



MEMO

FROM:

Planning Solicitor
Resources Department
Tel Ext

TO:

Susan Leeson
Planning Officer
Dated 26/1/09

REF:P/4/09/ CLP CONSULTATION

ADDRESS : 43 SEA LANE PAGHAM

NATURE OF OPERATION :ERECTION OF REAR DETACHED SWIMMING POOL BUILDING

1.ACKNOWLEDGEMENT AND TERMS OF ADVICE

Thanks for your recent consultation memo now returned together with your file on which alone plus the authorities cited this is based.

2.GENERAL RECOMMENDATION

I recommend you still have an arguable case to refuse for reasons that follow subject to your finding any contradictory evidence.

You as a Planner need ultimately to make a planning judgement but I append some guidance

I rely on you to tell me of any evidence indicating otherwise.

3.DETAILS AND TESTS UNDER SS 192 TCPA 1990 AND CIRCULAR 10/97 ANNEX 8

(1) Sufficiency of Evidence: para 8.12-8.22

General

The evidence judged on a balance of probability and the above criteria is insufficient and is imprecise and ambiguous.

Para 8.15 and the case of Gabbittass v SSE and Newham LBC 1985 JPL 630 referred to there establishes that corroboration is not needed unless to resolve any ambiguity. S194 TCPA 1990 states that it is a criminal offence to supply false or misleading information. So the applicants own uncorroborated evidence and unsworn evidence via letters is sufficient for these purposes.

Past history File ref P/76/08/CLP

I have referred to ref P/76/08/CLP and the previous plans and the cases of 253 Shinfield Road Reading , 1987 JPL 144 on the phrase " incidental to the enjoyment of a

dwellinghouse as such” within GPDO Class E Schedule 2 GPDO 1995 as amended by SI 2008 No 2362 as from 1 October 2008 which replaces the GPDO version in place when ref P/76/08/CLP was decided on 31 July 2008 [albeit then never signed off due to a withdrawal] .

However the phrase “incidental to” remains and is still crucial .

Before and after

I note that the present application proposes only a swimming pool with plant room [for equipment /workings] and shower room . Previously a combination of leisure rooms was proposed as detailed in full on ref P/76/08/CLE eg gym relaxation snooker study etc .

The point now is the size and dimensions. The present application building appears [without making measurements] about the same size and height as the previous application building. Eg see site plans in both cases

Consequently the issue is whether the swimming pool is too large [judged reasonably] for the dwellinghouse it is supposed to be “ incidental to” I think it can arguably be said to be too large as it appears to be as large as the house .

“incidental “ per eg 1987 JPL 144 means a development of a lesser size and subordinate to the dwellinghouse . The case at 253 Shinfield Road refers to the need for the applicant to evidence the need for a building of a particular size and it is open to you to ask the applicant for evidence to justify such a large swimming pool [which is not seen on file] .

You will measure exactly I note too that the “tolerances “ at Class E .1 (a) – (i) need to be assessed .

4.FURTHER EVIDENCE

I rely on you to show me any fresh evidence which may alter the tenor of this advice .

5.TERMS

1. refuse
2. too large to be “incidental” in terms of Class E
3. no evidence to justify large size

ref/lgdr/lprec/pl/cleudetcmodelmem

ref