



Appeal Decision

Site visit made on 5 February 2026

by **E Griffin LLB Hons**

an Inspector appointed by the Secretary of State

Decision date: 19th May 2026

Appeal Ref: APP/J0350/X/25/3359343

15 Upton Park, Slough, SL1 2DA

- 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 Mal Kang against the decision of Slough Borough Council.
- The application ref P/09806/003, dated 22 October 2024, was refused by notice dated 19 December 2024.
- 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 a single storey detached outbuilding to be used as swimming pool and gym.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. When an LDC is sought, the onus is on the appellant to demonstrate on the balance of probabilities that the proposed development would be lawful. The relevant date for determining lawfulness is the date of the application. The decision is based upon the facts of the case, relevant planning law and judicial authority.

Main Issue

3. The main issue is whether the Council's refusal to issue an LDC was well founded. This turns upon whether the proposed outbuilding would constitute permitted development under Article 3, Part 1, Schedule 2, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 ('the GPDO').

Reasons

4. The provision within the curtilage of a dwellinghouse of any building or enclosure, swimming pool or other pool required for a purpose incidental to the enjoyment of the dwellinghouse is permitted by Class E of the GPDO subject to limitations set out in paragraph E.1, E2 and E3. The Council is satisfied that the proposed outbuilding complies with the limitations set out in Classes E.1, E.2 and E.3 and I see no reason to take a different view. The area of dispute is whether the proposed outbuilding would be required for purposes incidental to the enjoyment of the dwelling house.
5. The appellant states that the main consideration for the appeal is that the size of the outbuilding would not exceed 50% of the remaining garden and as that requirement is met, the appellant does not consider that any further information is required to justify having an indoor pool. However, that limitation is contained in paragraph E.1(b) and it is not disputed that the limitation is met.

6. The judgement in *Emin v SSE [1989] JPL909* is relevant to this appeal. It 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. It was held that “incidental connoted an element of subordination in land use terms in relation to the enjoyment of the dwellinghouse.”
7. The appeal decision¹ relied upon by the Council sets out that ‘*as held in Emin, the appellant is expected to identify the purpose and incidental quality of what is proposed in relation to their enjoyment of the dwellinghouse and answer the question as to whether the proposed building is genuinely and reasonably required or necessary in order to accommodate the proposed use or activity and thus achieve that purpose*’. The Council is not being snobbish in asking for information, the information is required for the assessment of an outbuilding under Class E.
8. In assessing Class E, the term “required” for purposes incidental to the enjoyment of the dwelling house therefore should be interpreted as “reasonably required.” Whether or not an outbuilding is incidental to the enjoyment of the dwelling house therefore involves an element of objective reasonableness and is not a matter solely at the whim of the individual.
9. I therefore need to consider, whether in the particular circumstances of this case, it has been shown that the proposed building is reasonably required for purposes incidental to the enjoyment of the dwellinghouse. Each case has to be judged on a fact and degree basis in light of the particular circumstances.
10. The application submitted to the Council consisted of an application form, plans and elevations. In the absence of any information or explanation as to why the proposed building was reasonably required for purposes incidental to the enjoyment of the occupiers of the dwelling house, the Council refused to issue an LDC. The appeal form states that the Council has not considered that the outbuilding contained an indoor swimming pool which justifies the size of the outbuilding and the proposal is policy compliant. However, the Council’s decision notice clearly sets out why an LDC was refused.
11. The proposed outbuilding would be located in the generous rear garden of the appeal dwelling. The original dwelling had a footprint of around 133 square metres. In the appeal form, the appellant refers to the existing dwelling as being 181 square metres. The proposed outbuilding would be around 168 square metres. The outbuilding would therefore be slightly smaller than the current dwelling. Having regard to case law, size can be an important consideration but it is not conclusive by itself. However, it is for the appellant to show that the outbuilding is reasonably required for purposes incidental to the dwelling house.
12. The application referred to a swimming pool/gym. The simple layout plan provided shows a roughly rectangular shaped building with the swimming pool in the middle and the word ‘gym’ to one side of the space between the pool and the side wall. The plan also shows a separate shower room with a shower cubicle, toilet and changing area. The pool size is 9.3 metres by 6.2 metres with a 1.2 metre safety perimeter around the pool.

¹ APP/N0410/X/3259488

13. A gym area of 18 square metres is proposed but no defined area is shown on the plan. The gym area would need to be located sufficiently far away from the swimming pool to be used safely. The shower room is 11.30 square metres and the sitting/ resting area within the recess between access doors is 3.4 square metres. There is reference to swimming pool equipment being located below the gym area at the same level as the pool floor with no additional ground floor area. However, there is no information about what pool equipment is needed for the size of the pool, what amount of space it would require and it is not shown on the plan. If the pool equipment is in the rear lower part of the building, it needs to be accessible and there is no door on the rear elevation.
14. Rather than providing site specific information for this appeal, the appellant has referred to average sizes for pools and gyms within the United Kingdom based on internet searches to justify the pool and gym on the basis that what is proposed is not excessive in proportion to those averages. 18 square metres for a home gym may have been modest floorspace incidental to the residential use of the main house in the appeal decision relied upon by the Council. However, each case has to be assessed upon its own facts and circumstances and that appeal was dismissed largely due to lack of information to support the proposed uses.
15. The appellant has stated that he is a fit conscious person who attends the gym regularly with 3 young children and he would like to spend gym time with the family and introduce them to fitness. There is no information to show where exactly the gym will be located or what type of equipment is envisaged for the appellant and his young family or what circulation space will be required. There is very little reasoning to explain what facilities are required or to show what level of provision is required to serve the household.
16. Whilst swimming pools, gyms and associated space can be considered as incidental to the enjoyment of the dwelling house, there is limited justification before me as to why these facilities are reasonably required to support the size of the outbuilding. There is limited detail to show what is proposed in terms of the gym in terms of location and circulation space and how the gym and swimming pool will co-exist in one area or what space is needed in terms of pool equipment for the size of pool. The outbuilding is of a generous size in comparison to the dwellinghouse. The simple layout plan does not clearly identify what is being proposed. It may be that the appellant has further information and can provide a detailed plan but that information has not been provided for this appeal.
17. On the evidence before me, I consider that as a matter of fact and degree, it has not been shown that the proposed outbuilding is reasonably required for purposes incidental to the enjoyment of the dwellinghouse. The proposal would not be permitted development falling within Class E of the GPDO.

Conclusion

18. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for an outbuilding incidental to the enjoyment of the dwellinghouse is well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act (as amended).

E Griffin INSPECTOR