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# 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**

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**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'.
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## 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

## 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

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**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.

## 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, Wickham, Gateshead NE16 4PU**

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Scale: not to scale

