



Appeal Decision

Site visit made on 8 October 2019

by JP Roberts BSc(Hons) LLB(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 November 2019

Appeal Ref: APP/Y3615/X/18/3216596

Meadowsweet, Heathway, East Horsley, Leatherhead KT24 5ET

- 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 Mrs Carol Londal against the decision of Guildford Borough Council.
 - The application Ref 18/P/01510, dated 31 July 2018, was approved in part and refused in part by notice dated 12 October 2018.
 - The application was made under section 192(1)(a) 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 construction of a single-storey oak-framed outbuilding housing a swimming pool and other associated use – incidental to and in the rear garden of a dwellinghouse. Extension of existing garden path in paving with porous joints to access outbuilding.
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Decision

1. 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.

Procedural matter

2. The Council's decision certified that the proposed garden path would be lawful. I shall therefore confine my consideration to the refused part of the proposal, that relating to the swimming pool building.

Main Issue

3. The main issue is whether the Council's decision to refuse to certify the lawfulness of this part of the proposal was well-founded.

Reasons

4. There is no dispute that the proposal meets the technical criterion of Class E of Part 1 to Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015. The matter at issue is whether the proposal is one that is required for a purpose that is incidental to the enjoyment of the dwellinghouse as such.
5. Amongst other things, Class E permits 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.
6. Thus, on the face of it, a swimming pool building falls within the scope of the permitted class, and I consider that a gym is also a use which might normally be expected to fall within the range of uses which are incidental to the enjoyment of the dwellinghouse as such. However, legal authorities have set out limits to the scope of Class E. The leading case on the scope of buildings used for purposes incidental to the enjoyment of the dwellinghouse as such is *Emin v Secretary of State for the Environment and Mid-Sussex District Council* (1989). Whilst the Court acknowledged that such questions are largely a matter of fact and degree, some key principles were set out. The Court held that the nature and scale of the activities are important as there must be a prospect that they 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 use. Thus, the physical size could be a relevant consideration, but it is not by itself conclusive.
7. The Court also acknowledged that the fact that such a building has “to be required for a purpose associated with the enjoyment of a dwellinghouse 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”. It also reinforces that incidental uses should remain at all times ancillary or subordinate to the use of the dwellinghouse, and that it is necessary to determine whether the proposed building is genuinely and reasonably required or necessary in order to accommodate the proposed use or activity and thus achieve that incidental purpose.
8. In this case, the building would be of a substantial size, having an L-shape, measuring 14.6m wide by 12.2m deep (along the longest element). It would accommodate a swimming pool measuring 9m by 4.5m, with a generous margin around it. The building would also house a gym area, a large plant room, two showers, a changing area and a toilet.
9. I accept that neither the swimming pool nor the gym area could take place within the house without displacing other existing primary residential uses. It is therefore reasonable to expect them to be carried out in an outbuilding. The key question is whether the facilities proposed are reasonably and genuinely required for an incidental purpose. I acknowledge that the standard of accommodation in the building is generous. However, nothing in the legal authorities suggests that the size of outbuilding should be the minimum required to accommodate the proposed purposes. Rather, I consider that the question of reasonableness has to be addressed looking at the circumstances of the case. The host dwelling is large and comfortable, with good room sizes set in a large, long garden. Whilst it would be possible to accommodate the swimming pool and gym in a slightly smaller building, I consider that the extent of facilities shown on the submitted plans would be commensurate with the character of the house and grounds and do not go beyond the bounds of reasonableness in the circumstances.
10. I therefore consider that the proposed building is genuinely and reasonably required or necessary in order to accommodate the proposed use or activity

and would achieve incidental purposes. Thus, the proposed operation is one that is permitted under Class E.

Conclusion

11. I find that the proposed development would be one permitted under Class E of the Order, and that the Council's decision to refuse to issue a certificate was not well-founded. The appeal is therefore allowed.

JP Roberts

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 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 31 July 2018 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and cross-hatched in black 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 would benefit from the deemed permission granted under Article 3 and Class E of Part 1 to Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015.

Signed

JP Roberts

Inspector

Date 05 November 2019

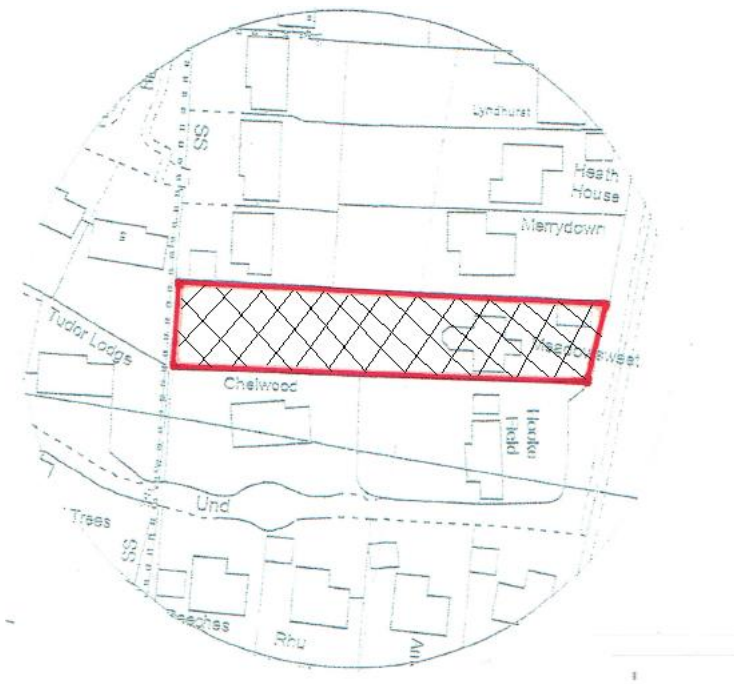
Reference: APP/Y3615/X/18/3216596

First Schedule

The construction of a single-storey oak-framed outbuilding housing a swimming pool and other associated use – incidental to and in the rear garden of a dwellinghouse as shown on plans refs: 107, 19/1, 19/2 rev A, 19/3 Rev A and 19/4 Rev A.

Second Schedule

Land at Meadowsweet, Heathway, East Horsley, Leatherhead KT24 5ET



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.