



Appeal Decision

Site visit made on 3 December 2020

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13th January 2021

Appeal Ref: APP/V1260/X/20/3254379

Land at 14 Links Road, Poole BH14 9QR

- 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 and Mrs Adams against the decision of Bournemouth, Christchurch and Poole Council.
 - The application Ref APP/20/00417/K, dated 8 April 2020, was refused by notice dated 4 June 2020.
 - 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 an outbuilding for a swimming pool and home gymnasium.
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Summary Decision: The appeal is allowed and a certificate of lawful development is issued in the terms set out below in the Formal Decision.

Application for costs

1. An application for costs was made by Mr and Mrs Adams against Bournemouth, Christchurch and Poole Council. This application is the subject of a separate decision.

Procedural Matters

2. I note the number of representations from interested parties regarding the acceptability or otherwise of the development that is the subject of the appeal. Whilst these representations are acknowledged, for the reasons I set out below I am not able to consider the planning merits of the proposed development. Accordingly, many of the points raised are not relevant to the decisive matter in this appeal.
3. The Council suggests that the proposal includes the provision of 'a car parking area and drive for access to the outbuilding'. Whilst I note that plan numbered ADAM1/402 Rev A shows what appears to be a drive and turning area close to the outbuilding, this does not form part of the development described in the application form. I have determined this appeal on the basis of the development described in the application form, as illustrated on the accompanying plans, which does not include a proposed drive, turning and parking area.

Main Issue

4. Section 192(2) of the Town and Country Planning Act 1990 as amended indicates that if, on an application under this 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 they 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 LDC was well founded. In this respect, the burden of proof is on the appellants to show that, on the balance of probability, the development referred to in the application would be lawful if begun on the date the application was made.
5. It is the appellants' case that the development referred to in the application would be permitted by Class E, Part 1, Schedule 2, Article 3 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (the Order). This permits, among other matters, the provision within the curtilage of the dwellinghouse of any building required for a purpose incidental to the enjoyment of the dwellinghouse as such. There is no dispute between the parties that the outbuilding would be located within the curtilage of the dwellinghouse or that it would accord with the criteria set out in part E.1. of the Order. The parties' dispute in this case is whether or not the outbuilding in question is required for a purpose incidental to the enjoyment of the dwellinghouse at the appeal site, having regard to the proposed use of the outbuilding, its size and its distance from the dwellinghouse in this case. This is the main consideration in this case.

Reasons

6. An essential feature of an incidental use is that it should have a functional relationship with the primary use (i.e. the dwelling at the appeal site in this case), and the relationship should be one that is normally found. The appellants propose an outbuilding to be used for a swimming pool and as a gym. Whilst the Council point to a lack of any justification for the proposed facilities, I do not consider the uses proposed within the outbuilding to be uncommon in association with a dwelling. Indeed, a swimming pool is specifically referred to as development permitted by Class E. Whilst the outbuilding also contains a changing room, w.c. and shower, I am satisfied that these facilities would be ancillary to the pool and gym, particularly given the distance from the main dwelling. In all, the uses proposed within the outbuilding may be regarded as being incidental to the enjoyment of the dwellinghouse as such.
7. Notwithstanding the above, the Council suggests that the proposed outbuilding would not be 'genuinely or reasonably' required for purposes incidental to the enjoyment of the dwelling. It is the Council's view that the facilities to be provided within it would be extensive. It also points to the size of the proposed outbuilding, and makes comparisons with the host dwelling and other development that has previously been proposed for the site.
8. The case of *Emin v SSE and Mid-Sussex District Council* [1989] J.P.L. 909 (Emin) established that "The term 'required' is...interpreted for the purposes of

applying Class E as meaning 'reasonably required'. In that case it was found that the size of the building is not, in itself, determinative of whether a development benefits from the provision of Class E. Nevertheless, I do not find the size of the gymnasium room to be excessive for a domestic use, and it is not unusual for a home gym and domestic swimming pool to be provided with a changing room, w.c. and shower. I acknowledge that the swimming pool covers a large area, that it occupies the majority of the outbuilding and has been designed with an area of relaxation. However, for a pool to be used for swimming, it will inevitably be large. Indeed, such a point is highlighted in some of the appeal decisions referred to by the appellants, where one Inspector notes that a swimming pool 'is something which needs to be quite big if it is to function properly (space is needed to be able to swim particularly if any serious training is envisaged)¹'. I do not, therefore, consider the facilities within the building or the space occupied by those facilities to be excessive, as suggested by the Council. They are reasonably required and do not demonstrate an unrestrained whim of the appellant.

9. I note that the footprint of the outbuilding would be large and that it would cover a significant portion of the lawned, northernmost area of the garden. The dwelling does, however, have the benefit of an extensive curtilage. Within this context, the size of the proposed outbuilding alone does not lead me to conclude that its purpose would not be incidental to the enjoyment of the dwelling. That the footprint of the outbuilding compares to that of the dwelling on site or previously proposed dwelling houses on the site is of little consequence in this case. The proposed use of the outbuilding would be different to that of a dwelling. As noted above, it is a use that requires extensive internal floorspace.
10. I have not been made aware of any other similar existing facilities within the dwelling or anywhere else on the site. There are other outbuildings on the site, but these appeared to have other domestic uses, such as a green house and an orangery/summer house. Furthermore, these do not appear to be suitable or sufficient in size to accommodate a pool, gym and associated facilities.
11. As for the distance between the dwelling and the proposed outbuilding, I note that the site is a linear plot where the dwelling sits close to where the plot appears to be most narrow, which is close to the boundary of the site with Links Road. Whilst the outbuilding would be at the opposite end of the linear plot to the dwelling, its location would nevertheless be logical. It would be positioned on the widest part of the plot, in an area that is more level than the remainder of the site. The proposed location of the outbuilding relative to the dwelling would not, therefore, mean that its purpose would not be incidental to the dwelling, particularly as there is no dispute that its location would be within the curtilage of the dwelling.
12. The Council refer to a driveway and parking area, which it suggests is for the proposed outbuilding. Whilst I have clarified earlier that the scheme before me does not include the provision of a drive and parking area, I noted on site the compacted surface that could provide vehicular access from the dwelling to the northernmost section of the site. This is, however, of no consequence and does not alter my conclusions in this case. The appellants do not suggest that the outbuilding requires vehicular access and parking.

¹ Appendix A of the appellants' appeal statement - Appeal reference APP/P1940/X/12/2176006

13. That the proposal does not include a plant room is not relevant to this case. Such detail is not necessary on plans accompanying an LDC application and plant need not, in any event, occupy considerable space within the proposed outbuilding.
14. The planning history for the site, including applications for an additional dwelling, is also not relevant to the matter of whether or not the development now proposed would be lawful. The LDC granted in this case is for the development proposed in the application. It would not apply to development that differs from the proposed scheme.
15. Whilst I note the Council refer to an appeal decision in support of its case, no further details have been provided of this specific case in order for me to make an informed comparison. Notwithstanding this, I have determined the appeal having regard to the particular circumstances in this case and the evidence that is before me.
16. Having regard to all of the above, I conclude on the balance of probability that the purpose of the proposed outbuilding would be incidental to the enjoyment of the dwellinghouse as such and that it would be genuinely and reasonably required to accommodate the uses proposed. The development would, therefore, be permitted by Class E, of Part 1, Schedule 2, Article 3 of the Order.

Conclusions

17. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of an outbuilding for a swimming pool and home gymnasium was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the Act.

Formal Decision

18. The appeal is allowed and attached to this decision is a certificate of lawful development describing the proposed operation which is found to be lawful.

J Moss

INSPECTOR



The Planning Inspectorate

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 8 April 2020 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 development consisting of an outbuilding for a swimming pool and home gymnasium would have been permitted by Class E, Part 1, Article 3, Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 as it would have been within the curtilage of the dwellinghouse; would have been a building required for a purpose incidental to the enjoyment of the dwellinghouse as such; and would not have fallen within any of the criteria set out in part E.1 of the 2015 Order.

Signed

J Moss

INSPECTOR

Date: 13th January 2021

Reference: APP/V1260/X/20/3254379

First Schedule

An outbuilding for a swimming pool and home gymnasium.

Second Schedule

Land at 14 Links Road, Poole BH14 9QR

NOTES

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

It certifies that the 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, would not have been liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any 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, 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:

by J Moss BSc (Hons) DipTP MRTPI

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Scale: Not to scale

