



Appeal Decision

Site visit made on 3 July 2017

by Mrs H M Higenbottam BA (Hons) MRTPI

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

Decision date: 28 July 2017

Appeal Ref: APP/R5510/X/17/3171528
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/2016/3766 is dated 11 February 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 (Application for a Certificate of Lawful Development for a Proposed Development)¹.
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Decision

1. The appeal is dismissed.

Background

2. An appeal² in relation to an LDC application for a single storey outbuilding for use as a swimming pool was dismissed in December 2016. The Council stated that the proposal in that case was for a building with a floor area of some 151m². The appellant stated the intended purpose of the proposed outbuilding was to accommodate a swimming pool, with subsidiary facilities that included a sauna, changing rooms and a play area. The Inspector in that case found that the proposed outbuilding was of a size that could not be considered as reasonably required for a purpose incidental to the enjoyment of No 188 as a dwellinghouse.

Reasons

1. In seeking an LDC, the burden of proof is firmly on the appellant to demonstrate on the balance of probabilities that, at the time of the application to the Council, the proposed development would have been lawful. To this end, the appellant relies on Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO) which grants deemed planning permission for certain categories of permitted development.

¹ There is no description of development stated on the application form – question 3. The description stated above is that given to the application by the Council and repeated by the appellant on the appeal form.

² Reference APP/R5510/X/16/3158554

2. These are set out in Schedule 2 to the GPDO, subject to conditions and limitations. The category relevant to the appellant's case is Class E of Part 1 of Schedule 2, which includes the provision within the curtilage of a dwellinghouse of any building required for a purpose incidental to the enjoyment of the dwellinghouse as such. There is agreement between the parties that none of the size or locational limitations to which Class E is subject is breached by the proposal. However, the Council contend that Class E does not apply to the scheme as, in their view; there has been no explanation as to why the outbuilding is required to be provided for its proposed uses, the outbuilding is not regarded as being reasonably necessary and as such is not considered to be incidental to the main dwellinghouse.

Incidental purposes

3. The Courts have held that the word "required" in this context should be interpreted to mean "genuinely and reasonably required or necessary in order to accommodate the proposed use or activity³." Therefore, it is for the appellant to show that what is proposed is genuinely and reasonably required or necessary for a purpose incidental to the use of the dwellinghouse as a dwellinghouse.
4. The proposed building would accommodate a swimming pool with a length of 8.4m long and an area around the pool on three sides of 1.5m. At one end there is a larger space to allow for sunbeds on which people can relax after swimming. The building is shown to have a length of 15m, a width of 10.052 m and a height to the ridge of 4m and height to eaves of 2.5m. The Council state that the size of the outbuilding remains the same as the previous appeal scheme, with a floor area of 151 m², however, internally the swimming pool has become bigger. I have not been provided with the plans of the previous appeal scheme.
5. The Council state the ground floor of No 188 is 114 m², with a first floor of 100 m² giving a total area for the dwellinghouse of 214 m². The footprint of the proposed outbuilding would be greater than the footprint of the dwellinghouse it would serve.
6. Whilst the size of a building is not of itself determinative as to whether or not it is incidental to the enjoyment of a dwellinghouse for the purposes of Class E, the evidence must demonstrate, on the balance of probabilities, that the proposed building, and therefore the floor space attributed to each use, is genuinely and reasonably required for purposes incidental to the enjoyment of the dwellinghouse. It was also held in the judgement of Emin that *'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.'* The word 'incidental' implies subordination in land use terms in relation to the enjoyment of the dwellinghouse. These principles have been reiterated in other judgements⁴.
7. It was further held in Emin that the tests to be applied in such a case are *'...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*

³ Emin v Secretary of State for the Environment [1989] JPL 909 (Emin)

⁴ In particular LB Croydon v Gladden [1994] 1 PLR 2 and Holding FSS & Thurrock BC [2004] JPL 1405.

the main use of the property as a dwelling house.’ In applying this test regard should be 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 dwellinghouse.’

8. The Council consider that the test of whether or not the building is reasonably necessary for a purpose incidental to the enjoyment of the dwellinghouse at No 188 is whether the total scale of the building would be subordinate and incidental to the enjoyment of the dwellinghouse. This is not the test set out in *Emin*. The test in *Emin* is whether the uses of the proposed building, in the context of the planning unit, are intended and would remain ancillary or subordinate to the main use of the dwellinghouse. The physical size of the building in comparison to the dwellinghouse might be an important consideration, but is not by itself conclusive. *Emin* sets out that it is necessary to identify the purpose and incidental quality of the use in relation to the enjoyment of the dwelling and answer the question as to whether the proposed building is genuinely and reasonably required or necessary in order to accommodate the proposed use or activity and thus achieve that purpose
9. It is therefore not simply a matter of saying the footprint of the proposed building is greater than that of the original dwellinghouse. It is necessary to assess whether or not the floor space attributed to each use is genuinely and reasonably required for purposes incidental to the enjoyment of the dwellinghouse.
10. While the Council state that no specific purpose has been identified for a proportion of the building at one end of the pool, the appellant has stated that it is intended to have a sun lounge/seating area at one end. This is not unusual, and many indoor pools do have a seating area as a subordinate part of the space. The Council state that the swimming pool would occupy just 37% of the floor area of the proposed building, thus leaving 63% of the floor space for circulation and seating.
11. The area at the end of the pool is around 5m in depth and the full width of the building at just over 10m. This is a significant proportion of the floor area of the proposed building. In my view, the appellant has failed to demonstrate, on the balance of probabilities, that the floor space attributed to the seating area use is genuinely and reasonably required for purposes incidental to the enjoyment of the dwellinghouse.
12. For the reasons given above I conclude that the Council’s deemed refusal to grant a certificate of lawful use or development in respect of a single storey outbuilding to rear for use as a swimming pool was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Hilda Higenbottam

Inspector