
Appeals Decisions

Site visit made on 26 March 2026

by D A Hainsworth LL.B(Hons) FRSA Solicitor
an Inspector appointed by the Secretary of State

Decision date: 8 April 2026

Appeal ref: APP/F1040/X/25/3361698

55 Meynell Street, Church Gresley, Swadlincote DE11 9LS

- The appeal is made by Gary Taylor under section 195 of the Town and Country Planning Act 1990 against a refusal by South Derbyshire District Council to grant a lawful development certificate.
- The application Ref: DMPN/2024/1117, dated 23 August 2024, was refused by notice dated 22 November 2024.
- The application was made under section 192(1)(b).
- The development for which the certificate is sought is "the erection of a proposed Garden Building to be incidental to the existing dwelling at 55 Meynell Street, Church Gresley".

Appeal ref: APP/F1040/X/25/3361702

55 Meynell Street, Church Gresley, Swadlincote DE11 9LS

- The appeal is made by Gary Taylor under section 195 of the Town and Country Planning Act 1990 against a refusal by South Derbyshire District Council to grant a lawful development certificate.
- The application Ref: DMPN/2024/1118, dated 23 August 2024, was refused by notice dated 22 November 2024.
- The application was made under section 192(1)(b).
- The development for which the certificate is sought is "the erection of a proposed Swimming Pool and associated landscaping at 55 Meynell Street, Church Gresley".

Decisions

Appeals refs: APP/F1040/X/25/3361698 & APP/F1040/X/25/3361702

1. The appeals are allowed and attached to this decision is a lawful development certificate relating to the operations described in the applications, which I consider would be lawful if begun at the time of the applications.

Reasons for the decision

Introduction

2. Section 195 requires assessments to be made as to whether the Council's refusals of the applications are or are not well-founded. The assessments are based on the lawfulness of the proposed operations at the time of the applications. The planning merits of the operations are not relevant to the appeals and there are no planning applications before me.

3. The Council refused application DMPN/2024/1117 for the following reason: -

"The Garden Building development exceeds 50% of the total curtilage of the original dwelling house in combination with other development under construction on site including that subject of a separate certificate of lawfulness application for the erection of a proposed Swimming Pool. On the balance of probability the development is considered to be not lawful as the development does not accord with part E.1 part b. A material start has been made on site for both the swimming pool and the garden building therefore they are to be considered together for the purposes of concluding lawfulness."

4. Although the application DMPN/2024/1118 refers to the "erection" of a swimming pool, the proposal is in fact for the provision of an uncovered open-air swimming pool formed by excavating the ground space.

5. The Council refused the application for the following reason: -

"The proposed Swimming Pool development exceeds 50% of the total curtilage of the original dwelling house in combination with other development under construction on site including that subject of a separate certificate of lawfulness application for the erection of a proposed garden building. On the balance of probability the development is considered to be not lawful as the development does not accord with part E.1 part b. A material start has been made on site for both the swimming pool and the garden building therefore they are to be considered together for the purposes of concluding lawfulness. Additionally , the means enclosure surrounding the swimming pool is over 2m in height therefore the swimming pool and means of enclosure is not lawful and contrary to E1.e(ii)."

6. During the course of the appeals, the Council have added (i) that the garden building on its own or considered together with the swimming pool and other works at the rear of the house would not be 'incidental to the enjoyment of the dwellinghouse' because of their scale and (ii) that the garden area has been raised and that this amounts to a 'raised platform'. The appellant has pointed out that the application Dwg no.02 shows that the height of the proposed walls/fences would be reduced to 2 metres by removing part of the tops of their supporting columns.

The permitted development provisions

7. The Town and Country Planning (General Permitted Development) (England) Order 2015, Article 3(1) and Schedule 2, Part 1, Class E permits the 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 as such". This permission is subject to a list of exclusions, one of which is if "(b) the total area of ground covered by buildings, enclosures and containers within the curtilage (other than the original dwellinghouse) would exceed 50% of the total area of the curtilage (excluding the ground area of the original dwellinghouse)".
8. The reference made by the Council to 2m in "E1.e(ii)" is incorrect since the height restriction in E1.(e)(ii) is 2.5 metres. There is however a general restriction to 2 metres in Schedule 2, Part 2 Minor operations, Class A.1(b).

Assessments

9. The appellant and the Council have reached different conclusions in relation to the '50%' calculation. However, both have included the area of the swimming pool in their calculations. I consider this to be mistaken. It seems to me on a reading of Class E as a whole that the omission of the words "swimming or other pool" in E.1(b) is deliberate, the intention being to exclude these items from the '50%' calculation unless they should be treated in the applicable circumstances as being buildings or enclosures. If they are not to be treated in this way, the Council's refusal of the applications on the basis of their calculations of site coverage is unsustainable.
10. Before any works were carried out, the garden already sloped steeply away from the rear of the house. I saw at my visit that some groundworks had taken place, but I observed by looking at undisturbed ground and the descending line of gravel boards under the existing boundary fence that these were works associated with the approved house extensions or were required in order to erect the garden building or excavate the swimming pool, and that nothing had taken place or is proposed to take place amounting to a significant engineering operation or which could be a 'raised platform'.
11. In this instance, the swimming pool would be an uncovered open-air swimming pool formed by excavating the ground space. It would not be housed in a building or in part of a building or within any structure or erection at all. The provision of hard surfaces around the pool and elsewhere in the Council's calculations of site coverage are permitted by Class F.
12. The Council's contention that the swimming pool would be within an enclosure is founded upon the proposal to erect the walls/fences referred to above. There would be two walls/fences, each of them next to and parallel with the existing, lower, fences on the boundaries with adjoining residential properties. As a matter of fact and degree, I do not consider that they would enclose the swimming pool since they would not surround it and their function would be to safeguard the privacy of the pool area, the patio and the lawn. As such, they would be subject to the height limit of 2 metres in Part 2, Class A.1(b), which is in fact the height proposed in the applications.
13. My understanding of the principles that apply to the phrase "required for a purpose incidental to the enjoyment of the dwellinghouse as such" in Class E is as follows: -
 - The concept of Class E is broad and a wide range of incidental purposes is permitted.
 - The incidental purposes must be connected with the running of the house or the domestic, recreational or leisure activities of its occupiers and the garden building and swimming pool must be required for those purposes, but it is primarily for the occupiers to decide what incidental purposes are to be enjoyed.
 - In order to assess whether the purposes are incidental to the enjoyment of the house, their nature and scale are to be considered. There should be an element of subordination in land use terms in relation to the enjoyment of the house itself. The size of the garden building and swimming pool in

comparison to the size of the house is a relevant, but not a decisive, factor. The comparison should be with the whole of the house, not just with its footprint, since this is the "dwellinghouse as such" which Class E relates to.

- The issues are to be decided with an element of objective reasonableness, as a matter of fact and degree in each case.
14. The swimming pool would be used for outdoor swimming by the household in suitable weather conditions. It is no larger than it needs to be for this purpose. The garden building would accommodate the heating plant, electrical equipment and filters needed for the swimming pool, but its main function would be to provide space where the household could spend leisure time together and enjoy the sitting area with TV projector, pool table and bar facilities that the garden building would provide. Its size is not disproportionate in relation to the house.
15. The extended house is a large dwelling and it should be assumed to have a potential occupancy commensurate with a house of this size. It is reasonable for its residents to require the garden building and the swimming pool for their domestic, recreational and leisure activities. The size and scale of the garden building and the swimming pool would not be unreasonable having regard to the number of residents who might use them and the overall size of the house and they would be subordinate in land use terms in relation to the enjoyment of the house itself. As a matter of fact and degree, they are in my opinion required for purposes incidental to the enjoyment of the dwellinghouse as such.
16. The Council have referred to the appeal decision APP/N5090/X/23/3314263 in Barnet, which they maintain is comparable to the circumstances arising at 55 Meynell Street. There are innumerable cases of this kind throughout the country, with varying outcomes, and as the inspector recorded in the Barnet appeal, "the decision is very much a matter of fact and degree based on the specific circumstances of the case". I have approached the present appeals on that basis.

Conclusions

17. For the reasons given above, I am satisfied that the Council's refusals of the applications are not well-founded, because the garden building and the swimming pool are permitted by Class E. The appeals have therefore been allowed and as required by section 195(2) the appellant has been granted a lawful development certificate under section 192.

D.A.Hainsworth

INSPECTOR