

Certificate of Lawfulness of Proposed Use or Development
34 Nassau Road SW13 9QE

Supporting Statement
July 2024

1. This statement accompanies an application for a Certificate of Lawfulness of Proposed Use or Development (CLOPUD) seeking confirmation that a proposed swimming pool and pool house is permitted development under Class E of the General Permitted Development Order 2015.
2. This is a re-submission with additional information in response to the refusal to issue a Certificate ref 24/1194/PS192 dated 25th June 2024¹ for the following reason:-

U0183977 Reason for Refusal - not incidental

This proposal CONSTITUTES DEVELOPMENT within the meaning of Section 55 of the Town and Country Planning Act 1990, and a planning application IS REQUIRED. This is because it does not meet criteria laid down under Class E (a) of Part 1 Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 and any subsequent legislative amendments. This is because the proposed development, by reason of its scale and absence of sufficient information in relation to the proposed use, has failed to demonstrate that it is reasonably required for purposes incidental to the enjoyment of the main dwellinghouse.

3. There are two threads in this reason. One is that there is an absence of sufficient information, and the other is that, in association with the absence of sufficient information, the scale of the pool house is such that it is not shown to be incidental to the enjoyment of the dwelling house.
4. A Certificate is determined on the evidence submitted (and any evidence that the Council has itself) on the balance of probability.
5. The general purpose of a swimming pool and a pool house is easily understood and the application contained all the drawings and calculations that are required to describe the proposed building; its dimensions, its location, its size relative to the curtilage, its internal layout and the purpose of the facilities within. Requests for further details were answered during the application and when it was advanced to a decision by the case officer, it was understood that the information was sufficient for a Certificate to be granted².
6. A CLOPUD concerns a prospective use for which it is not possible to give factual evidence of the future use, all that can be supplied is the drawings which are to be considered within the applicant's declared intention to have a pool house and a swimming pool at the bottom of the garden for use by the family.
7. The refusal alleges that the application material fails to show that the pool and pool house would, on the balance of probability, be incidental to the enjoyment of the house. This is a surprise given that a swimming pool and an associated pool house, located at the end of a generous domestic garden is not especially unusual and would normally be considered an incidental amenity for a family house and garden.
8. This re-submission endeavors to address the refusal reason, in so far as it can be understood.

¹ Decision and Report in Appendix 1

² Confirmed in an email dated 12th June 2024 Appendix 3

Framing of the decision in the delegated report

9. After the assessment table³ (that concludes that the E1, E2, and E3 criteria are met⁴) the delegated report continues under the heading / question: -

'General: Would the proposed building be used for a purpose not considered incidental to the enjoyment of the dwellinghouse?

10. This is an unusual framing for the assessment of a CLOPUD because it reverses the emphasis that flows from the requirements of s192 (2) of the Act :-

"If, on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect; and in any other case they shall refuse the application."

11. The Act indicates that the assessment starts with what is submitted in support of the application and asks whether it is more likely than not that what is proposed is permitted development.

12. The question in the report is different because it asks whether the building could be used for something that is not incidental. It asks us to speculate whether a building could be used for something that isn't incidental rather than to start with an objective testing of what is in front of the decision maker. It is the applicant's evidence that is tested not the imagination of the officer. The relevant question is whether the submitted information demonstrates that it is at least 51% likely to be permitted development.

13. It is then said:-

"Whilst it is a matter primarily for the occupier to determine what incidental purpose he/she proposes to enjoy, the test must retain an element of objective reasonableness. The Council has a duty to critically examine such applications, particularly where a substantial building is proposed, otherwise Class E would be open to abuse."

14. And this is followed by a reference to Emin

"A relevant case for the consideration of this assessment is the appeal of Emin v SSE & Mid Sussex DC [1989] JPL 909. This appeal indicates that event (sic) if the nature of activities carried out within a proposed outbuilding are considered incidental to the main use of the dwellinghouse, the scale of the activities is important. The relevant conclusive remark for this appeal suggests that 'the fact that such a building has to be required for a purpose associated with the enjoyment of a dwellinghouse cannot rest solely on the unrestrained whim of him who dwells there, but connotes some sense of reasonableness in all the circumstances of the particular case'"

15. Two appeal cases are also set out on page 6 'by way of further information'.

16. It is assumed that these three cases are cited in support of the assessment that led to the refusal.

17. Dealing with the appeals, the first, Vivien Avenue⁵, was a building proposed without any clear indication on the drawing of how it was to be used internally. There is only a sauna drawn in the corner. The Inspector's rationale, set out in the quoted paragraph 9, is a logical response to the

³ on page 4 appendix 1

⁴ Applicant's calculations in covering letter 9th May 2024 and shown on drg 2313 00-01

⁵ Appendix 4

lack of information. It is a relatively large empty building and its emptiness means that the intended use is not clear. There is no similarity on this point between this appeal decision and this application because the submitted drawings show everything that is proposed in the pool house.

18. The second case, Draycot Avenue⁶, was a building that was 45% of the footprint of the parent house. The Inspector was satisfied that the use proposed was capable of being an incidental one but the information supplied lacked the detail or explanation to make a sufficient case as to how it would be used. It was another largely empty building.
19. Both cases failed to meet the balance of probability test of evidence, the uses proposed were agreed to be capable of being incidental, but it was the lack of detail to show that it was, that was fatal. They were both proposing substantially empty buildings and it followed that there was no evidence (sufficient for the purposes of a Certificate) to show why the proposed buildings were the size they were and it followed that their use was not shown clearly enough to justify a Certificate.
20. There appears to be an indication that the report author approached the subject in the belief that these cases indicate something different; that, if a building is large, that raises a doubt as to whether its use is incidental. If so that is not the lesson derived from these cases. It was the size of the empty area within the buildings that was the concern not the size of the building per se.
21. This understanding is consistent with the PPG advice on Certificates [Paragraph: 006 Reference ID: 17c-006-20140306] :-

“an applicant needs to describe the proposal with sufficient clarity and precision to enable a local planning authority to understand exactly what is involved”.

an empty building does not have that clarity.

22. Regarding Emin, the additional point raised is that something that might be incidental to the enjoyment of one individual's home, such as an indoor archery range, might not meet the requirement of being 'required' under Class E because it is the whim of one person's passion and not 'reasonably required' by householders in a general sense.
23. There is nothing whimsical or idiosyncratic about this swimming pool and pool house that would cause it to fall into that aspect of Emin.

The Council's Assessment of the application

24. The report says (page 5) that:-

“it is not considered there is sufficient information to determine that the proposals are reasonably required for purposes incidental to the dwelling house. Notably, a bathroom and shower would not generally fit this description, although some flexibility can be given in this circumstance given there is a proposed pool, the proposed bathroom facilities are large, comprising an area of approximately 12.5sqm.

Furthermore, it is noted that there is a reiki room proposed, as well as a large area (approximately 9.5sqm) which was originally proposed as a kitchen, but now has no annotated use. It is unclear how these spaces are genuinely and reasonable required, incidental to the dwelling

The onus is on the applicant to demonstrate that a building of this scale, with the individual rooms the size proposed, is reasonably required, for purposes incidental to the enjoyment of the main

⁶ Appendix 4

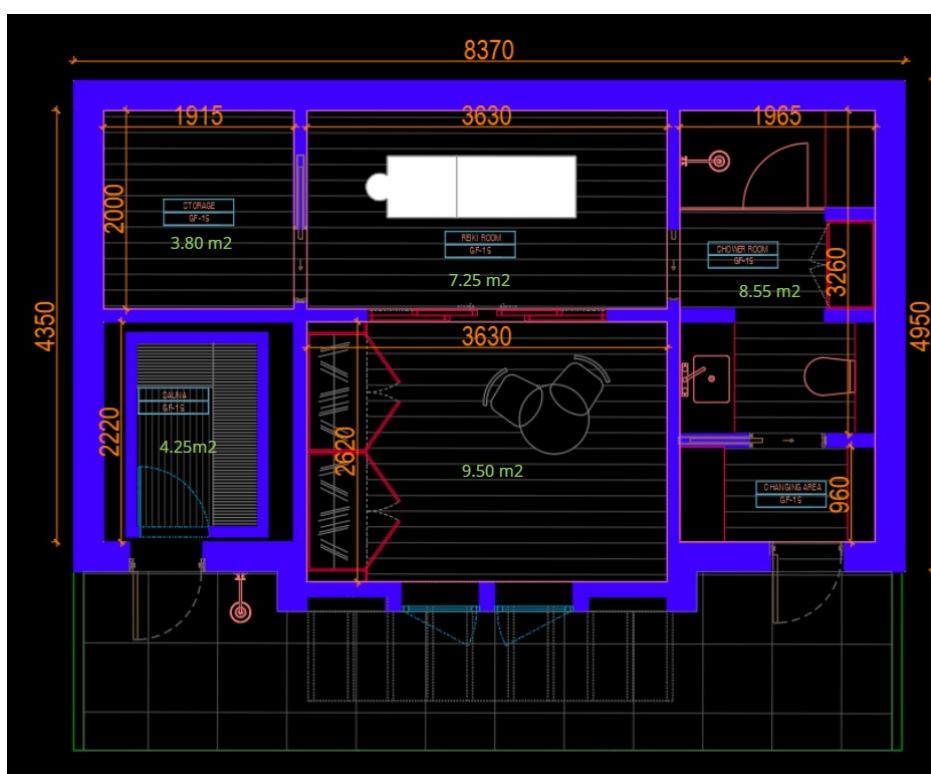
dwellinghouse, and the Council is unsatisfied that the application achieves this aim. The size of the building is considerable and whilst some of the proposed uses are likely to be considered incidental, insufficient information has been provided to demonstrate that the outbuilding as a whole is reasonably incidental.'

25. There was no bathroom proposed and the purpose of 'the outbuilding as a whole' is as a pool house associated with the pool. The simple act of calling the building a pool house, rather than an 'outbuilding' goes a long way in explaining its purpose. It is not readily apparent from the report where the application was deficient and we therefore set out a detailed explanation of the submission below.

26. In regard to the relationship of the pool and pool house to the main house the facts are :-

- a. The pool house door is 43m from the rear of the house
- b. The pool house is 33.8 sq m GIA
- c. The main house ground floor is 148 sq m GIA
- d. The whole house is 322.5 sq m GIA

27. The pool house is therefore 22% of the ground floor of the house and 10% of the whole house.



The swimming pool

28. The application included two proposed elements, a swimming pool, and a pool house. The delegated report is silent on the inter-relationship between the two and the proposed development as a whole has been refused a Certificate and it applies to both elements.

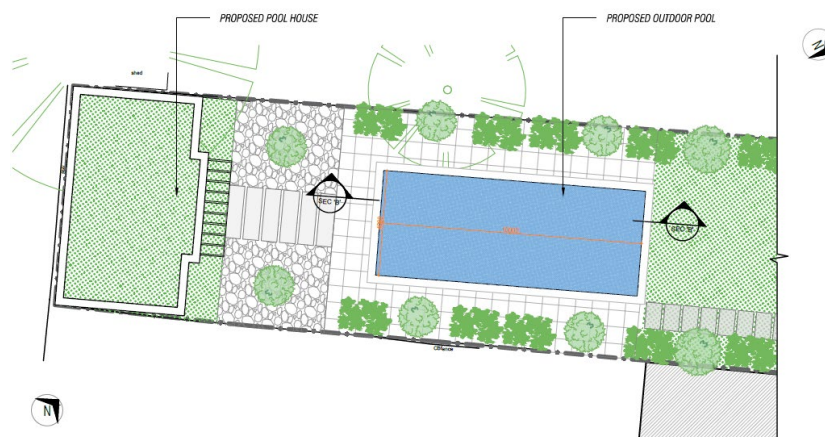
29. The pool house is proposed with the swimming pool and would not exist without it. The drawings show the immediate proximity between the pool and pool house. A drawn section of the pool was requested by the case officer and it was confirmed that the information was then sufficient.

30. The parent house, in common with its neighbours, has a substantial garden which is an amenity

that enhances the enjoyment of a family house bringing opportunities for outdoor recreation.

31. Locating the swimming pool at the end of the garden allows the retention of a generous lawn and garden setting in character with this house. The location avoids the incongruity of a pool very close to a house, especially in winter, and it brings activity to the end of the garden encouraging full use its length.
32. The location means that the pool and pool house can only be accessed from within the property and can only be used by people who are at the house.
33. A swimming pool is cited in Class E, and this is an indication that the GPDO has an underlying assumption that a pool is ordinarily incidental to the enjoyment of a dwelling house and capable of being permitted development.
34. The pool in the application is an ordinary pool 10m long and 4m wide, it is to be used in an ordinary way by the resident family. There is no reasonable basis to doubt that it is within the scope of Class E.

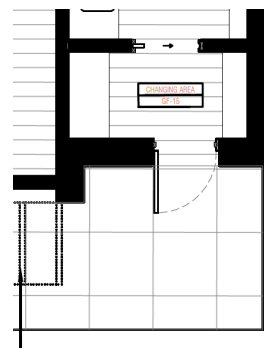
The pool house



35. The purpose of a pool house is to be used with a swimming pool. When used as such, it shares the same incidental relationship to the enjoyment of the dwelling house. It is used, at the same time, by the same people, for the same purpose, which is enjoying the pool and garden. A pool with a pool house is a better amenity than one without because it makes it; more convenient, practical, and pleasurable to swim.
36. Instead of recognising this self-evident truth the delegated report says that insufficient information has been provided to demonstrate that *'the outbuilding as a whole is reasonably incidental'*. Surely the starting position in any assessment should be to mention that a pool house goes with a pool and is clearly capable of being incidental.
37. The report says that *the onus is on the applicant to demonstrate that a building of this scale, with the individual rooms the size proposed, is reasonably required, for purposes incidental to the enjoyment of the main dwellinghouse, and the Council is unsatisfied that the application achieves this aim.*
38. In the light of that comment we will examine each aspect of the proposed pool house as it was shown in the submitted plan.

The Changing Facilities

39. The pool house provides changing facilities allowing the family to change by the pool. This is especially convenient with a pool that is quite distant from the house, people are wet after swimming and traipsing back to the house is less than ideal. It also makes swimming in poor weather a less Spartan endeavour as it is only necessary to brave a few steps to the pool.

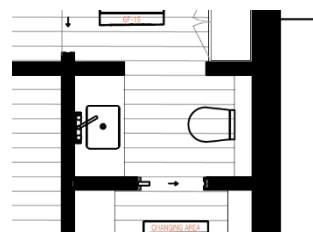


40. The changing room is on the right-hand side of the building accessed from an external door facing the pool. This room is 1.965m wide and 0.960m deep, the drawing shows two benches and clothes hanging areas.

41. There is nothing unusual, excessive, or unreasonable about this and nothing to suggest that it is not incidental to the enjoyment of the pool and the parent dwelling.

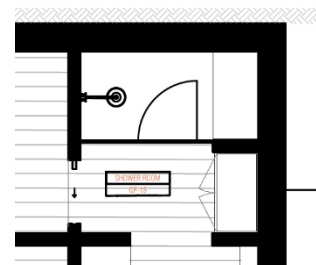
The WC

42. Accessed from the changing room and from a lobby there is a toilet with hand basin. This is a literal convenience for all people using the pool but especially for children. It allows more practical use of the pool by the whole family.



The Shower and lobby

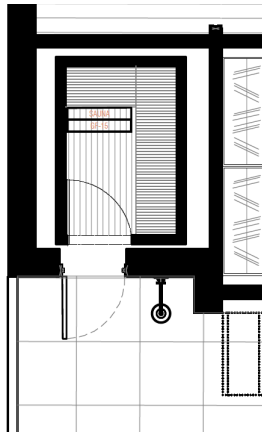
43. Beyond the toilet is a lobby with towel storage and then a shower. The lobby allows access to the WC or shower from the rest of the pool house and a space to dry when stepping out of the shower. The advantage of being able to change at the pool is undermined if, having got dressed, it is then necessary to go back to the house to shower.



44. In total this series of three facilities is 1.965m wide and 3.260m deep (including the internal walls), 6.4 sq m. It is assumed that these elements constitute the 'bathroom' in the delegated report. If so, that is misleading as it is not a bathroom and it is not 12.5 sq m but half the size.

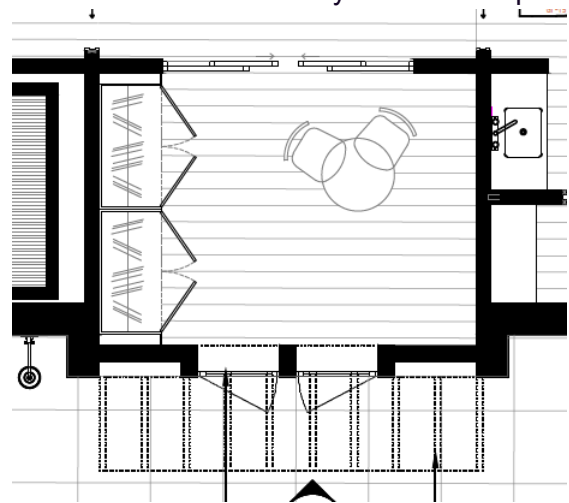
45. There is nothing unusual, excessive, or unreasonable about this and nothing to suggest that it is not incidental to the enjoyment of the pool and the parent dwelling.

The Sauna



46. On the opposite side of the pool house is a sauna accessed from an external door with an outside shower. It is a modest size, perhaps a maximum of three people. A sauna is a reasonable facility to have in a pool house next to a pool.

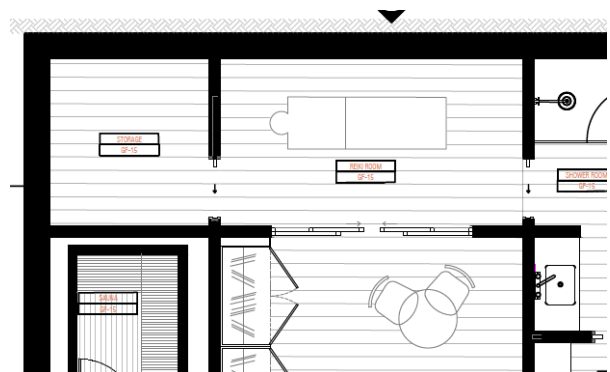
47. At the centre of the pool house there is a space accessed via two doors that provides the internal space you would expect to find in a pool house. The drawing shows a table and two chairs which gives an indication of its modest capacity. It is shown with storage cupboards on one wall and is 3.63m wide wall to wall and 2.62 m deep, 9.5 sq m.



48. This is the primary place to shelter from the sun and rain, to have refreshments, to provide play space for young children, to be able to oversee children in the pool, or to simply sit and read a book or socialise.

49. This room can be opened up into a rear area which is also multi-purpose. If the whole family gets caught by a storm they can open up the whole space and it can be used if the extended family or family guests come to use the pool.

50. This rear space is 3.63 wide and 2m deep, 7.25 sq m. It is shown on the drawing with a moveable couch and labelled as a 'reiki room'. When not used with the front room this area could provide a remote place for relaxation, therapy, yoga or exercise.



51. There is nothing unusual, whimsical, excessive, or unreasonable about this and nothing to suggest that it is not incidental to the enjoyment of the pool and the parent dwelling.

The Store

52. Finally, there is a store room in the back left-hand corner. This is for the storage of pool related equipment, families with children can generate a surprising amount of swimming paraphernalia in summer and this can be stored here for day to day use. In winter it can accommodate poolside items such as chairs and umbrellas when the pool is out of use.

53. There is nothing unusual, excessive, or unreasonable about this and nothing to suggest that it is not incidental to the enjoyment of the pool and the parent dwelling.

Summary

54. It is difficult to understand why any of these facilities was said to be unclear or unrelated to an incidental use of the house and its garden and proposed pool. They are very ordinary purposes and are very clear from the drawings.
55. Whilst the primary role of a pool house is to support the use of the pool there are other incidental uses of garden rooms and summer houses that people enjoy. As we spend most of the year in the house the opportunity to use a place in the garden to; read, or write, a book, to listen to music, to snooze, or play games, to do homework, is something that many people enjoy at home. They are all incidental domestic activities that make a house and garden more pleasurable. A pool house located and built primarily for its role with the pool can also be an incidental summer house retreat.
56. It is worth returning to the delegated report heading and ask '*would the proposed building be used for a purpose not considered incidental to the enjoyment of the dwellinghouse?*' Given the examination above there is not a single activity or purpose that is shown in the application that could be said to be something other than an incidental use. Furthermore, the application is made on the explicit basis that it is to be used for incidental purposes and it is not, objectively, possible to conclude anything other than it is at least 51% likely that the proposed pool and pool house as shown would be used within the scope of the development permitted by Class E.
57. A swimming pool with a pool house is not an idiosyncratic or whimsical requirement of a single individual. They are ordinary commonplace amenities and a pool is explicitly cited in Class E. There is therefore nothing in this that raises the issues covered in Emin.
58. The two appeal cases concerned proposals where the uncertainty came from a lack of evidence. It was not generated by the size of the building per se, but by the size of the emptiness that was shown within. There is no similarity here, each part of the pool house has a clear use and there is no unexplained emptiness, the drawings are clear as to the purpose of the constituent parts of what is clearly a pool house.
59. For all of these reasons the refusal is not reasonable and the decision does not meet the requirements of s192 (2) of the Act.
60. Hence this resubmission for reconsideration.

Appendix 1 The decision notice and delegated report ref 24/1194/PS192

Appendix 2 Application covering letter including assessment 9th May 2024

The application drawings

i.	Existing Site and Location Plan	2313_00-00	25 th April 2024
ii.	Existing and Proposed Site Plan	2313_00-01	25 th April 2024
iii.	Pool house and Outdoor Pool as Proposed	2313_02-08	12 th June 2024

Appendix 3 Correspondence on application

Appendix 4 Appeals cited by the Council in the refusal