14 GREENAWAY GARDENS

A D V I C E

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1. INTRODUCTION

1.1. Applications for Certificates of Lawfulness ("CLOPUDs") are to be made in relation to land at 14 Greenaway Gardens, London NW3 7DH for various elements of the proposed development in the gardens at the residential dwelling. The applications are for:

- an outbuilding to accommodate a games room and gallery with art room and indoor and outside WCs
- an outbuilding to accommodate a gym
- an outbuilding to accommodate a swimming pool hall, including Jacuzzi, sauna, treatment room and changing/shower facilities, together with relaxation/supervision area
- two outbuildings to accommodate pool filtration kit and a garden store / irrigation shed.

1.2. By decision notice dated 12th June 2023, the London Borough of Camden as Local Planning Authority ("LPA") refused to grant a Certificate in respect of an earlier application concerning the same proposed development in one composite application. The earlier application was supported by, amongst other things, my Advice dated 5th December 2022. The delegated report associated with the determination took issue with aspects of the earlier application, partly on legal grounds and partly for evidential reasons. The reason for refusal was:

> *'The proposed outbuildings by reason of their scale, number and intended use, fail to be of a purpose incidental to the enjoyment of the dwellinghouse as such, contrary to Schedule 2, Part 1, Class E of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).'*

1.3. I have been asked to advise in relation to the preparation of the fresh applications, which include further evidence and which I understand will include this Advice among the supporting documentation.

1.4. No issue was taken in relation to any of the measurements or other technical aspects of the previous application. The designs in the current applications remain the same in all essential particulars.

1.5. The area where the LPA was not satisfied concerned the purposes for which the various elements are required and intended to be used and the relative scale of the proposed works to the dwellinghouse at the site. This Advice is focussed on those two aspects and should be read in association with the Advice dated 5th December 2022. Accordingly, I do not set out here the general provisions and caselaw relating to CLOPUDs. The key parts which the

delegated report relied on to justify refusal of the earlier applications were Article 3 of the GPDO and paragraph (a) of Class E of Part 1 of Schedule 2.

1.6. Specifically, officers suggested in the report that the proposed works would conflict with one or more conditions imposed on the already implemented Planning Permission 2021/0984/P and therefore fall foul of Article 3(4) which provides:

> *'Nothing in this Order permits development contrary to any condition imposed by any planning permission granted or deemed to be granted under Part 3 of the Act otherwise than by this Order.'*

This concern, however, did not form part of the reason for refusing the earlier application. Instead the reason for refusal alleged that the proposed works were not *'required for a purpose incidental to the enjoyment of the dwellinghouse as such'*, in accordance with paragraph (a) of Class E.

1.7. I shall deal with both points of concern in this Advice, referring to the materials which have been prepared as part of the forthcoming applications.

2. BREACH OF CONDITION

2.1. Planning Permission 2021/0984/P - Demolition of summerhouse in rear garden and landscaping works - authorised the some reconfiguration of the rear garden of the property. Condition 3 provides as follows:

> *'No development shall take place until full details of hard and soft landscaping and means of enclosure of all un-built, open areas have been submitted to and approved by the local planning authority in writing. Such details shall include details*

> *of any proposed earthworks including grading, mounding and other changes in ground levels. The relevant part of the works shall not be carried out otherwise than in accordance with the details thus approved.'*

2.2. The condition simply requires implementation of approved details; there is no continuing maintenance obligation (as there would be, typically, in the case of a visibility splay, for example). Therefore, even if the proposed works were inconsistent with the scheme permitted under Permission 2021/0984/P, there would be no 'conflict' with Condition 3, provided that the permission had been implemented in accordance with it, as I am instructed is happening. However, as a matter of fact, no such inconsistency is proposed. The architects who have prepared the plans to be submitted as part of the CLOPUD applications have designed the proposed works using the works permitted by Permission 2021/0984/P as the baseline. There would be no physical conflict between the proposed works and the scheme authorised by the Permission, which is currently under construction, as the architects explain in their Justifications for each CLOPUD. I note that the delegated report on the previous application did not specify any alleged conflicts and, as I have said, there was no reason for refusal on this ground. In my view, the materials to be submitted adequately demonstrate that Article 3(4) presents no impediment to lawfulness.

3. PURPOSE INCIDENTAL TO THE ENJOYMENT OF THE DWELLINGHOUSE AS SUCH

3.1. The relevant legal principles are set out in *Emin v Secretary of State for the Environment* (1989) JPL 909. The case was an unusual one, in which the

development in question consisted of a large empty room. It was held (at p.912), firstly, that, subject to compliance with the dimensional requirements of the Order, consideration of size alone when considering whether or not the development was ‘incidental’ was unlawful. The Judge went on to hold that the scale of activities proposed could be relevant and said that the question whether or not an activity was incidental

> *‘could not rest solely on the unrestrained whim of him who dwelt there but connoted some sense of reasonableness in all the circumstances of the particular case…..not to say that the arbiter could impose some hard and objective test so as to frustrate the reasonable aspirations of a particular owner or occupier so long as they were sensibly related to his enjoyment of the dwelling….element of subordination in land use terms in relation to the enjoyment of the dwellinghouse itself…..whether the proposed buildings, when considered in the context of the planning unit, were intended and would remain ancillary or subordinate to the main use of the property as a dwellinghouse.’*

Accordingly, the inspector’s decision had been flawed in that the test adopted by him

> *‘was solely by reference to the sheer physical size of the proposed buildings and the relationship between their physical size and the physical size of the dwellinghouse also within the curtilage…..size might be an important consideration but not by itself conclusive’.*

3.2. The LPA’s essential concern in relation to the earlier application, as articulated in the delegated report, related to the relative footprints of the dwellinghouse and the proposed development. Whilst the report recognised that the physical size was not in itself conclusive, it stated that it was ‘an important component’. The report went on to refer to some appeal decisions on the application of these

principles in particular cases. Clearly, each case is fact specific and inspectors' decisions do not lay down principles of law nor can they operate as formal precedents. In particular, it is not clear what direct evidence as to purpose the inspectors had before them in these cases, where there appears to have been an element of scepticism as to the stated intentions and purposes of the appellants. In one case, the inspector was clearly not convinced by the explanations given as to proposed use, expressing concern that 'the layout appears to have been designed to be used by a number of people at any one time'. Use by more than one person is not a legal bar; for example, in the case of a swimming pool, which is one of the purposes specifically named in Class E, it is entirely foreseeable – and, indeed, preferable on safety grounds - for use to occur by more than one person at once, including areas for supervising children. Similarly, games rooms are likely to be utilised by more than one person at once, so that a game (in this case, snooker or table tennis) may be played. The true explanation of at least some of the decisions relied on by the officers appears to be that inspectors were not satisfied as to the reliability of the evidence put forward in support of the stated purposes, and, therefore, they were cases which turned on their own particular facts. The covering planning statements identify other decisions, where Certificates were granted, some of which related to proposals with larger footprints than the 'host' building and for purposes including poolside relaxing areas, hobby rooms for art and for classic car storage, gyms and WC/shower facilities.

3.3. The delegated report focuses on relative footprints, but, in terms of use of space, internal area is a more relevant comparator. The respective internal

areas of the dwellinghouse and the proposed new structures have been calculated and are included in the applications, as follows:

- GIA of dwellinghouse (as proposed): 1,112 sqm.
- GIA of - outbuilding to accommodate a games room, gallery and art room: 160 sqm.
- GIA of outbuilding to accommodate a gym: 64 sqm.
- GIA of outbuilding to accommodate a swimming pool hall: 164 sqm.
- GIA of two outbuildings to accommodate pool filtration kit and a garden store / irrigation shed: 30 sqm
- Total GIA of outbuildings: 418 sqm.

3.4. The applicant has also addressed the proposed use of the buildings by himself and his household in a statutory declaration. In this sworn evidence, he details the interests which he and his family have in keeping fit and appreciating and developing their skills in the arts. The desire for his children to have healthy and fulfilling hobbies and to share these pursuits with his wider family cannot fairly be characterised as an 'unrestrained whim'; it is an objectively reasonable expression of domestic life and residential occupation. The applicant's commitment to sharing his home with wider family on visits from Ukraine is also entirely objectively reasonable and understandable, especially in the current situation. In my opinion, the applicant's sworn evidence addresses the *Emin* questions and there is no reason not to take it at face value, unlike the apparent rationale for some of the appeal decisions relied on in the delegated report. Given that size, in itself, is not a reason for refusing to find that a proposal falls within Class E, the Council's suggestions that space could have been reduced

by being used for multiple purposes is not relevant; in any event, the applicant's statement explains why these suggestions are misconceived as a matter of fact.

4. CONCLUSION

4.1. I conclude that the proposed works fall within Class E and are lawful.

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25 July 2023

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