The Planning Inspectorate

Appeal Decision

Site visit made on 7 October 2020

by Jan Hebblethwaite MA Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 22 October 2020

Appeal Ref: APP/L3815/D/19/3233779
The Old Town Hall, Bosham Lane, Bosham PO18 8HY.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mrs Isabelle Mathew against the decision of Chichester District Council.
- The application Ref BO/19/01352/DOM dated 18 May 2019, was refused by notice dated 18 July 2019.
- The development proposed is an outdoor swimming pool.

Procedural Matter

1. The application form sent with the appeal documents was dated 12 December 2018. However, the Appellant's agent has confirmed that the application which is the subject of this appeal was made on 18 May 2019 and is in identical terms.

Decision

2. The appeal is dismissed.

Main Issues

3. The main issues in this appeal are (a) the effect of the proposed development on the setting of designated heritage assets; (b) whether the personal circumstances of the Appellant would outweigh any identified harm.

Reasons

Setting of designated heritage assets

4. The proposed development is an outdoor swimming pool within the garden of The Old Town Hall, a Grade II listed building. The development site is also within the Bosham Conservation Area (BCA), both designations being heritage assets. The listing for the Old Town Hall shows that it dates from 1694 although it has been "much restored". Restoration was originally undertaken in the 1930s, when the property was apparently converted from four cottages and the Town Hall to a single dwelling. Further alterations have been carried out by the Appellant in recent years.

5. The Old Town Hall is in a prominent position in Bosham Lane and above Shore Road which is considerably lower than the garden. Shore Road floods at each

high tide. The Old Town Hall is described in the Bosham Conservation Area Appraisal[1] as a significant example of a more prestigious gentry house.

6. On my site visit, the tide was low and I walked along both Shore Road in front of the Old Town Hall and The Trippet (an elevated narrow path to the rear), in both directions. Pedestrians on Shore Road are well below the top of the wall between the garden and the road. The wall is some 2m high and the garden cannot be seen over the wall from the road. The walls of the Old Town Hall and the extensions to the east prevent views of the garden from The Trippet.

7. In assessing the effect of the proposed development on designated heritage assets, I have paid special attention to the desirability of preserving or enhancing the setting of the listed building and to the character and appearance of the BCA, having regard to sections 66 and 72 of the Planning (Listed Buildings and Conservations Areas) Act 1990 and to Chapter 16 of the NPPF[2]. Paragraph 193 of the NPPF requires that in considering the impact of proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. Any harm to that significance requires a clear and convincing justification.

8. As I noted on my site visit, The Old Town Hall is a distinctive and prominent building in the historic part of Bosham and is significant in the BCA. The BCA has as its key characteristics its location as an historic marine settlement overlooking Bosham Channel, with an "outstanding collection of listed buildings" and groups of small-scale cottages. The overall impression is of a quiet and peaceful historic village with an informal layout, dominated by the tidal Bosham Channel.

9. Whilst I recorded that it is not possible to see into the garden to the Town Hall, the significance of the setting of a heritage asset is not limited to the purely visual. Although the Appellant describes the garden as being in two parts, I noted that the division between the two is a low and open-structured fence. Although the current arrangement is that the area in front of the building has a more tended cottage-garden appearance, and the area to the east of the fence is simply laid to grass, the whole of the open space forward of the building and the extensions has the feeling of a garden serving the building as a whole.

10. I consider that the swimming pool would appear as an intrusive modern element, entirely unrelated to the history and setting of a building of the age and appearance of the Old Town Hall. This would be the case whether the pool was covered when not in use or not. For that reason, I consider that the introduction of the swimming pool, with its regular shape and York stone paving would detract from and cause less than significant harm to the setting of the listed building and to the character and appearance of the BCA.

11. Where less than significant harm to a designated heritage asset is found, Paragraph 196 of the NPPF requires that the harm be weighed against the public benefits which could arise from the proposed development.

12. Public benefit may be anything which delivers economic, social, or environmental objectives (Planning Practice Guidance para 18a-20-20190723) and must flow from the proposed development. There would be a short-term

[1] Bosham Conservation Area Character Appraisal and Management Proposals (Review) approved 7 May 2013 (page 14)
[2] National Planning Policy Framework

economic benefit during construction works, and potentially during future maintenance, but these would be limited in time and extent. I do not consider them sufficient to outweigh the less than substantial harm which I have identified.

Personal circumstances

13. I have had due regard to the Public Sector Equality Duty (PSED) contained in section 149 of the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it.

14. The Appellant falls within two of the nine protected characteristics in the PSED, namely age and disability through arthritis and cancer. It does not follow from the PSED that the appeal should automatically succeed, but the existence of protected characteristics is a consideration which should be taken into account in the planning balance.

15. The taking of exercise is beneficial for those suffering with arthritis and the Appellants eye condition would be affected by the chlorine traditionally used in public swimming pools. However, swimming is not the only form of exercise which could benefit arthritic joints and they are not likely to have the same risk to the Appellants eye condition. The addition of a swimming pool to the garden would be a permanent change to the setting of the listed building and although I have attached some weight to the Appellants situation, I do not consider it to be sufficient to overcome the objection to the proposed development identified above.

Other Matters

16. The Appellant has pointed out that there is a fallback position, in that a moveable above-ground pool could be located in the same position as the proposed pool. I have been given no details of the size and construction of such a pool, nor have I been given any indication that there is more than a theoretical chance that the moveable pool would be installed in the absence of permission for the proposed development.

17. A pool of a size sufficient for swimming is likely to fall within the definition of development due to the weight of water which would secure it to the ground, whether it is technically moveable or not. The GPDO[3] permits a swimming pool in the curtilage of a dwellinghouse but not where it would be sited in the curtilage of a listed building (Class E.1(g)) as would be the case with this development site.

18. For those reasons, I do not consider that a true fallback position exists, or if it does, that it should be given anything more than very limited weight.

[3] Town and Country Planning (General Permitted Development) (England) Order 2015 Schedule 2 Part 1 Class E

Conclusion

19. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Jan Hebblethwaite

INSPECTOR