

Appeal Decision

Site visit made on 6 December 2016

by Paul Freer BA (Hons) LLM MRTPI

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

Decision date: 03 January 2017

Appeal Ref: APP/R5510/X/16/3158554

188 Harefield Road, Uxbridge UB8 1PS

- 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 failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
 - The appeal is made by Mr S Singh against the Council of the London Borough of Hillingdon.
 - The application (Ref. 72018/APP/2016/2419) is dated 27 June 2016.
 - 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 a single storey outbuilding to rear for use as a swimming pool.
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Summary Decision: The appeal is dismissed.

Procedural Matter

1. The description of the proposal on the application form is somewhat brief and truncated. I have therefore adopted the description on the appeal form, which more comprehensively describes the proposed development.

Reasons

2. 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, whilst I have noted the objections to this proposal from the occupiers of neighbouring properties, these are not material to my decision.
 3. 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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4. 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.
5. 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.
6. The appellant confirms that the intended purpose of the proposed outbuilding is to accommodate a swimming pool, but with subsidiary facilities that include a sauna, changing rooms and a play area. 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. Indeed, I note that the scope of Class E as set out in the GPDO specifically includes a swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse. The building proposed in this case would include a pool as well as a sauna, a play area and changing rooms. These are all facilities that, in principle, can be reasonably considered as being 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.
7. The Council's concern in this respect is the size of the proposed outbuilding in relation to the host dwelling. The Council calculate that the proposed outbuilding would have a gross floor area of some 151m². This compares with a total floor area of some 214 m², resulting in an increase in floor area of approximately 70% on the host property. These figures are not disputed by the appellant.
8. It is settled case law that the size of the building is not, in itself, determinative of whether a development falls within the provision of Class E³. Nevertheless, it is necessary to look at the function of the space within the proposed outbuilding. I recognise that, in order to fulfil its intended purpose, a swimming pool would need to be of a certain size. However, the pool proposed in this case occupies only some 18% of the total floor area and occupies less space than the changing room, play area and sauna combined. There is also a considerable amount of circulation space that does not surround the pool itself and for which no specific purpose is identified. It follows that a significant proportion of the total floor in the proposed outbuilding, including the play area and much of the circulation space, would not be used for purposes directly related to the swimming pool.

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] J.P.L. 909

9. The burden of proof is upon the appellant to show, on the balance of probability, that the proposed outbuilding is reasonably required for its intended purpose. The appellant has provided no evidence to demonstrate that the size of the building, in terms of floor area, is reasonably required to fulfil the intended purpose of a swimming pool. The appellant has therefore failed to discharge the burden of proof that falls upon him.
10. I therefore consider that the proposed outbuilding is of a size that cannot be considered as being reasonably required for a purpose incidental to the enjoyment of this particular dwellinghouse. As such, having regard to the conditions and limitations therein, the proposed outbuilding is not permitted by Article 3, Schedule 2, Part 1, Class E of the GPDO.

Formal Decision

11. The appeal is dismissed.

Paul Freer

INSPECTOR