

3rd November 2023

Our Ref: SWLC.LPC5755

Development Management
Cotswold District Council
Trinity Road
Cirencester
GL7 1PX

Dear Sir/Madam

Town and Country Planning Act 1990
The Planning (Listed Buildings and Conservation Areas) Act 1990
Paxford House, Paxford, Chipping Campden, GL55 6XQ

LPC (Trull) Ltd have been instructed to provide an updated planning commentary to support the project architect; Holland Green's amended application for the erection of a tennis court, log store, outdoor swimming pool and plant shed at the above property (LPC Ref: 23/03150/FUL).

The application, as submitted, has now been revised, without prejudice, to also seek the authorisation of the residential use of the land on which the incidental residential developments described are to be provided.

Notwithstanding the change of use referenced in the description of development though it is a matter of fact that it is the effluxion of time that established a lawful use and not the issue of any paperwork. It should also be stressed too that, 'curtilage' is not a land use, and consequently the householder application original made cannot by law influence the use of land, as it is restricted to operational works only. For completeness I have therefore repeated the previous background particulars provided by the agents regarding the registration query and that I believe shows the long term residential use of the lawned areas related to the application development and within the red lined application site as identified too in the architect's Design and Access and previous Heritage supporting statements.

Figure 4 on the next page shows the 1974 OS survey map (49 years ago) shows a Tennis court in the proposed location for the new Tennis court as well as the garden curtilage as part of a single area of land highlighted, where the swimming pool is proposed.

Below that Figure 2 is taken from ordinance survey mapping dated 2003 (10 years ago) shows the site of a previous tennis court (as referenced in the Design and Access Statement too) in the proposed location for the new tennis court, and again also shows the garden curtilage as a single cartographical area.



Figure 4 1974 A detail from the Ordnance Survey



The historic position is believed to be a material consideration and in light of the lack of any contradictory information should be given substantial weight in the planning balance. I make this point mindful too of the findings of *Panton & Farmer v Secretary of State for the Environment, Transport and the Regions and Vale of White Horse District Council* [1999] JPL 461. This rules that lawful use rights can only be lost by evidence of abandonment; by the formation of a new planning unit; or be being superseded by a further change of use. Thus, a use which is dormant or inactive could still be 'existing', so long as it had begun more than ten years ago, in this case, and had not been extinguished in one of these ways.

These principles were upheld by the more recent case –*Thurrock Borough Council v Secretary of State for the Environment, Transport and the Regions and Holding* [2001] JPL 1388. This related to the use of land for taking off and landing of aircraft.

The established principles are therefore that an accrued planning right can only be lost in one of three ways, by operation of law. First, by abandonment, secondly by the formation of a new planning unit, and thirdly, by way of a material change of use.

It is a common misunderstanding that as far as the evidence to support a Certificate of Lawfulness as existing, and pursuant to Section 191 of the above Act, it must demonstrate on the balance of probability that a use has been continuous for the immunity period running up to the date of the application. That is not the case though, as the Act states that the required evidence must demonstrate that the use is lawful at the time the Certificate application is made. We of course say there is no evidence of an abandonment of the land's residential use and whilst the application as made in the interests of expediency (and without prejudice) includes the use of the land I trust these matters can be weighed positively in the planning balance.

With regard to the planning balance to be undertaken, the National Planning Policy Framework (NPPF) of course highlights that planning law (Section 70 [2] of the Town and Country Planning Act 1990 and Section 38 [6] of the Planning and Compulsory Purchase Act requires applications for planning permission to be determined in accordance with the Development Plan unless material considerations indicate otherwise. The Development Plan must be read as a whole but the following policies from the Cotswold District Local Plan 2011-2031, being the relevant Development Plan are considered key to the assessment of the proposed developments.

- EN1 –Built, Natural and Historic Environment
- EN2 –Design of Built and National Environment
- EN4 –The Wider Natural and Historic Landscape
- EN5 –Cotswolds Area of Outstanding Natural Beauty
- EN7 –Trees, Hedgerows and Woodlands
- EN10 –HE: Designated Heritage Assets

The NPPF provides the Government's planning policies for England and explains how they should be applied. It is a material planning consideration.

Paxford House is a Grade II* Listed Building, and is reviewed proportionately within the supporting Design and Access Statement and has been assessed more fully by the Heritage Impact Assessment in support of the recent applications to the House and barns, so that is not revisited as part of this statement, other than to stress the application site is maintained to be part of the house's established and commensurate setting. There is of course a statutory duty for the decision maker to have special regard to the desirability of presenting the building, its setting and features of special architectural or historic interest it may possess, in accordance with Section 66 [1] of the Planning (Listed Buildings and Conservation Areas) Act 1990.

The development proposed does not impact physically on the intrinsic fabric of the Heritage Asset and thus Listed Building Consent is not required in association with the full application made. The property's setting is a material consideration and is assessed within the following planning assessment.

The site also lies within the Paxford Conservation Area and Cotswolds Area of Outstanding Natural Beauty. There are other Listed Buildings, namely 'The Round House' to the south west and 'Wells Farmhouse' to the north east.

Section 72 to the above Act is of course also relevant as the Conservation Area's character and appearance must be preserved or enhanced. In this regard as indicated it is strongly maintained that the area's affected are already distinctly residential garden land in character and appearance, which is not materially changed.

In light of the issues arising, it is considered that the necessary planning assessment falls under the following main issues:

- Design and Impact on Heritage Assets
- Impact on Residential Amenity
- Impact on Cotswolds Area of Outstanding Natural Beauty

Planning Assessment

Cotswold District Local Plan Policy EN10 'Historic Environment: Designated Heritage Assets' states that in considering proposals that affect a designated heritage asset or its setting great weight should be given to the asset's conservation. Development proposals that sustain and enhance the character, appearance and significance of designated heritage assets (and their settings), and that puts them to viable use, consistent with their conservation will be permitted. Proposals that lead to harm to the significance of a designated heritage asset or its setting will not be permitted, unless clear and convincing justification of public benefit can be demonstrated to outweigh that harm.

Section 16 of the NPPF states that in determining applications, local planning authorities should take account of the desirability of maintaining or enhancing the significance of heritage assets. Indeed, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). Any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification. Paragraph 202 states that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, where appropriate, securing its optimal viable use.

Local Plan Policy EN2 'Design of the Built and Natural Environment' states that development will be permitted which accords with the Cotswold Design Code (Appendix D). In particular, proposals should be of a design quality that respects the character and distinctive appearance of the locality.

Section 12 of the NPPF also seeks to achieve well-designed places, and considers good design to be a key aspect of sustainable development.

The proposals are for the authorisation of the residential use of the land identified to construct a tennis court and outdoor pool with 2No incidental outbuildings. The site's particulars are described in the Design and Access Statement.

The listed gardens and the application site as a whole are well contained within defined boundary walls and hedge rows. The proposal sites are both well contained with dense and established planted boundaries and with limited/potentially no views from outwith the site. There is no intervisibility with the house either, due to the land levels, height of boundary walls, hedges and foliage and also some attached outbuildings.

The gardens as described provide the immediate setting for Paxford House but there are also views into the wider surrounding countryside from southern limits of the contained land. This relationship with the wider landscape is defined yet transitional and limited by the change in character/maintenance beyond the red lined application site.

The proposed tennis court has been carefully designed utilising the established levelled area negating ground work changes. The proposed surfacing material could have a large impact on the overall appearance of the tennis course. In order to appear as unobtrusive as possible in this context, a material which emulates the grass in colour and texture is proposed and can be conditionally controlled.

As advised above it is the enclosed and well managed garden character of the proposed site that curtails a wide scale appreciation of the setting and significance of the House. This is not changed by the modest development in question.

Overall, it is strongly maintained that the proposed tennis court, 2No new timber clad and low level secluded buildings, and outdoor pool have been carefully designed utilising the levelled and managed land, and retaining the established vegetation and screening, which compartmentalise the spaces, minimising the expanse of the House's setting and transition to the countryside to the south. The existing hedgerows and trees render the proposed tennis court largely concealed within characteristic landscape features and as part of a clearly garden setting.

Notwithstanding the assessment above, it is acknowledged that the use of the tennis court and pool could change the intensity of activities, in particular the resultant noise issues from the uses and, as the application includes changing the use of residential curtilage, there are resultant uses potentially stemming from this too. This is reflected in Historic England's 'The Setting of Heritage Assets' Planning Note 3 which states 'although views of or from an asset will play an important part, the way an asset in its setting is also influenced by other environmental factors such as noise, dust vibration from other land uses in the vicinity'.

Noise from people play tennis or swimming in this location would not realistically be heard outwith the residential managed areas identified. Public footpaths run outside the application site to the south and again, particularly in light of the diffusing vegetation, it is not expected use of the site will materially impact people beyond the site's boundaries.

Potential stray balls will not impact beyond the application site either.

Even if the sites' uses were noticeable there are mitigating factors to these issues. The uses are outdoors and exposed as such any activity on the site would be limited by weather and limited to the warmer months. Also, no lighting is proposed which could be conditionally controlled. Therefore, any activity would be limited to daylight hours where some background noise would be expected. Any expectant noise issues would therefore be heavily restricted and the uses of the area as residential land would be unlikely to detrimentally affect the tranquillity and enjoyment of the wider area.

Consequently, it is maintained that the scheme would not harm the significance of Paxford House as a listed building, it would also not be detrimental to the settings of any nearby listed buildings or monuments either, and the character and appearance of the Conservation Area is unharmed. Thus, the proposal meets the requirements of Section 16 of the NPPF and Policies EN1, EN2, EN10 and EN11 of the Local Plan.

Impact on Residential Amenity

Local Plan Policy EN2 (Design Code) states that development should respect the amenity of dwellings, giving due consideration to issues of garden space, privacy, daylight and overbearing effect. Similarly, paragraph 130 of the NPPF also states that planning decisions should ensure that developments create places that are safe, inclusive and accessible, with a high standard of amenity for existing and future users.

The tennis court, pool and residential use of the land would be tightly contained and located over 45m from the nearest dwelling. As such any issues relating to loss of privacy or loss of light overbearing or overshadowing impacts are unlikely. The submitted Design and Access Statement makes it clear such features are not uncommon in the vicinity of housing nearby.

With regard to any noise emanating from the use of the tennis court and pool within the managed residential areas, for the reasons explained above, as to why this would not be harmful to the setting of the nearby heritage assets and Conservation Area, the noise likely to occur is unlikely to detrimentally impinge on the residential amenities of any nearby dwelling.

Impact on Cotswolds Area of Outstanding Natural Beauty (AONB)

The site is located within the Cotswolds Area of Outstanding Natural Beauty (AONB). Section 85 of the Countryside and Rights of Way Act (CROW) Act 2000 states that relevant authorities have a statutory duty to conserve and enhance the natural beauty of the AONB.

Local Plan Policy EN4 (the Wider Natural and Historic Landscape) states that development will be permitted where it does not have a significant detrimental

impact on the natural and historic landscape (including the tranquillity of the countryside) and that proposals will take account of landscape and historic landscape character, visual quality and local distinctiveness. They will be expected to enhance, restore and better manage the natural and historic landscape, and any significant landscape features and elements, including key views, the setting of settlements, settlement patterns and heritage assets.

Local Plan Policy EN5 'Cotswolds Area of Outstanding Natural Beauty' states that in determining development proposals within the AONB, or its setting, the conservation and enhancement of the natural beauty of the landscape, its character and special qualities will be given great weight.

The site is bounded on most sides by built form, and dense planting such that is predominately located within the confines of existing development, and the apparent built up limits of the hamlet.

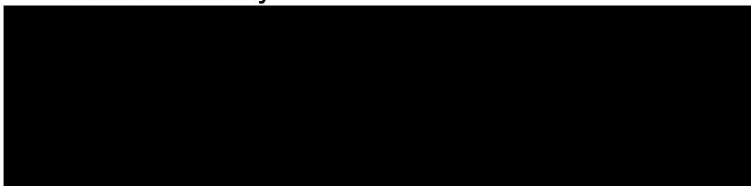
There are no Public Rights of Way (PROW) within the site although as said there is a footpath to the south. There will be limited views of the proposals from outside the site due to intervening natural and man made features.

With regard to any noise emanating from the use of the tennis court, pool and residential land for the reasons explained as to why this would not be harmful to the heritage assets this noise is unlikely to affect the tranquillity of the countryside beyond the contained site.

Overall, it is considered the proposal will not constitute an incongruent change or addition to the wider landscape context of Paxford House, or its more intimate managed areas. This is due to the existing features to the boundaries and within the overall site which ensure the proposals are not seen as a protrusion into the rural landscape, limited views of the proposed development owing to design and location support the grant of permission as do the fact that any externalities are heavily constrained and limited in any event so as not to be materially noticeable.

I trust the above brief and focused comments ensure you have sufficient reasons to support the full application now made

Yours faithfully

A large black rectangular redaction box covering the signature of Simon Chambers.

Simon Chambers
Director

Cc Ms A Clay