
Appeal Decision

Site visit made on 20 September 2016

by Paul Freer BA (Hons) LLM MRTPI

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

Decision date: 23 September 2016

Appeal Ref: APP/L5240/X/16/3145943

56 Hartley Old Road, Purley, Croydon CR8 4HU

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Les Wilkshire against the decision of the Council of the London Borough of Croydon.
 - The application Ref 15/04722/LP, dated 20 October 2015, was refused by notice dated 17 December 2015.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is the erection of a single-storey detached outbuilding to accommodate a swimming pool.
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Summary Decision: The appeal is allowed and a certificate of lawful use or development is issued, in the terms set out below in the Formal Decision.

Main Issue

1. Section 192(2) of the Town and Country Planning Act 1990 (1990 Act) indicates that if, on an application under that section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect; and in any other case shall refuse the application. My decision is therefore based on the facts of the case and judicial authority. For the avoidance of doubt, this means that the planning merits of the proposed development are not relevant to this appeal and the main issue is whether the Council's decision to refuse to grant a Certificate of Lawful Use or Development (LDC) was well founded. In this respect, the burden of proof is firmly on the appellant to show that, on the balance of probability, the proposed development would have been lawful at the time the application was made to the Council.

Reasons

2. The provision within the curtilage of a dwellinghouse of any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such is permitted by Article 3, Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO), subject to the limitations set out at Classes E.1, E.2 and E.3. The Council is satisfied that the proposed outbuilding complies with the limitations at Classes E.1, E.2 and E.3, and I see no reason to take a different view.
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3. The area of dispute is whether the proposed outbuilding is required for a purpose incidental to the enjoyment of the dwellinghouse as such. Consideration of this issue raises two questions: is the purpose of the proposed outbuilding incidental to the enjoyment of the dwellinghouse as such and, if so, is the proposed outbuilding reasonably required for that purpose.
4. In terms of whether the purpose of the proposed outbuilding is incidental to the enjoyment of the dwellinghouse as such, case law confirms that the keynote is reasonableness. Case law establishes that what is abnormal is not necessarily unreasonable, but also that what could be regarded as incidental does not depend on the unrestrained whim of the occupier. This approach follows that taken in *Emin v SSE Mid Sussex*¹, and subsequently reiterated in *Croydon LBC v Gladden*², in which the Court held that the concept of what was incidental to the enjoyment of the dwellinghouse as such involved an element of objective reasonableness and was not a matter solely at the whim of the individual owner or occupier.
5. The provision of a swimming pool is expressly referred to in Article 3, Schedule 2, Part 1, Class E of the GPDO in the context of buildings, etc, incidental to the enjoyment of a dwellinghouse. Furthermore, the provision of a swimming pool is a facility that many would aspire to as part of a family home, and is therefore not solely at the whim of the appellant in this case. The building proposed in this case would include a pool as well as a sauna and a shower. These are all facilities that I consider to be incidental to the enjoyment of a dwellinghouse as such. My attention therefore turns to whether the proposed outbuilding would be reasonably required for that purpose.
6. The Council's concern in this respect is the size of the proposed outbuilding in relation to the host dwelling, the size of the plot and other outbuildings on the land. I have not been provided with any details regarding the floorspace or footprint of the host dwelling although, as the Council indicate, the original detached house has been extensively enlarged by extensions at ground floor, first floor and roof level. As part of my site visit, I was afforded the opportunity to view the accommodation within the host dwelling which I noted comprises five bedrooms on the upper floors together with a lounge, office, gym and a sizeable kitchen/utility room on the ground floor. The host dwelling is therefore a substantial and well appointed family home.
7. In determining whether a development falls within the provision of Class E, it is settled case law that the size of the building is an important consideration but is not, in itself, determinative³. The proposed outbuilding would have a footprint of some 47.8 square metres. Given the space required for a usable swimming pool and the associated facilities, I do not consider the footprint to be excessive to accommodate those facilities. Moreover, I consider that the footprint of the proposed outbuilding is commensurate with and subordinate to the accommodation provided by the host dwelling as a family home. I therefore consider that the proposed outbuilding is of a size that is reasonably required for a purpose incidental to the enjoyment of this particular dwellinghouse.

¹ *Emin v SSE & Mid Sussex DC* [1989] EGCS 16

² *Croydon LBC v Gladden* [1994] 1 PLR 30

³ *Emin v Secretary of State for the Environment* [1989] EGCS 16

8. The proposed outbuilding would occupy a substantial part of the rear garden, although this does not approach half the size of the garden as the Council suggest. I note also that part of the garden space is taken up by a raised patio at the rear of the house and a gazebo-type structure, and that there is a detached garage at the end of the garden. However, the Council accept that the outbuilding complies with the limitations set out in Class E.1(b) in terms of occupying less than 50% of the total area of the curtilage, excluding the ground area of the original dwellinghouse. Moreover, none of the other structures in the garden area provide the same facilities that would be provided by the proposed outbuilding. The presence of these other structures in the garden space therefore has no bearing on whether the proposed outbuilding is reasonably required for a purpose incidental to the dwellinghouse.
9. Both the appellant and the Council have referred me to appeal decisions in support of their respective cases. However, whether or not a building would be 'incidental' is a matter of fact and degree, such that determination in that regard requires a judgement to be made in relation to the specific facts of each individual case. Each of the appeal decisions referred to turned on facts that are materially different to those in this case such that, whilst the general principles in law remain applicable, the findings of the Inspectors based on those facts do not assist me in determining this appeal. I have therefore based my Decision solely on the facts that apply in this case.
10. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the erection of a single-storey detached outbuilding to accommodate a swimming pool at 56 Hartley Old Road, Purley, Croydon CR8 4HU was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me in section 195(2) of the 1990 Act as amended.

Formal Decision

11. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed operation which is considered to be lawful.

Paul Freer

INSPECTOR



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2010: ARTICLE 35

IT IS HEREBY CERTIFIED that on 20 October 2015 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed development accords with the limitations set out in Article 3, Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015.

Signed

Paul Freer

Inspector

Date: 23 September 2016

Reference: APP/L5240/X/16/3145943

First Schedule

The erection of a single-storey detached outbuilding to accommodate a swimming pool (as shown on Drawing Nos: 56HR 100; 56HR 101; 56HR 102).

Second Schedule

Land at 56 Hartley Old Road, Purley, Croydon CR8 4HU.

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.

Plan

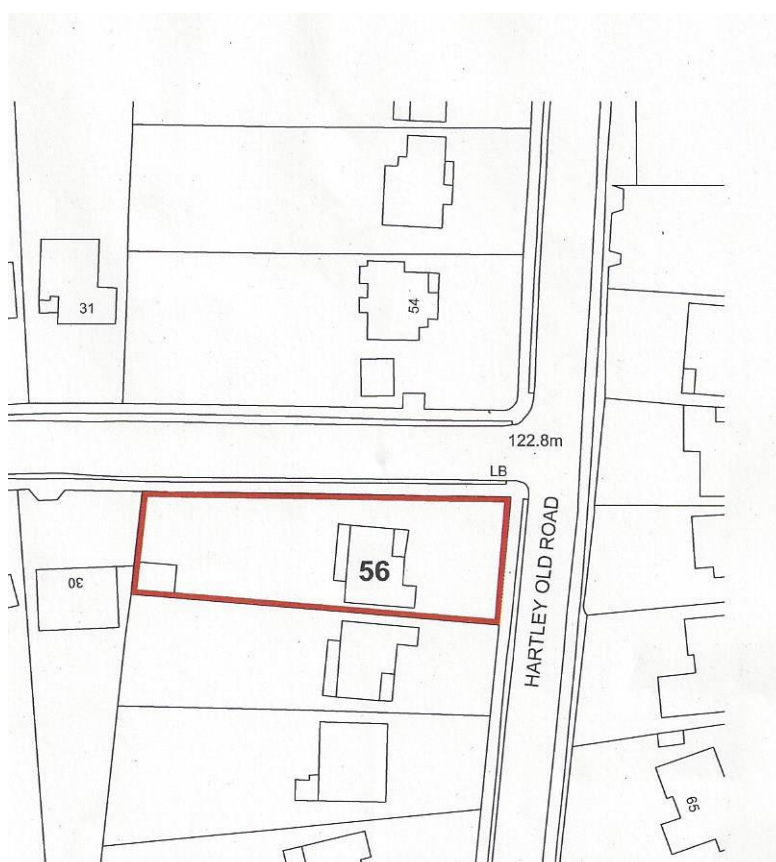
This is the plan referred to in the Lawful Development Certificate dated: **23 September 2016**

by **Paul Freer BA (Hons) LLM MRTPI**

Land at: 56 Hartley Old Road, Purley, Croydon CR8 4HU

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Scale: Not to scale



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