The documents contain a useful and brief description of the proposals to which the application for determination related and the reasons for those determinations:

(a) the erection of 2 buildings on land within the curtilage of Keepers Cottages, Crawley Lane, Balcombe, West Sussex ... and proposed for use as a pottery (including provision for storage of materials, work bench and equipment) a utility room and games/garden room, would constitute or involve development for which an application for planning permission is required under Part III of the 1971 Act (proposal A); and

(b) the erection of 2 buildings on land within the curtilage of Keepers Cottages, Crawley Lane, Balcombe, West Sussex ... intended for use for archery, billiards and pottery, would constitute or involve development for which an application for planning permission is required under Part III of the 1971 Act (proposal B).

As will emerge from the conclusions of the inspector, the proposed buildings were relatively substantial. The contention advanced at the inquiry, and before this court, was essentially that, in so far as the proposals constituted or involved development, planning permission was granted by Article 3 of and Class 1(3) of the Schedule to the Town and Country Planning (General Development) Order of 1977, as amended, pursuant to section 24 of the Act. Article 3 provides that, subject to certain provisions:

Development of any class specified in Schedule I to this order is permitted by this order and may be undertaken on land to which this order applies without the permission of the local planning authority or of the Secretary of State.

Class 1.3 deals with development within the curtilage of a dwelling-house and includes the erection, construction or placing of any building, subject to certain exceptions, "... required for a purpose incidental to the enjoyment of the dwelling house as such ..." There follow certain provisos, ***418** two of which relate to the restrictions on the scale of buildings to which Class 1.3 relates, by reference to height and ground cover.

(c) ... So long as the height does not exceed, in the case of a building with a ridged roof 4 metres, or in any other case, 3 metres;

(d) the area of ground covered by buildings within the curtilage (other than the original dwelling house) does not thereby exceed fifty per cent. of the total area of the curtilage excluding the ground area of the original dwelling house.

It is common ground that these buildings, albeit substantial, did not fall foul of either of those constraints.

The decision letter recorded the inspector's conclusions, and it will be necessary to set out

certain relevant passages *in extenso*. The inspector found as follows:

1. the site lies in rural surroundings and comprises a land area of about 1 ha on which there is a dwelling-house and various outbuildings and structures: the greater part of the property is in the form of a walled garden;
2. the dwelling, [now known as Keepers Cottage] once a pair of worker's cottages, is now occupied as a single family residence but is not in full-time, day to day occupation as such: it includes 6 bedrooms, 3 reception rooms, 2 bathrooms and a kitchen: small extensions have been made to the front and rear;
3. existing outbuildings and structures include a carport and store, a tractor and garden implement shelter, a chicken shed, storm damaged greenhouse, lean-to store and produce store;
7. the proposals subject of appeal provide for extensions on either side of the atomic shelter unit to form an L-shaped building with accommodation for various utility and amenity purposes: the 2 proposals are basically the same but one is larger to provide for an additional sporting facility...
8. the floorspace provided by the proposed buildings plus that which already exists plus that approved for construction by the grant of planning permission or confirmation of permitted development rights would, in one case, amount to almost double the floorspace of the existing dwelling-house and, in the second case, it would amount to more than double.

I turn to paragraph 9 of the Secretary of State's decision letter, where he sets out certain conclusions of the inspector:

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 ***419** 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 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 out buildings 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.

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Having taken the submissions of the parties into account and had regard to the conclusions of the inspector which I have just read, the Secretary of State considered 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 must 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 continued:

... [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.

I pause there to indicate that 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 calculations 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 for 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 terms of which are not necessary for the purpose of the issues raised in this ^{*421} court. The Secretary of State's decision was challenged on a number of grounds set out in an amended notice of motion, and I will read the relevant grounds as they throw the issues conveniently into relief:

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.

I should say that this case is unusual, although not unique, in that the Secretary of State acknowledges in this court that an error of law was made and that the matter should be remitted, whereas the second respondent, the local planning authority, seeks to uphold the Secretary of State's decision in its totality.

Grounds 3 and 4 raise questions which were mentioned by the inspector in expressing his conclusions but, in my judgment, 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 concedes that the fact that archery is not normally practised is nothing to the point and, in so far as the Secretary of State relies on what he conceives to be an alleged recreational abnormality in the decision, there is an error of law. I accept that submission because, as a matter of principle, indoor archery, although perhaps unusual cannot 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 proceed on the basis of some caution. In so far as the decision tests 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 is acknowledged on behalf of the Secretary of State, would not suffice to deprive the appellant of his permission under the order. It is accepted that the only constraints on mere physical size are imposed within the terms of the order itself in paragraphs (c) and (d), which I have already read.

In relation to size of building, the concession accords with my 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 is 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 is 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 will raise questions of fact and degree ^{*422} which are quintessentially appropriate for consideration by a planning authority or the Secretary of State or his inspector, who are 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 are commonplace for the purpose of making such decisions but they are not practised by the courts, who are 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 will need to concern himself with the nature of the activities carried on in the proposed buildings so as to ensure that they are 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 is obviously an important matter because there must 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 has to be required for a purpose associated with the enjoyment of a dwelling-house cannot rest solely on the unrestrained whim of him who dwells there but connotes some sense of reasonableness in all the circumstances of the particular case. That is not to say that the arbiter can impose some hard objective test so as to frustrate the reasonable aspirations of a particular owner or occupier so long as they are sensibly related to his enjoyment of the dwelling. The word “incidental” connotes an element of subordination in land use terms in relation to the enjoyment of the dwelling-house itself. I would endorse the general approach adopted by the Secretary of State in the present case. He is correct in stating that the overriding factor in deciding the question as to whether uses of the proposed buildings can properly be regarded as incidental to the enjoyment of the dwelling-house must concern the incidental use, which, in that 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 by the Secretary of State, and I agree, that the test to be applied is whether the uses of the proposed buildings, when considered in the context of the planning unit, are intended and will remain ancillary or subordinate to the main use of the property as a dwelling-house.

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

However, when the test is subsequently applied in this case it is clear that its application is *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 lies the flaw, as the Secretary of State acknowledges. However, I would not wish to be taken as saying that size and comparable sizes are irrelevant. When a matter is looked at as a whole, size may 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 **423* the purpose and the incidental quality in relation to the enjoyment of the dwelling and answer the question as to whether the proposed buildings are genuinely and reasonably required or necessary in order to accommodate the proposed use or activity and thus achieve that purpose. Accordingly this appeal succeeds on the limited ground conceded by the Secretary of State in the particular circumstances that obtain in this case.

There was discussion yesterday as to the appropriate order for costs. In the circumstances the Secretary of State and the second respondent will each bear half the costs of the applicant in this court.

Representation

Solicitors—Weedon & Co., London SE13; the Treasury Solicitor; the Solicitor, Mid-Sussex District Council.

Appeal allowed. Case remitted to the Secretary of State. The Secretary of State and the Mid-Sussex County Council to bear the costs.

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