



Neutral Citation Number: [2021] EWHC 2028 (Admin)

CO/1531/2020

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 19/07/2021

Before:

Mr Timothy Corner, QC
Sitting as a Deputy High Court Judge

Between:

R (on the application of Richard Buxton)
- and -
Cambridge City Council

Claimant

Defendant

-and-

[1] Mr Twomey
[2] Ms Farrukh

Interested Parties

Richard Harwood, QC (instructed by Richard Buxton Solicitors) for **the Claimant**
Jack Parker (instructed by Tom Lewis of 3C Shared Services Legal Practice) for the Defendant
The interested parties were not represented.

Hearing date: 6th July 2021

Approved Judgment

Timothy Corner, QC:

INTRODUCTION

1. These judicial review proceedings concern the grant of planning permission and listed building consent to erect a rear extension to a house, 7A Parker Street, Cambridge.
2. Permission to apply for judicial review was granted on the papers by Neil Cameron QC, sitting as a Deputy High Court Judge, on grounds 1 to 3. Permission was refused on ground 4 and the application in relation to that ground was renewed but is not now proceeded with.
3. The grounds which have permission are:
 - (i) The Defendant (“the Council”) wrongfully:
 - (a) relied on claimed reversibility of proposals in relation to no. 7A,
 - (b) failed to have regard to the Historic England guidance on the issue; and
 - (c) had regard to a matter which will not arise, namely the removal of the proposed extension.
 - (ii) The Council failed lawfully to address the significance and setting of no.7;
 - (iii) The Council failed to address local plan policy (58a) regarding effects on the appearance of listed buildings.

FACTUAL BACKGROUND

4. No. 7A Parker Street is a terraced house in the central ‘Kite’ area of Cambridge, fronting onto the back of Emmanuel College. It is listed at grade II with the adjacent house, no. 7, and described as mid-Nineteenth Century, two storeys in height, constructed from grey gault brick. It is part of a group of listed buildings, Nos 1 to 13. Nos. 7 and 7A were constructed a little after the rest of the terrace, with 7A being the later.
5. At the rear, no. 7A has a single storey extension (originally an outbuilding which was then joined to the house). No. 7 has a large two storey extension, original to the building and constructed as servants’ quarters. It has a different scale from the extensions on the rest of Parker Street. The buildings back onto Victoria Street (to the north) with Clarendon Street being to the east.
6. The Claimant lives at 40 Clarendon Street and also owns 19B Victoria Street. The two properties share a garden adjoining no. 7A.
7. In early 2019 a planning application and listed building consent application were made for a roof extension and part one-storey, part two-storey rear extension (demolishing the existing extension) at no. 7A. The Council’s conservation officer visited the site and took photographs, including a photograph from Clarendon Street showing a view of the

no. 7 rear extension over the current 7A extension. The conservation officer objected to the scheme saying of the proposed extension that it:

“does not appear to take into consideration the original or existing form of this listed building, and is not sympathetic to its character, masking most of the original details which are still visible on the rear of the building”.

8. The applications were withdrawn and in what follows I will refer to them as “the withdrawn applications” or “withdrawn scheme”.
9. The planning and listed building applications that were then submitted, and are now in issue in these proceedings, were registered on 17th September 2019 under references 19/1199/FUL and 19/1200/LBC and appeared on the Council’s weekly list of applications on 23rd September 2019. The new scheme is for a part one-storey, part two-storey extension, replacing the existing extension and running the full width of the building (the first floor oversailing a passageway). A three page “Design/Access and Heritage Statement” was submitted noting that 7A and 7 were built post-1846 and are listed, but without saying more about no. 7.
10. The conservation team responded on 3rd October 2019 concluding that there was no adverse effect on “the character or special interest of the listed building”. Much of this response subsequently appeared in the delegated report, although the report omitted the paragraph that raising floor levels “may be acceptable subject to details” to ensure reversibility (see penultimate paragraph).
11. Whilst most other neighbouring properties were notified by the Council on 17th September 2019 the Claimant was only formally notified on 23rd January 2020, although he had been told about the proposals by neighbours and already made representations on 25th October 2019. He raised objection, amongst other points, to the mass of the extension and its impact on the setting of no. 7, including its extension (paras 1-5). The Claimant wrote again on 26th October 2019 drawing attention to the harm to views of no. 7’s extension particularly from the south and east. He provided photographs, including from one from the driveway of 13 Parker Street as illustrative of the view from Clarendon Street.
12. A ward councillor, Tim Bick, was contacted by local residents and on 6th November 2019 he requested that the applications be called in for consideration by the planning committee, calling and then emailing the planning case officer, Mr Andy White.
13. The developer’s agent responded to various representations and the Claimant replied on 10th January 2020. He referred to the failure to address impacts on the setting of no. 7, including the public view of it from Clarendon Street (para 1). He cited local plan policy 58a as requiring that proposals “do not adversely impact on the setting, character or appearance of listed buildings” (para 2). There appears to have been a case officer recommendation to approve at least provisionally formulated by 15th January 2020.
14. Mr White (the author of the delegated report) says that whilst discussing his recommendation with his line manager, he considered the discretion to refer applications to the committee, but decided that it did not raise contentious, sensitive or significant policy issues nor would it otherwise be beneficial for the application to be considered by members (his witness statement para 8-10). He was “subsequently

advised” by his line manager that “subject to any issues raised by the further consultation with the owner of 40 Clarendon Street, the applications should be determined under the scheme of delegation”. Mr White then refers to the consultation letter being sent.

15. On 26th January Councillor Bick emailed Mr White chasing up his request for the applications to go to committee, having not heard back from officers. On 28th January at 10:56 am, in response to a separate request, Mr White advised Mr Buxton that “with regard to decision dates & possible committees ... any decision will not be made until the consultation period has ended”.
16. At 3.23 pm that same day Mr White emailed Councillor Bick:

“Your request was not received within 21 days of the application being on the weekly list. Having discussed it with managers it was decided that the application will be determined under delegated powers.”
17. The Claimant made further representations on 12th February 2020.
18. The conservation officer, Mrs Smith, commented on the Claimant’s representations in an email to the planning officer on 20th February 2020. This was quoted, slightly paraphrased, in the delegated report. The conservation officer did not carry out a site visit in the course of these applications, relying instead on her previous January 2019 visit (her witness statement at paragraphs 5 and 6).

The delegated report

19. The applications were determined by officers under delegated powers on 26th February 2020. A report was written by Mr White and made available after the decision.
20. The report listed policies including the National Planning Policy Framework, policy 58 “Altering and extending a listed building” of the Cambridge Local Plan 2018 and the Kite Area Conservation Area Appraisal. It then quoted most of the original Conservation Team comments referring to a “light touch addition” and the existing window to be “lowered to create a new doorway” (para 6.2). The summary concluded “The proposal will not adversely affect the character or special interest of the Listed Building” (para 6.3).
21. Local representations, including from the Claimant, were summarised as including:

“Harms the architectural interest through obscuring most of the rear elevation of the listed building.

Erodes the appreciation of the existing rear wing of No.7 Parker Street ...

... less than substantial harm ...

Gross over development, fails to recognise the difference between No 7 which is larger and its servant quarters and No 7a which is a smaller property.

No consideration of the setting of the listed building at No.7.”

22. The report said in relation to Councillor Bick:

“Councillor Bick requested that the application be called to Committee for a decision but did not identify any material planning reason for his request. However, he commented that if the officer recommendation was for refusal then he would withdraw the request. The application was received on 17th September and the request was made significantly beyond 21 days of the application appearing on the weekly list (7th November 2019).”

23. Heritage and design matters were considered by the planning officer under “assessment” (para 8.1-8.6). In particular, the report said (para 8.1):

“The proposed first floor will abut the rear projection of No.7 which is also a Listed Building although the appearance of the rear projection (that will be masked by the two-storey extension to No.7a) is of no particular architectural merit.

8.2 It is considered that the proposal is compliant in design terms with Cambridge Local Plan (2018) policies 55, 56, 58, 59.”

24. On law and policy, the statutory duties were referred to in (para 8.3):

“The NPPF identifies protection and enhancement of the historic environment as an important element of sustainable development, as well as achieving good design. Policy 61 of the Local Plan requires new proposals to preserve or enhance the City’s heritage assets and policies 55 and 57 require proposals to respond appropriately to the local context with high quality design.”

25. Paragraph 8.4 said, in part:

“The current application represents the outcome of the pre-application work. It is acknowledged that the proposed extension is large, but the integrity of the Listed Building is considered to be preserved through the inclusion of the glazed link and “light touch” connection to the grade II Listed Building. It is noted that objections raise concerns over the setting of the building however in this instance the key elements of the building that are identified in its listing specify features on the front elevation. This in itself is not an identification of the setting and in this regard, it is considered that the important considerations about the rear of the buildings and small gardens which surround the site and form a demarcated area are:

- (1) that this area has undergone a significant amount of change in contrast to the frontages;*
- (2) that the Listed Building at No7a will be readily distinguishable from the extension through the inclusion of the glazed link;*
- (3) that the form and appearance of the extension has had regard to the design of the listed building and neighbouring buildings; and*

(4) it is not considered that there is harm to the setting of No.7. Just because one part of No.7 can no longer be seen from some viewpoints is not considered to equal harm to setting. Were that the case change to any Listed Building in this type of high density location would become almost impossible.”

26. Further comments (based on the Conservation Team’s 20th February response) were italicised (para 8.5):

“There is an existing ground floor extension to the building that covers a large area of the rear elevation. The additional width will cover the entire ground floor of the property, enclosing the whole of the rear façade. However this will be done in such a way that it is fully reversible, with the new extension meeting the rear wall rather than being toothed in, there is a suggested condition to ensure that the brickwork, which will become internal, will not be covered over or painted. The existing French doors will remain. The first floor extension has been revised during the pre-application process and this iteration, which is supported by the Conservation Team, is a link from an existing first floor window, lowering the sill, into a lightweight link to the new first floor. As with the ground floor, it is considered that there is an element of reversibility of these works.

The identification of “public view” of the rear of no. 7 Parker Street that the neighbour has identified is hard to identify unless the view referred to is from the private gardens of the surrounding local properties. If that is so the conclusion of the Conservation Team is that those views of no. 7 are not important to the appreciation of that listed building. The two storey element has no particular architectural detailing to the east elevation other than the extension itself which is of considerable size and dates back to the Victorian era at least. The rear of the properties along Parker Street, all of which are grade II listed, have all been altered over time apart from no. 8. There is no consistent building form and many having full width ground floor extensions. This eclectic mix is part of the character of the conservation area. As the property already has a significant rear ground floor extension, it is considered that the additional extensions, due to their reversibility, will have no greater impact on the character or special interest of the listed building.”

27. The heritage section finished at paragraph 8.6:

“Having concluded that there would be no greater impact on the character or special interest of the listed, it is considered that the proposal is compliant with Cambridge Local Plan (2018) policy 61.”

28. The planning permission and listed building consent were issued on 26th February 2020. Two conditions dealt with reversibility;

“3 Prior to the commencement of the development hereby approved, the details of the method(s) by which the extension will meet and be securely attached to the rear wall of the Listed Building shall be submitted in a report including drawings at a scale of 1:20. The report shall be agreed in writing by the Local Planning Authority before any works commence. The report

should indicate how the attachments will enable the extension to be fully removed without causing damage to the historic fabric of the Listed Building. The work should then proceed in accordance with the agreed details.

Reason; To avoid harm to the special interest of the listed building (Cambridge Local Plan 2018, policy 61).

11 Where formerly external masonry or other walls become internal walls, they are not to be plastered, rendered, painted or otherwise coated irreversibly. If the walls are to be lined, they shall be battened out and the lining affixed to this system [may be metal, timber or other appropriate battens].

Reason; to avoid harm to the special interest of the listed building (Cambridge Local Plan 2018, policy 61)."

LAW AND POLICY

Heritage law and policy

29. A duty applies to the determination of listed building consent applications by the Planning (Listed Buildings and Conservation Areas) Act 1990 ("the Listed Buildings Act"), s 16(2):

"In considering whether to grant listed building consent for any works the local planning authority or the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses."

30. Section 66(1) applies a similar duty to the determination of planning applications:

"In considering whether to grant planning permission or permission in principle for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses."

31. Conservation areas are designated by local planning authorities as 'areas of special architectural or historic interest the character or appearance of which it is desirable to preserve or enhance': s 69(1). By section 72(1):

"In the exercise, with respect to any buildings or other land in a conservation area, of any functions under or by virtue of any of the provisions mentioned in subsection (2), special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area."

32. These provisions include the Listed Buildings Act and the Town and Country Planning Act 1990: see s 72(2).

The National Planning Policy Framework

33. Listed buildings and conservation areas are “designated heritage assets” under the National Planning Policy Framework. The developer should:

“Describe the significance of any heritage assets affected, including any contribution made by their setting. The level of detail should be proportionate to the assets’ importance and no more than is sufficient to understand the potential impact of the proposal on their significance. As a minimum the relevant historic environment record should have been consulted and the heritage assets assessed using appropriate expertise where necessary” (para 189).”

Paragraph 190 advises:

“Local planning authorities should identify and assess the particular significance of any heritage asset that may be affected by a proposal (including by development affecting the setting of a heritage asset) taking account of the available evidence and any necessary expertise. They should take this into account when considering the impact of a proposal on a heritage asset, to avoid or minimise any conflict between the heritage asset’s conservation and any aspect of the proposal.”

34. Paragraph 193 ascribes great weight to any harm to a designated heritage asset. By paragraph 194:

“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.

“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 including, where appropriate, securing its optimum viable use.” (para 196)

35. The duties to have “special regard” or “special attention” in sections 16, 66 and 72 mean that “considerable importance and weight” should be attached to preserving the listed building or preserving and enhancing the conservation area: *East Northamptonshire District Council v Secretary of State for Communities and Local Government* [2014] EWCA Civ 137, [2015] 1 WLR 45 at para 29 per Sullivan LJ. This also amounts to a ‘strong presumption’ against the grant of planning permission: *East Northamptonshire* at para 20, 23, 28.

Historic England advice

36. The *Historic England Advice Note 2: Making Changes to Heritage Assets* (HEAN2) says on reversibility (at para 43):

“The junction between new work and the existing fabric needs particular attention, both for its impact on the significance of the existing asset and the

impact on the contribution of its setting. Where possible it is preferable for new work to be reversible, so that changes can be undone without harm to historic fabric. However, reversibility alone does not justify alteration; If alteration is justified on other grounds then reversible alteration is preferable to non-reversible.”

Cambridge Local Plan

37. The Cambridge Local Plan policy 58 says:

“Alterations and extensions to existing buildings will be permitted where they:

a. do not adversely impact on the setting, character or appearance of listed buildings or the appearance of conservation areas ...”

Duty to give reasons for decisions

38. As it was an officer decision the Council was under a statutory duty to provide reasons for granting the planning permission and listed building consent: Openness of Local Government Regulations 2014, reg 7(3)(b); *R (CPRE Kent) v Dover District Council* [2017] UKSC 79, [2018] 1 WLR 108 at para 30 per Lord Carnwath JSC. These are to be discerned from the delegated report.

Approach to interpretation of planning committee reports

39. The applicable legal principles where a party challenges the grant of planning permission by a local planning authority by reference to an officer’s report are well settled but bear repetition in the circumstances of this claim. As summarised by Lindblom LJ in *Mansell v Tonbridge and Malling BC* [2017] EWCA Civ 1314:

“(1) The essential principles are as stated by the Court of Appeal in R. v Selby District Council, ex parte Oxtou Farms [1997] E.G.C.S. 60 (see, in particular, the judgment of Judge L.J., as he then was). They have since been confirmed several times by this court, notably by Sullivan L.J. in R. (on the application of Siraj) v Kirklees Metropolitan Borough Council [2010] EWCA Civ 1286, at paragraph 19, and applied in many cases at first instance (see, for example, the judgment of Hickinbottom J., as he then was, in R. (on the application of Zurich Assurance Ltd., t/a Threadneedle Property Investments) v North Lincolnshire Council [2012] EWHC 3708 (Admin) , at paragraph 15).

“(2) The principles are not complicated. Planning officers’ reports to committee are not to be read with undue rigour, but with reasonable benevolence, and bearing in mind that they are written for councillors with local knowledge (see the judgment of Baroness Hale of Richmond in R. (on the application of Morge) v Hampshire County Council [2011] UKSC 2 , at paragraph 36, and the judgment of Sullivan J., as he then was, in R. v Mendip District Council, ex parte Fabre (2000) 80 P. & C.R. 500 , at p.509). Unless there is evidence to suggest otherwise, it may reasonably be assumed that, if the members followed the officer’s recommendation, they did so on the basis of the advice that he or she

gave (see the judgment of Lewison L.J. in Palmer v Herefordshire Council [2016] EWCA Civ 1061, at paragraph 7). The question for the court will always be whether, on a fair reading of the report as a whole, the officer has materially misled the members on a matter bearing upon their decision, and the error has gone uncorrected before the decision was made. Minor or inconsequential errors may be excused. It is only if the advice in the officer's report is such as to misdirect the members in a material way—so that, but for the flawed advice it was given, the committee's decision would or might have been different—that the court will be able to conclude that the decision itself was rendered unlawful by that advice.

“(3) *Where the line is drawn between an officer's advice that is significantly or seriously misleading – misleading in a material way – and advice that is misleading but not significantly so will always depend on the context and circumstances in which the advice was given, and on the possible consequences of it. There will be cases in which a planning officer has inadvertently led a committee astray by making some significant error of fact (see, for example R. (on the application of Loader) v Rother District Council [2016] EWCA Civ 795), or has plainly misdirected the members as to the meaning of a relevant policy (see, for example, Watermead Parish Council v Aylesbury Vale District Council [2017] EWCA Civ 152). There will be others where the officer has simply failed to deal with a matter on which the committee ought to receive explicit advice if the local planning authority is to be seen to have performed its decision-making duties in accordance with the law (see, for example, R. (on the application of Williams) v Powys County Council [2017] EWCA Civ 427). But unless there is some distinct and material defect in the officer's advice, the court will not interfere.”*

40. The Chancellor of the High Court in *Mansell v Tonbridge and Malling Borough Council* [2017] EWCA Civ 1314 added that the legality of planning decisions does not turn on a “*minute legalistic dissection*” of an officer’s report (at paragraphs 62 and 63):

“[i]t cannot be over-emphasised that such an approach is wrong and inappropriate. As has so often been said, planning decisions are to be made by the members of the Planning Committee advised by planning officers. In making their decisions, they must exercise their own planning judgment and the courts must give them space to undertake that process.

“Appeals should not, in future, be mounted on the basis of a legalistic analysis of the different formulations adopted in a planning officer’s report. An appeal will only succeed, as Lindblom L.J. has said, if there is some distinct and material defect in the report. Such reports are not, and should not be, written for lawyers, but for councillors who are well-versed in local affairs and local factors. Planning committees approach such reports utilising that local knowledge and much common-sense. They should be allowed to make their judgments freely and fairly without undue interference by courts or judges who have picked apart the planning officer’s advice on which they relied.”

41. The principles set out in *Mansell* are equally applicable to decisions taken by officers under delegated powers: *Bates v Maldon DC* [2019] EWCA Civ 1272 per Lindblom LJ at [43], although of course where there is determination by delegated report the opportunity for members to correct errors in the officer report does not arise.
42. As to the content of the officer's report, the following propositions were set out:
- i) "...[T]he courts should not impose too high a standard upon such reports, for otherwise their whole purpose will be defeated: the councillors either will not read them or will not have a clear enough grasp of the issues to make a decision for themselves." (*R (Morge) v Hampshire County Council* [2011] UKSC 2 at [36], per Baroness Hale).
 - ii) "The court should focus on the substance of a report by officers given in the present sort of context, to see whether it has sufficiently drawn councillors' attention to the proper approach required by the law and material considerations, rather than to insist upon an elaborate citation of underlying background materials. Otherwise, there will be a danger that officers will draft reports with excessive defensiveness, lengthening them and overburdening them with quotation of materials, which may have a tendency to undermine the willingness and ability of busy council members to read and digest them effectively." (*R (Maxwell) v Wiltshire Council* [2011] EWHC 1840 (Admin) at [43], per Sales J).
43. The assessment of how much and what information should go into a report to enable it to perform its function is itself a matter for the officers, exercising their own expert judgment (*R v Mendip District Council ex parte Fabre* (2000) 80 P&CR 500 at page 509).
44. Having regard to the fact that this was an officer decision with the duty to give reasons, Mr Harwood and Mr Parker agreed that as a result the delegated report in this case should be read avoiding an overly benevolent or critical approach but using a sensible approach and applying common sense.

ASSESSMENT

First ground

45. Mr Harwood QC for the Claimant submitted that the Council wrongfully
- i) Relied on claimed reversibility of proposals in relation to no. 7A
 - ii) Failed to have regard to the Historic England guidance on the issue
 - iii) Had regard to a matter which will not arise, namely the removal of the proposed extension.
46. Mr Harwood said that when the conservation officer referred to reversibility in her email of 20th February 2020 (in passages reproduced in italics in the delegated report) she (and therefore the Council in its decision) took no account of the Historic England

guidance that “reversibility alone does not justify alteration”. He further said that any benefit of reversibility is not capable of being achieved, and so not capable of having weight in the decision, if what is approved is permanent development with no intention or practical possibility of it being removed.

47. Mr Parker for the Council responded by submitting, to begin with, that reversibility of the proposed development was just one of a number of matters taken into account by the Council in its judgement that the proposed development would not harm the significance of any heritage asset. In reaching its judgement that there would be no harm to heritage assets, the Council took into account, amongst other things, that
- i) There were no particular features of architectural significance that would be affected, (and the particular features included in the listing itself were to the front, rather than the rear, of the building).
 - ii) There would be no harm to the setting of 7A Parker Street (or the setting of 7 Parker Street or other neighbouring buildings) because the area had undergone significant change (in contrast to the frontages), the extension would be distinguishable from the original building as a result of the glazed link; and the form and appearance of the extension had had regard to the design of the building and neighbouring buildings.
 - iii) So far as the fabric of the listed building was concerned, the proposed development would not cause any damage to it (and the work was reversible).
48. Mr Parker continued that it followed from the fact that the Council did not rely solely on reversibility that it did not need to refer expressly to the Historic England guidance which provides that reversibility alone does not justify alteration.
49. Mr Parker also said that it was unarguably open to the Council to take into account that the works were reversible, and the fact that the proposed development was intended to be permanent did not oblige the Council to ignore or otherwise qualify the fact that the works were reversible.
50. In my judgement the Claimant’s first ground cannot be sustained. It is plain that reversibility of development can be a material consideration which a decision-maker dealing with an application for alteration to a listed asset is entitled to take into account. It is also plain that the Council was entitled to take account of the reversibility of the development in the present case. As Mr Harwood confirmed in response to my question, the Claimant does not suggest that the development was *not* reversible. He did not so contend in his representations to the Council before the application was determined, and it is notable also that Mr Derrick, the heritage expert whose statement made during these proceedings I admitted, did not so suggest. In other words, it cannot be said that the Council erred in thinking that the development was reversible. If that is right, it must follow that it was entitled to take account of reversibility.
51. Further, I do not think that the fact that the development was intended to be permanent and that there were no proposals for its removal vitiated the Council’s analysis in this regard. It is important to be clear about what reversibility means. As Mr Harwood agreed, the word simply means that a something is capable of being reversed, no more and no less. The concept of reversibility does not carry with it any judgement about the

likelihood of the reversal taking place. I therefore do not accept that any benefit of reversibility is not capable of having weight in the decision if what is approved is permanent development with no intention of it being removed. If there were no “practical possibility” of it being removed (in other words, if removal were in reality not possible) that would prevent weight being given to this factor, because the development would not then be truly reversible. But again, that is not the Claimant’s case.

52. No policy guidance suggests that reversibility is material only if there is a realistic prospect that the development will actually be reversed. All the Council was saying was that the development *could* be reversed, and it was entitled to take that possibility into account, without assessing how likely reversal actually was. Of course, if the Council had relied on a *likelihood* of the permitted alterations being reversed, it would have needed some evidence of that. But it did not rely on such a likelihood and so there was no need for such evidence. Reversibility of itself is material. The Historic England guidance on additions and alterations (paragraph 43) supports this, referring to the possibility of reversal as opposed to its likelihood;

“Where possible it is preferable for new work to be reversible, so that changes can be undone without harm to the historic fabric.”

53. I also agree with Mr Parker that the Council was not solely reliant on reversibility in its judgement about the impact on no. 7A, and therefore there was no need for it to refer expressly to the Historic England guidance which provides that reversibility alone does not justify alteration. Mrs Smith said (her witness statement at paragraph 10) that reversibility was “key” to her acceptance of the proposals, but that is not the same as saying this was a case where reversibility alone justified the proposals. In any event, she did not determine the application, and as is evident from the delegated report, in deciding there was no harm, the Council took into account a number of matters, of which reversibility was just one.

54. At paragraph 8.4 of the delegated report, the determining officer (Mr White) made comments with particular reference to the effect on no. 7A itself;

- i) Though the extension was large, the integrity of the Listed Building was considered to be preserved through the inclusion of the glazed link and the “light touch” connection to the grade II Listed Building;
- ii) The key elements of the building that are identified in its listing specify features on the front elevation;
- iii) As to the rear;
 - a) the area had undergone a significant amount of change in contrast to the frontages;
 - b) the extension would be readily distinguishable from the rest of no. 7A through inclusion of the glazed link;
 - c) The form and appearance of the extension had had regard to the design of the listed building and neighbouring buildings.

55. These points are largely if not wholly concerned with matters other than reversibility. It is true that the delegated report goes on at paragraph 8.5 to refer to and quote the response of the conservation officer to third party concerns and that in those comments the conservation officer referred to reversibility (which was not referred to in her first consultation response). However, the conservation officer also made other points including, echoing the points made at paragraph 8.4, that the rear of most of the Parker Street properties had been altered and was an eclectic mix.
56. Mr Harwood said that reversibility must have been the sole justification. The Council must have thought there was harm before reversibility was taken into account, as otherwise there would be no reason to consider this aspect; and then, having taken reversibility into account decided there was no harm. I do not read the reasoning process as set out in the delegated report in that way. In my view the Council made one assessment of whether or not there was harm, and in so doing took account of a number of matters, of which reversibility was just one.
57. Overall, therefore, I do not think that the Council considered the proposals were justified solely because of reversibility. Therefore, there was no need to refer to the Historic England guidance to the effect that reversibility alone does not justify alteration. Even if there were an error in this regard, I would refuse relief under section 31 of the Senior Courts Act, because I cannot see that had the alleged error not been made the outcome for the Claimant would have been different.
58. I should add that I do not think that comparison between the conservation officer's assessment of the previous applications and the applications which are the subject of this challenge helps the Claimant in relation to the first ground.
59. Mr Harwood pointed out that the conservation officer objected to the withdrawn applications on the ground that they would mask a great part of the rear of no. 7A and did not mention reversibility.
60. However, Mrs Smith, the conservation officer, said (see her witness statement at para 10) that there were material differences between the two schemes. To begin with, the withdrawn scheme would have masked the original detailing visible on the rear elevation whereas the scheme, which is the subject of these proceedings, would not, because of the glazed link. Further, in her view the new scheme would be reversible because at first floor level it meets the rear elevation with a "light touch" glazed link rather than the more significant alteration to the rear (proposed in the withdrawn scheme) where two new non-reversible openings would be created.
61. In any case, what matters is whether the Council's approach to the scheme under challenge was proper. Whether or not its judgement about the withdrawn applications was correct, for the reasons set out above I find that its approach in relation to the scheme which received planning permission was proper.
62. I therefore reject the Claimant's first ground.

Second ground

63. Mr Harwood submitted that the Council failed lawfully to address the significance of no. 7 Parker Street. The delegated report said that:

“Just because one part of no 7 can no longer be seen from some viewpoints is not considered to equal harm to setting.”

64. Mr Harwood said that this was explained in the quotation from the conservation officer;

“The identification of the ‘public view’ of the rear of no 7 Parker Street that the neighbour has identified is hard to identify unless the view referred to is from the private gardens of the surrounding local properties. If that is so the conclusion of the Conservation Team is that those views are not important to the appreciation of that listed building.”

65. Mr Harwood said that views were seen as unimportant by the Council on the basis that there were no views from public vantage points, but that this overlooked the fact that there were views of the rear of no. 7 from public vantage points (in particular Clarendon Street). He said that the fact that such views existed was clear from the conservation officer’s own photograph taken in January 2019 as well as other later photographs which were contained in the evidence before me. Those later photographs included not just the series of photographs taken in August 2020 by the conservation officer, but also photographs taken by the Claimant.

66. Mr Harwood continued that it was in any event not clear what the basis of the Council’s evaluation of setting was. As well as failing to consider the views from Clarendon Street, the Council failed to explain its judgement about the significance of the setting from the interior of the block of houses bounded by Parker Street and Victoria Street. Mr Harwood reminded me that the Planning Practice Guidance makes clear that:

“The contribution that setting makes to the significance of the heritage asset does not depend on there being public rights of way or an ability to otherwise access or experience that setting...”

67. Mr Harwood said that the conservation officer’s comments which were italicised in the delegated report do not mention setting at all. On any rational view, there was *some* harm here from the blotting out of public and private views and the Council failed to assess that harm in its evaluation of setting.

68. Mr Parker responded that the delegated report explicitly considered the impact of the proposed development on the heritage significance and setting of 7 Parker Street, and he drew attention in particular to paragraphs 8.1, 8.3, 8.4 and 8.5 of the delegated report. Mr Parker further said that the Claimant’s contention that the Council’s decision was made on the “erroneous basis that there were no public views of the no 7 extension” was misconceived. Mr Parker characterised the Claimant’s attempts to impugn the Council’s judgement that the development would not cause harm to the heritage to the setting of the heritage asset as nothing more than an attempt to re-run the planning objections which the Claimant had made. Overall, said Mr Parker, the Council plainly had sufficient information on which to base the decision. The Council had sufficient information, from both the applicant and the Claimant (whose further material included additional photographs) to deal with what the Claimant called the “critical issue” of the proposed development’s effect on 7 Parker Street.

69. In my judgement the Council did adequately consider the impact on no. 7 Parker Street, including its setting, and took account of the availability of views including public views.
70. At paragraph 8.1 the delegated report deals specifically with the relationship of the proposed development to no. 7. What is said is plainly relevant to no. 7's setting:
- “The proposed first floor will about the rear projection of no 7 which is also a Listed Building although the appearance of the rear projection (that will be masked by the two-storey extension to no 7A) is of no particular architectural merit. The design has replicated the roof division that the rear element of no 7 has via the separate hipped roof which gives the impression of the building having a subservient relationship to the main house.”*
71. At paragraph 8.3 the relevant heritage legislation is identified (and the issue of setting referred to) as well as the protection for the historic environment in the National Planning Policy Framework.
72. At paragraph 8.4 the setting of no. 7 is expressly considered;
- “(4) it is not considered that there is harm to the setting of no 7. Just because one part of no 7 can no longer be seen from some viewpoints is not considered to equal harm to setting. Were that the case change to any Listed Building in this type of high density location would become almost impossible.”*
73. I agree with Mr Parker that this statement is apt to apply to views generally, whether public or private. It excludes neither. Further, I do not agree with Mr Harwood's criticism of that paragraph as being simply a statement of the obvious. The statement that there is no harm to the setting just because one part of no 7 cannot be seen from some viewpoints has to be read in the context of the observations elsewhere in the delegated report (see 8.1 and 8.5) about the rear extension of no. 7 being of no particular architectural merit and its east elevation (the one the 7A extension would obscure) having no particular architectural detailing.
74. At the start of paragraph 8.5 the conservation officer said, as quoted in the delegated report;
- “The identification of ‘public view’ of the rear of 7 Parker Street that the neighbour has identified is hard to identify unless the view referred to is from the private gardens of the surrounding local properties.”*
75. Applying a sensible, common sense approach, I do not read that passage (or any other) as saying there are no public views of the no. 7 extension. Instead, the conservation officer was specifically responding to the objection sent by the Claimant, on which he relied in relation to public views. However, as was agreed at the hearing, the photograph he sent (with his letter of 26th October 2019) to demonstrate this point was not, in fact, taken from a public viewpoint. It was (as his letter says) taken from the driveway of 13 Parker Street, although even at the hearing the precise location from which the photograph was taken was not clear. In a letter to the Council dated 21st September 2020 the Claimant said that the picture was taken using the full zoom

function on an iPhone and was “not intended to show the size of what one sees from Clarendon Street”.

76. In that somewhat confusing context, it is not surprising that the conservation officer made the comment she did make. In my judgement she was simply expressing uncertainty about the precise location from which the photograph was taken and doubt about how helpful the Claimant’s photograph was as an indicator of the nature and extent of public views. Having regard to the background set out above, she was entitled to say these things.
77. The delegated report and the conservation officer’s italicised comments of 20th February 2020 do not support the proposition that either the conservation officer or the officer responsible for the delegated report suffered from the misapprehension there were no public views. We know from the fact that on a site visit in January 2019 in connection with the withdrawn proposals she took a photograph from Clarendon Street showing the rear extension of no. 7 that the conservation officer was aware that such public views existed. I should add that she said in her witness statement (paragraph 16) that there are “very limited views of the rear of no.7 Parker Street from Clarendon Street.” On the basis of the material before me, this conclusion cannot be said to be irrational.
78. After dealing with the Claimant’s submissions, the conservation officer’s commentary, reproduced as part of paragraph 8.5 of the delegated report, goes on to deal with private views, and in particular views from the surrounding properties. Contrary to what the Claimant appeared at least at one stage to suggest, it does not discount them on the ground that they are views from private land, but instead explains why such views are not a matter of concern. In essence this is because of the perceived relative lack of importance of the rear extension to no. 7 Parker Street and the eclectic mix arising from the fact that the rear of most of the relevant properties had already been altered.
79. Overall, in my view the delegated report did indeed consider the effect of the proposals on no. 7, including its setting and including views, whether public or private. Taking account of the opinion that the rear projection of no. 7 was of no particular architectural merit, its lack of detailing to the east side and the eclectic mix which is to be seen at the rear of properties on Parker Street, the judgement was reached that the mere fact that the rear of no.7 would no longer be seen from some viewpoints did not mean that there would be harm to its setting. I think that was a judgement the Council was entitled to make. The Claimant disagrees, but the Council’s judgement was not irrational.
80. Further, even if (contrary to my view) the delegated report should have dealt expressly with public views, I would refuse relief under section 31 of the Senior Courts Act, because it is overwhelmingly likely that the outcome for the Claimant would not have been different, having regard to the Council’s judgement about the relative lack of merit and importance of the rear extension of no. 7 and the “eclectic mix” at the rear of the Parker Street properties, as well as the officer’s opinion (which was not irrational) about the limited nature of such views.
81. I therefore reject the second ground.

Third ground

82. Mr Harwood contended that the Council failed to address the local plan policy (policy 58) regarding the effect of the proposals on the appearance of the rear part of no. 7 Parker Street. He said that policy 58 requires that proposals “do not adversely impact on the setting, character or appearance of listed buildings.” On any view, said Mr Harwood, the proposals will affect the appearance of the rear part of no. 7 as they blot out all views from the east including the street and very significantly change the view from the north. The delegated report failed to consider whether the proposals would adversely affect the appearance of no. 7 and reliance on a mere reference to policy 58 was not sufficient.
83. I do not accept these contentions. It seems to me plain that the Council in the delegated report did indeed address the impact of the proposals on the appearance of no. 7 Parker Street. To begin with, it needs to be kept in mind that the material question is not whether the appearance of no. 7 would be affected by the proposals, but whether it would any such effect would be adverse to a material degree. Policy 58 is specifically concerned with adverse effects, not just any effects. At paragraph 8.1 of the report it was said that although the first floor of the proposed development would abut the rear projection of no. 7, this element of the listed building was of no particular architectural merit and that the design of the proposed development replicated the roof division on the rear projection of no. 7 by way of a separate hipped roof which would give the impression of the building having a subservient relationship to the main house.
84. At paragraph 8.2 of the report, it was said that the proposal was compliant in design terms with policy 58. This must have been for reasons set out in paragraph 8.1, which is the first paragraph of section 8 of the report, the Assessment and therefore the only paragraph of the Assessment that preceded paragraph 8.2. It follows that in these paragraphs the Council was indeed dealing with the effect of the proposals on the appearance of no. 7, and in the specific context of policy 58.
85. Mr Harwood appeared to suggest that paragraphs 8.1 and 8.2 were irrelevant as they did not fall within the section headed “Impact on the Conservation Area/Listed Building/BLP”. I think it is artificial to consider the delegated report in this way. The report has to be read as whole and paragraphs 8.1 and 8.2 were plainly relevant to the question of the effect of the proposals on the appearance of no. 7.
86. Furthermore, insofar as the Claimant’s submissions on this ground relied on changing or blotting out views of no.7, for reasons I have already given in relation to the second ground, the delegated report dealt adequately with the effect on views, including (at paragraph 8.5 in the sentence starting with “The two storey element...”) expressly referring to the appearance of no. 7.
87. I therefore reject the third ground.

CONCLUSION

88. I reject all three grounds of challenge. This application for judicial review must therefore be dismissed.

IN THE HIGH COURT OF JUSTICE
PLANNING COURT

CLAIM NO: CO/1531/2020

B E T W E E N :

THE QUEEN (on the application of RICHARD BUXTON)

Claimant

- and -

CAMBRIDGE CITY COUNCIL

Defendant

- and -

(1) MR TWOMEY AND (2) MRS FARRUKH

Interested Parties

ORDER

Before Timothy Corner, QC sitting as a Deputy High Court Judge on 6 July 2021

UPON hearing Mr Richard Harwood QC for the Claimant and Jack Parker for the Defendant and the Interested Parties not being represented

IT IS ORDERED THAT:

1. The Claimant's application dated 19 November 2020 to admit the witness statement of Richard Buxton is allowed.
2. The Claimant's application dated 19 November 2020 to admit the expert report of Andrew Derrick is allowed.
3. The Claimant's claim is dismissed.
4. The Claimant shall pay the Defendant's costs summarily assessed in the sum of £12,085.25.
5. The Claimant's application for permission to appeal is dismissed.

Timothy Corner

19th July 2021

IN THE HIGH COURT
APPLICATION FOR LEAVE TO APPEAL
TO THE COURT OF APPEAL (CIVIL DIVISION)

Title of case/action: R (on the application of Richard Buxton) v Cambridge City Council and Mr Twomey and Mrs Farrukh	Action/case no. CO/1531/2020
Heard/tried before (insert name of Judge): Timothy Corner, QC sitting as a Deputy High Court Judge	Court no N/A
Nature of hearing Application for judicial review	
Date of hearing/judgement: Hearing date was 6th July 2021, judgement handed down on 19th July 2021.	
Results of hearing (attach copy of order): Application for judicial review dismissed.	
Claimant's application for leave to appeal I refused the Claimant's application for permission to appeal.	
Reasons for decision (to be completed by the Judge): I refused the Claimant permission to appeal. The application for permission to appeal adds nothing to the points made before me at the hearing, with which I dealt fully in my reserved judgement. An appeal has no realistic prospect of success and there is no other reason why the Court of Appeal should consider this case.	
Judge's signature: <i>Timothy Corner</i> <i>19th July 2021</i>	Note to the Applicant: When completed this form should be lodged in the Civil Appeals Office on a renewed application for leave to appeal or when setting down an appeal