



## Appeal Decision

**by John Braithwaite BSc(Arch) BACh(Hons) RIBA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 22 January 2026

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**Appeal Ref: APP/J1535/X/24/3356423**

**Firs House, Moreton Road, Bobbingworth, Ongar CM5 0LU**

- 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 Mr T Martin against the decision of Epping Forest District Council.
  - The application ref EPF/2136/24, dated 22 October 2024, was refused by notice dated 8 November 2024.
  - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 (as amended).
  - The development for which an LDC is sought is construction of swimming pool building with gym and plant room.
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### Decision

1. The appeal is allowed and attached to this decision is an LDC describing the proposed operation which is found to be lawful.

### Preliminary Matters

2. Determination of the appeal requires an assessment of the proposed development against the provisions of The Town and Country Planning (General Permitted Development)(England) Order 2015 (the GPDO). The proposed development is shown on drawings submitted with the application. In these circumstances visiting the site is unnecessary. The appeal has been determined without undertaking a site visit.
3. An application for costs has been made by the Appellant against the Council. This application is the subject of a separate decision.

### Reasons

4. Firs House is a large detached dwelling in a substantial plot. The proposed swimming pool building falls to be considered under Class E of Part 1 of Schedule 2 of the GPDO. Class E states that provision within the curtilage of a dwellinghouse of any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse is permitted development, subject to limitations. The Council does not claim that the proposed outbuilding would not be built in the curtilage of the dwellinghouse or that it would not comply with the limitations.
5. The Council has not submitted an appeal statement and rely on an 'Application Checklist'. Notes attached the Checklist state that "The proposed outbuilding is of a scale and mass that contradicts the provisions of the class for building proposals that are incidental to the main dwelling. The proposal is for an outbuilding with a significant area which is considered excessive in comparison to the main dwelling". The reason for refusal of the application includes "The scale of the proposal is considered excessive in comparison to the main dwelling and is therefore not considered to be incidental to the main house".

6. The judgement in *Emin v SSE [1989] JPL909* confirmed that regard should be had not only to the use to which the building would be put, but also to the nature and scale of that use in the context of whether it was for a purpose incidental to the enjoyment of the dwellinghouse. The physical size of the building in comparison to the dwelling might be part of that assessment but is not in itself conclusive. The fundamental question is whether the building is genuinely and reasonably required or necessary to accommodate the proposed use and thus to achieve the intended purpose.

7. A swimming pool is expressly referred to in Class E as being a use that is for a purpose incidental to the enjoyment of the dwellinghouse, and the Council has not sought to suggest otherwise. The Council has also not sought to question the size of the proposed swimming pool or that a gym is also for a purpose incidental to the enjoyment of the dwellinghouse. The proposed building would be no larger than is necessary to accommodate the incidental uses and the necessary plant room and other ancillary accommodation.

8. The only matter referred to by the Council is the scale of the proposal in comparison to the scale of the dwellinghouse. They have not, however, quantified the footprint of the proposed building or the footprint and floor area of the dwelling with or without planned extensions to be erected under permitted development rights. So it is not clear how the Council has reached the conclusion that the scale of the proposed building would be excessive.

9. On the Appellants evidence the two-storey dwelling has a footprint of 133 square metres which will be increased to 223 square metres. The proposed single storey building would have a footprint of 123 square metres and, just as importantly, would be erected in a plot that extends, overall, to nearly one hectare. Comparatively, the proposed building would be commensurate in scale to the dwellinghouse, with or without planned extensions. The proposed building is for purposes incidental to the enjoyment of the dwellinghouse and would therefore be development permitted under Class E of Part 1 of Schedule 2 of the GPDO.

10. For the reasons given above, and on all evidence now available, the Council's refusal to grant an LDC for construction of swimming pool building with gym and plant room at Firs House, Moreton Road, Bobbingworth, Ongar was not well-founded and the appeal succeeds. The powers transferred under section 195(2) of the 1990 Act as amended have been exercised accordingly.

***John Braithwaite***

Inspector



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## Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191  
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)  
ORDER 2015: ARTICLE 39

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**IT IS HEREBY CERTIFIED** that on 22 October 2024 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged and cross-hatched in black on the plan attached to this certificate, were lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The operations are development permitted under Class E of Part 1 of Schedule 2 of the GPDO.

Signed

*John Braithwaite*

Inspector

Date: 22 January 2026

Reference: APP/J1535/X/24/3356423

### ***First Schedule***

Construction of swimming pool building with gym and plant room

### ***Second Schedule***

Land at Firs House, Moreton Road, Bobbingworth, Ongar CM5 0LU

### IMPORTANT NOTES

This certificate is issued solely for the purpose of Section 191 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 were 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.

## Plan

This is the plan referred to in the Lawful Development Certificate dated: 22 January 2026

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Land at Firs House, Moreton Road, Bobbingworth, Ongar CM5 0LU

Reference: APP/J1535/X/24/3356423

Scale: Not to Scale

