



Appeal Decision

Site Visit made on 28 September 2021

by N Thomas MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 October 2021

Appeal Ref: APP/V1505/X/21/3267802

Akal House, Thames View, Langdon Hills, Basildon SS16 5LN

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mrs B Singh against the decision of Basildon Borough Council.
 - The application ref 20/01338/LDCP, dated 26 October 2020, was refused by notice dated 4 December 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 construction of a pool building.
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Decision

1. The appeal is dismissed.

Background

2. The appeal relates to a detached dwelling in a spacious plot. It fronts onto Thames View, which is a narrow lane that becomes Grays Avenue as it turns south at a right angle. The dwelling is a chalet bungalow has been extended in the past, and has an outdoor swimming pool to one side.

Reasons

3. In an application for an LDC, the onus is on the applicant to provide all the relevant information and evidence to support their case. On appeal, the Inspector's role is to decide whether, on the evidence, the Council's refusal to issue an LDC was well-founded or not. The case must be considered solely on the relevant legal tests, and its planning merits are of no relevance. The burden of proof lies with the appellant. The appellant must show, on the balance of probabilities, that the developments proposed would, at the date of the applications, be lawful.
4. The decision turns on whether the pool building would be permitted development under the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO). The Council refused to grant the certificate as it determined that the pool building is not required for a purpose incidental to the enjoyment of the dwellinghouse and it would be sited forward of the principal elevation of the dwellinghouse.

Whether incidental

5. Class E of Schedule 2 Part 1 of the GPDO gives planning permission for '(a) any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such...'. It is necessary to identify

the purpose and incidental quality in relation to the enjoyment of the dwellinghouse, and to determine whether the building is genuinely and reasonably required to accommodate the use and thus achieve that purpose.

6. A building to provide year round use for an existing swimming pool is capable of being for an incidental purpose. However, the proposed pool building would be considerably larger than the existing swimming pool. As a result, there would be generous space around the pool within the building. The appellant states that the size takes into account the safe passage of children and the elderly around the pool and essential facilities for seating, changing area and WC/shower. However, the internal space does not indicate that the space would be subdivided to provide a changing area and WC/shower. While a pool building could be incidental, it is not clear to me that it is of size that is genuinely and reasonably required to accommodate the use. In any event, bearing in mind its close proximity to the existing conservatory and house, it is not clear that changing and WC/shower facilities are reasonably required. The space around the pool would be in excess of what is required for safe circulation and seating. I do not therefore find that the proposed building is required for a purpose incidental to the enjoyment of the dwellinghouse.
7. The appellant refers to a certificate¹ that was granted at Ramsden Park by Basildon Borough Council. I note that in that case the building included considerably less circulation space, as well as a plant room, shower, changing and WC and I do not therefore find that it is comparable.

Principal elevation

8. Paragraph E.1 of Schedule 2 Part 1 of the GPDO sets out the limitations to the permitted development right. Under E.1(c) development is not permitted if any part of the building would be situated on land forward of a wall forming the principal elevation of the original dwellinghouse.
9. The Permitted Development Technical Guidance² includes an explanation of some of the terms used in the GPDO. In relation to the principal elevation, it states that in most cases this will be the part of the house which fronts the main highway serving the house. It will usually contain the main architectural features such as main bay windows or a porch serving the main entrance to the house. I also note that paragraph E.1(c) refers to the 'original' dwellinghouse. The GPDO in Article 2 defines 'original' as the building as existing on 1 July 1948, or if built on or after that date, as so built.
10. According to the appellant's evidence, the dwelling was originally modest in size. It has been extended several times, with a conservatory on the east elevation, an extension to the north in 1985³, and two successive extensions to the west elevation, the latest being in 2017⁴. I have not been provided with drawings showing the original dwelling, but from the evidence before me, it appears that the south elevation has not been altered since it was originally constructed.
11. Although the nearest highway is at a bend the road, the south elevation of the building faces Thames View, which gives the site its address and is the main

¹ Ref 20/00389/LDCP

² MHCLG September 2019

³ Ref BAS/151/85

⁴ Application ref 17/00983/FULL

highway that serves the property. The south elevation contains two large bay windows at ground floor, with a gable at first floor level with a further large window that is centrally located. This elevation has a symmetrical appearance and contains main architectural features.

12. The appellant argues that the west elevation is the principal elevation. The drawings provided with the 2017 permission for extensions to the dwelling indicate that it previously contained a door that led to the hall and stairs which the appellant considers was the front door. I have seen no evidence that contradicts the appellant's view that the front door was located in the west elevation of the original house. This arrangement has been retained in the dwelling as extended. I note that the west elevation was labelled on the drawing with the 2017 application as 'front elevation'.
13. However, with the exception of the front door, I have seen no evidence that the original west elevation contained the main architectural features of the dwelling, such as large windows or bays. Furthermore, it does not front the main highway serving the house. I do not therefore find that the location of the front door is determinative in this case. I note that the existing swimming pool is built in a position forward of the south elevation, but I have seen no evidence that it was considered to be permitted development. Taking into account the evidence before me, I conclude that the principal elevation of the original dwellinghouse was the south elevation.
14. As the outbuilding would be sited forward of the principal elevation, I agree with the Council that it would not meet the limitation set out in paragraph E.1(c), and would not therefore be permitted development.

Conclusion

15. The basis of the application is that the proposal benefits from permitted development rights under Class E of Schedule 2 Part 1 of the GPDO, but I have found that it would not be incidental to the enjoyment of the dwellinghouse and would be sited forward of the principal elevation of the dwellinghouse. It therefore requires planning permission.
16. I conclude that the Council's refusal to grant a certificate of lawful use or development for construction of a pool building is well-founded, and that the appeal should fail. I shall exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

N Thomas

INSPECTOR