November 2023

Statement of Case

14 Greenaway Gardens, London, NW3 7DH

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1. Introduction

1.1. This Statement of Case has been prepared by Savills on behalf of the appellant in support of the submission of 4no. planning appeals relating to four Certificate of Lawful Proposed Development (CLOPUD) applications relating to 14 Greenaway Gardens, London, NW3 7DH. The location of the subject site is shown below.

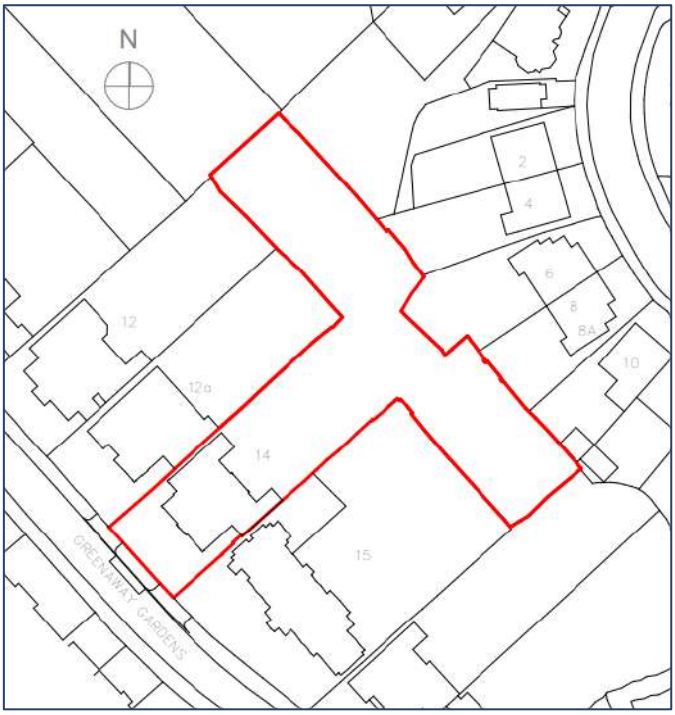


Figure 1- Site Location Plan

1.2. The four CLOPUD submissions which are the subject of this appeal all relate to proposed outbuildings located within the rear garden of the property, for which the appellant sought confirmation that they would comprise permitted development under Class E (development within the curtilage of a dwellinghouse), Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO). The descriptions of development for each of the applications, and their associated planning reference numbers, are set out below.

Application Reference Number	Description of Development
2023/3072/P	One single storey outbuilding in rear garden (pool hall).
2023/3074/P	One single storey outbuilding in rear garden (gymnasium).
2023/3078/P	One single storey outbuilding in rear garden (games hall and gallery).
2023/3081/P	Two single storey outbuildings in rear garden (pool filtration and irrigation stores).

1.3. All four of the applications followed the same application timeline. The applications were submitted individually on 25th July 2023 and were registered on the 7th September 2023. The applications were all refused on 11th October 2023 for two identical reasons listed across all four decision notices. The reasons for refusal are as follows:

1. *The proposed outbuilding by reason of its scale and intended use, fails 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).*

2. *The proposed development would result in a breach of conditions 3 and 5 of planning permission 2021/0984/P dated 20/08/2011 (detail subsequently approved on 29/03/2022 under planning reference: 2021/5768/P) which has been implemented on site, contrary to Article 3(4) and as such, is not permitted under Schedule 2, Part 1, Class E of The Town and Country Planning (General Permitted Development) (England) Order 105 (as amended).*

1.4. This Statement of Case has been prepared following an examination of the site and surroundings, a detailed review of the legislation outlined within the GPDO, and case law relating to the matter. The Statement has been prepared following consultation with Legal Counsel and a legal submission on the matter from Richard Ground KC is submitted alongside, and should be read in conjunction with, this Statement of Case.

1.5. Background details to the site, its surroundings and the proposed development is set out in detail within the original submission documents including a legal opinion from Morag Ellis KC and therefore is not replicated here. This Statement instead focuses on the details of the reasoning for refusal for each application and sets out the appellant's case against the reasoning for refusal and why, in our view, the Council's decision to not grant the certificates was not well-founded and certificates for the proposed development should be issued. It is necessary for the Inspector to reach a conclusion on each appeal and so each application is set out individually in this statement.

2. Agreed Matters

2.1. The applications seek four certificates confirming the lawfulness of proposed development (CLOPUD) under Class E, Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO). "Class E" rights allow for the following:

E. The provision within the curtilage of the dwellinghouse of –

(a) Any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such, or the maintenance, improvement or other alteration of such a building or enclosure; or
(b) A container used for domestic heating purposes for the storage of oil or liquid petroleum gas.

2.2. Paragraph E.1 outlines a series of circumstances under which development is not permitted. The Council have confirmed within all four delegated reports associated with refusals that the development would not conflict with any of the circumstances set out within paragraph E.1.

2.3. Paragraph E.2 outlines a condition for development of land within the curtilage of the dwellinghouse which is within an area of outstanding natural beaty, the Broads, a National Park; or a World Heritage Site. The appeal site is not subject to any of these designations, therefore paragraph E.2 is not relevant in this instance.

2.4. Paragraph E.3 outlines that, in the case of any land within the curtilage of the dwellinghouse which is article 2(3) land, development is not permitted by Class E if any part of the building, enclosure, pool or container would be situated on land between a wall forming a side elevation of the dwellinghouse and the boundary of the curtilage of the dwellinghouse. The site is located within the Redington Frognal Conservation Area, therefore is defined as being article 2(3) land. This restriction on development under Class E therefore does apply to the site. The proposals put forward as part of the four applications however are contained solely to the rear of the dwellinghouse and not on land between a wall forming a side elevation of the dwellinghouse and the boundary of the curtilage. The developments therefore comply with this condition. This is confirmed by the Council within their delegated reports associated with the refusals.

3. Disputed Matters

3.1. As set out above, the Council have confirmed that the proposed developments would comply with all of the conditions outlined across paragraphs E.1, E.2 and E.3 of the GPDO. In respect of compliance with the permitted development right, the only area which the Council consider the proposed developments would not comply is in respect of paragraph E.4, which relates to the interpretation of Class E.

3.2. Paragraph E.4 states the following:

E.4. For the purposes of Class E, "purpose incidental to the enjoyment of the dwellinghouse as such" included the keeping of poultry, bees, pet animals, birds or other livestock for the domestic needs or personal enjoyment of the occupants of the dwellinghouse".

3.3. In all four cases, the Council have considered that the use of the proposed buildings would *"move beyond a use which is 'incidental'"* and have considered that the buildings would be "*more akin to an extension to the primary accommodation"*.

3.4. The disputed matter in relation to the Council's first reason for refusal is therefore whether the buildings would meet the definition of being "*incidental to the enjoyment of the dwellinghouse*".

3.5. The Council's second reason for refusal has considered that the proposed works would result in development which would result in a breach of planning conditions associated with planning permission granted for a wider development scheme for the site, which is currently being implemented on site. The Council consider that the works for which certificates are sought would be contrary to Article 3(4) of the GPDO which states that "*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*". In short, the Council consider that the works would result in non-compliance with details approved as part of condition 3, and an ongoing compliance consideration under condition 5, of planning consent reference 2021/0984/P.

3.6. Each of these matters raised as reasoning for refusal are discussed in turn within the following sections of this statement.

4. Appellant's Case

4.1. The following section of this Statement outlines the appellant's case against each of the Council's matters for refusal of the certificates. Whilst this Statement of Case has been prepared to address all 4 of the Listed Building Consents decisions, each application is independent of one another and should be determined as such. Whilst the reasoning for refusal of each application is identical, the background to the reasoning behind the decision differs, as set out within the Council's delegated officer reports. This is discussed in relation to each case individually below.

4.2. Axonometric images of the proposed buildings prepared by the architects are provided at the start of the discussion for each application. These are provided to help identify each of the outbuildings in the context of the house and its rear garden.

4.3. Annotated plans showing the division of space within each of the outbuildings, which appear later in this statement, are also provided as an appendix to this statement – **Appendix 1**.

4.4. It is our view, for the reasoning set out below, that each of the of the proposed outbuildings would be lawful under Class E, Part 1, Schedule 2 of the GPDO however should the Inspector consider one or more to not be lawful, this must not prevent LDC's being issued for those which are determined to be lawful.

4.5. The reasoning for refusal matters are addressed in turn, with the Council's second reason for refusal (relating to whether the proposed developments would result in non-compliance with conditions associated with a wider, implemented consent for the site) addressed first. The appellant's case against this reason for refusal is addressed as one relating to all four decisions. The Statement then turns to the first reason for refusal which relates to whether the uses of the proposed buildings would be *"incidental to the enjoyment of the dwellinghouse*". This is addressed individually for each case in turn.

Reason for refusal 2- Conflict with planning conditions

4.6. The Council's second reason for refusing all four of the CLOPUD's relates to whether the proposed works would mean that conditions associated with another consent could be lawfully complied with, and thus whether the developments would be contrary to Article 3(4) of the GPDO. The reason for refusal is set out as follows:

"The proposed development would result in a breach of conditions 3 and 5 of planning permission 2021/0984/P dated 20/08/2011 (detail subsequently approved on 29/03/2022 under planning reference 2021/5768/P) which has been implemented on site, contrary to Article 3(4) and as such, is not permitted under Schedule 2, Part 1, Class E of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)."

4.7. The relevant parent consent which the Council cite within their reason for refusal is that granted under planning permission reference 2021/0984/P on 20th August 2021 for the demolition of summerhouse in the rear garden and landscaping works.

4.8. Condition 3 of this aforementioned consent states the following:

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.

Reason: To ensure that the development achieves a high quality of landscaping which contributes to the visual amenity and character of the area in accordance with the requirements of policies A2, A3, D1 and D2 of the London Borough of Camden Local Plan 2017 and policies BGI and BGI 2 of the Redington and Frognal Neighbourhood Plan 2020.

4.9. A discharge of condition of application which brought forward the details required by this planning condition was subsequently approved by the Council on 29th March 2022 under planning reference 2021/5768/P.

4.10. Condition 5 of planning permission reference 2021/0984/P states the following:

All hard and soft landscaping works shall be carried out in accordance with the approved landscape details by not later than the end of the planting season following completion of the development or any phase of the development, whichever is sooner. Any trees or areas of planting (including trees existing at the outset of the development other than those indicated to be removed) which, within a period of 5 years from the completion of development, die, are removed, or become seriously damaged or diseased, shall be replaced as soon as reasonably possible and, in any case, by not later than the end of the following planting season, with others of similar size and species, unless the local planning authority gives written consent of any variation.

Reason: To ensure that the landscaping is carried out within a reasonable period and to maintain a high quality of visual amenity in the scheme in accordance with the requirements of policies A2, A3, A5 of the London Borough of Camden Local Plan 2017.

4.11. Condition 3 therefore secures the final details of hard and soft landscaping works for the site, with condition 5 a compliance condition outlining timing for planting and an ongoing requirement for the maintenance of "any trees or areas of planting" within 5 years of completion.

4.12. In their delegated report associated with the refusals of the CLPOUD's to which this appeal relates, the Council set out that they consider that "*the outbuildings proposed as part of the current application would conflict with the approved plans and it would involve building on area which are designated to landscaped area*" going on to state that *"the proposals would be contrary to the conditions attached to permission 2021/0984/P, and therefore cannot be considered as permitted development*".

4.13. The landscaping works, both hard and soft, will be implemented in line with the details approved under condition 3 and will not be altered as a result of the proposed outbuildings for which CLOPUD's are sought. The proposed outbuildings for which CLOPUD's are sought are all proposed to be sited upon hard landscaped areas approved as part of the landscaping plan under application reference 2021/5768/P. There will therefore be no resultant conflict with condition 3 of planning reference 2021/0984/P, nor the approved details approved under the discharge of condition application reference 2021/5768/P.

4.14. Condition 5 of the consent can be broken down into two parts. Firstly, the condition requires all hard and soft landscaping to be carried out in accordance with the approved landscaping details by not later than the end of the planting season following completion of the development or any phase of the development, whichever is sooner. As noted above and in line with condition 3, the landscaping works can and will be carried out in line with the timescales set out within this condition. The construction of the proposed buildings will not result in an inability to comply with the requirement of this element of the condition.

4.15. The second element of condition 5 relates specifically to the soft landscaping elements of the approved scheme and requires any trees or areas of planting to be replaced if they die, are removed, or become seriously damaged or diseased within 5 years from completion of the development. The condition does not require any ongoing maintenance of the hard landscaped areas.

4.16. The proposals will not be sited upon any areas which have been approved for soft landscaping, nor result in any changes to any trees or areas of planting as approved. As noted above, the proposed outbuildings will be sited upon areas approved for hard landscaping only. The approved details for these areas will not be altered, albeit outbuildings will be placed upon them. This would not however result in any non-compliance with the requirements of the condition, assuming that the permission had been implemented in accordance with it prior to the works to construct the outbuildings commences. The condition does not for instance prevent any buildings from being placed in these locations at any point in the future.

4.17. Crucially, the buildings will not be located in areas identified for soft landscaping within the approved documents. These areas can and will be planted within the timescales specified within the condition. The construction of buildings on the areas identified to be hard landscaped will not impact on the areas identified to be soft landscaped and will not prevent the ongoing compliance obligation of the condition which requires any trees or areas of planting to be replaced. This condition requirement can be complied with regardless of whether the buildings are constructed or not.

4.18. Taking account of the above therefore, in our view, the outbuildings which are proposed to be constructed under permitted development rights can be without resulting in any future conflict or inability to comply with planning conditions associated with the implemented consent relating to the wider landscaping works in this area of the site. The proposed outbuildings will all be located on areas identified for hard landscaping and will not prevent the ongoing condition compliance requirement relating to the soft landscaped areas. As such, the proposed outbuildings are not considered to be contrary to Article 3(4) of the GPDO and the Council's reasoning for refusal on this ground is unfounded.

Reason for refusal 1 – purpose incidental to the enjoyment of the dwellinghouse

Background

4.19. In this section, we set out why we consider for each application that the Council's reason to refuse to grant the certificate was not well founded and therefore each appeal should succeed. We make reference to a number of appeal decisions which we consider are particularly relevant to these appeal proposals because they relate to similar proposals. Throughout, regard is had to relevant case law.

4.20. Both Richard Ground KC and Morag Ellis KC provide advice on the legal principles set out in Emin v Secretary of State for the Environment (1989) and the tests for whether a use or purpose for a building is incidental to the use of a dwellinghouse. In this case, the Secretary of State's decision was quashed because he had erred in law by regarding the physical size of the buildings and the relative size as the sole test as to whether they were incidental. The judge went on to set out how that test should be applied. He said that whether it is required for a purpose associated with the enjoyment of a dwellinghouse cannot rest solely on the unrestrained whim of the owner. However, a hard objective test could not be used to frustrate reasonable aspirations as long as they are sensibly related to the enjoyment of the dwelling. He also said that incidental connotes an element of subordination and the nature and scale of the use is relevant as to whether it is incidental use of the dwellinghouse.

4.21. The Technical Guidance for Permitted Development Rights for householders as updated on 10th September 2019 states that *"buildings under Class E should be built for purposes incidental to the enjoyment of the house. Paragraph E.4 of Class E indicates that purposes incidental to the enjoyment of the house includes the keeping of poultry, bees, pet animals, birds or other livestock for the domestic needs or personal enjoyment of the occupants of the house. But the rules also allow, subject to the conditions and limitations below, a large range of other buildings on land surrounding a house. Examples could include common buildings such as garden sheds, other storage buildings, garages, and garden decking as long as they can be properly be described as having a purpose incidental to the enjoyment of the house. A purpose incidental to a house would not, however, cover normal residential uses, such as separate self-contained accommodation or the use of an outbuilding for primary living accommodation such as a bedroom, bathroom, or kitchen."*

4.22. In considering each application, we have considered the following in order to come to a judgement. What is the nature and scale of the incidental activity? What are the views of the owner and how they want to use outbuildings? What is the size of the dwellinghouse and the curtilage in the context of the user?

Pool Hall (2023/3072/P)

4.23. The proposed outbuilding sought under reference 2023/3072 is to be used as a swimming pool hall. This would comprise the main pool area and associated facilities such as a jacuzzi, sauna and treatment room, as well as space around the pool.

4.24. Class E of Part 1, Schedule 2 of the GPDO under which the applications are made allow for the construction, with the curtilage of the dwellinghouse, any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such, or the maintenance, improvement or other alteration of such a building or enclosure. E.4 goes on to outline the interpretation of *"purpose incidental to the enjoyment of the dwellinghouse as such"* as including the keeping of poultry, bees, pet animals, birds or other livestock for the domestic needs or personal enjoyment of the occupants of the dwellinghouse. The technical guidance referred to above gives further advice on the matter.

4.25. The nature of such a building is clearly one which is incidental to the dwellinghouse and indeed it is a use which is expressly referenced within the permitted development right and so there can be no dispute that such a use would not be incidental in light of this.

4.26. This point is made by the Inspector dealing with the appeal at Thorndon Cottage, Brentwood (ref. APP/H1515/X/10/2124574) – **Appendix 2**. The Inspector was considering proposals for a building about 30m long by 10.5m wide, so some 315 sqm in area, which was to be for the purposes of a swimming pool, gym, sauna and stables. The Inspector concludes at paragraph 8 that a *'building to house a swimming pool would clearly be "incidental" as indicated in the wording of paragraph E(a) of Class E. The proposed pool in this case would not be unusually large for domestic family use and I consider that that element of the building would be permitted development'*. The Inspector also notes in paragraph 9 that a sauna would also be for a purpose incidental to the enjoyment of the dwellinghouse.

4.27. The Council have reached an alternative conclusion based on evidence provided within the statutory declaration. Within this, the applicant has set out that the pool building will be used by him, his family and, when visiting, family and friends would also be allowed to join and enjoy using this space. This is used as the Council in their concluding point where they suggest that "*there is an expectation that it would accommodate larger numbers of people*" and therefore would be "*more akin to an extension to the primary accommodation"*.

4.28. In terms of the Council considering it to be primary accommodation, this outbuilding is not to provide for primary living accommodation such as a bedroom, bathroom, or kitchen to which the technical guidance makes clear would not be incidental. As was set out by the appellant in their Statutory Declaration, the space would be used by the family who would reside within the dwelling for exercise and recreational purposes. They go on to note that they would also allow for family and friends to use the pool and associated facilities when visiting. This commitment to sharing the facilities of their home with guests and family is not unreasonable at all and is perfectly and objectively understandable. It is not dissimilar to allowing guests to use any facilities within the main dwellinghouse and is common in family life. Allowing such use to invited friends and family to the property is something which is incidental to the enjoyment of the dwellinghouse.

4.29. It is impossible to conclude that this would be an unrestrained whim of the owner with no sense of reasonableness. The use will clearly be sensibly related to the enjoyment of the dwellinghouse by the owner, and taking account of the judgement in Emin is clearly one of reasonable aspirations of the owner.

4.30. The Council's delegated report goes on to discuss the size of the pool hall and appears to raise objection on the basis of the provision of associated facilities which will be housed within it (such as a jacuzzi, sauna and treatment room), as well as the size and extent of the circulation space around the pool itself.

4.31. The Council state in their delegated report that there would be "*space for observation*" which includes "*ample space for sunbeds, tables and chairs*" and seemingly suggest that it is the associated facilities and circulation space around the pool itself which would, in their view, mean that the pool hall would not be "incidental". Indeed, this is set out at paragraph 4.8 of the delegated report where the Council have stated that "*the layout of the building includes substantial space for observation of the pool and multiple additional facilities*" going on to state that "*when considered as a whole this suggests a use which extends beyond an incidental use*".

4.32. The proposed "additional facilities" which the Council cite are ones which are not uncommon to find in such pool facilities and are clearly associated with the pool itself and would be used in conjunction with it. They are all facilities which are part of the appellant's desire to provide a facility which will promote their healthy lifestyles, as is set out by the appellant within their original Statutory Declaration. In the Thorndon Cottage appeal decision, the Inspector when dealing with a building for a swimming pool, sauna, gym and stables considered at paragraph 12 that *"each of the elements proposed in this case is capable of being reasonably required for an incidental purpose. It would also in my view be feasible that a family occupying the house could reasonably require each of the elements. The uses would be ancillary to the residential occupation of the house in functional terms, even though the scale of the leisure building would be substantial"*

4.33. In an appeal case at 30 Linksway, Northwood (reference APP/R5510/X/09/2103482) – **Appendix 3**, proposals for an outbuilding providing a pool, steam room, leisure room, shower and toilet was considered by an Inspector. The Inspector concluded in paragraph 15 that *"there is no evidence to suggest that it would be put to any purpose other than one which would be incidental to the enjoyment of the dwellinghouse*".

4.34. The jacuzzi, sauna and treatment room proposed within the pool hall building are considered to be wholly associated with the pool use, and these facilities within the space will all be used in conjunction with one another. In our view, they are all uses which are incidental to the enjoyment of the dwellinghouse and therefore are in full compliance with the requirements of the permitted development right. The accumulation of these uses within the proposed outbuilding do not change this conclusion. They are ancillary and subordinate or secondary to the main dwelling, and intended to be as such. There is no evidence to suggest that they will be used for anything other than that which is incidental to the enjoyment of the house.

4.35. Turning away from use, the Council suggest that the outbuilding itself would be excessive in size as it would provide "*substantial space for observation of the pool*". What is being referred to here, it appears, is the areas for circulation around the pool itself.

4.36. Such an assessment which focuses solely on size is one which would be in conflict with the principles set out in case law which sets out that such an approach would be an error in law. Taking account of the Council's delegated report, it is considered that this error is made in their assessment, or at least they come very close to making such an error.

4.37. In respect of size, there are a few relevant comparisons to make taking account of previous appeal decisions. The Council themselves seek to make such comparisons and cite a series of decisions however none of these relate to an outbuilding of a similar use. Of far more relevance in this case is the decision in the case of Porters Cross, Wargrave (reference APP/X0360/X/09/2102032) – **Appendix 4**, where a certificate of lawfulness for a pool building (in addition to other outbuildings) was sought. In refusing the certificate, the Council had argued that a smaller building could accommodate the pool. In the appeal decision, the Inspector stated in paragraph 7 that "*circulation space around the pool is primarily a matter for the appellant provided it is not unreasonable or excessive*" and went on to note that this would not be the case in that instance. The Inspector set out that "*it is to be expected that some space is provided around the pool for relaxation and safety purposes*" and it is not considered right that *"the Council should seek to impose some arbitrary limitation on the building size in proportion to the pool size."*

4.38. The circulation spaces provided within the proposed pool hall are not considered to be in any way excessive or unreasonable. The indication on the plans that sunbeds and tables will be provided are clearly areas for relaxation around the pool area, which, as set out in the Porters Cross decision, are to be expected.

4.39. Whilst size is not a conclusive element, it is pertinent to note that in the case of this appeal at Greenaway Gardens, the circulation areas surrounding the pool itself amount to a combined area of 48sqm, which equates to approximately 27% of the total floor area of the building. By comparison, in the Porters Cross case, the circulation space equated to some 45-50% of the total area of the building. The total footprint areas of the proposed building at Greenaway Gardens (194sqm) and that in the Porters Cross (200sqm) case are comparable. The plans associated with the allowed appeal at Porters Cross and that which is the subject of this appeal, are provided below.

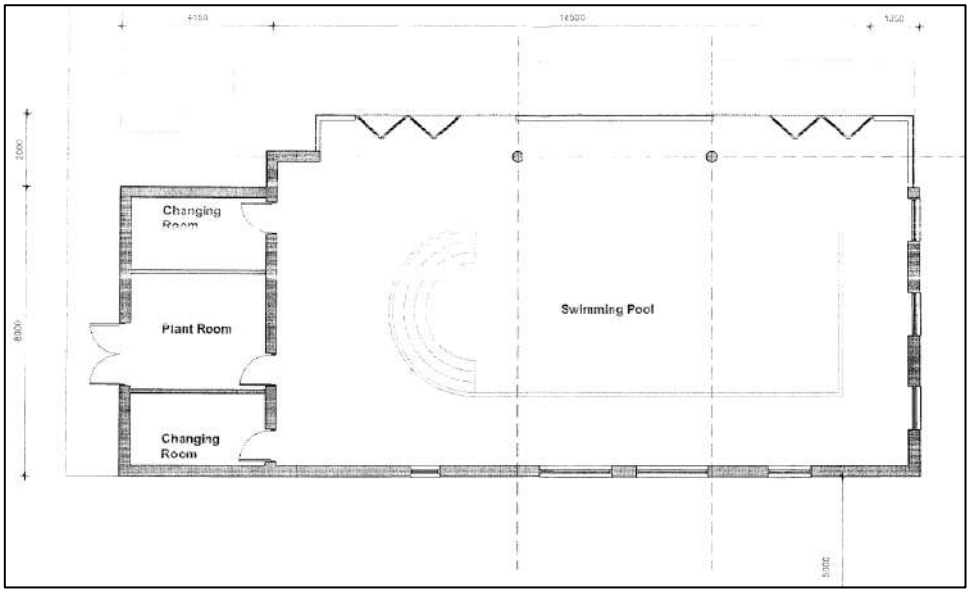


Figure 1- Ground floor plan associated with the appeal at Porters Cross (reference APP/X0360/X/09/2102032)

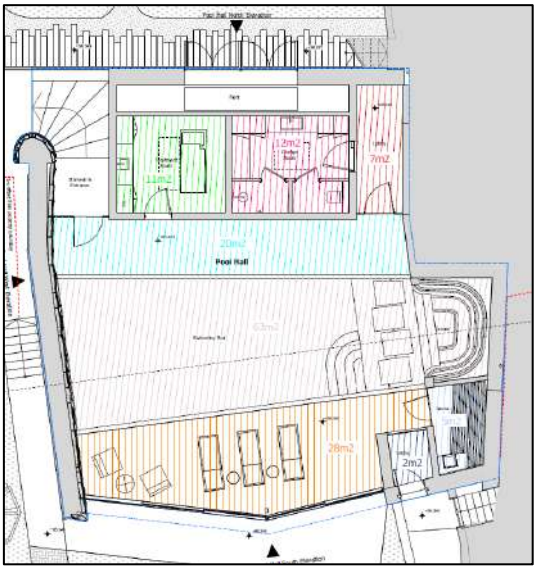


Figure 2- Annotated proposed ground floor plan at 14 Greenaway Gardens

4.40. Furthermore, in the Porter's Cross appeal, the Inspector considered the floor area of the pool building in comparison with the dwellinghouse. In the case of Porter's Cross, the proposed pool building of 200sqm was in the context of a dwellinghouse with a floor area of approximately 300sqm (i.e the pool building would have a floor area of approximately 67% of the existing dwelling). Taking this into account, the Inspector went on to conclude in paragraph 9 that "*it is clear that the floor area of the pool building would remain subordinate to the house*".

4.41. In the case of Greenaway Gardens, the proposed pool building comprises of an internal floor area of 164sqm, with the floor area of the main house some 1,112sqm. The pool building therefore equates to approximately 15% of the size of the main house. These figures demonstrate the subordinate nature of the proposed outbuilding.

4.42. The Inspector also went on to consider the size of the residential curtilage, which was substantial, and was satisfied that the size of the outbuilding and its use would be within the bounds of objective reasonableness when considering whether it is incidental. Taking account of the building within the context of the curtilage of the dwellinghouse as a whole therefore further demonstrates the subordinate size and nature of the proposed outbuilding. In this case, the curtilage of the original dwellinghouse is some 3,139sqm, with the total curtilage less of the original dwellinghouse totalling 2,853sqm. The pool hall proposed would cover just 194sqm which equates to just 6.7% of the total curtilage less the original dwellinghouse, significantly less than the 50% figure which is the maximum allowed by the permitted development right.

4.43. The 30 Linksway appeal decision is also relevant on this size point. In that appeal, the pool building was 144sqm and would occupy about 10% of the curtilage of the dwellinghouse and have a footprint equivalent to somewhere between 54% and 77% of the dwellinghouse. In this regard, the Inspector concluded in paragraph 16 that the *"the proposed building is not excessively large in comparison to the existing dwellinghouse"*.

4.44. Taking the above into account, it is not considered that the size of the proposed building would be in any way unreasonable or excessive to the use. The provision of other associated facilities within the building would also not render the building one that would no longer be "incidental" to the enjoyment of the dwellinghouse. It contains only uses which would allow for that incidental enjoyment.

4.45. We also make reference to the appeal decision at 25 Conmoor Road, Gateshead (ref. APP/H4505/X/14/3001056 – **Appendix 5**, where a number of matters are discussed in relation to a proposal for an outbuilding measuring 10 metres wide and 20 metres long, a footprint of 200sqm, to house a lobby, plant/store room, a shower/changing room and a swimming pool surrounded by walkways. The Inspector considers at paragraph 9 that *"the appellant is not required to demonstrate that he or any other occupants of the dwellinghouse enjoy swimming and would benefit for the physical exercise and enjoyment of such an activity. The provision of a swimming pool within the curtilage of the dwellinghouse would be required for a purpose incidental to the enjoyment of the dwellinghouse"*.

4.46. The Inspector goes on to consider that *"the swimming pool itself would be on the small side for a private swimming pool but would be sufficient for meaningful exercise and leisure activities, the plant room and the shower/changing room are necessary ancillary accommodation and would be no bigger than they need to be, and the surrounding walkways would be necessary to maintain safety when the swimming pool is in use. The building, in terms of its size, is reasonably required to provide a no more than adequate facility for its intended purpose."*

4.47. The Inspector concluded in paragraph 10 that the outbuilding was not over large for its intended purpose and the property is not just the dwellinghouse but a large residential plot of about 2000sqm. The outbuilding would be larger than the dwellinghouse but only take up 10% of the curtilage. An important consideration, but not in itself conclusive. The Inspector went on to state that the building was reasonably required for a purpose incidental to the enjoyment of the dwellinghouse, indeed was a no more than adequate facility for its intended incidental use, which indicates that something greater than adequate would also be incidental. Again, there was no evidence to indicate that the building, with reference to Emin, was proposed on a 'whim' rather than a desire to provide a facility that is associated with enjoyment of the dwellinghouse.

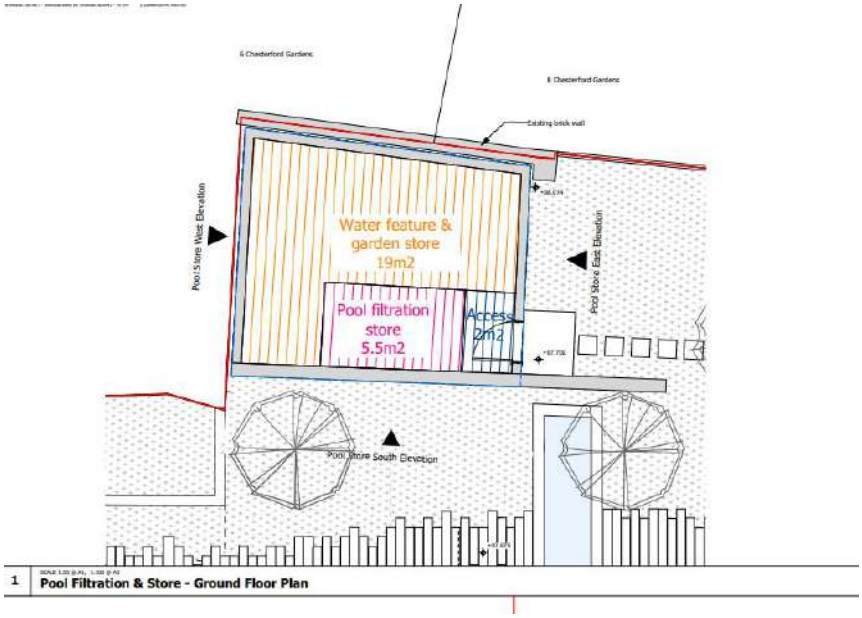
4.48. That is the same situation with this application. The applicant has a desire to provide a pool building with quite normal expected facilities connected to a swimming pool such as changing rooms, sauna, treatment room and a space where people can sit and observe swimmers, particularly important when supervision of children is required. The building is directly related to the enjoyment of the dwellinghouse by the owner.

Pool filtration and irrigation stores (2023/3081/P)

4.49. The proposal sought under application reference 2023/3081/P relates to the provision of two single storey outbuildings providing facilities for pool filtration and irrigation stores.

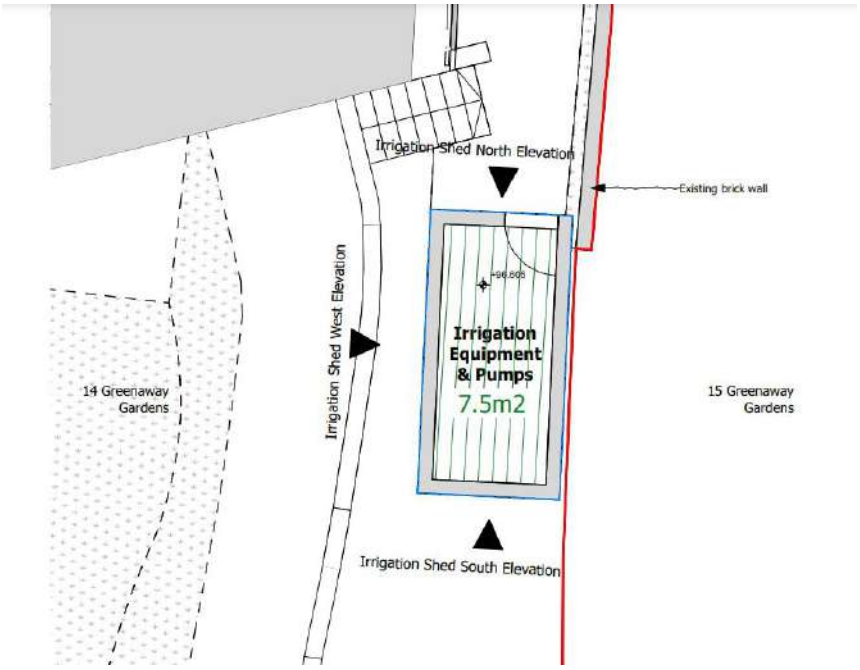
4.50. These outbuildings are described as shed buildings in the architects permitted development compliance document and this is considered to be a reasonable description. Sheds and shed-like structures are common place in residential gardens providing ancillary space for storage and garden related activities all of which are purposes incidental to the enjoyment of a dwellinghouse.

4.51. The pool filtration room is in a location where there used to be a garden shed of some 8sqm in area. It is intended to accommodate garden store space alongside pool filtration equipment, which needs to be installed above the pool water level. Locating the pool filtration equipment inside means that any noise emanating from it can be kept below background noise levels.



4.52. The nature of the pool filtration element of the building is intrinsically linked to the pool hall building, as discussed above, and is required for the proper functioning of the pool. It is necessary ancillary accommodation and accommodates a small part of this building. The garden store element is akin to a garden shed, with the building replacing the old one and is a very normal and reasonable aspiration for the homeowner in order to store garden equipment.

4.53. The proposed irrigation store also replaces a previous shed which was 7.8 sqm in area and this was used for pool heating and filtration for the previous outdoor pool and also housed a garden irrigation tank. This is the reason why this new outbuilding has been called the irrigation store. It will be similarly sized at 7.5sqm but will contain pumps related to the house's ground source heat pump installation.



4.54. The nature of both these uses in the outbuildings are clearly incidental to the use and enjoyment of the dwellinghouse and are necessary to support the incidental pool and to support the ongoing maintenance of the large garden and a domestic ground source heat pump. They do not in any way provide primary residential spaces and cannot be described as a whim of the owner, rather they are reasonable aspirations sensibly related to the residential use and enjoyment of the dwellinghouse and its garden. A place to store garden equipment or facilities connected to the upkeep and maintenance of the garden and a swimming pool in the back garden is entirely reasonable and quite ordinary, certainly not a 'whim' of the owner.

4.55. Within their delegated report, the Council clearly accept that the buildings would be of a subordinate nature in size when considered in isolation. In terms of the garden irrigation store, it does not appear that there is any objection.

4.56. The Council's objection is more focussed on the pool filtration store and they have considered this within the context of the pool hall building. The Council state that the size of the pool filtration and irrigation stores combined with the proposed pool hall to be "*excessively large and considering the nature of the use are not reasonably required*".

4.57. Whilst it is noted that the pool building and pool filtration buildings are linked in terms of their purposes, they are independent of each other in terms of application submissions and the Council's conclusions on another application should not prejudice conclusions drawn on a different application. Secondly, the Council again focus solely on size which again, taking account of the principles set out in Emin, is an error of judgement.

4.58. The pool house is clearly one which is incidental to the dwellinghouse as explained in the previous section, and the pool filtration building is one which is clearly subordinate in its associated role. In terms of size, the buildings comprise of just 41sqm, equating to just 1% of the total curtilage of the dwellinghouse less of the original house. Taking this into account, it cannot be concluded that these buildings would be anything other than subordinate or incidental to the dwellinghouse in terms of their use, nature and size.

Gymnasium (2023/3074/P)

4.59. The application made under reference 2023/3074/P seeks a Lawful Development Certificate for a single storey building housing a gymnasium.

4.60. The building will house a gym area of 30sqm and a more open area for ballet and taekwondo practise and exercise just under 30sqm.

4.61. The applicant has confirmed within their Statutory Declaration that this building would be used by himself and his family to exercise and keep fit. The applicant explains that the building would house cardio machines which they regularly use (cross trainer and treadmill), areas for weight training and stretching, as well as a space to practice their virtual and in person personal training sessions. The applicant has also explained his family's hobbies (namely the practice of his daughter's ballet and wife's taekwondo) and has detailed the reasoning as to why space for such practice is reasonably located separately to areas of heavy weights and cardio machines (which cannot freely be moved).

4.62. The provision of a gym and the nature of such a use in the rear garden is not uncommon and it is one which is clearly incidental to the residential use of the dwelling. The Council do not appear to disagree with this within their officer delegated report. Indeed, in the Thorndon Cottage decision referred to earlier the Inspector states that a gym would be incidental to the enjoyment of the dwellinghouse. It is not unreasonable that the occupier of a dwellinghouse may wish have a gym in their garden. In an appeal decision at Little Heath, Crowthorne (ref. APP/X0360/X/09/2107624) – **Appendix 6**, the Inspector was considering proposals for a single storey outbuilding of about 173sqm within the extensive landscaped grounds of a relatively modest bungalow and which was to accommodate a double garage for the storage of classic cars, gym/studio, sauna, WC and boiler room. The Inspector states in paragraph 8 that *"the provision of domestic gym/studio and sauna facilities within the curtilage of a dwelling is not unusual in terms of modern lifestyles and the space identified for these uses appears reasonable."*

4.63. In considering the reasonableness of the space, it is important to take account of the judgement of Emin where it is stated that the "reasonable aspirations of a particular owner" must be taken into account. In this case, taking account of the applicants Statutory Declaration, it is clear that this is not an unrestrained whim with no sense of reasonableness. Rather, the building is specifically designed and laid out in a sensible and logical manner related to his and his family's enjoyment of the dwellinghouse. There is certainly no suggestion that anyone other than the owner and his family or friends would use the space. The size is genuinely and reasonably related to families hobbies, with exercise and keeping fit being very important, and so required for this purposes incidental to the enjoyment of the dwellinghouse.

4.64. In terms of the size of the building, the Council have considered this to be "*excessively large and considering the nature of the use are not reasonably required*". Taking account of the above and the evidence provided as part of the application, it is clear that the size is reasonable and in no way excessive when considering how the space will be used and the reasoning behind this.

4.65. The proposed building is to be a footprint of 77sqm in total, meaning that it will take up just 2% of the total curtilage of the dwellinghouse less of the original house. In terms of internal area, the building will comprise 64sqm by comparison to the GIA of the dwellinghouse of 1,112sqm. The GIA of the gym building will therefore equate to just 6% of the main house.

4.66. The size is clearly subordinate. When adding this to the nature of the proposed use as set out above and the detailed explanation of this, it is clear that the building would be incidental to the use of the dwellinghouse as such

Games room and gallery (2023/3078/P)

4.67. This proposal relates to the provision of a single storey outbuilding which would provide space for games (including snooker and table tennis), an art studio and gallery space and also a WC for use by the gardener.

4.68. Within their Statutory Declaration, the applicant has explained their hobbies for snooker and table tennis, as well as their passions for art. The applicant further explains how the building will sensibly be used in association with these hobbies which are perfectly usual. A building which provides space to support such hobbies and passions are clearly reasonable aspirations of the applicant which sensibly relate to the enjoyment of his dwellinghouse by himself and his family. It is not unreasonable for someone who has art as a hobby to want to do this in a garden setting and be able to benefit from good levels of natural light. Similarly, a games room in a large garden setting benefitting from an adjacent terrace is not an unreasonable aspiration for the home owner to have as part of their enjoyment of their dwelling.

4.69. The rooms in this outbuilding are not replicating the main living spaces of the dwelling such as the living room, dining room, kitchen and bedrooms. They are clearly ancillary or secondary spaces to the dwelling and so their accommodation in an outbuilding in the garden is incidental to the enjoyment of the dwellinghouse.

4.70. The Council dispute that such a use would be incidental and cite a number of appeal decisions in support of their case. Very few of these, however, are considered to be of relevance in respect of the nature of their use. An appeal decision which is considered to be of relevance is that of 12 Gladsdale Drive, Pinner (reference APP/R5510/X/10/2121399) – Appendix 7. In this case, the Inspector set out in paragraph 6 that "*games rooms are capable of being a type of use which is incidental to a dwellinghouse*". In this case, the proposed games room and garage measured 52sqm which the Inspector noted in paragraph 7 to be "*within the realms of objective reasonableness*" despite being "*quite large*". Ultimately, the Inspector saw "*no reason to doubt that the uses would be those that are incidental to the enjoyment of the dwelling*".

4.71. In this case, the Council have raised particular issue with the fact that the building has been "*designed to be used by a number of people at any one time*" and that it "*does not just provide space for games like snooker and table tennis but also space for observation by numerous other people*". The Council go on to state that the art and gallery spaces suggest "*that it is to be used by others as an art studio or exhibition space*". As the Inspector in the Glasdale Drive appeal states, *"the test must retain an element of objective reasonableness and should not be based on the unrestrained whim of an occupier. On the other hand, a hard objective test should not be imposed to frustrate the reasonable aspirations of a particular owner or occupier so long as they are sensibly related to the enjoyment of the dwelling"*.

4.72. The applicant's Statutory Declaration clearly sets out how the space will be used and the justification for the space which has been provided. It is quite logical and reasonable to have space around games equipment particularly for activities that can involve multiple players and for people to be sat in those areas. It is to be expected that a homeowner may invite family and friends around to play such activities and pastimes. The owner has explained their passion for art and desire to display their collection. It is not on the unrestrained whim of the owner but rather is clearly and demonstrably reasonable for the nature of the proposed use. In applying the principles of Emin therefore, the nature of the use is considered to fall solely within the definition of "incidental" to the enjoyment of the dwelling by himself and his family.

4.73. In terms of size, the Council have again used the same sentence in their delegated report as that used for the gymnasium in drawing their conclusions, stating that "*the size of the Games Hall and Gallery is excessively large and considering the nature of the use are not reasonably required*" going on to state that "*the structure is notably large and by reason of the proposed use suggests that the real purposes of the building is as an extension to the primary accommodation*". They go on to state at paragraph 4.10 that "*it is considered that the excessive space proposed for the building is not reasonably required to accommodate the uses proposed*".

4.74. The size and the reasoning for that which is proposed is discussed above. This demonstrates that this is not simply the unrestrained whim, rather the size is logical to the proposed use of the building.

4.75. In terms of physical size, the ground area size of this building is 185sqm, which equates to just 6% of the total curtilage of the dwellinghouse, less of the dwellinghouse itself. This is clearly well below the 1,426sqm which would be required to tip the area covered over the 50% threshold set out within the permitted development right. In respect of the internal floor area, the proposed outbuilding comprises of 160sqm only, equating to just 14% of the internal floor area of the main dwellinghouse. It is quite clear that the building will be subordinate in size to the main dwellinghouse and the curtilage as a whole.

4.76. Taking both its size and proposed use into account, it is our view that the proposed games hall and gallery building would clearly fall within the definition of "incidental" to the enjoyment of the dwellinghouse. They are ancillary spaces and subordinate to the main dwellinghouse. It is therefore in accordance with the requirements of the Class E permitted development rights and is therefore lawful development.

Summary

4.77. As set out above, each of the outbuildings proposed have a clear use and the size of each of the buildings has been dictated by this use and the required space needed for the enjoyment as such.

4.78. None of the buildings are can be said to rest solely on the unrestrained whim of the owner and all of the buildings are reasonable aspirations of the applicant which are sensibly related to the enjoyment of the dwellinghouse. They are subordinate elements to the main house whether they are viewed individually (which is how they should be assessed) or cumulatively (which appears to be how the Council have assessed them). Individually and cumulatively, they are well below the size of the main dwellinghouse and are also well below the 50% threshold of ground floor coverage of the total curtilage of the dwellinghouse (less of the main house). A substantial garden will remain.

4.79. In our view, each of the buildings clearly fall within the definition of "incidental" and they will be enjoyed by the applicant and his family to pursue their hobbies and interests. They are considered to comply with all of the requirements for lawful development under Class E permitted development right and thus certificates should be duly issued.

5. Conclusions

5.1. This Statement of Case has been prepared by Savills on behalf of the appellant in support of the submission of four planning appeals relating to four Certificate of Lawful Proposed Development (CLOPUD) applications relating to 14 Greenaway Gardens, London, NW3 7DH, located within the London Borough of Camden.

5.2. Each of the four CLOPUD submissions which are the subject to this planning appeal relate to proposed outbuildings located within the rear garden of the property. Applications were made seeking lawful development certificates to confirm that the proposed outbuildings would be permitted development under Class E (development within the curtilage of a dwellinghouse), Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO).

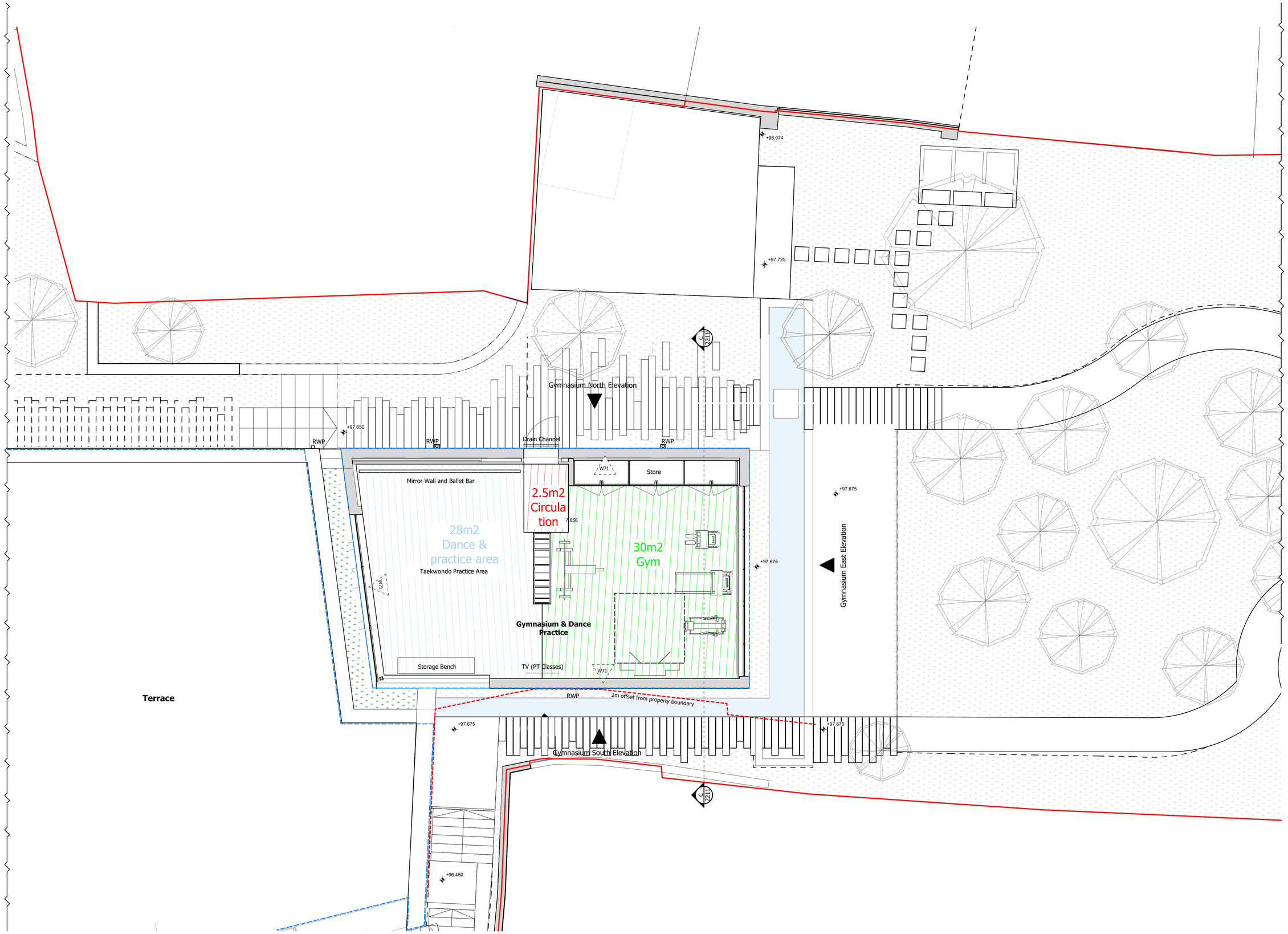
5.3. All four of the applications were refused by the Council on 11th October 2023 for identical reasons. The Council's first reason for refusal considered that the proposed outbuildings, by reason of their scale and intended use, would fail to be of a purpose incidental to the enjoyment of the dwellinghouse (as required by the permitted development right) and would instead be an extension to the primary accommodation. The Council's second reasoning for refusal listed across the decision notices claims that the developments would result in a breach of planning conditions of another permission relating to the site.

5.4. This appeal Statement of Case (in conjunction with the original submission material and other appeal submission documents) demonstrates the clear uses of the proposed outbuildings, all of which are sensibly related to the enjoyment of the dwellinghouse. They will provide suitable spaces which allow for him and his family to pursue hobbies and interests. They are not for primary living accommodation of the dwelling but rather are secondary spaces that are incidental to the enjoyment of the dwellinghouse. They cannot be said to be based on the unrestrained whim of the owner, rather they are fully justified and reasonable aspirations of the owner. Whilst size cannot be used as the sole test of whether a building is incidental or not (as laid down by the principles of Emin vs Secretary of State for the Environmental) the judge noted that incidental use connotes an element of subordination. Each of the buildings are just that in their size when considering the curtilage of the dwellinghouse and the size of the house itself and are well below the threshold limits, as set out within the permitted development right.

5.5. This appeal Statement of Case has demonstrated and clearly explained that the outbuildings can be constructed without resulting in any future conflict or inability to comply with planning conditions associated with the implemented consent relating to wider landscaping works in the areas identified for their construction. They will be located on areas identified for hard landscaping and will not prevent the ongoing compliance requirement of the aforementioned consents relating to soft landscaping areas. The proposed outbuildings do no conflict with Article 3(4) of the GPDO as the Council suggest and their reasoning for refusal is therefore unfounded on this basis.

5.6. Taking account of the above and the cases in detail, the proposed outbuildings which are subject to the appeal submissions are considered to be in full conformity with Class E, Part 1, Schedule 2 of the GPDO and are considered to be lawful development. The Council's reasons for refusing each of the certificate applications was not well-founded and therefore it is respectfully requested that each of the appeals should succeed.

Appendix 1: Annotated Plans



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Legends & Notes:

Denotes permitted development building outline

Rev	Date	Description	Athr
PL01	18/07/2023	Issued for CLOPUD application	CK

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Project:
14 Greenaway Gardens
14 Greenaway Gardens
Hampstead, NW3 7DH

Client:
PRIVATE

Drawing Title:
GA PLANS
Gymnasium Proposed Ground Floor Plan

(Project number)DWG number_Revision:
(0942)0414_PL01

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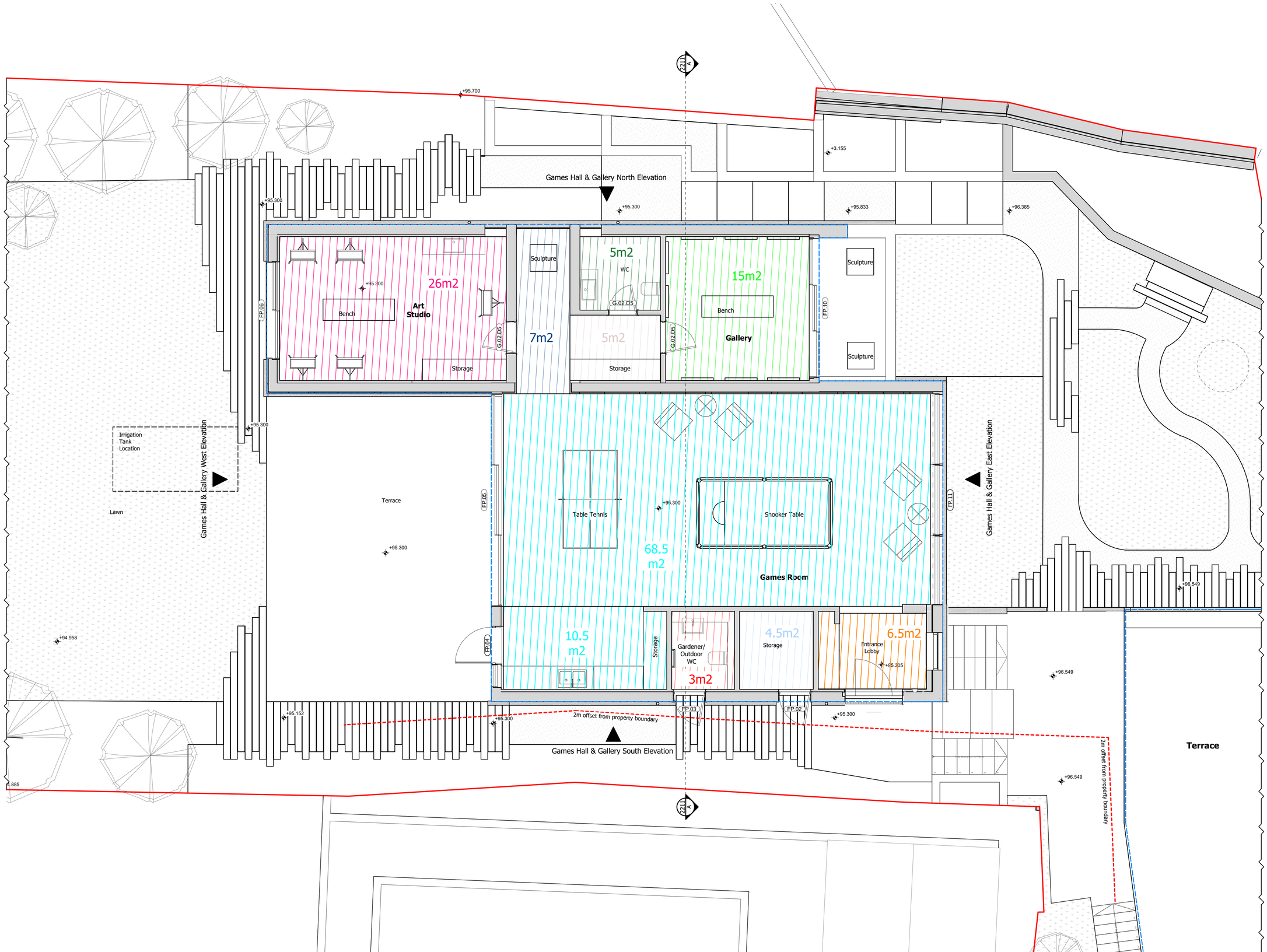
Gymnasium - Proposed Floor Plan



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ens
14 Greenaway Gardens
Hampstead, NW3 7DH

Client:
PRIVATE

Drawing Title:
GA PLANS
Games Hall & Gallery Proposed Ground Floor Plan

(Project number)DWG number_Revision:
(0942)0416_PL01

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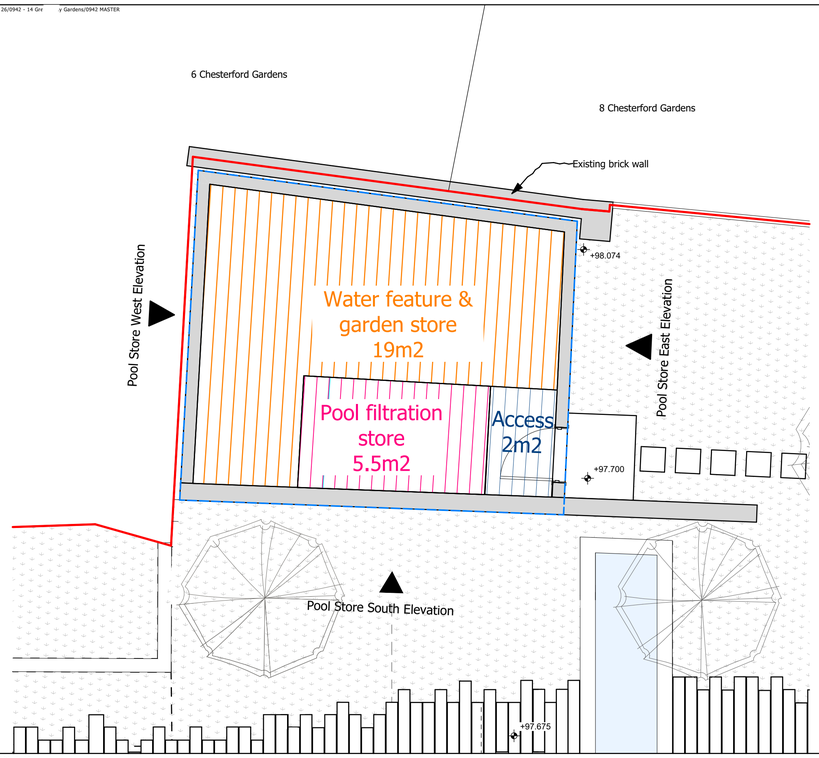

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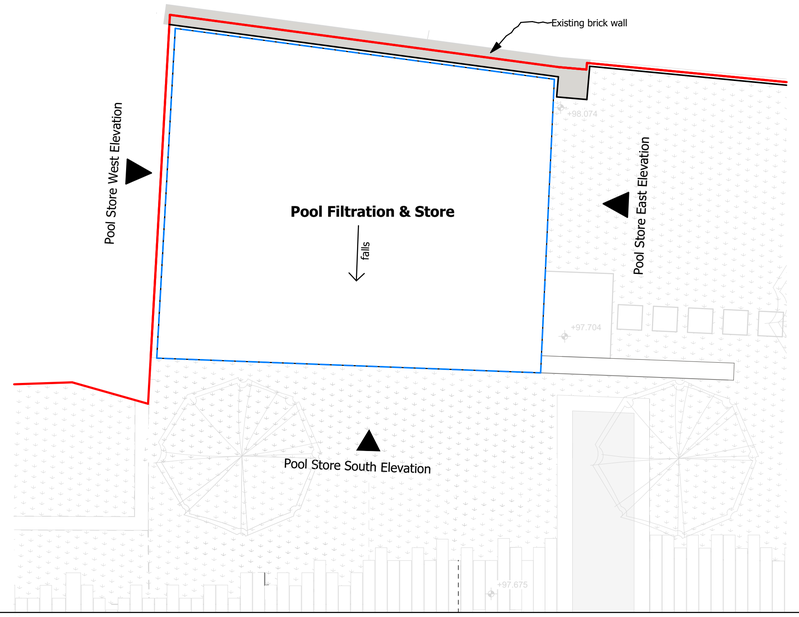
Pool Filtration & Store - Ground Floor Plan



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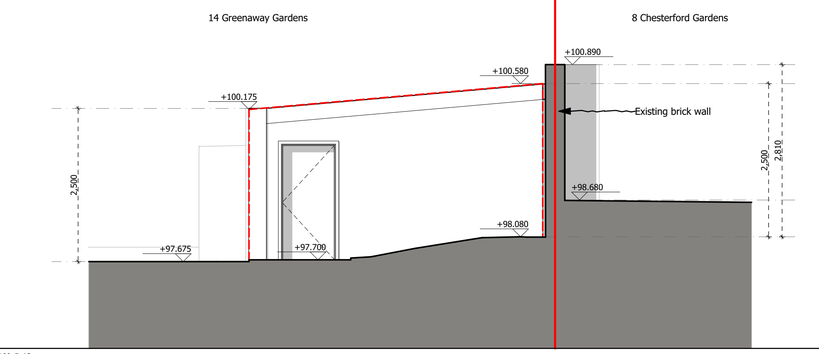
Pool Filtration & Store - Roof Plan



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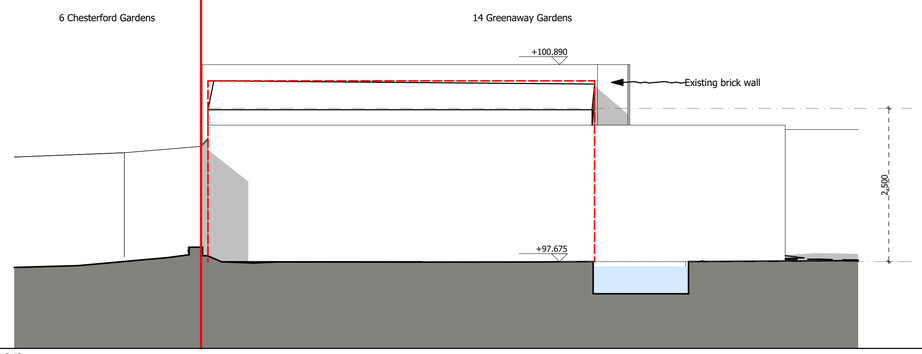
Pool Filtration & Store - East Elevation



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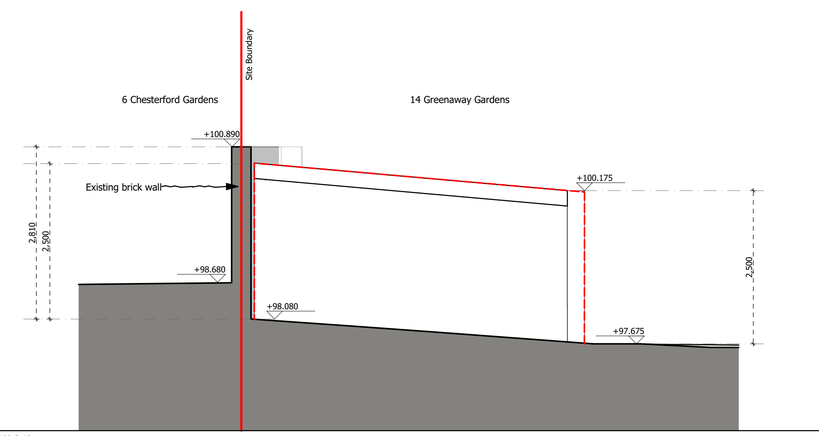
Pool Filtration & Store - South Elevation



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Pool Filtration & Store - West Elevation

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Legends & Notes:

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Client:
PRIVATE

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GA PLANS
Pool Filtration & Store - Proposed

(Project number)DWG number_Revision:
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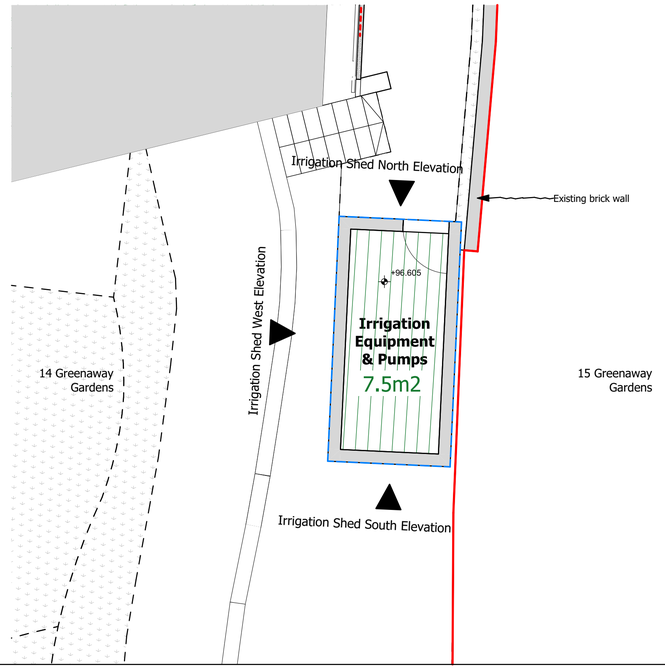

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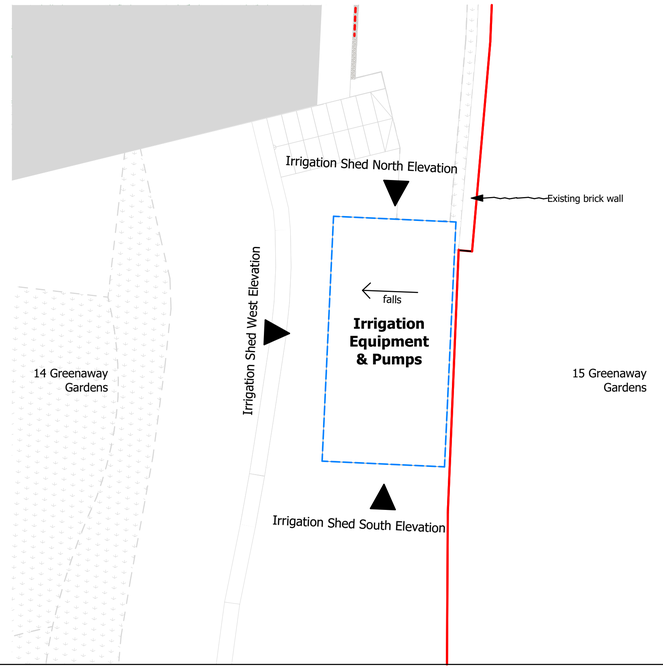
Irrigation Shed - Ground Floor Plan



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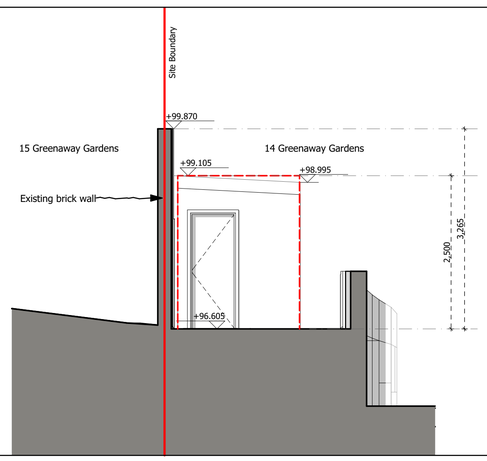
Irrigation Shed - Roof Plan



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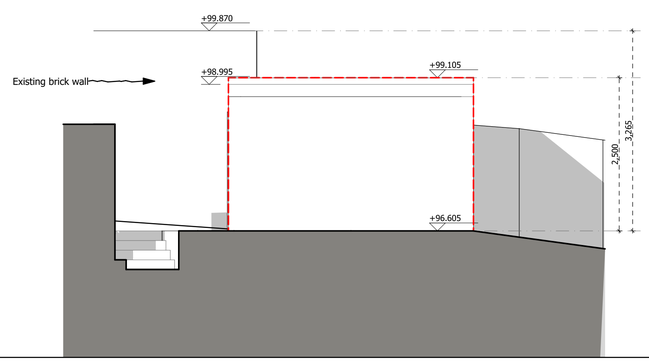
Irrigation Shed - North Elevation



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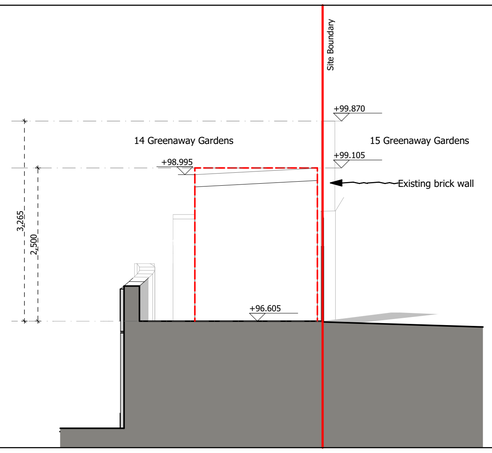
Irrigation Shed - West Elevation



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Irrigation Shed - South Elevation

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Client:

PRIVATE

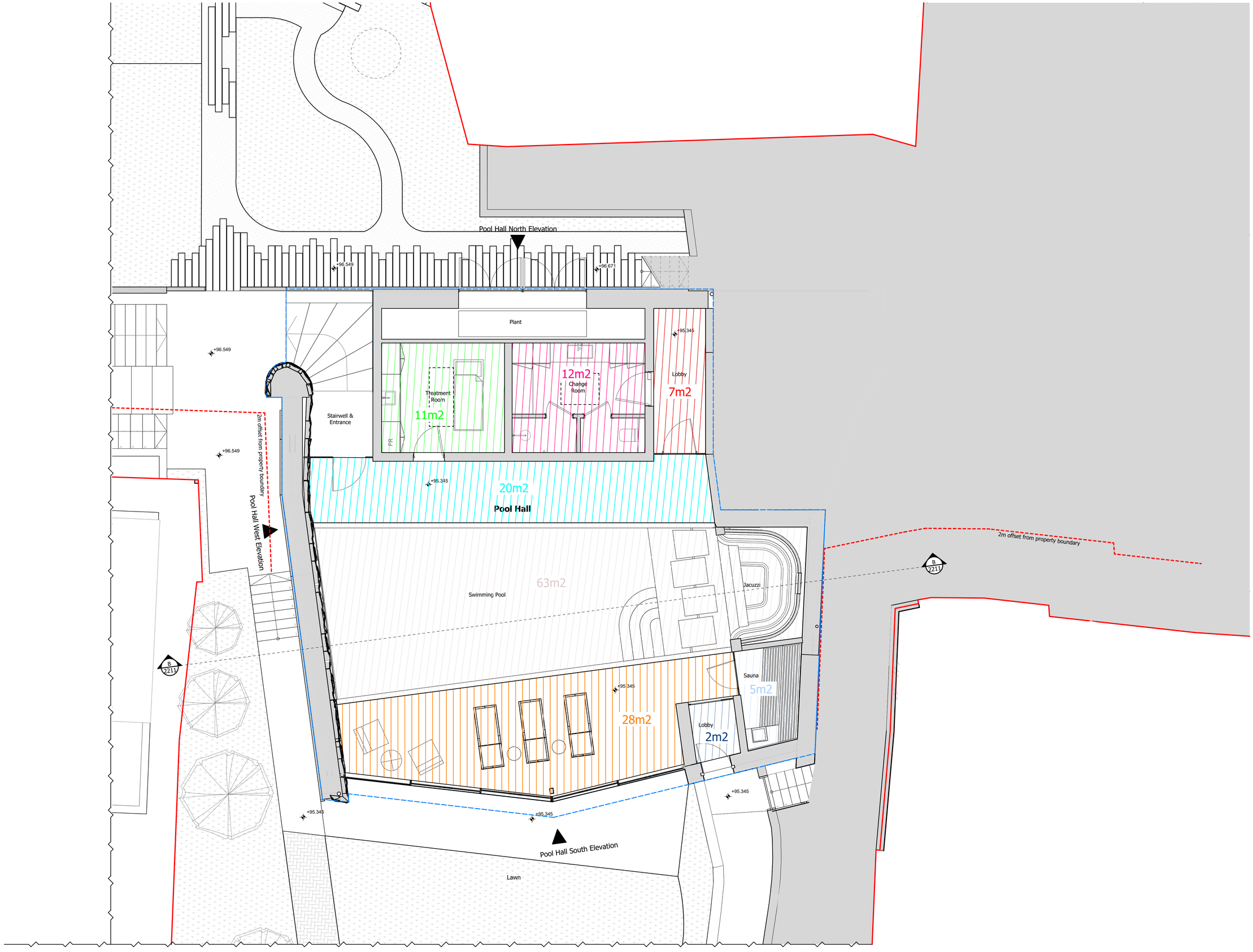
Drawing Title:

GA PLANS

Irrigation Shed - Proposed

(Project number)DWG number_Revision:

(0942)0419_PL01



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14 Greenaway Gardens
Hampstead, NW3 7DH

Client:

PRIVATE

Drawing Title:

GA PLANS

Pool Hall Proposed Ground Floor Plan

(Project number)DWG number_Revision:

(0942)0412_PL01

1

SCALE 1:50 @ A1, 1:100 @ A3

Pool Hall - Proposed Floor Plan

Appendix 2: Thorndon Cottage Appeal - 2124574

The Planning Inspectorate

WR100-070-064

Appeal Decisions

Site visit made on 10 November 2010

by Clive Whitehouse BA(Hons) MCD MRTPI

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

Decision date: 19 November 2010

Appeal A: APP/H1515/X/10/2124574
Thorndon Cottage, Warley Gap, Little Warley, Brentwood CM13 3DP

- 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 M L Atreed & RRJ & CM Dove against the decision of Brentwood Borough Council.
- The application Ref S192/BRW/50/2009, dated 27th October 2009, was refused by notice dated 7th December 2009.
- The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
- The development for which a certificate of lawful use or development is sought is (i) the construction of a detached outbuilding and (ii) the construction of a side and rear extension and the installation of a rear dormer.

Summary of Decision: The appeal is allowed and a lawful development certificate is issued in the terms set out below in the formal decision.

Appeal B: APP/H1515/A/10/2124622
Thorndon Cottage, Warley Gap, Little Warley, Brentwood CM13 3DP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
- The appeal is made by M L Atreed & RRJ & CM Dove against the decision of Brentwood Borough Council.
- The application Ref BRW/693/2009, dated 27th October 2009, was approved on 14th December 2009 and planning permission was granted subject to conditions.
- The development permitted is a two-storey side extension.
- The condition in dispute is No.5 which states that: "Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995, or any subsequent re-enacting Order, the development hereby permitted shall not be implemented if additional habitable floor space over and above that indicated on the approved plans, is formed prior to the implementation of this permission".
- The reason given for the condition is: "The site lies in the Metropolitan Green Belt, wherein the Authority seeks to restrict the formation of habitable floorspace in the interests of amenity".

Summary of Decision: The appeal succeeds and the planning permission is varied in the terms set out below in the formal decision.

Appeal A

Procedural Matter

1. The application included the re-submission of proposals for side and rear extensions and a rear dormer for which the Council had already issued a lawful development certificate (LDC) in 2009 (Ref. S192/BRW/42/2008). The reason

given by the appellants was that "it is considered more useful to have a single certificate that covered the extensions and the outbuilding if the property is sold in the future". The Council refused the LDC application in respect of the outbuilding, but appears to have declined to make a further decision in respect of the re-submitted proposal. The extension scheme has not been refused and there is no appeal against non-determination and therefore no basis for me to consider an appeal. I will confine my attention to the proposed detached outbuilding.

Reasons

2. The appeal property consists of a modest-sized detached house set in a large plot, and it has a lengthy planning history. The extent of the lawful residential curtilage has previously been established by the grant of a LDC, and there is no dispute that the proposed outbuilding would be within the curtilage.

3. The issue is whether the detached outbuilding constitutes permitted development under the terms of Part 1, Class E of the schedule to the Town and Country Planning (General Permitted Development) (No.2) (England) Order 2008 (GPDO). Development under this class is permitted within the curtilage of a dwellinghouse, subject to certain ground coverage and height limitations and provided the building is "required for a purpose incidental to the enjoyment of the dwellinghouse as such"

4. The proposal is for a building about 30m long by 10.5m wide for the purpose of a swimming pool, gym, sauna and stables.

5. Drawings showing three slightly different versions of the building are amongst the appeal documents, and I sought to establish at the site visit which is the plan on which the Council made its decision. One version (200 rev.A) shows the stables as a separate building, but that is dated after the Council's decision and is not be the basis for the appeal. Another drawing shows a kitchen, "breakout area" and shower room within the area originally indicated as stables but the status of that drawing is unclear and it did not appear to be within the Council's file. I will base my decision on the drawing carrying the Council's date stamp of 30 Oct 2009, which shows a single building annotated for the purposes of a swimming pool, gym, sauna and stables.

6. It is common ground that the proposal would comply with the ground coverage and height limitations set out under Class E.1 of the Order. However, the Council considers that the large size of the proposed building (having a footprint about four times that of the existing house) is such that it can not be justified as being reasonably required to serve purposes incidental to the enjoyment of the existing dwellinghouse. The Council describes the proposal as a "lavish leisure complex" that would not be ancillary or subordinate to the dwellinghouse.

7. Both parties make reference to the case of Emin v SSE and Mid Sussex DC [1989], which deals with the questions of building size and incidental uses. The Court held in that case that whereas the relative sizes of the proposed leisure building and the house might be an important consideration, it is not by itself conclusive in determining whether uses meet the "incidental" test. It is also necessary to consider the incidental quality of the uses in relation to the enjoyment of the dwelling house and whether the building is genuinely and reasonably required for its intended purposes.

8. A building to house a swimming pool would clearly be "incidental", as indicated in the wording of paragraph E(a) of Class E. The proposed pool in this case would not be unusually large for domestic family use and I consider that that element of the building would be permitted development.

9. The proposed gym and sauna would also in my view be for a purpose incidental to the enjoyment of the dwellinghouse as such and would not be excessively large.

10. The keeping of pet animals or other livestock is defined in the Order as a purpose incidental to the enjoyment of the dwellinghouse, and a small group of stables within the residential curtilage would satisfy the "incidental" test.

11. Apart from the ground coverage and height limitations set out in E.1 of the Order, the question of "reasonableness" applies to incidental uses. The Judge in the Emin case stated that the scale and type of accommodation could not "rest solely on the unrestrained whim" of the occupier.

12. I consider that each of the elements proposed in this case is capable of being reasonably required for an incidental purpose. It would also in my view be feasible that a family occupying the house could reasonably require each of the elements. The uses would be ancillary to the residential occupation of the house in functional terms, event though the scale of the leisure building would be substantial.

13. I conclude as a matter of fact and degree that the proposed detached leisure building would be permitted development under Class E of the GPDO.

Formal Decision

14. I allow the appeal and I attach to this decision a lawful development certificate describing the extent of the proposed development which I consider to be lawful.

Appeal B

15. Having previously issued a LDC for single storey extensions and a dormer, the Council granted planning permission for a two-storey side extension, but attached a condition that sought to ensure that only one of those schemes would be implemented. The reason given was that the house is in the Green Belt where policies set a limit to the scale of extensions to houses.

16. The 2008 amendments to the GPDO removed the volume limitation that formerly applied to house extensions, making it difficult for the Council to achieve its objective in this case. No additional GPDO limitations apply to houses in the Green Belt compared to the general housing stock.

17. The disputed condition seeks to prevent the two storey extension from being implemented if permitted development extensions such as those covered by the 2009 LDC were carried out first. However, as the appellant points out, the condition does not prevent extensions permitted by the 2008 GPDO from being carried out after the two-storey extension had been built. Consequently, the disputed condition would be ineffective for its stated purpose and therefore unnecessary

18. Furthermore, a condition does not come into effect until the development to which it is attached is implemented, so the disputed condition could not in fact prevent works under the 2008 GPDO from being carried out before the two-

storey side extension is commenced. To achieve its objective in this case the Council would have had to secure a legal agreement to give up permitted development rights before the permission was issued.

19. The Council refers to an unimplemented planning permission granted on appeal for a replacement dwelling on the same site, where the Inspector attached a condition withdrawing permitted development rights for extensions. The difference in that case was that the condition would come into effect when the new house was completed and it would override the permitted development rights enjoyed by the existing dwellinghouse.

20. I conclude that the disputed condition is unreasonable and unnecessary.

Formal Decision

21. I allow the appeal, and vary the planning permission Ref BRW/693/2009 for a two-storey side extension at Thorndon Cottage, Warley Gap, Brentwood granted on 14th December 2009 by Brentwood Borough Council by deleting conditions No.5.

C Whitehouse

INSPECTOR

The Planning Inspectorate

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 2010: ARTICLE 35

IT IS HEREBY CERTIFIED that on 27TH October 2009 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto 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 detached building is permitted development under the terms of the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008.

Signed

C Whitehouse
Inspector

Date 19.11.2010
Reference: APP/H1515/X/10/2124574

First Schedule
Proposed detached outbuilding as shown on drawing No.200 date-stamped 30 October 2009 by the local planning authority.

Second Schedule

Land within the residential curtilage of Thorndon Cottage, Warley Gap, Little Warley, Brentwood.

NOTES

1. This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

2. 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, was not liable to enforcement action, under section 172 of the 1990 Act, on that date.

3. 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.

4. 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.

Appendix 3: 30 Linksway Appeal - 2103482

Appeal Decision

Site visit made on 19 October 2009

by George Mapson DipTP DipLD MRTPI

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

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Decision date:
11 November 2009

Appeal Ref: APP/R5510/X/09/2103482
30 Linksway, Northwood, Middlesex HA6 2XB

- 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 Mrs Annar Amersi against the decision of the Council of the London Borough of Hillingdon.
- The application Ref 18329/APP/2008/2986, dated 14 October 2008, was refused by a notice dated 9 December 2008.
- 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 described as "*proposed swimming pool enclosure in rear garden – drawings 2659/1 and 2*". The Council's decision notice described the proposal as "*the proposed erection of a single storey detached outbuilding for use as a swimming pool within the curtilage of a dwellinghouse*".

Decision

1. I allow the appeal, and I attach to this decision a certificate of lawful use or development describing the proposed operation which I consider to be lawful.

Main issue

2. The main issue is whether the Council's decision to refuse to grant a lawful development certificate was well-founded.

Reasons

The site

3. No. 30 Linksway is a large detached dwellinghouse that stands in spacious grounds. The plot is about 25m wide and about 75m long, giving an overall area of about 2,025sqm (see Plan B attached).

The proposal

4. The proposal is to construct a single storey building – comprising a swimming pool, steam room, leisure room, shower and toilet, and plant room - within the curtilage of the dwellinghouse (see Plan A attached).

5. The proposed building would measure about 6.6m by 20.45m and would have an eaves height of 2m and a ridge height of 4m. The total footprint area would be about 144sqm, and would occupy about 10% of the net area of the curtilage of the dwellinghouse[1]. It would replace two existing buildings (an artist's studio and a summer house) which have a combined footprint of about 33.31sqm.

[1] The area of the plot excluding the footprint of the dwellinghouse itself.

6. The evidence confirms that it would be used solely by the family who occupy the house.

Conflict of views on the size of the existing dwellinghouse

7. The parties disagree on the footprint size of the existing dwellinghouse. According to the appellant's calculations, it is about 264 sqm; according to the Council it is about 187sqm. Based on the appellant's estimate, the footprint of the proposed building would have a footprint equivalent to about 54% of the dwellinghouse. The Council, however, estimates that it would have a footprint equivalent to about 77% of the dwellinghouse.

Conflict of views on whether the proposal would constitute permitted development

8. The appellant considers that the proposed development would constitute permitted development under Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (Amendment) (No.2) England) Order 2008, because it would comply with all the size restrictions and limitations specified in that Class.

9. The Council considers that the proposed development would not constitute permitted development under that Class, because Class E applies only to a building or enclosure, swimming or other pool "*required for a purpose incidental to the enjoyment of the dwellinghouse as such*". In the Council's opinion the proposed building exceeds what is required for those purposes.

Appeal and High Court decisions

10. The Council's opinion was influenced by two appeal decisions[2] and one High Court judgment (*Emin*[3]), where it was held that the outbuildings proposed were not permitted development because they were not "*required for a purpose incidental to the enjoyment of the dwellinghouse as such*".

11. In the first appeal case, the proposed development represented a 161% increase on the footprint of the existing dwellinghouse. In the second appeal case, the proposed development represented a 263% increase on the floor area of the existing dwellinghouse. In *Emin*, the proposed development represented a 182% increase on the floor area of the existing dwellinghouse.

The tests in 'Emin'

12. In *Emin* the Court held that, in order to attract the planning permission granted by the Order, the erection or construction of a building must be required for a purpose incidental to the enjoyment of a dwellinghouse as a dwellinghouse and not for extraneous purposes. It was therefore necessary to ensure that it is incidental or conducive to the very condition of living in the dwellinghouse.

13. In that context the physical size of the building could be a relevant consideration, in that it might represent some index of the nature and scale of the activities.

14. The Court held that the use of a building cannot rest solely on an unrestrained whim but connotes some sense of reasonableness in the circumstances of the particular case. The word "incidental" implies an element of subordination, in land use terms, in relation to the enjoyment of the dwellinghouse itself.

[2] Appeal Ref. Nos. APP/R5510/X/07/2061776 and APP/X0360/X/01/1072016

[3] Emin v SSE and Mid Sussex DC [1989] JPL 909

15. The Court endorsed the general approach adopted by the Secretary of State in that appeal and agreed that the test to be applied was whether the uses of the proposed buildings, when considered in the context of the "planning unit", are intended and will remain ancillary or subordinate to the main use of the property as a dwellinghouse. It was correct to consider the nature and scale of that use in the context of whether it is a purpose incidental to the enjoyment of the dwellinghouse.

My assessment and conclusions

16. I am satisfied that the proposed building is not excessively large in comparison to the existing dwellinghouse and that it would be subordinate to the main use of the property as a dwellinghouse. There is no evidence to suggest that it would be put to any purpose other than one which would be incidental to the enjoyment of the dwellinghouse.

17. The *Emin* test – that the use of the proposed building, when considered in the context of the planning unit, is intended and will remain ancillary or subordinate to the main use of the property as a dwellinghouse – is therefore met.

18. I have taken account of all the matters raised, but for the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the proposed swimming pool enclosure in rear garden 30 Linksway, Northwood, Middlesex HA6 2XB was not 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.

George Mapson

INSPECTOR

Lawful Development Certificate

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TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (GENERAL DEVELOPMENT PROCEDURE) ORDER 1995: ARTICLE 24

IT IS HEREBY CERTIFIED that on 14 October 2008 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and cross-hatched in red on Plan A 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 development would constitute permitted development under Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (Amendment) (No.2) England) Order 2008. It would comply with all the size restrictions and limitations specified in that Class.

George Mapson
INSPECTOR

Date: 11 November 2009

Reference: APP/R5510/X/09/2103482

First Schedule

The proposed erection of a single storey detached outbuilding for use as a swimming pool within the curtilage of a dwellinghouse

(See Plan A)

Second Schedule

Land at 30 Linksway, Northwood, Middlesex HA6 2XB

(See Plan B)

NOTES

1. This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

2. 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, would not have been liable to enforcement action, under section 172 of the 1990 Act, on that date.

3. 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.

4. 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

Plan A

This is Plan A referred to in the Lawful Development Certificate dated: 11/11/09

by George Mapson DipTP DipLD MRTPI

Land at 30 Linksway, Northwood, Middlesex HA6 2XB

Reference: APP/R5510/X/09/2103482

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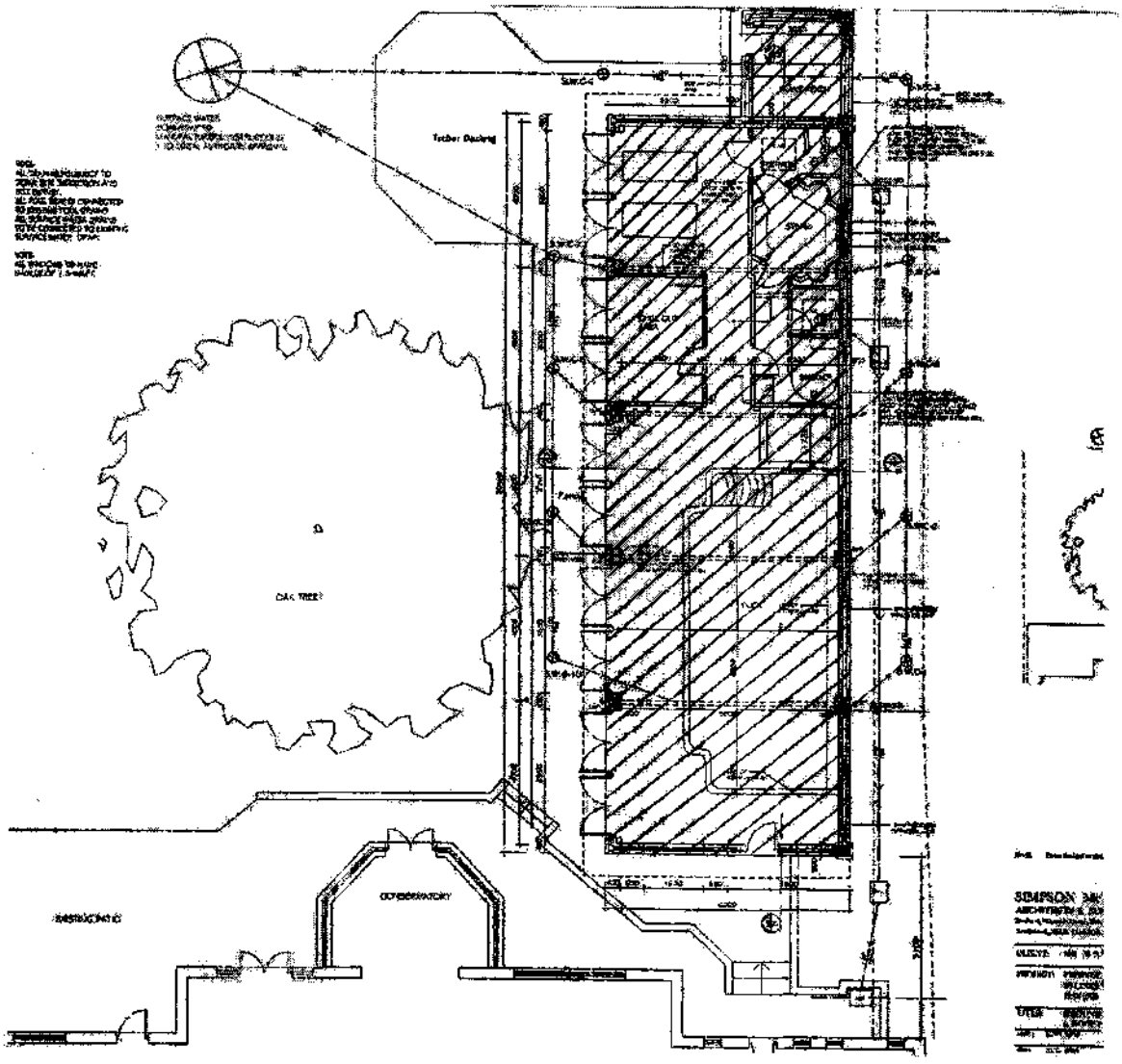
Scale:



Plan B

This is Plan B referred to in the Lawful Development Certificate dated: 11/11/09

by George Mapson DipTP DipLD MRTPI

Land at 30 Linksway, Northwood, Middlesex HA6 2XB

Reference: APP/R5510/X/09/2103482

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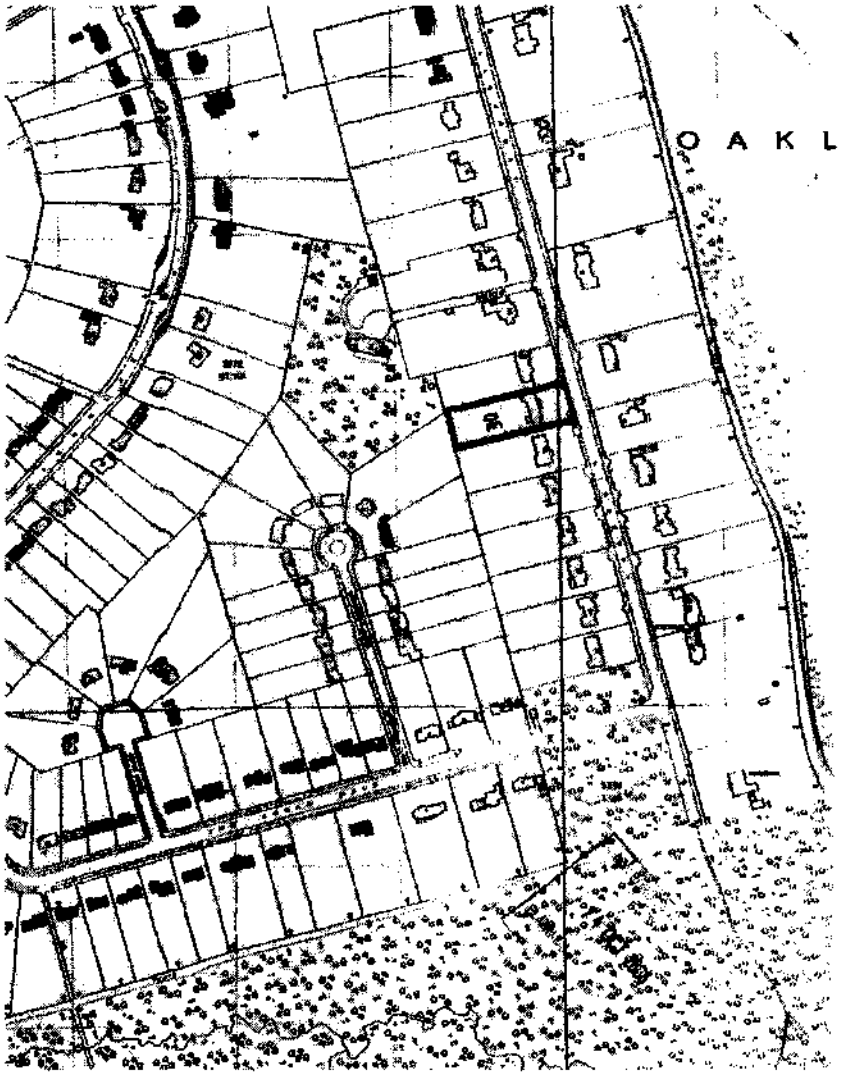
Scale:

Location plan



Appendix 4: Porters Cross Appeal - 2102032

Appeal Decision

Site visit made on 26 October 2009

by N P Freeman BA(Hons) Dip TP MRTPI DMS

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

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Decision date:
28 October 2009

Appeal Ref: APP/X0360/X/09/2102032
Porters Cross, Crazies Hill, Wargrave, Nr Reading, Berks, RG10 8PX

- 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 M Bigley against the decision of Wokingham Borough Council.
- The application Ref. CLP/2009/0322, received by the Council on 18 February 2009, was refused by notice dated 13 March 2009.
- The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
- The development for which a LDC is sought is the proposed erection of a pool building, pathway and tennis court.

Summary of Decision: The appeal is allowed and a LDC is issued, in the terms set out below in the Formal Decision.

Application for costs

1. An application for costs was made by the appellant against the Council. This application is the subject of a separate Decision.

Procedural matter

2. The Council's decision notice makes it clear that it is the detached pool building which it is claimed would be unlawful. The informative on the notice indicates that, although the tennis court and associated fencing would constitute development, this would be 'permitted development' by virtue of certain rights conveyed by The Town and Country Planning (General Permitted Development) Order (GPDO) 1995 (as amended). However, no split decision granting a LDC for this aspect has been issued. The matter before me is therefore whether the proposed pool building would be lawful having regard to the rights conveyed by Schedule 2 (Part 1) (Class E) of the GPDO[1]. If it is then the appeal should be allowed and an LDC granted for all elements of the development referred to in the application. I have been provided with copies of the drawings submitted with the application and will base my decision upon them[2].

Inspector's Reasoning

3. It is not disputed that the proposed pool building is development. The issue is whether it is permitted development by virtue of Class E which permits, amongst other things, the provision within the curtilage of a dwellinghouse of a swimming or other pool required for a purpose incidental to the enjoyment of a

[1] For ease of reference I will simply refer to Class E
[2] Drawing Nos. 08.231.003; 004; 017 & 018

dwellinghouse. There is agreement that the building in question falls within the curtilage of the appeal property and meets all the conditions that are relevant set out in Paragraph E1. However, the Council argue that due to the size and scale of the building in relation to the existing dwelling, which they claim would be disproportionately large, it is not "incidental" and therefore not permitted development by virtue of Class E.

4. The Council have also referred to the size of replacement dwelling that has been permitted (said to have a floor area of 217 sq.m.) which they say is subject to a condition removing permitted development rights for outbuildings and extensions. I do not consider that this has any bearing on the lawfulness of what is before me as the permission has not been implemented and consequently the particular condition is of no effect at this time.

5. I start by reviewing the key case law which has been referred to[3]. Games rooms and pool buildings are capable of being a type of use which is incidental to a dwellinghouse. A building used primarily for archery could also fall within this category and it was wrong for an Inspector to say that proposed buildings could not reasonably be said to be required for a use reasonably incidental to the enjoyment of the dwelling as such because they would provide more accommodation for secondary activities than the dwelling provided for primary activities[4]. The court held in *Emin* that this was not part of the test as to what buildings fell within Class E. Nevertheless, the test must retain an element of objective reasonableness and should not be based on the unrestrained whim of an occupier[5]. On the other hand, a hard objective test should not be imposed to frustrate the reasonable aspirations of a particular owner or occupier so long as they are sensibly related to the enjoyment of the dwelling. These cases and another[6] indicate that with each case it is a matter of fact and degree based on the particular circumstances.

6. The single storey pool building in this case would have a floor area of about 200 sq.m.[7] and would be sited a short distance from the house within the garden. The pool itself would have a maximum length of about 12m (to the semi-circular end) and a width of about 4.5m. There would be 2 changing rooms and a plant room at the northern end.

7. The Council argue that although the pool itself is of an average size for a domestic pool, the building[8] could be much smaller and still accommodate the pool. I have noted the response of the agent and tend to agree that the circulation space around the pool is primarily a matter for the appellant provided it is not unreasonable or excessive. In my view this is not the case and it is to be expected that some space is provided around the pool for relaxation and safety purposes. The changing rooms and plant room seem relatively modest to me and within the realms of reasonableness. In the light of *Emin* I do not consider it right that the Council should seek to impose some arbitrary limitation on the building size in proportion to the pool size.

[3] Summarised at paragraph 3B-2068.13 of the Encyclopaedia of Planning, Law and Practice
[4] Emin V SSE [1989] JPL 909
[5] Wallington v SoS for Wales [1990] 62 P & CR 150; Holding v FSS [2004] JPL 1405; Croydon LBC v Gladden [1994 1 PLR 30
[6] Peche d'or Investments v SSE [1996] JPL 311
[7] This is the Council's figure with which I tend to agree with based on measurement from the submitted plans; the agent claims it would slightly larger at 210 sq.m.
[8] I calculate a maximum length of about 21.5m and width of 9.6m

8. I turn to the size of the pool building in relation to the existing dwelling. Both the Council and the appellant's agent have provided me with some figures. I consider that the car port area should be included as this is a permanent brick structure which is physically attached to the dwelling. It seems from the calculations before me that the Council have failed to include the first floor area and their floorspace figure (as existing) is significantly less than that provided by the agent. However, I also have some difficulty reconciling the agent's figures with the plans before me based on my rough examination.

9. I do not have any survey information or large scale plans of the existing house and it is therefore not possible reach a definitive conclusion on the floor area. However it appears that the footprint of the house as it stands is about 235 sq.m.[9] It is then necessary to add the first floor area (i.e. the second storey of the house). This appears to be about 65 sq.m. So as a rough estimate I consider the floor area to be about 300 sq.m. – and not 413.26 as suggested by the agent. Comparing this figure with that of the pool building, I calculate that the pool building would have a floor area about 67% of the existing dwelling. This compares with a figure of about 51% advanced for the appellant. Whichever of these figures are taken, it is clear that the floor area of the pool building would remain subordinate to the house. I have also taken into consideration the size of residential curtilage which is substantial. I am therefore satisfied that the size of the building and its use would be within the bounds of objective reasonableness when considering whether it is incidental.

10. In reaching this finding I have taken account of 2 appeal decisions to which I have been referred[10]. The Shinfield Road decision concerned a games and gym room. The Inspector found that, based on the lack of evidence as to why the building had to be so large (about twice the floor area of the existing dwelling) and having regard to the size of the largest snooker table, the test of objective reasonableness was not met. The circumstances in this case have not led me to the opposite conclusion. In the Greenacres Farm case, the floorspace of what was described as a lavish leisure complex was about 400 sq.m. as compared with a floor area of 152 sq.m. for the existing bungalow – an increase of about 2.5 times. I consider that the nature of the uses to which the building was to be put and its size in relation to the host building are not comparable with the situation before me. Indeed, the floorspace increase in that case was of a totally different quantum. In both of these cases the percentage increase in floorspace would have been significantly greater.

11. Bringing these points together, as a matter of fact and degree, I find that the proposed pool building would satisfy the test of being required for a purpose incidental to the enjoyment of the dwellinghouse as such. Accordingly it would be permitted development by virtue of the rights conveyed by Class E of Part 1 of Schedule 2 of the GPDO. For the reasons given above I conclude that the Council's refusal to grant a LDC in respect of the swimming pool building was not 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.

[9] Based on ground floor area of about 175 sq.m. plus 60 sq.m. for the car port (for the latter I have taken a figure between 64 sq.m. (LPA) and 56 sq.m. (Appt))
[10] APP/X0360/X/08/2064462 – 253 Shinfield Road, Reading & APP/X0360/X/01/1072016 – Greenacres Farm, Nine Mile Ride, Finchhampstead

Formal Decision

12. I allow the appeal, and I attach to this decision a certificate of lawful development (LDC) describing the proposed operation which I consider to be lawful.

N P Freeman

INSPECTOR

Lawful Development Certificate

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TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (GENERAL DEVELOPMENT PROCEDURE) ORDER 1995: ARTICLE 24

IT IS HEREBY CERTIFIED that on 18 February 2009 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black on the Plan A attached to this certificate, would have been lawful within the meaning of section 192 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The development described would be permitted development by virtue of the rights conveyed by Class E of Part 1 of Schedule 2 of The Town and Country Planning (General Permitted Development) Order 1995 (as amended 2008 by SI No. 2362).

Signed

N P Freeman
Inspector

Date: 28 October 2009

Reference: APP/X0360/X/09/2102032

First Schedule:

Proposed erection of pool building, pathway and tennis court (as shown on Drawing Nos. 08.231.003, 08.231.004, 08.231.017 & 08.231.018).

Second Schedule:

Land at Porters Cross, Crazies Hill, Wargrave, Nr Reading, Berks, RG10 8PX.

NOTES

1. This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

2. 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, would not have been liable to enforcement action, under section 172 of the 1990 Act, on that date.

3. 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.

4. 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.

Plan A

This is the plan referred to in the Lawful Development Certificate dated: 28/10/09

by N P Freeman BA(Hons), DipTP, MRTPI, DMS

Land at: Porters Cross, Crazies Hill, Wargrave, Nr Reading, Berks, RG10 8PX

Ref: APP/X0360/X/09/2102032

The Planning Inspectorate
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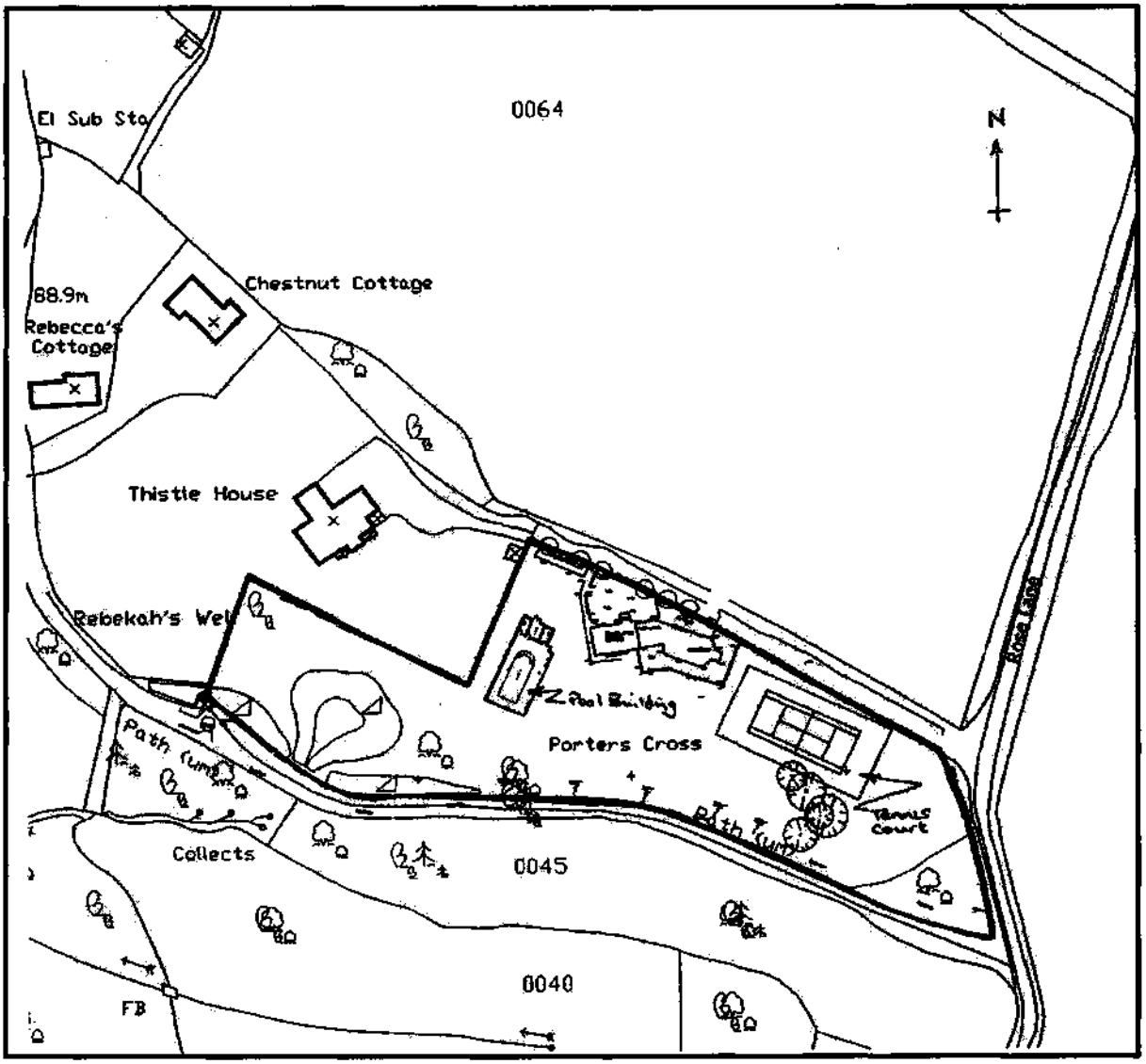
Do not scale



Costs Decision

Site visit made on 26 October 2009

by N P Freeman BA(Hons) Dip TP MRTPI DMS

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

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Decision date:
28 October 2009

Costs application in relation to Appeal Ref: APP/X0360/X/09/2102032
Porters Cross, Crazies Hill, Wargrave, Nr Reading, Berks, RG10 8PX

- The application is made under the Town and Country Planning Act 1990, sections 195, 196(8) and Schedule 6 and the Local Government Act 1972, section 250(5).
- The application is made by Mr M Bigley for a full award of costs against Wokingham Borough Council.
- The appeal was against the refusal of a certificate of lawful use or development (LDC) for the proposed erection of a pool building, pathway and tennis court.

Summary of Decision: The application fails and no award of costs is made.

Reasons

1. I have considered this application for costs in the light of Circular 03/2009 (the circular) which advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur or waste expense unnecessarily.

2. Paragraph A22 of the circular indicates that the word unreasonable should be given its normal meaning and refers to Part B of the annex where common examples of what could amount to unreasonable behaviour are cited. The appellant's agent has referred to some of these and I will address each in turn.

3. Paragraph B15 makes it clear that planning authorities are at risk of an award of costs against them if they prevent or delay development which could clearly have been permitted having regard to the development plan, national policy and other material considerations. It seems to me that this is primarily aimed at the consideration of planning applications on their merits and not LDC applications which concern the legal interpretation of the legislation. Moreover, I am satisfied that the Council has provided a reasonable explanation of why they adopted the position they have taken. Whilst I have not agreed with their reasoning they have provided arguments to defend their stance.

4. Reference is also made to paragraph B16 which requires evidence to be produced to substantiate the reasons for refusal. Based on my comments above I consider that such evidence has been adduced by the Council in this case. It is also claimed that the Council have acted contrary to well-established case law which is at odds with the advice in paragraph B29. I consider that the cases cited and discussed in my Appeal Decision make it clear that there is no hard objective test and that each proposal needs to be considered in the light of the particular circumstances applying. There are court authorities pulling in different directions and much depends on the interpretation of the facts and a significant element of subjective judgement.

On this basis I do not accept that the Council clearly went against well-established case law.

5. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in Circular 03/2009 has not been demonstrated.

Formal Decision

6. I refuse the application for an award of costs.

N P Freeman

INSPECTOR

CASE OFFICER

PLANNING

19 FEB 2009

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REF

0322 19.FEB09

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spratley studios

Notes:

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Project:
PORTERS CROSS
CRAZIES HILL

Client:

Status:
PLANNING

Drawn:
AB

Description:
SITE LOCATION PLAN

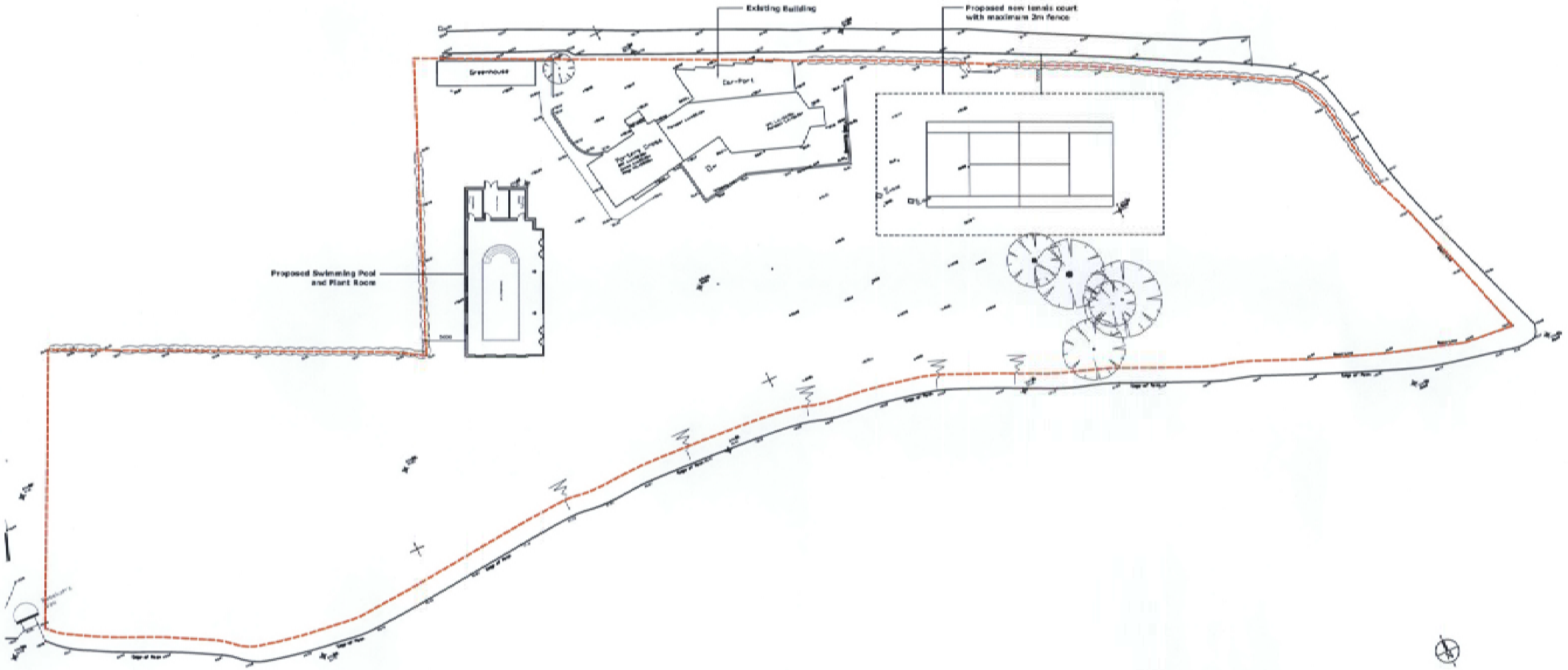
Date:
APRIL 2008

Scale:
1:1250 @ A3

Job No:
08.231.

Drawing No:
003

Rev:



PORTERS CROSS, CRAZIES HILL

PROPOSED SITE PLAN

0322 19FEB09

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Notes:

spratley studios

Project: PORTERS CROSS CRAZIES HILL

Client:

Status: PLANNING

Drawn: AB

Description: PROPOSED SITE PLAN

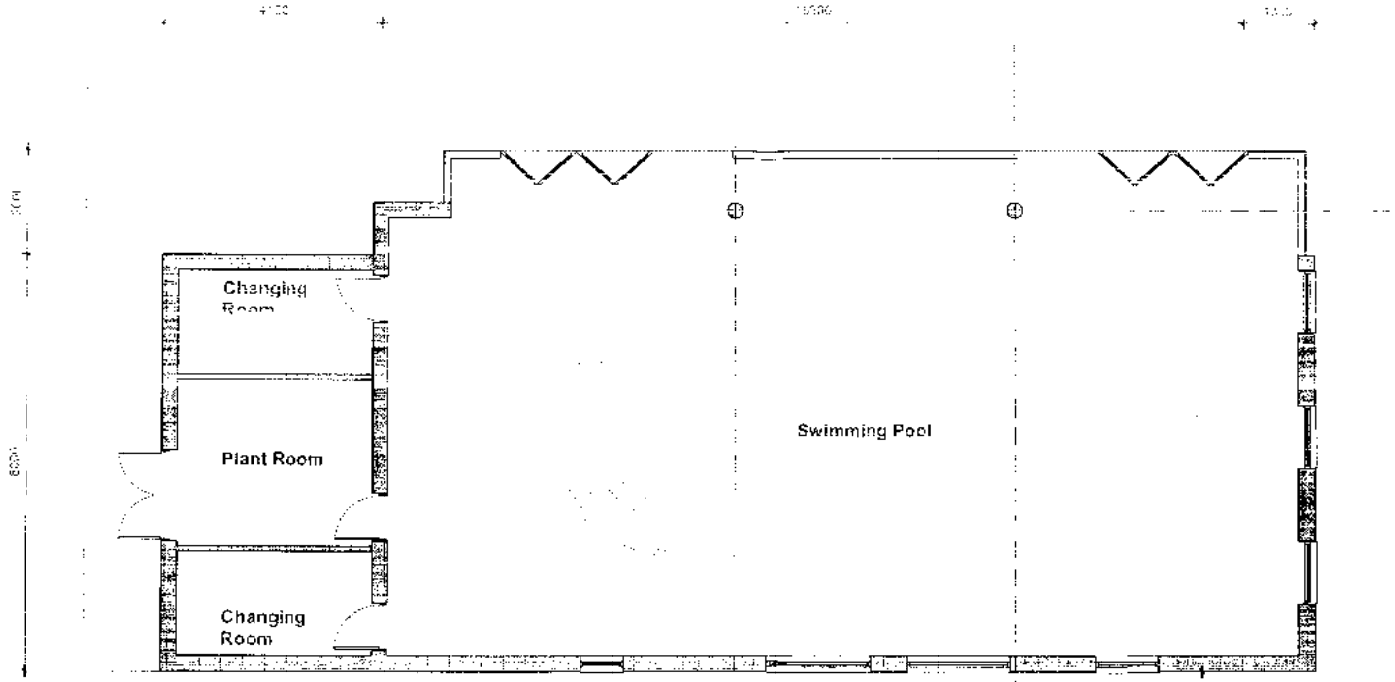
Date: APRIL 2008

Scale: 1:500 @ A3

Job No: 08.231.004

Drawing No:

Rev:



FLOOR PLAN

0322 19FEB09

PORTERS CROSS
CRAZIES HILL

PROPOSED SWIMMING POOL

PLANNING

YW

08.231.017

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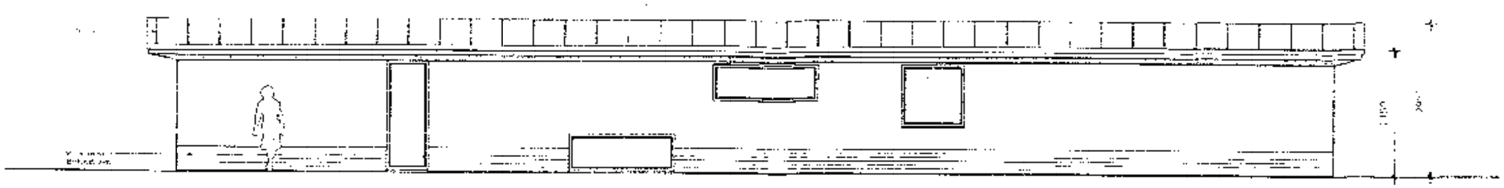

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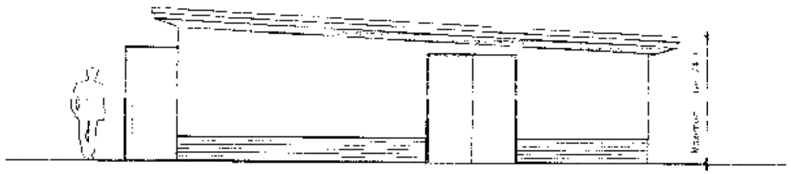
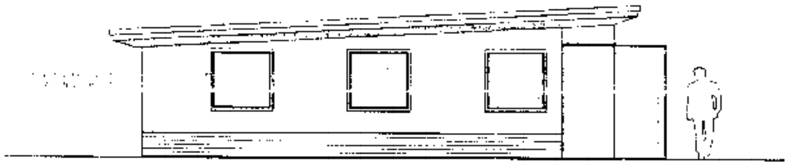
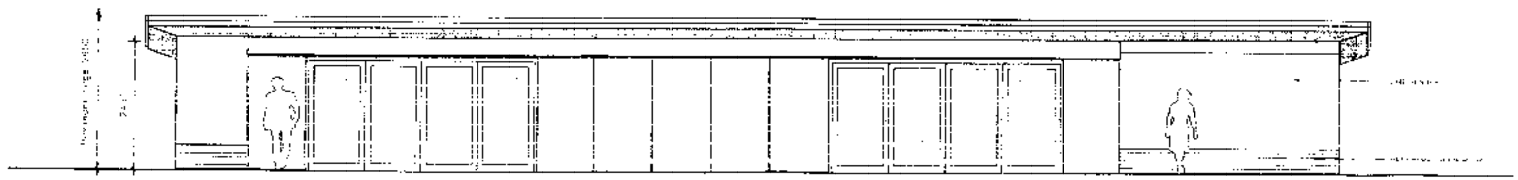


NORTH ELEVATION



SOUTH ELEVATION



EAST ELEVATION

0322 19FEB09

PORTERS CROSS
CRAZIES HILL

PROPOSED SWIMMING ELEVATIONS

Date: APRIL 2008
Scale: 1:100 @ A3

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Status: PLANNING
Drawn: YW

Drawing No: 08.231.018

Appendix 5: 25 Conmoor Road Appeal - 3001056

The Planning Inspectorate

Appeal Decision

Site visit made on 28 August 2015

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

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

Decision date: 17 September 2015

Appeal Ref: APP/H4505/X/14/3001056

25 Cornmoor Road, Whickham, Gateshead NE16 4PU

- 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 Rodney Scullard against the decision of Gateshead Metropolitan Borough Council.
- The application Ref DC/14/01096/CPL, dated 6 October 2014, was refused by notice dated 14 November 2014.
- The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
- The use for which a certificate of lawful use or development is sought is 'the provision within the curtilage of the dwellinghouse of a building required for purposes incidental to the enjoyment of the dwellinghouse'.

Decision

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

Procedural matter

2. An application for costs has been made by Mr Rodney Scullard against the Council. This application is the subject of a separate Decision.

Reasons

3. 25 Cornmoor Road is a detached dwelling in a residential plot that is about 18 metres wide and 113 metres deep. The dwelling is about 19 metres from the east frontage to the road. Behind the dwelling is a single garage and about in the middle of the plot is a brick outhouse. The proposed building would be sited to the rear of the plot and a drawing submitted with the application, drawing no. 828-02, indicates that it would be 10 metres wide and 20 metres deep, and would comprise a lobby, a plant/store room, a shower/changing room, and a swimming pool 5 metres wide and 12 metres long surrounded by walkways.

4. The application was submitted when The Town and Country Planning (General Permitted Development) Order 1995 as amended (the GPDO) was in force. The Appellant maintains that the proposed building would be permitted development under the provisions of Class E of Part 1 of Schedule 2 of the GPDO; which provides for 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. The Council accepts that the building would satisfy the dimensional conditions of Class E.

5. The main issue in this case is whether the proposed swimming pool building is required for a purpose incidental to the enjoyment of the dwellinghouse.

6. Both main parties have referred to the judgement in *Emin v SSE and Mid-Sussex District Council [1989] 58 P & CR 416* (Emin) and this case is directly relevant to the appeal. The Council maintains that Emin "…established that the building must be "*required*" for the incidental purpose, and that it is a matter primarily for the occupier to demonstrate what incidental purposes they intend to enjoy". That the building must be 'required' for the incidental purpose was not established in Emin; it is stated in Class E of Part 1 of Schedule 2 of the GPDO itself. On the second matter, the application that is the subject of the appeal is clear on its face; though under 'Information about the existing use' when it is a proposed use, the incidental purpose for the building is stated to be "…to house a small swimming pool with changing and shower room and plant room". The layout and scale of the building, and its relationship to the dwelling and its plot, are also shown on a drawing that was submitted with the application.

7. The Council are correct in stating that Emin established that "The term '*required*' is…interpreted for the purposes of applying Class E as meaning '*reasonably required*'". In their appeal statement they go on to claim that "…it is clear that the Appellant must provide evidence over and above that which merely proposes a building of dimensions that fall within the scope of…(Class)…E (of Part 1 of Schedule 2) of the GPDO. Further evidence which addresses the incidental element of the uses in relation to the enjoyment of the dwellinghouse and whether the buildings are genuinely and reasonably required for their intended purpose is also required". The Council has clearly considered whether there is a genuine, as well as reasonable, requirement for the building. In a Delegated Decision Report an Officer of the Council indicates that the uses and activities which the building would accommodate must "…genuinely reflect the reasonable needs of the existing and prospective occupiers of…" the dwellinghouse. Two appeal decisions referred to by the Council (2206377 and 2201544) do refer to a genuine need but in both cases there was doubt about the size of the accommodation for the proposed use, neither of which was solely a swimming pool. The size of the proposed building in this case, and therefore of genuine need, is considered below.

8. The Appellant's Agent is correct in questioning the Council's need for further information. Such proof, or any other evidence as to why the building is required for its clearly stated purpose, is not required to justify a conclusion that the building would be required for its intended purpose. It is worth noting, in this regard, that the Applicant could not satisfy the Council's requirement that the building must reflect the reasonable needs of 'prospective' occupiers of the dwellinghouse. Having established that the proposed building "…would accommodate activities which, in principle, are capable of being considered incidental to the enjoyment of a dwellinghouse" the aforementioned Council Officer has gone on to ask unnecessary questions such as "…how (would) the proposed facilities…be utilised", and "…how…(the building)…would interact with the existing residential accommodation". The Officer has also, somewhat irrationally given the nature of the proposals, gone on to state that "The application does not show why the nature and scale of the uses…cannot be reasonably accommodated within the existing property…".

9. The Appellant is not required to demonstrate that he or any other occupants of the dwellinghouse enjoy swimming and would benefit from the physical exercise and enjoyment of such an activity. The provision of a swimming pool within the

curtilage of the dwellinghouse would be required for a purpose incidental to the enjoyment of the dwellinghouse. However, in the context of whether the building is reasonably required, Emin does require that consideration is given to whether the scale of the building is necessary, though the judgement does state that "…size may be an important consideration but not by itself conclusive". The proposed building would have a footprint of 200 square metres. The swimming pool itself would be on the small side for a private swimming pool but would be sufficient for meaningful exercise and leisure activities, the plant room and the shower/changing room are necessary ancillary accommodation and would be no bigger than they need to be, and the surrounding walkways would be necessary to maintain safety when the swimming pool is in use. The building, in terms of size, is reasonably required to provide a no more than adequate facility for its intended purpose.

10. The dwellinghouse has a footprint of about 109 square metres and the proposed building would be about 183% larger in footprint than the dwellinghouse. The author of the Delegated Decision Report stated in it that "It has not been demonstrated that any of the accommodation is reasonably required on such a large scale in relation to such a relatively small property". The building is not over large for its intended purpose and the property is not just the dwellinghouse but a large residential plot of about 2000 square metres. The building would be larger than the dwellinghouse but would take up only 10% of the curtilage of the dwellinghouse; significantly less than the 50% maximum that is a condition of Class E of Part 1 of Schedule 2 of the GPDO. In any event, the size of the proposed building is an important consideration but is not by itself conclusive.

11. The building, in terms of its size, is reasonably required to provide a no more than adequate facility for its intended incidental purpose. It would be large in comparison to the existing dwellinghouse but this consideration is offset by its small size in comparison with the size of the residential plot within which it would be located. The proposed building is reasonably required for a purpose incidental to the enjoyment of the dwellinghouse as such. There is no evidence to indicate that the building is proposed, with reference to Emin, on a 'whim' rather than on a desire to provide a facility that is associated with enjoyment of the dwellinghouse. If the swimming pool building was to be constructed in accordance with an LDC any alterations to, or future use of, the swimming pool building, which did not accord with the terms of the LDC, would be subject to planning control.

12. Both main parties have referred to several appeal decisions in support of their cases. These decisions provide useful background information but this appeal has been judged on its merits and with regard to the facts of the case.

13. For the reasons given above the Council's refusal to grant a certificate of lawful use or development in respect of the provision within the curtilage of the dwellinghouse of a building required for purposes incidental to the enjoyment of the dwellinghouse at 25 Cornmoor Road, Whickham, Gateshead was not well-founded and the appeal thus succeeds. The powers transferred under section 195(3) of the 1990 Act as amended have been exercised accordingly.

John Braithwaite

Inspector

The Planning Inspectorate

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 2010: ARTICLE 35

IT IS HEREBY CERTIFIED that on 6 October 2014 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black 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 no. 828-02, dated September 2014, is reasonably required for a purpose incidental to the enjoyment of the dwellinghouse.

Signed

John Braithwaite

Inspector

Date: 17 September 2015

Reference: APP/H4505/X/15/3001056

First Schedule

The provision within the curtilage of the dwellinghouse of a building required for purposes incidental to the enjoyment of the dwellinghouse.

Second Schedule

Land at 25 Cornmoor Road, Whickham, Gateshead NE16 4PU

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, was 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.

The Planning Inspectorate

Plan

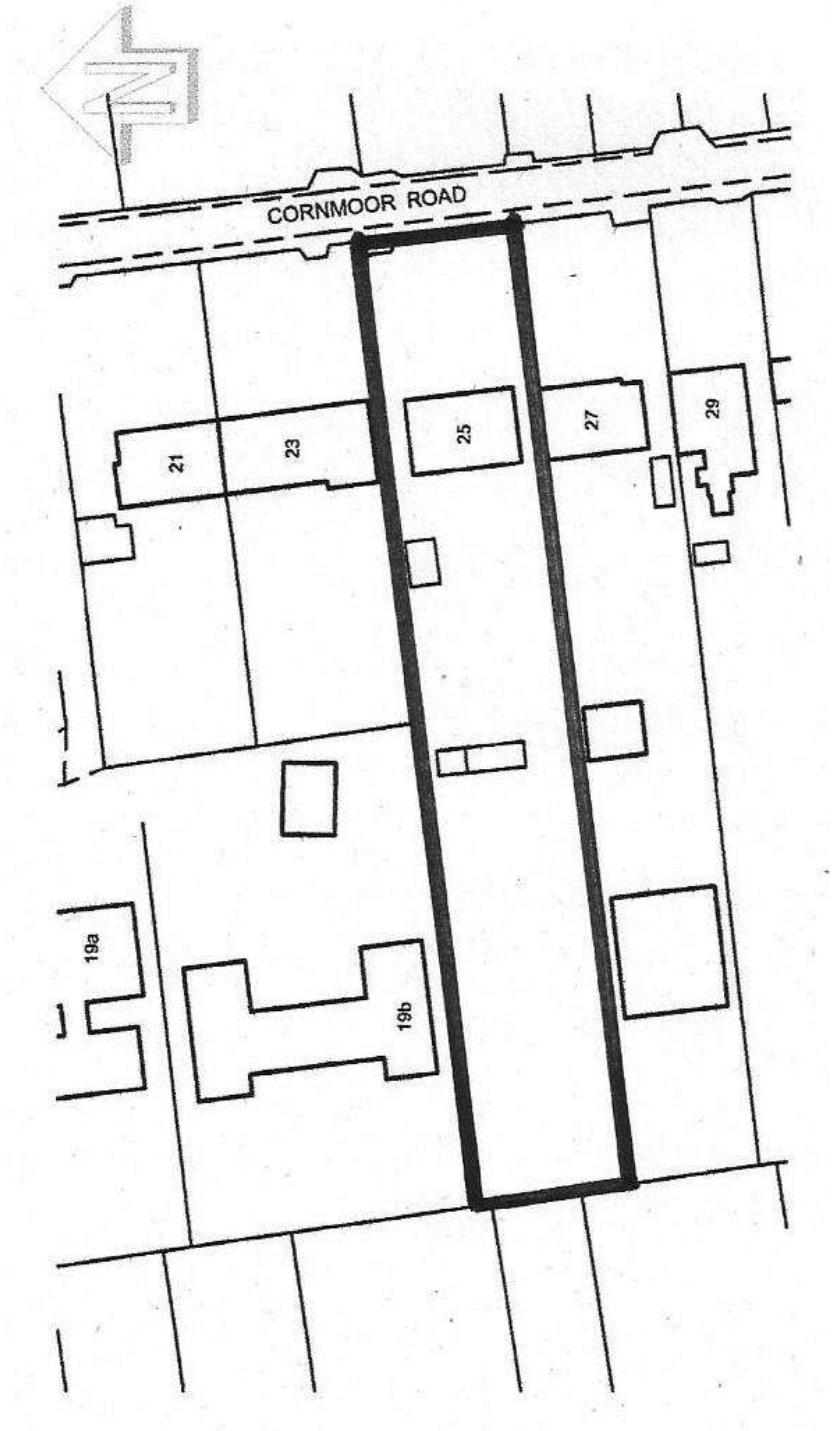
This is the plan referred to in the Lawful Development Certificate dated: 17 September 2015

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

Land at 25 Cornmoor Road, Whickham, Gateshead NE16 4PU

Reference: APP/H4505/X/14/3001056

Scale: not to scale



The Planning Inspectorate

Costs Decision

Site visit made on 28 August 2015

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

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

Decision date: 17 September 2015

Costs application in relation to Appeal Ref: APP/H4505/X/14/3001056
25 Cornmoor Road, Whickham, Gateshead NE16 4PU

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
- The application is made by Mr Rodney Scullard for a full award of costs against Gateshead Council.
- The appeal was against the refusal of a certificate of lawful use or development for the provision within the curtilage of the dwellinghouse of a building required for purposes incidental to the enjoyment of the dwellinghouse.

Decision

1. The application for an award of costs is refused.

Reasons

2. Circular 03/2009 has been superseded by sections of the National Planning Practice Guidance (NPPG). The NPPG advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.

3. This claim for costs has been judged on its merits and with regard to circumstances relating to the application and to the appeal. The Council's actions and behaviour in other applications and appeals are not relevant.

4. The Council has, appropriately, had regard to relevant case law and to appeal decisions. There are many recent LDC appeal decisions on the subject of the application of Class E of Part 1 of Schedule 2 of the GPDO and it was not unreasonable for the Council, as did the Appellant's Agent, to have specific regard to those that supported their case. Applying the principles established in Emin does require a degree of subjective judgement to be exercised when considering the scale of a proposed building against the scale of the dwellinghouse and the plot within which it would be situated. The Council compared the scale of the proposed building with that of the dwelling but paid no regard to the scale of the plot, even though this has been a matter considered in several of the appeal decisions. It is unlikely, however, if they had, that they would have reached a different decision in this case. The Council has exercised planning judgement with due regard to relevant case law and appeal decisions, and has not acted unreasonably. The Appellant, whose personal choice it was to engage the services of an Agent, has not wasted expense unnecessarily and the claim for costs thus fails.

John Braithwaite

Inspector

Appendix 6: Little Heath Appeal - 2107624

Appeal Decision

Site visit made on 17 November 2009

by P N Jarratt BA (Hons) DipTP MRTPI

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

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Decision date:
2 December 2009

Appeal Ref: APP/X0360/X/09/2107624
Little Heath, Roman Ride, Crowthorne, Berkshire, RG45 6BU

- 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 C Richards against the decision of Wokingham Borough Council.
- The application Ref CLP/2009/0482, dated 11 March 2009, was refused by notice dated 6 May 2009.
- 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 single storey outbuilding for use as a garage/gym/studio/sauna.

Decision

1. I allow the appeal, and I attach to this decision a certificate of lawful use or development describing the proposed operation which I consider to be lawful.

Reasons

2. The proposal is for a single-storey outbuilding of about 173m^2 within the extensive landscaped grounds of a relatively modestly proportioned bungalow which has a footprint of about 179m^2. The proposed outbuilding would have an eaves height of 2.4m, a maximum pitched roof height of 4m and a footprint of about 9.6mx18m. It would accommodate a double garage for the storage of classic cars, gym/studio, sauna, WC and boiler room. There is an existing detached double garage of about 58.5m^2 with a storage loft over.

3. Class E of Part 1 of Schedule 2 of the Town and Country (Permitted Development) Order 1995 as amended permits buildings required for a purpose incidental to the enjoyment of the dwellinghouse within the curtilage of a dwellinghouse, subject to the physical limitations set out in that Class.

4. The proposed development meets these limitations and the Council accepts that the proposed uses could be regarded as incidental to the enjoyment of the dwellinghouse. However the Council consider that the scale of the proposed outbuilding when compared to the existing dwelling on the site would take the development out of the reasonable definition of "incidental to the enjoyment of the dwellinghouse".

5. It has been held that the term "incidental to the enjoyment of the dwellinghouse" should not rest on the unrestrained whim of the householder and that there should be some connotation of reasonableness in the

circumstances of each case (Emin v SSE [1989] EGCS 16). The comparative size of the proposed building to a dwelling may be an important consideration, although it is not by itself conclusive so long as it could be said to be "required for some incidental purpose." The fact that the size and scale of the outbuilding might not be characteristic of the area is not in my view relevant to this appeal as this would involve the planning merits of the case although the comparative sizes of the proposed outbuilding to the dwelling may be relevant as indicated in the Emin judgement.

6. In this case the proposed outbuilding would have a footprint only slightly less than that of the bungalow. However it would not appear overlarge in the context of the extensive grounds of the bungalow. Nor do I do regard it to be overlarge when considered in terms of the space requirements of the various uses that the proposed building is intended to meet as these are not excessive. They are reasonable in the context of what the appellant is seeking to provide in terms of the security, storage and upkeep of classic cars and trailer, and the provision of a gym/sauna and ancillary WC and heating facilities, all of which are incidental to the enjoyment of the dwelling.

7. At the site visit I inspected the garage and its loft and also two shipping containers currently on the site, which the appellant is using as temporary storage. A large quantity of domestic paraphernalia is stored in addition to grounds maintenance equipment and a classic car. With the appellant's intention to use the existing double garage for the garaging of 'everyday' vehicles, the proposed additional garaging and storage facilities appear reasonable and necessary for purposes incidental to the enjoyment of the dwellinghouse.

8. Similarly, the provision of domestic gym/studio and sauna facilities within the curtilage of a dwelling is not unusual in terms of modern lifestyles and the space identified for these uses appears reasonable.

9. The Council does not consider that the appellant's wish to achieve a degree of security to be a planning consideration. However, I consider it to be relevant in terms of establishing the reasonableness of the appellant's proposals.

10. I therefore disagree with the Council's view that the proposed outbuilding is excessive in scale. There is a clear requirement for the proposed outbuilding, the use of which would be genuinely ancillary to the enjoyment of the dwellinghouse.

11. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the erection of a single storey outbuilding for use as a garage/gym/studio/sauna was not 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.

P N Jarratt

Inspector

Lawful Development Certificate

Appeal reference
APP/X0360/X/09/2107624

Town and Country Planning Act 1990: section 192 (as amended by section 10 of the Planning and Compensation Act 1991)
The Town and Country Planning (General Development Procedure) Order 1995: Article 24

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Decision date:
2 December 2009

IT IS HEREBY CERTIFIED that on 11 March 2009 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(2) of the Town and Country Planning Act 1990 as amended, for the following reason:

Permission is granted under Article 3 of the Town an Country Planning (General Permitted Development) Order 1995 as amended as the proposal is in accordance with Schedule 2 (Part 1) (Class E) of the Order.

P N Jarratt

INSPECTOR

First schedule

Erection of a single storey outbuilding for use as a garage/gym/studio/sauna as detailed on drawing number 09.03.01 dated February 2009

Second Schedule

Land at Little Heath, Roman Ride, Crowthorne, Berkshire, RG45 6BU

NOTES

1. This certificate is issued solely for the purpose of section 191 or 192 of the Town and Country Planning Act 1990 as amended.
2. 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, would not have been liable to enforcement action, under section 172 of the 1990 Act, on that date.
3. 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.
4. 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.

Lawful Development Certificate Plan

Appeal reference
APP/X0360/X/09/2107624

Plan attached to the Lawful Development Certificate

The Planning Inspectorate
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Bristol BS1 6PN

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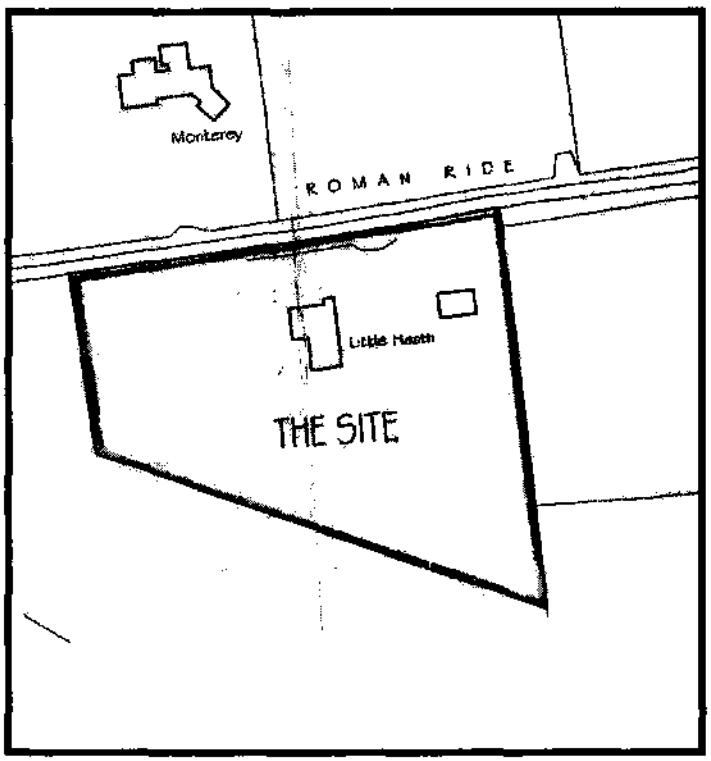
email:enquiries@pins.gsi.gov.uk

Decision date:
2 December 2009

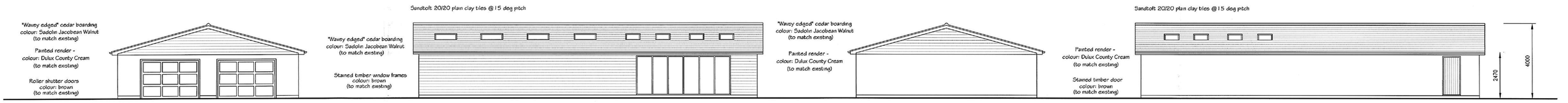
Land at Little Heath, Roman Ride, Crowthorne, Berkshire, RG45 6BU

Scale: Do not scale

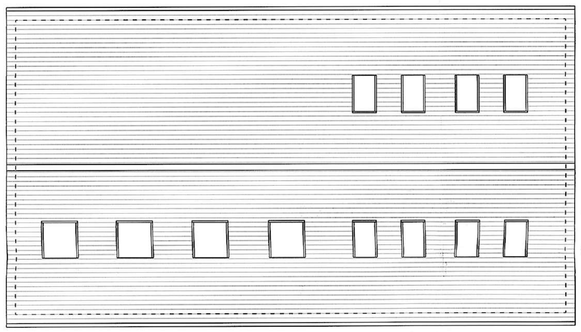


P N Jarratt
INSPECTOR

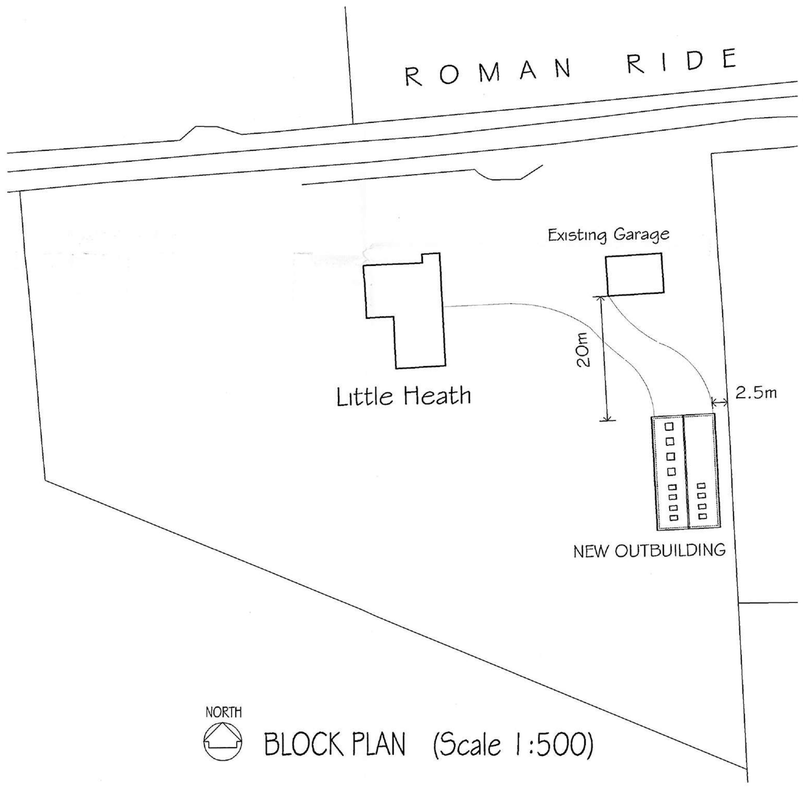
No	Date	Revision.
-	-	-



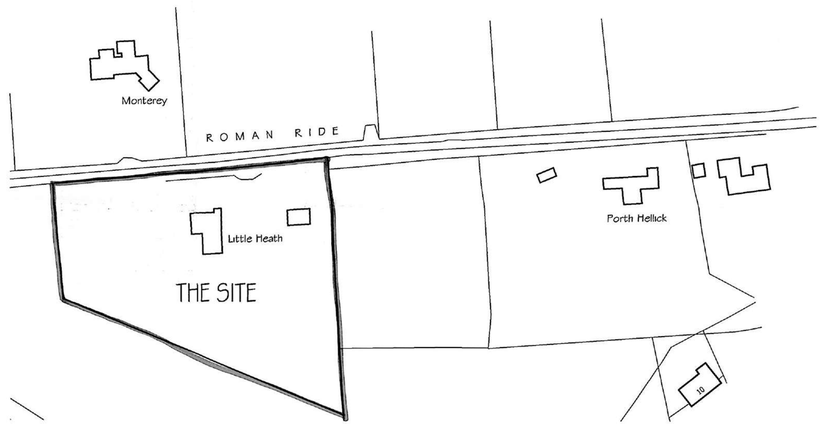
FRONT (Facing Roman Ride) SIDE (Facing House) REAR SIDE



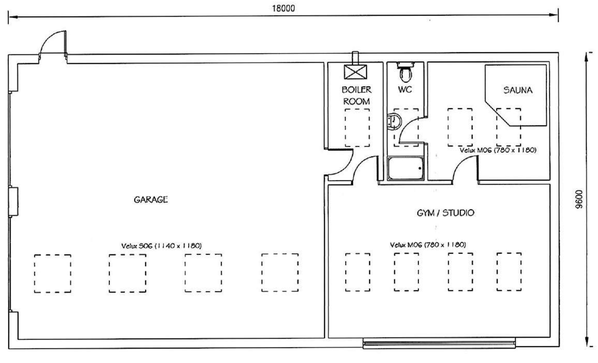
ROOF



NORTH BLOCK PLAN (Scale 1:500)



LOCATION PLAN (Scale 1:1250) NORTH



PLAN

NORTH

ORIGINAL SIZE OF DRAWING A1

DO NOT SCALE

project
LITTLE HEATH
ROMAN RIDE
CROWTHORNE RG45 6BU

title
PROPOSED
PLANS AND ELEVATIONS

date FEB 2009 scale 1:100

drawing number 09.03.01 rev -

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Appendix 7: 12 Gladsdale Drive Appeal - 2121399

The Planning Inspectorate

WR100-069-700

Appeal Decision

Site visit made on 2 November 2010

by N P Freeman BA(Hons) Dip TP MRTPI DMS

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

Decision date: 8 November 2010

Appeal Ref: APP/R5510/X/10/2121399
12 Gladsdale Drive, Pinner, Middx, HA5 2PP

- 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 D Corcoran against the decision of the Council of the London Borough of Hillingdon.
- The application Ref. No. 41717/APP/2009/2562, dated 25 November 2009, was refused by notice dated 25 January 2010.
- The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
- The development for which the LDC is sought is a proposed garage and games room.

Summary of Decision: The appeal is allowed and a LDC is issued, in the terms set out below in the Formal Decision.

Procedural matter

1. The consideration of this appeal is a matter of legality and not whether the development is acceptable on planning merits. I say this as it is evident from the correspondence from some local residents that their opposition is partly based on matters of principle and planning policy. Whilst I appreciate their concerns, they are not matters which can influence or affect the determination of this appeal which is solely dependent on whether the proposed development would be lawful, having regard to the extant legislation governing this type of development.

Reasons

2. There is no dispute that the proposed building would be development. The issue is whether it would constitute 'permitted development' (PD) by virtue of the rights conveyed by The Town and Country Planning (General Permitted Development) Order (GPDO) 1995 (as amended by the 2008 Order[1]). Specifically, whether the building, which would incorporate a garage and games room, would be lawful having regard to the rights conveyed by Schedule 2 (Part 1) (Class E) of the GPDO[2]. Sub paragraph (a) of Class E indicates that a building within the curtilage of a dwellinghouse which is required for a purpose incidental to the enjoyment of the dwellinghouse as such will be PD if the various conditions that are applicable, set out in paragraph E.1, are met. The Council in the reason for refusal of the LDC state that the development would not be PD as its excessive size and scale fails to represent a structure required for a purpose incidental to the enjoyment of the dwellinghouse.

[1] The Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008
[2] For ease of reference I will simply refer to this as Class E

3. It is claimed by some objectors that the appellant has incorporated an area of land which was formerly outside the domestic curtilage of the dwelling by moving the fence line eastwards. The Council in the delegated decision report by the Head of Planning and Enforcement comment:

> *"As a general principle all Permitted Development Classes are limited to the curtilage of a property rather than the boundary of the land in the same ownership which nevertheless may be in the same occupation but does not serve the dwellinghouse..... Although there is no record of the previous CLD application being preceded by a Section 191 application for a Lawful Development Certificate for an Existing Use or of a Planning Permission being granted for a Change of Use of the land to become part of the curtilage to No.12 Gladsdale Drive, the applicant supplied documentary evidence to demonstrate that the adjoining land has been used as part of the curtilage of the property for at least 10 years. Consequently although the application was for a proposed use and not one seeking confirmation that an existing use is lawful it was approved on the basis of the documentary evidence submitted."*

4. I am mindful of the earlier application for an LDC for a smaller garage to the east of the dwelling which was issued by the Council on 19 November 2009. The eastern boundary fence shown on the approved plan appears to be in the same position as the current proposed plan. In the light what the Council say about evidence provided with earlier application showing the use of the land in question as domestic curtilage for over 10 years and given that the curtilage argument was not advanced in the reason for refusal as a basis for not issuing the LDC, I am inclined to the view that the proposed building would come within the current lawful curtilage of the appeal property. Indeed, I have no sound evidence to set against this conclusion.

5. Turning to the terms of Class E, there is no disagreement between the Council and the appellant that the conditions set out in paragraph E.1 are either met or are not applicable. The dispute is over whether the building can rightly be described as one which is required for purposes incidental to the enjoyment of the dwelling in question.

6. I start by commenting on the key case law of relevance[3]. Garages and games rooms are capable of being a type of use which is incidental to a dwellinghouse. The court held in *Emin*[4] that is incorrect to say that proposed buildings could not be said to be required for a use reasonably incidental to the enjoyment of the dwelling as such because they would provide more accommodation for secondary activities than the dwelling provided for primary activities; this was not part of the test as to what buildings fell within Class E. Nevertheless, the test must retain an element of objective reasonableness and should not be based on the unrestrained whim of an occupier[5]. On the other hand, a hard objective test should not be imposed to frustrate the reasonable aspirations of a particular owner or occupier so long as they are sensibly related to the enjoyment of the dwelling. These court authorities and another[6] indicate that with each case it is a matter of fact and degree based on the particular circumstances.

[3] Summarised at paragraph 38-2068.13 of the Encyclopaedia of Planning, Law and Practice
[4] Emin V SSE [1989] JPL 909
[5] Wallington v SoS for Wales [1990] 62 P & CR 150; Holding v FSS [2004] JPL 1405; Croydon LBC v Gladden [1994] 1 PLR 30
[6] Peche d'or Investments v SSE [1996] JPL 311

7. Turning to the facts in this case, I understand from the information provided by the agent that the single storey building will measure about 52 sq.m.[7] This is a considerable area but the agent and the appellant have explained how this floorspace would be used. The garage area does not strike me as being excessive for a house of this size and the games room although quite large would still be within the realms of objective reasonableness. I have no reason to doubt that the uses would be those that are incidental to the enjoyment of the dwelling. Objectors have argued that the house is currently let out and not occupied by the appellant. He has confirmed that this is currently the case but he and his family (himself, his wife and 3 children) intend to move in. Even if this were not the case the test is whether the building is incidental to the dwelling as such and is not dependent upon the nature of the occupants.

8. In terms of the house size the Council have produced a series of figures which they say show that the building is excessive and not subordinate in nature. The word subordinate does not appear in Class E and I am conscious of the findings in *Emin*. Nevertheless, having regard to the words "as such" I accept that some comparison with the size of the dwelling is a useful indicator. However, this comparison should be made against the existing building as this is the current dwellinghouse and not the original house. It is not a matter of what might have been accepted as incidental in the past but what is incidental to the current extended property, as such.

9. The Council calculate the total floor area of the new building as being about 60 sq.m. which is about 8 sq.m. larger than the figure provided for the appellant. However, even assuming that the Council's figure is more accurate this compares with the current footprint for the dwelling of about 97 sq.m[8]. So the ground coverage would be significantly less than that of the present house. Moreover, I see no reason why the floorspace at first floor level should not be included in making this assessment. Taking the Council's figure of 52 sq.m. for the original footprint and assuming this is roughly equivalent at first floor level, the total floor area of the house would be about 150 sq.m. This reinforces my view that the proposed building would be incidental.

10. Bringing these points together, as a matter of fact and degree, I find that the proposed building would satisfy the test of being required for a purpose incidental to the enjoyment of the dwellinghouse as such. Accordingly it would be permitted development by virtue of the rights conveyed by Class E of Part 1 of Schedule 2 of the GPDO. For the reasons given above I conclude that the Council's refusal to grant a LDC was not 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.

Formal Decision

11. I allow the appeal, and I attach to this decision a Lawful Development Certificate describing the proposed operation which I consider to be lawful.

N P Freeman

INSPECTOR

[7] 4.9 x (4.9 + 5.7) = 4.9 x 10.6 = 51.94 sq.m. (Appellant's agent's figures)
[8] 52 + 28.56 + 14.08 = 94.64 sq.m. (Council's figures)

The Planning Inspectorate

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 (GENERAL DEVELOPMENT PROCEDURE)
ORDER 1995: ARTICLE 24

IT IS HEREBY CERTIFIED that on 25 November 2009 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in bold black outline on Plan A 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 development described would be permitted development by virtue of the rights conveyed by Class E of Part 1 of Schedule 2 of The Town and Country Planning (General Permitted Development) Order 1995 (as amended in 2008 by SI No. 2362).

Signed

N P Freeman
Inspector

Date: 8 November 2010

Reference: APP/R5510/X/10/2121399

First Schedule:

Proposed garage and games room (as shown on Drg. Nos. DC1, DC2, DC3, DC4 & Location Plan)

Second Schedule:

Land at 12 Gladsdale Drive, Pinner, Middx, HA5 2PP

(See next page for Important Notes)

NOTES:

1. This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

2. 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.

3. 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.

4. 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.

The Planning Inspectorate

Plan A

This is the plan referred to in the Lawful Development Certificate dated: 8 November 2010

by N P Freeman BA(Hons), DipTP, MRTPI, DMS

Land at: 12 Gladsdale Drive, Pinner, Middx, HA5 2PP

Appeal Reference: APP/R5510/X/10/2121399

(Not to scale – for illustrative purposes only)