

## **Preamble**

Previous applications have been refused and Pre-Application Advice has been sought. This application has addressed the remarks in previous delegated reports as well as taken on board the Pre-Application Advice.

I have complete confidence that all tests are fully satisfied in this application.

# LAWFUL DEVELOPMENT CERTIFICATE APPLICATION

## STATEMENT FOR PERMITTED DEVELOPMENT PROPOSAL

WELL END LODGE, WELL END ROAD, BOREHAMWOOD, WD6 5PR

### INTRODUCTION

This is an application for a Certificate of Lawful Development (Proposed)

This statement provides a brief description of the site and the proposal. It also demonstrates that the proposed development satisfies all of the requirements and conditions of Schedule 2, Part 1, Class E of the GPDO.

This statement should be read alongside the plans and drawings.

### THE EXISTING SITE & BUILDINGS

The site is located in the east of England in Hertsmere, within Well End and falls within the Shenley ward. There is a two-storey detached family dwelling on the site. The site has two primary access points off Well End Road for both vehicular and pedestrian access.

### THE PROPOSED PERMITTED DEVELOPMENT CLASS

Schedule 2, Part 1, Class E building within the curtilage of the dwellinghouse.

### THE PROPOSAL

The proposed permitted development for three new single storey outbuildings all of which are within the curtilage of the existing dwelling house and are incidental to the enjoyment of the main dwelling.

### THE USE

No change. The existing use is residential C3.

### ACCESS

No change. The existing access onto the site is off Well End Road. The site has 2no existing access points from the main road.

## STATEMENT IN SUPPORT OF APPLICATION FOR LAWFUL DEVELOPMENT CERTIFICATE

All of the proposed outbuildings are within the curtilage of the dwellinghouse and would not infringe any of the requirements of the GPDO as demonstrated below.

**CLASS E:** *The provision within the curtilage of the dwellinghouse of 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.*

### E1

The proposed new outbuildings are Permitted Development for the reasons set out below:

- (a) The permission to use the dwellinghouse as a dwellinghouse was not granted only by virtue of Class M, N, O, P, PA or Q of Part 3 of this Schedule (changes of use);
- (b) The total area of ground covered by buildings, enclosures and containers within the curtilage (other than the original dwellinghouse) will not exceed 50% of the total area of the curtilage (excluding the ground area of the original dwellinghouse).
- (c) The proposed outbuilding will not be situated on land forward of a wall forming the principle elevation of the original dwellinghouse. (i.e. it will not be in front of the dwelling)
- (d) The proposed outbuilding will not have more than one storey.
- (e) The proposed outbuilding height will not exceed 4 metres (with dual pitched/hipped roof) and it is situated further than 2 metres of the boundary of the curtilage of the dwellinghouse.
- (f) The proposed outbuilding eaves height will not exceed 2.5 metres.
- (g) The proposed outbuilding is not situated within the curtilage of a listed building.
- (h) The proposed outbuilding does not include the construction or provision of a veranda, balcony or raised platform.
- (i) The proposed outbuilding does not involve the creation of a new dwelling nor the installation of any microwave antenna/satellite dish.
- (j) The proposed garden building does not involve a container.
- (k) The building has not been built under Part 20 of the Schedule.

### E2

The dwellinghouse is not located in a Conservation Area, a World Heritage Site, a National Park, ANOB or the Broads.

### E3

The dwellinghouse is not located on article 2(3) land.

## CONCLUSION

The analysis above conclusively demonstrates that the proposed outbuildings constitute permitted development under the requirements and conditions of the General Permitted Development Order, Schedule 2, Part 1, Class E.

Below is further information about the outbuildings individually to demonstrate how they are incidental to the dwelling house.

## **B – Swimming Pool**

- Swimming Pool buildings are specifically cited in Class E as being permitted. Despite there being no additional requirement to demonstrate how their use will be incidental, this has been demonstrated beyond doubt below.
- It has also been demonstrated why this size and scale of outbuilding is required for this incidental purpose. Size should not be determinative, however the LPA have previously indicated this is a consideration to pass their tests.
- The internal layout of the swimming pool building is indicative, once the proposal is deemed lawful the final design can be confirmed. 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 swimming pool is required by all of the occupiers of the house: The applicant's parents, the applicant's daughter, the applicant and his wife.
  - The applicant's parents both suffer from heart conditions. The General Practitioner for Mrs M Ramani (Applicant's mother) in particular has recommended daily exercise in the form of swimming would be greatly beneficial since it will allow for her to maintain full-body physical health as well as gentle exercise of the heart muscle. Evidence is enclosed.
  - The General Practitioner for Mr J Ramani (Applicant's father) in particular has recommended daily exercise in the form of swimming would be greatly beneficial since it will allow for her to maintain full-body physical health as well as gentle exercise of the heart muscle. Evidence is enclosed.
  - The applicant's daughter has been swimming since she was 5 weeks old. She is now 2 years, 6 months old. The applicant is very keen for his daughter to maintain her swimming and has great ambitions for his daughter. Evidence is enclosed.
  - The swimming pool is of very modest size and has been reduced in size considerably following the pre-application advice provided.
  - See appeal reference APP/H4505/X/14/3001056. The below is taken from the inspectors report on this appeal:

*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 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.*

- The Swimming Pool is solely for use by the applicant and his family who live at Well End Lodge.
- In conclusion the Swimming Pool is absolutely incidental to the dwelling house. The pool building in terms of size, is reasonably required to provide a no more than adequate facility for its intended purpose.

## C – Gym & Home Office

- The gym is required by all 4 adult occupiers of the house to maintain physical and mental health.
- Regular exercise has been recommended by the General Practitioner for the applicant's parents, Mrs M Ramani and Mr J Ramani.
- The accessibility of a home gym dramatically increases the usage that the applicant and others will have of the gym and will play a very important role in maintaining health. The applicant's parents are 61 and 67 years of age respectively, based on family history, their current health and the predisposition to heart disease from their South-Asian heritage, it is deeply important to the applicant for his parents to have access to home gym facilities to maintain their health.
- The gym diagram provided is not a finalised layout. The proposed home gym is of basic adequate size to allow family members to safely use different equipment at the same time safely and without risk. The proposed gym would allow for a reasonable amount of equipment to be available and placed in the home gym area with only adequate spacing between different pieces of equipment.
- The home office would be primarily used by the applicant and his wife. Occasionally the applicant's parents would also greatly benefit from it since they are directors on the board of multiple companies.
- The applicant requires a quiet office space to work from, take video meetings from, do research from and from where to conduct academic webinars/seminars/lectures from.
- The home office is no more than adequate for its intended end-use. There will be space for 2 desks, printer, video conferencing, storage of documents, researching station, shelving for papers and journals. It will be comfortable to work from and allow a good setting from which to produce a good standard of work.
- Combining the home office and gym allows for the most efficient use of space by having only 1 entrance/lobby and a single WC facility to be shared by both areas.
- Having a home office will allow the applicant to work from home more effectively and see his child more.
- It is anticipated that the applicant's child would benefit from a home office to use as a study area and an area from where to practice music in the future too when her music lessons begin. The applicant takes the education of his child very seriously, this can be evidenced by the applicant placing deposits for her schooling from the moment she was born at some of the leading schools.
- The Home Gym and Office is solely for use by the applicant and his family who live at Well End Lodge.

In conclusion the gym and the home office is absolutely incidental to the dwelling house. The gym and home office building in terms of size, is reasonably required to provide a no more than adequate facility for its intended purpose.

## **D – Garden Store**

- The dwelling is on a plot of c. 5315 sqm. The plot borders wild woodland as well as privately owned and unkept common land – Well End Common.
- This substantially large plot of land takes a lot of up-keep and maintenance. The surroundings increase the level of maintenance required due to their wild nature.
- The Garden Equipment required includes: Ride on mower, strimmer, rotovator, wheelbarrows, leaf blower, chainsaw, hole digger, manual gardening tools, garden furniture and paraphernalia, + servicing area. In addition bicycles, larger garden toys which get blown away in the wind in this open setting etc.
- In addition to tools, various materials are required which require dry storage – this can include weedkillers, disposables for power equipment, fuel, oils, grass-seed, fertiliser etc.
- An area to service the garden equipment is also required.
- The applicant's father is a trained carpenter, if feasible and there is sufficient room, he would like a small area for carpentry and wood making tools and equipment including a work-bench and fixed-in place bench tools (drills, saws), plus manual woodworking tools.
- The garden store is solely for use by the applicant and his family who live at Well End Lodge.

In conclusion the garden store is absolutely incidental and essential to the dwelling house. In terms of size, it is reasonably required to provide a no more than adequate facility for its intended purpose.

## **Materials & Finishes**

To reduce their visual impact the outbuildings could be clad with timber or brick built. We are open to dialogue on this point.



## SIZE & SCALE

The applicant has made several compromises in achieving vast reductions in scale and size of the proposed outbuildings.

Previous unsuccessful applications were afforded greater space. This space is required, however since the LPA did not agree with this, and the detail on why such space was required in previous applications was not sufficient both are now being addressed in this proposal: a) vast reduction in footprint/scale/size; b) detailed reasoning and justification of the space. Many compromises have been made by the applicant to achieve the scale and size reduction.

This house is atypical so should be treated as such, the plot size is c. 5315 m<sup>2</sup> which is incredibly large, with a very large garden, bedrooms in the house are as large as 9450mm x 4700mm (internal measurements).

GPDO Conditions are satisfactorily met, this has been well established. Incidental uses were accepted, the scale/size to achieve the incidental purpose was under question.

The proposed outbuildings footprints are as follows:

- Swimming Pool = 120 m<sup>2</sup>
- Gym & Home Office = 64 m<sup>2</sup>
- Garden Store = 49 m<sup>2</sup>

The floorspace would be somewhat smaller since the footprint is the external footprint. The usable area would be even less.

- The total footprint is **41% smaller** than that proposed in the previously refused application (23/1591/CLP) and Pre-Application Advice application.
- The Swimming Pool Building footprint is **40% smaller** than that proposed in the previously refused application (23/1591/CLP) and Pre-Application Advice application.
- The Gym & Home Office footprint is **52% smaller** than that proposed in the previously refused application (23/1591/CLP) and Pre-Application Advice application.
- The Garden Store footprint is **23% smaller** than that proposed in the previously refused application (23/1591/CLP) and Pre-Application Advice application.

The existing property footprint total is 292.479 m<sup>2</sup> (Breakdown as per the below).

House	193.144 m <sup>2</sup>
Building X	36.637 m <sup>2</sup>
Building Y1	44.613 m <sup>2</sup>
Building Y2	18.085 m <sup>2</sup>
<b>Total Footprint</b>	<b>292.479 m<sup>2</sup></b>
<b>Existing property floorspace</b>	<b>495.8 m<sup>2</sup></b>

Approved extension 22/1126/PD42 adds a further 97.576 m<sup>2</sup> to the footprint and floorspace of the dwelling house.

The total footprint of the proposed outbuildings is 233 m<sup>2</sup>, this is considerably less than the total footprint of the current house and outbuildings (292.479 m<sup>2</sup>). 233 m<sup>2</sup> represents the footprint of 3 individual small outbuildings, not a singular mass.

The individual buildings are considerably smaller than the main dwelling house.

- Swimming Pool = 62.1% of the footprint of the existing house;  
41.0% of the footprint of the existing buildings  
24.2% of the floorspace of the existing buildings
- Gym and Home Office = 33.1% of the footprint of the existing house;  
21.9% of the footprint of the existing buildings  
12.9% of the floorspace of the existing buildings
- Garden Store = 25.4% of the footprint of the existing house;  
16.8% of the footprint of the existing buildings  
9.9% of the floorspace of the existing buildings

Based on the size of the plot of the house, c. 5315 m<sup>2</sup>, the proposed outbuildings would individually represent:

- Swimming Pool = 2.26% of the plot size
- Gym and Home Office = 1.20% of the plot size
- Garden Store = 0.92% of the plot size

Singly and cumulatively well below the 50% test. In fact the cumulative total is **just 4.38% of the plot size**. This **less than one tenth of the limit**.

The total floorspace of the proposed outbuildings is 233 m<sup>2</sup>, this is less than half of the floorspace of the current property (495.8 m<sup>2</sup>). Floorspace is a consideration as per the inspector's report for appeal APP/R5510/X/16/3143072.

The proposed outbuildings are 2.5m in eaves height and 4.0m at the ridge. The existing house at its highest point is **10.30m high** with a ridge height of **8.66m**.

The proposed outbuildings are set-back from the existing house.

The proposed outbuildings are less than 39% of the height of the existing house.

The house is set over 3 storeys, the outbuildings are all single storey.

There is no risk of any imbalanced relationship between the existing house and the new outbuildings. It must be noted that the proposed are 3 individual small outbuildings, they should be considered singly rather than as a singular mass.

From the 1<sup>st</sup> PD Application, which again met all of the GPDO conditions, the footprint is more than **4 times smaller** in this proposal.

## Relevant Appeal Cases & Information

Please find attached Counsel Note from Leading Barrister Hashi Mohamed. This was submitted with a prior LDC application, it is equally valid with this current application.

- 1) The leading court case relating to the matter of determining whether an outbuilding would be incidental to the enjoyment of a dwellinghouse under Class E (a) of the GPDO is *Emin v Secretary of State for the Environment* [1987] JPL 144. This case related to the erection of two buildings to provide facilities for archery, billiards and pottery.
  - a) In this case the High Court determined that an outbuilding must be 'required for some incidental purpose' to be permitted development under Class E. As advised in the legal opinion (para. 7) the Court found that the Inspector was wrong to place emphasis on the size of the new buildings which the Inspector felt would provide more accommodation for secondary activities than the dwellinghouse provided for primary activities. The Court found that the size of the new buildings when compared to the existing dwellinghouse was irrelevant.
  - b) As set out in para 8 of the legal opinion, the *Emin* judgement, found that while size was relevant to whether the use was incidental, all factors must be considered when applying the test. The case found that it is wrong to disregard other factors in favour of size. The use of the new buildings must be connected with the running of the house or leisure activities of those living in the house.
  - c) It was held in *Emin*, that it is necessary to identify the purpose and incidental quality of what is proposed in relation to the enjoyment of the dwellinghouse. In addition, whether the proposed building is genuinely and reasonable required in order to accommodate the proposed use or activity and thus achieve that purpose.
  - d) There is no statutory definition of the word incidental. The legal opinion (para. 9) confirms that something incidental cannot itself be a dwellinghouse. Activities that constitute living in a dwellinghouse would not be 'incidental to the enjoyment of the dwellinghouse'. The wording of a 'purpose incidental to the enjoyment of the dwellinghouse' is considered to be quite a broad concept (para. 9 of legal opinion). However, the use of buildings (such as those sought here) would need to be subordinate to the main use as a dwellinghouse. Recreational uses, including swimming pools (which is specifically cited in the legislation) and home gyms and a home office would be considered to fall into that category.
  - e) The legal opinion (para. 10) also makes reference to the concept of 'objective reasonableness'. It confirms that the test in this case is 'whether the buildings are reasonably required for a purpose incidental to the enjoyment of the particular dwellinghouse'. Each case is a matter of fact and degree based on the particular circumstances of the case.
  - f) In terms of the size of the individual outbuildings and the cumulative size of the outbuildings comparative to the size of the host property leading Counsel advises:
    - i) "First, the Council's clear fixation with size is wrong, and does not accord with the proper and logical interpretation of *Emin*. It is no doubt a consideration. Whilst the Council's previous officer report mentions that size itself could not be 'determinative or conclusive', their whole approach would appear to take the opposite approach".

- g) The High Court was clear in the Emin case that the **size of the new buildings when compared to the existing dwellinghouse was irrelevant**. The Court found that it was incorrect to place emphasis on the size of the new buildings which the Inspector felt would provide more accommodation for secondary activities than the dwellinghouse provided for primary activities.
- h) The point raised by the Council that the proposals are 'not considered to require such large outbuildings of generous proportions' is irrelevant. The Class E concessions (which do put a number of physical limits on proposals) neither mention size of outbuildings, their relationship to the host building nor does it fix a limit on the size of the outbuilding (for example the size of a swimming pool). If Class E sought to impose a limit on the size of an outbuilding or relative size in relation to its host dwelling, it could have done so. Crucially, this demonstrates the degree or range and flexibility expected in applying this to different scenarios, local areas and buildings.
- i) Likewise, the Council's comment that 'the existing property should appear as the primary living accommodation' is also irrelevant. There is nothing in Class E that requires the existing property to appear as the primary living accommodation.
- j) The Emin High Court judgement is clear that each case is fact sensitive and objective reasonableness should be applied. The Court found in the Emin case that the size of the new buildings compared to the existing dwellinghouse was irrelevant and the case underscored the principle that it is wrong to understate other factors in favour of size.
- k) The uses are reasonably required by the applicant and his family for personal use. They would provide for secondary activities and not primary living accommodation as provided by the dwellinghouse. In the case of Emin, this principle was accepted by the High Court. There is no restriction or requirement in the GPDO that the outbuildings need to be subordinate / smaller than the host building. It is about reasonable function and use incidental to the principal residential use of the host dwelling and not about size.

The applicant therefore does not consider that there is any sound basis on which to refuse the proposed outbuildings based on the individual and cumulative size of the buildings and their relationship with the host primary dwellinghouse. To do so would be to take an arbitrary and unreasonable approach. It is not consistent with the way in which case law is understood and/or interpreted. For the Council to persist in taking this approach is only likely to lead to the application ending up at an appeal. Which would be both unnecessary and unreasonable.

Some of the relevant appeals and inspectors reports I have looked at so far include the following:

APP/B9506/X/13/2195174

APP/H4505/X/14/3001056

APP/P5870/X/14/2227399

APP/T0355/X/16/3145610

APP/Z5630/X/13/2198781

APP/R5510/X/16/3143072

I have attached the Appeal Decisions and Inspectors Reports for the above with relevant sections highlighted or excerpts taken (where highlighting was locked).

The relevant highlighted excerpts are found below. For the complete context you will benefit from looking at the entirety of the Appeal Decisions and Inspectors Reports.

APP/H4505/X/14/3001056

*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.*

*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.*

*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.*

APP/B9506/X/13/2195174

16. *The swimming pool element of the proposed building is expressly referred to in the Class E definition. With the possible exception of the provision of two separate WCs, I do not consider that the level of provision of recreational facilities for "the personal enjoyment of the occupants of the dwellinghouse..." to quote from paragraph E.4 set out in paragraph 12 above, with other ancillary rooms normally associated with them, such as showers and changing facilities, to fall outside the definition of uses incidental to the enjoyment of a dwellinghouse as such.*

17. *The main space users in the building, the swimming pool, gymnasium/changing room and the bike/lawn mower store all fall within that category and the incorporation of two WCs, which occupy a very small part of the total area of the building, can, in my professional judgement, be overlooked for these purposes.*

23. *In these circumstances, I consider that it is sufficient to say that this dwelling is a spacious three-storey detached dwelling more than one hundred years old set within a large well-established curtilage. Although, the footprint of the proposed structure may not be much smaller than that of the main house, I am satisfied that its single-storey scale, and the uses to which it is to be put, place it firmly within the category of building incidental to the enjoyment of 'Keyhaven House'. Moreover, it satisfies all of the limitations imposed by Class E of Part 1 of Schedule 2 to the GPDO as amended.*

24. *In contrast, it should not be overlooked that in Emin, where it was held that size alone of the subordinate building was not in itself determinative of its incidental status, the building in that instance was twice the size of the main dwelling and incorporated an indoor archery range, to my mind a rather more idiosyncratic proposal than anything envisaged by the appellants in this case.*

APP/P5870/X/14/2227399

10. *The term 'required' is therefore interpreted for the purposes of applying Class E of Part 1 of Schedule 2 to the GPDO as meaning 'reasonably required'. I am satisfied that, in principle, facilities such as a double garage, garden store and swimming pool with shower and changing rooms may be regarded as reasonably required for incidental purposes. All are facilities that residential occupiers might reasonably aspire to in seeking to improve their quality of life. Nor is it unreasonable to assume that such facilities would be genuinely incidental to the domestic enjoyment of the property by future occupiers as well as the Appellants.*

11. *Moreover, I do not find a disparity between the size of the envisaged outbuilding, the scale of the proposed facilities and the contention that it would be put to purposes incidental to the enjoyment of the dwellinghouse.*

*...unquestionably, would be subordinate to it in terms of volume.*

*In any event, relative floor areas must also be taken into account. In doing so, it must be borne in mind that the dwelling comprises two storeys. Having regard to Wallington v SSW [1991] 1 PLR 87, the proposed facilities would not, in my assessment, exceed what might reasonably be required by a single household occupying a property of this size.*

*13. The argument that it might be possible to provide some of the proposed facilities within the dwelling itself assumes that existing accommodation thus re-deployed is not reasonably required by the occupiers in its present use. Such an assessment is largely subjective and open to wide interpretation, which tempers the weight that I attribute to it. In any event, my internal inspection of the dwelling revealed no shower facilities or area that could function as changing rooms associated with the swimming pool on the ground floor, or any accommodation within the property as a whole that was obviously surplus to requirements.*

*14. Although the Council suggests that the Appellants have not demonstrated a need for the proposed facilities, it is difficult to envisage what more they might say in this respect, over and above what is included in the appeal submission. It is sufficient for the purposes of Class E that the additional accommodation would be of a kind that can be regarded in general terms as 'reasonably required'. Significance should not be attributed to the fact that the designations of proposed rooms were changed between the appeal application and an earlier LDC application. The assessment of lawfulness must be made on the basis of the current submission.*

#### APP/T0355/X/16/3145610

*7. Although the number of vehicles that would be parked in the outbuilding in this case may be considered abnormal, in my view this needs to be looked at the context of the stated purpose of housing a private collection of 10 sports and classic cars rather than the parking of vehicles for ordinary use. To my mind, whilst unusual, it does not seem unreasonable to have a private collection of cars of this scale in the context of a hobby enjoyed from a dwellinghouse. Looked at objectively, it therefore seems to me that the number of cars involved and the size of building required to accommodate them is not so great as to be unreasonable in the context of a hobby enjoyed from this particular dwelling. It follows that an outbuilding used in connection with that hobby would itself be reasonably incidental to the purpose of the dwellinghouse.*

*9. It is settled case law that the size of the building is not, in itself, determinative of whether a development falls within the provision of Class E2. Nevertheless, the appellant explains that the proposed outbuilding has been specifically designed to accommodate 10 cars to reflect the number of cars in his collection. The appellant has provided documentary evidence to prove that all but one of the cars in his collection are registered in his name as owner at the address of the appeal site, albeit that they are currently stored at various locations. The proposed outbuilding has been specifically designed to accommodate those 10 cars and, on that basis, the size of the proposed outbuilding is commensurate with its intended purpose and not an unrestrained whim on the part of the appellant.*

*10. I therefore consider that the proposed outbuilding is of a size that is reasonably required for a purpose incidental to the enjoyment of this particular dwellinghouse. Moreover, even when the proposed outbuilding is taken together with the existing parking on the site, I consider that the overall nature, scale and purpose of the proposed outbuilding is not unreasonable in the particular circumstances of the case.*

#### APP/Z5630/X/13/2198781

*Emin also confirmed that it was incorrect to say that a proposed building could not be incidental because it provided more space for secondary activities than the main building had for primary residential activities. It is a matter of fact and degree in each particular case and Class E does not require the proposed building to be*

*subordinate to the main house in terms of size as long as the size of the ancillary accommodation is reasonable in terms of the use to which it is to be put.*

*9. The plot coverage of the proposed building at 115 sqm would, according to the Council's figures, be about 34% of the rear garden area of about 338 sqm. The total area of the site is said to be about 585 sqm and, again, the proportion of this (not including the original dwelling) that would be taken up by the proposed building, at about 27%, does not seem to me to be excessive, given the presumption in the GPDO that 50% of the curtilage can be given over to incidental buildings permitted under Class E.*

APP/R5510/X/16/3143072

*3. The agent explains that the dwelling is occupied by a large extended family and that the outbuildings are required as a children's playroom and as a domestic store for garden tools and household items. I consider that use for such purposes falls within the remit of purposes incidental to the enjoyment of the dwellinghouse. The plans that accompanied the application show buildings measuring 4.6m x 6m of the same, but handed, design constructed of brickwork with pitched roofs and ridge heights of 3.38m.*

*4. There is no statutory definition of the word "incidental". However case law provides authority for how this should be interpreted by decision makers. These authorities indicate that games rooms, play rooms and utility areas are capable of being a type of use that is incidental to the enjoyment of a dwellinghouse. In the leading case of *Emin v SSE [1989] JPL 909* it was held that it was wrong to conclude that an outbuilding could not be said to be required for a use reasonably incidental to the enjoyment of a dwellinghouse as such because it would provide more accommodation for secondary activities than the dwelling provided for primary activities. Nevertheless, 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.*

*5. Turning to the particulars of this case, the Council's argument is that the combined floorspace of the proposed outbuildings is too large to be required for purposes incidental to a dwellinghouse. In this respect there is no absolute limit in percentage terms on the size of outbuildings as compared with the host property.*

*However, if the upper floor of the house is taken into account as well, then the floor area of the outbuildings compared to the total size of the house does not strike me as being excessive and would be within the bounds of objective reasonableness when considering whether they are incidental.*



**Evidence Enclosed:**

- RR1** Applicants Daughters Birth Certificate
- RR2** Applicants Daughters Swimming Classes Confirmation - Multiple
- RR3** Letter from Applicants Mothers General Practitioner
- RR4** Letter from Applicants Fathers General Practitioner
- RR5** Appeal Decision & Inspectors Report of APP/H4505/X/14/3001056
- RR6** Appeal Decision & Inspectors Report of APP/B9506/X/13/2195174
- RR7** Appeal Decision & Inspectors Report of APP/P5870/X/14/2227399
- RR8** Appeal Decision & Inspectors Report of APP/T0355/X/16/3145610
- RR9** Appeal Decision & Inspectors Report of APP/Z5630/X/13/2198781
- RR10** Appeal Decision & Inspectors Report of APP/R5510/X/16/3143072
- RR11** Counsel Note from Hashi Mohamed, Leading Planning Barrister
- RR12** Pre-Application Advice Note

## Conclusion

- a) the proposed development satisfies all of the requirements and conditions of Schedule 2, Part 1, Class E of the GPDO (General Permitted Development Order).
- b) the swimming pool, gym/home office and garden store are absolutely incidental to the dwelling house. In terms of the size of the outbuildings, it has been demonstrated and detailed that the size and scale is reasonably required to provide a no more than adequate facility for their intended purpose.

I also rely on the facts in various appeals and appeal decisions to demonstrate that this proposal meets all of the tests and requirements, details on some of these has been provided above.

Having provided more than sufficient information and evidence for you to deem the proposal lawful I will not over-burden you with further information and evidence since I do not think this is necessary. If however you do have any questions or concerns please do not hesitate to reach out and I can then provide any further information you require to determine this application lawful.

In a previous delegated report I noted some untruths in relation to my family circumstances and the occupants of the house, many incorrect assumptions were made despite the officer having lots of opportunity to seek information and clarification if they were uncertain on any aspect. This was very disappointing.

Furthermore, yes the extensive garden and curtilage is a lot to manage but this is why better use of the space through well planned outbuildings incidental to the dwelling house will help with that.

I am very confident that you will now see that all applicable tests are 100% satisfied and shall proceed to confirm that this proposal is Lawful and issue the Lawful Development Certificate.