

P/4/09/CLP

CERTIFICATE OF LAWFUL PROPOSED DEVELOPMENT REPORT**REF NO:** P/4/09/CLP**LOCATION:** 43 Sea Lane
Pagham**PROPOSAL:** Application for a lawful development certificate for a proposed use - rear detached swimming pool building**SITE AND SURROUNDINGS**

DESCRIPTION OF APPLICATION	This application is to consider whether a building dual pitched roof ridge height less than 4m, with eaves less than 2.5m, 2m from the boundary on less than 50% of the plot to be used as a swimming pool would be considered Permitted Development under the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008.
SITE AREA	0.143 hectares
RESIDENTIAL DEVELOPMENT DEN	N/A
TOPOGRAPHY	Predominantly flat
TREES	There are several trees on the site none of any significance affected by the proposed development.
BOUNDARY TREATMENT	Fencing and hedging.
SITE CHARACTERISTICS	Garden area to rear of detached chalet, which is rendered.
CHARACTER OF LOCALITY	Predominantly residential, bungalows to the rear of the site.

RELEVANT SITE HISTORY

P/100/06/	Outline application for the erection of two bungalows	Refused 18-09-2006 Appeal: Dismissed 23 02 2007
P/112/07/	Proposed new bungalow to the rear of 43 Sea Lane	Refused 08-11-2007
P/84/08/	Revised planning application for the erection of 1 no. new bungalow (resubmission of P/112/07).	Refused 22-08-2008

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P/76/08/CLP	Application for a Certificate of Lawfulness for Proposed Development - rear detached leisure annexe	Withdrawn 11-09-2008
P/141/08/	Rear single storey extension, new porch and re-cladding of external walls.	Approve Cond 20-01-2009
P/162/68	Outline two dwellings	Refused 20-11-1968

REPRESENTATIONS**Representations received:**

Pagham Parish Council

There have been a number of proposals seeking consent for development of additional units in rear gardens of the mature properties along the north east flank of Sea Lane. To date all have failed. The provision of additional units by way of back land development was viewed as a worrying trend. Whilst it is recognised that this is not an application for a bungalow, the proposal is for a building of similar size and spatial context. This application for CLP regarding a detached swimming pool building is considered to be merely a device for securing a second dwelling.

Comments on Representations received:

Noted

CONSULTATIONS

Planning Solicitor- Delwyn Jones

Consultations responses received:

Planning Solicitor: There is still an arguable case to refuse. The evidence is judged on balance to be insufficient, imprecise and ambiguous. Past history has been considered and legal case history concerning the definition of "incidental to the enjoyment of a dwelling house". It is noted that the proposal is for a swimming pool with plant and shower rooms. The point now is size and dimensions. The present application appears about the same size and height as the previous application. Consequently the issue is whether the swimming pool is too large for the dwelling house it is supposed to be incidental to. It can be argued that the building is too large as it appears as large as the house. Therefore recommend refusal as the building is too large to be incidental in terms of Class E and no evidence has been submitted.

Comments on Consultation responses:

Comments noted

DEVELOPMENT PLAN AND/OR LEGISLATIVE BACKGROUND

Section 192 (2) of the Town and Country Planning Act 1990 states:-

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.

1. PRINCIPLE

Section 191-195 Town and Country Planning Act 1990 and DoE Circular 10/97 Annex 8 have the effect of requiring these applications to be determined having regard only to the evidence

adduced and not planning policy:-

- (i) Which to be judged on a balance of probability.
- (ii) The onus of proof is on the applicant (and not the LPA) to adduce the evidence
- (iii) The LPA may have on its files relevant evidence either supporting or contradicting that of the applicant.

2. ASSESSMENT

Would the proposal be classified as Permitted Development under Schedule 2, Part 1 Class E (a) of the Town and Country Planning (General Permitted Development) Order 1995 as amended.

In this case, the proposal is not considered to be classed as Permitted Development Under Schedule 2, Part 1 Class E (a) of the Town and Country Planning (General Permitted Development) Order 1995 as amended because of the following reasons:-

There have been several applications on the same site which have previously been refused for a bungalow and an application for 2 bungalows was dismissed at Appeal.

Last year a CLP (P/76/08/CLP) was withdrawn for a building with no defined purpose and described as ancillary as the applicant was aware that the proposal would not be considered Permitted Development.

The applicant recently gained planning permission for a single storey rear extension to the existing dwelling. This application on the red edge site plan separates the residential curtilage and visual separates the proposed site from the dwelling. The intention therefore would appear to be to erect a building to be used as a separate dwelling house. An ancillary swimming pool could be erected much closer to the house.

Therefore the proposed swimming pool because of the siting, size and history of the site, could not be considered as Permitted Development.

OTHER MATERIAL CONSIDERATIONS

It is considered that there are no other material considerations to warrant a decision otherwise than in accordance with the Development Plan and/or legislative background.

CONCLUSIONS

Refuse.

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The evidence, size, siting and previous history of the site has been judged on a balance of probability of intended use as not considered ancillary to the main dwelling and does not meet the test in Schedule 2, Part 1 E (a) in that the size of the building is approximately the same footprint as the dwelling itself and also of previous footprints and in the same location as previously refused single dwelling houses.

The Planning Solicitor has produced legal precedent concerning a case in Gravesham Borough Council to determine whether a granny annexe in the garden of a dwelling house would be considered incidental to the enjoyment of a dwelling house and due to distance of 11.5 metres away from the dwelling it could not be considered as an extension to the dwelling. In this case the building is 26.5m away from the dwelling. It measures 13.73m by 9m. The previous CLE leisure building was 14m x 14.3m. No justification has been provided as to why the swimming pool needs to be on the same footprint as previous proposed bungalows, other than to say the applicant is looking for a use of the land if the appeal on a refused bungalow (P/84/08) is dismissed the applicant is seeking an alternative use of the land.

Therefore it is not considered for the reasons given above that the proposal is ancillary accommodation to the dwelling and therefore it should not be considered Permitted Development, an the submission of a planning application would be required.

RECOMMENDATION**PLANNING PERMISSION REQUIRED**

- 1 Reason 1 The proposed development for a swimming pool to the rear of the existing dwelling, approximately 25 metres from the dwelling would not constitute permitted development under Schedule 2, Part 1, Class E (a) of the Town and Country Planning (General Permitted Development) Order 1995 as amended by the Town and Country Planning (General Permitted Development) (Amendment) (No. 2) (England) Order 2008 as judged on the balance of probabilities insufficient justification has been submitted to the size and siting of the swimming pool on a site previously refused planning permission for a single dwelling house, on the basis that the local planning authority is not convinced that a building of this size and in this location could reasonably be argued to be incidental to the enjoyment of the dwelling house.