



Appeal Decision

Site visit made on 9 October 2024

by Chris Preston BA(Hons) BPI MRTPI

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

Decision date: 14 November 2024

Appeal Ref: APP/M3645/X/23/3314143

Lyndale, Carlton Road, South Godstone, Godstone RH9 8LD

- 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 A Liasides against the failure of Tandridge District Council to give notice within the prescribed period of a decision on an application for a certificate of lawful development.
 - The application Ref 2022/1325 was dated 06 October 2022.
 - 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 the erection of a detached swimming pool building.
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Decision

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

Preliminary Matters

2. The application is submitted against the failure of the Council to determine the application for a certificate of lawful development (CLOPUD) within the prescribed period. Following the appeal the Council has indicated that had it determined the application it would have refused to grant a CLOPUD on the basis the scale of the pool building would be such that would not be incidental to the dwellinghouse and that it could accommodate a business use.
3. As with all CLOPUD appeals, the planning merits of a proposal are not determinative and the question is whether the proposed building would be lawful, having regard to the relevant facts and any judicial authority. Specifically in this case, the main issue is whether the proposal would have amounted to 'permitted development', under the terms of Class E, Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) on the date the application was made.
4. In addition to this appeal, I have also determined two appeals relating to the construction of a swimming pool building at the site; one made against the refusal to grant planning permission and the other against the Council's decision to issue an enforcement notice against the construction of that building. For clarity, the proposed building in the present appeal would be located to the side of the location of the building that has been erected, set

further within the appellant's garden. Whilst the issues are related, the CLOPUD appeal relates to a different building and requires a distinct judgement in itself. As such, I have issued my decision within a separate decision letter to the other two appeals.

Reasons

5. Class E, Part 1 of Schedule 2 of the GPDO permits the provision within the curtilage of any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse, subject to the limitations set out at paragraphs E.1 to E.4. There is no dispute that the proposed building would comply with those limitations in terms of its dimensions and location and I see no reason to take a different view, having regard to the information before me.
6. More fundamentally, the Council disputes whether the proposal would be incidental to the enjoyment of the dwellinghouse on account of its size and design.
7. The host property is a four bedroomed house of decent proportions, set in a generous garden. There is no reason in principle why a covered swimming pool would not be incidental to the enjoyment of that dwelling. The nature of swimming entails that any building would need to be reasonably substantial in scale in order to house a pool that is large enough to swim in, along with changing facilities, plant room and space to navigate around the pool.
8. The proposed plans are not excessively large in that respect. The pool would be large enough to swim in but no more than would be needed for gentle activity, being well under half that of a standard 25m pool one may find in a public facility. The space surrounding it is modest, with enough room to walk safely round all four sides but nothing that could be described as excessive.
9. The Council points to the provision of 5 changing cubicles which it maintains is excessive given that the host dwelling is only 4 bedrooms. I find that assessment to be unduly restrictive given that the pool may be used by visiting family members, friends of children etc. 5 changing spaces is not excessive in that context and is not indicative that the pool is inherently designed for a use that would not be incidental to the enjoyment of the dwellinghouse.
10. It seems to me that the Council's view has been tainted by the fact that the existing pool has been used for non-incidental purposes, being let to members of the public for swimming lessons and hourly hire for families and other groups. However, the appellant is well-aware that such use is not incidental to the enjoyment of the dwellinghouse and has put forward the CLOPUD application on the explicit basis that the proposed building would not be used in such a manner.
11. Given that the appellant is now facing enforcement action against the existing building it seems unlikely that he would seek to erect another building for the same purpose and I see no reason not to take the proposal at face value in terms of how the application was put forward; that being for a pool for use by members of the household, which may also entail occasional use by visiting friends or family with a connection to those living in the main dwelling. In other words, it does not follow that the proposed building would not be incidental simply because the current pool is used for business purposes.

12. On that basis, I am satisfied that the proposed use would be incidental to the enjoyment of the dwellinghouse and that there is nothing inherent in the size or design that would lead me to conclude otherwise. The proposal would also meet the limitations of Class E, as set out above. Accordingly, it would amount to development permitted by the GPDO and be lawful as a result.
13. For the reasons given above I conclude, on the evidence now available, that had the Council refused to grant a CLOPUD, that decision would not have been 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.

Chris Preston

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 06 October 2022 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 proposed swimming pool building (as shown on drawing numbers 1 & 3 submitted with the application) would be for a purpose incidental to the enjoyment of the dwellinghouse at Lyndale, Carlton Road, South Godstone, and would comply with the limitations set out within paragraphs E.1 to E.4 of Class E, Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO). Accordingly, the structure would have amounted to 'permitted development' on the date of the application, benefitting from planning permission granted by virtue of Article 3(1) of the GPDO, and thereby would have been lawful.

Signed

Chris Preston

Inspector

Date 14 November 2024

Reference: APP/M3645/X/23/3314143

First Schedule

The erection of a detached swimming pool building.

Second Schedule

Land at Lyndale, Carlton Road, South Godstone, Godstone RH9 8LD



Plan

This is the plan referred to in the Lawful Development Certificate dated: 14 November 2024

by Chris Preston BA(Hons) BPI MRTPI

Land at: Land at Lyndale, Carlton Road, South Godstone, Godstone RH9 8LD

Reference: APP/M3645/X/23/3314143

Scale: Not to scale



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.