
Appeal Decision

by Elizabeth Jones BSc (Hons) MTCP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 June 2021

Appeal Ref: APP/V1260/X/20/3252032

Harbins, Parley Green Lane, Christchurch BH23 6BB

- 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 Hugh Dampney against the decision of Bournemouth Christchurch and Poole Council.
 - The application Ref 8/20/0106/CLP, dated 31 January 2020, was refused by notice dated 31 March 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 covered swimming pool (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. I consider that this appeal can be determined without a site visit without causing injustice to any party. This is because I have been able to reach a decision based on the documentary evidence submitted. Both the appellant and the Council were contacted and given the opportunity to comment.

Main Issue

3. The main issue is whether the Council's decision to refuse to grant an LDC for a covered swimming pool was well-founded. This consideration is an issue of lawfulness which cannot take account of any matters of planning merit. The burden of proof in an LDC case rests with the appellant and the appropriate test of the evidence is the balance of probabilities.

Reasons

4. Amongst other things, Class E, of Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) sets out that the provision within the curtilage of a dwellinghouse "any building.... required for a purpose incidental to the enjoyment of the dwellinghouse as such" is permitted development. It is not disputed that the proposed outbuilding would be within the curtilage of the dwellinghouse and its

dimensions would not infringe the requirements of paragraphs E.1. of Class E of the GPDO.

5. My attention has been drawn to case law¹ which refers to the need to consider whether "the nature of the activities carried out in the proposed building ensure they are incidental or conducive to the very condition of living in the dwellinghouse." It goes on to say that "the physical sizes of buildings could be a relevant consideration in that they might represent some indicia as to the nature and scale of the activities." "When a matter is looked at as a whole, size might be an important consideration but not in itself conclusive." It was held that "incidental connoted an element of subordination in land use terms in relation to the enjoyment of the dwellinghouse."
6. In this case I am informed that the footprint of the proposed outbuilding would be 164m² compared to the footprint of the main dwellinghouse which is 235m². Whilst the floorspace of the proposed outbuilding would represent approximately 70% of the footprint of the main dwellinghouse, it would not appear overly large in the context of the generous sized garden of Harbins.
7. In addition, the proposed building would not be an unreasonable size to accommodate a family swimming pool and its associated seating area and changing room with shower. Moreover, having regard to the appellant's submitted evidence which includes a ground floor plan of the proposed building², I consider that the room sizes of the lobby, plant room and store are not unduly excessive given their proposed uses. Having regard to the evidence submitted, they are not proposed to be primary living accommodation such as bedrooms, kitchens or bathrooms and thus their provision would not be unreasonable as additional facilities for a family to enjoy. A shower room/toilet whilst it could be regarded as primary living accommodation, in this case would be an ancillary function to the swimming pool and its provision would not be unreasonable.
8. Taking all these factors into consideration, I consider that the proposed outbuilding, albeit considered by the Council to be "larger than the average UK detached house on terms of floorspace", would appear subordinate in scale and would not result in an unbalanced relationship between the main dwellinghouse and the proposed outbuilding.
9. The appellant has provided sufficient evidence that the swimming pool would be genuinely used for purposes incidental to the enjoyment of the dwellinghouse as such and for the personal enjoyment of the appellant and his family.
10. The Council draws attention to an appeal decision³ in which the previous Inspector considered that the proposed development was not incidental. I have considered the previous Inspector's findings and acknowledge that the Council has placed some reliance on the previous Inspector's decision. Whilst I do not have the full details before me, from the information provided, the proposed development related to the erection of four outbuildings amounting to approximately 641m². The Council acknowledge this amount of development is "considerably greater" than the proposed outbuilding subject of the appeal

¹ Emin v Secretary of State for the Environment and Mid Sussex District Council [1989] JPL 909

² Drawing Number ST114-22a.

³ APP/E1210/X/18/3216062.

before me. Thus, I consider that it is not directly comparable with the appeal proposal.

11. The Council refers to an assessment of several appeal decisions relating to outbuildings between 150-200m² in which 79% were found not to be incidental. I have not been provided with the full details of these appeals and do not know if they were directly comparable to the particular set of circumstances in this appeal. Moreover, and in any event, each case must be determined upon its own merits and that is how I have determined the appeal before me.
12. As such, on the evidence available to me and having regard to all other matters raised, I consider that, as a matter of fact and degree, it has been shown that the proposed outbuilding is reasonably required for the purposes incidental to the enjoyment of the main dwellinghouse.

Conclusion

13. 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 the proposed construction of a covered swimming pool (outbuilding) was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Elizabeth Jones

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 January 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 192 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The operations described in the First Schedule would be permitted development falling within Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 for development permitted under the provisions of Class E of Part 1 of Schedule 2.

Signed

Elizabeth Jones

Inspector

Date 25 June 2021

Reference: APP/V1260/X/20/3252032

First Schedule

Covered swimming pool (outbuilding) as detailed on drawing numbers ST114-20, ST114-22a, ST114-23a, and ST114-24

Second Schedule

Land at Harbins, Parley Green Lane, Christchurch, Dorset BH23 6BB

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 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, 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 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, 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 my decision dated: 25 June 2021

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Scale: DO NOT SCALE

