

Case Name: *Buxton, R (On the Application Of) v Cambridge City Council* [2021] EWHC 2028 (Admin) (19 July 2021)

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Commentary:

The High Court rejected all three grounds of the Claimant Richard Buxton's judicial review challenge to Cambridge County Council's granting on 26 February 2020 (under delegated powers rather than at planning committee) of planning permission and listed building consent for the erection of a part one-storey, part two-storey rear extension to a Grade II terraced house, 7A Parker Street, one of a row of listed residential properties in central Cambridge.

Ground 1 had several strands: that the Council wrongfully relied on claimed "reversibility" of the extension proposals; failed to have regard to the Historic England guidance on that issue; and had regard to the removal of the proposed extension as a matter which will not arise. In relation to these strands, the judge, Mr Timothy Corner QC (sitting as a Deputy), held that the Council's approach had been proper. He found that "reversibility" simply refers to something capable of being reversed (or removed), and that the Council was entitled to consider the development as potentially reversible regardless of material prospect of the development actually being reversed. He further found that the Council's approach was consistent with Historic England guidance on reversibility, specifically Historic England's "Advice Note 2: Making Changes to Heritage Assets" at paragraph 43, which comments that reversibility alone does not justify alteration to a heritage asset. The judge concluded that besides reversibility, the Council had considered other matters set out in the planning officer's report which recommending grant of planning permission and listed building consent.

Ground 2 was that the Council failed lawfully to address the significance and setting of 7A Parker Street. However, the judge held that the Council had adequately considered the impact on the property, including its setting. He found that the planning officer's report deals specifically with the relationship of the proposed development to 7A Parker Street, in a manner "plainly relevant" to the property's setting.

Ground 3 was that the Council failed to address a local plan policy regarding effects on the appearance of listed buildings (the policy at issue requiring that development proposals "do not adversely impact on the setting, character or appearance of listed buildings"). The judge again found that the planning officer's report was adequate: the report addresses the impact of the proposals on the appearance of 7A Parker Street such that adverse effects were properly considered.

In dismissing the claim, the judge emphasised that where the court is required to scrutinise planning officers' reports, these "are not to be read with undue rigour, but with reasonable benevolence... 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 [and] unless there is some distinct and material defect in the officer's advice, the court will not interfere." Substantially because the officer's report in question has no such defect, the judge found, the challenge failed.

Case summary prepared by George Morton Jack