Neutral Citation Number: [2023] EWHC 1395 (Admin)

Case No: CO/2424/2022

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT
PLANNING COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 9 June 2023

Before :
Her Honour Judge Karen Walden-Smith sitting as a Judge of the High Court

- -

Between :

THE KING (on the application of MS LESLEY FAHERTY

Claimant

- and –

BOURNEMOUTH, CHRISTCHURCH AND POOLE COUNCIL

Defendant

-and-

MS KATY TIZZARD

Interested Party

- -
- -

KATHERINE BARNES (instructed by **ADDLESHAW GODDARD LLP**) for the **CLAIMANT**
ANDREW PARKINSON (instructed by **LEGAL SERVICES for BOURNEMOUTH, CHRISTCHURCH AD POOLE COUNCIL**) for the **DEFENDANT**

Hearing date: 9 March 2023

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Approved Judgment

This judgment was handed down remotely at 10.30am on Friday, 9th June 2023 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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HER HONOUR JUDGE KAREN WALDEN-SMITH

HHJ KAREN WALDEN-SMITH:

1. The Claimant, Lesley Faherty, brings these proceedings to judicially review the decision made on 24 May 2022 by the Defendant, Bournemouth and Christchurch and Poole Council, to grant permission to the Interested Party, Kathy Tizzard, for:

> "*The remodel of an existing bungalow to provide an extension to the side and rear and first floor accommodation*"

at the property at 23 Wick Lane, Christchurch BH23 1HT ("the Site").

2. The Interested Party has not taken any active role in these judicial review proceedings.

3. On 3 November 2022, I granted permission to apply for judicial review of the decision on grounds 6, 7 and 8 of the application. It is averred by the Claimant that there had been a departure from policy in assessing the impact on the Conservation Area (Ground 6); that there had been a failure to give adequate reasons for disagreeing with the conservation officer (Ground 7); and that there had been a failure to take into account a relevant consideration (Ground 8).

4. The Claimant has decided to take the three Grounds in reverse order, the principal ground being Ground 8. I will also deal with the three Grounds in reverse order. The issues the parties are agreed need to be dealt with in the agreed statement are:

   (i) Whether in granting permission the members failed to take into account the advice of the conservation officer and/or were they misdirected as to the advice of the conservation officer?

   (ii) Did the common law impose a duty to give reasons for the grant of planning permission;

   (iii) Did the officer's report fail to explain adequately why the Defendant disagreed with the conservation officer in relation to the impact of the proposed development on the setting of the Conservation Area.

<u>The Factual Background</u>

5. The Claimant owns and occupies property at 2 Wickfield Avenue, Christchurch which adjoins the Site at 23 Wick Lane. The south-east boundary immediately adjoins the Christchurch Central Conservation Area (the "Christchurch Conservation Area"). The heritage significance of Wick Lane is set out in the Conservation Area Character Appraisal:

> "*Wick Lane (also known historically as Pig Land and Dolphin Lane) is a remnant of the Saxon street plan and forms one of the key entry points to the town and the conservation area. Wick Lane comprises a number of residential elements including small terraces, individual houses and flats above shops. Its modest scale provides a pleasant foil for the larger scale of the High Street and Church Street. The Post Office Arcade makes a striking but unsuccessful termination to the*

> *street and dominates the historic street plan and passing through the former Saxon Burgh. Wick Lane has early origins as one of the principal routes in to the town defences from the west. Its status appears to have been maintained as a side street with modest buildings and service buildings; stables, outbuildings interspersed with domestic dwellings.*"

6. The Interested Party had applied for planning permission on 27 April 2021 [application 8/21/0387 HOU] for the purpose of adding a single storey rear and side extension to the existing house together with a box dormer to the first floor.

7. The conservation officer responded to the consultation on the proposed development on 17 September 2021 in these terms:

> "*It is considered the modest of scale of no.23 helps it to sit comfortably within the street scene. Looking at the proposed scheme (albeit revised), concern is express that the new work is overscale with the host property. The front dormers are large, and to the sides the significant bulk being added with its large area of flat is very noticeable, with the former bungalow unrecognisable. It is considered there is scope for alterations and extension of the property, however concern is expressed that the current proposal overstretches the additional accommodation, resulting in a bulky property that would stand out rather than remain in keeping in the street scene. In terms of the impact of the setting of a conservation area as a whole the impact is only slight, but nonetheless is adverse.*
>
> *Conclusion*
>
> *With the lack of heritage statement, it appears that little consideration has been given to the context of the property in drawing up the proposed scheme. If however the works can be amended/scaled back to ensure the property remains in keeping with the street scene, then the impact upon the adjacent heritage asset should be negligible.*
>
> *Recommend: refuse or defer for negotiation over further amendment.*"

8. A Heritage Statement, which had not been before the conservation officer when she was initially consulted upon the application, was provided by the Interested Party on 24 November 2021. Amendments were made to the application following the grant of a lawful development certificate on 23 December 2021 which was granted with respect to an extension scheme based upon permitted development rights. Those amendments did not reduce the bulk of the proposed development.

9. There was a further round of consultation subsequent to the amendments to the proposal. The conservation officer did not amend the opinion she expressed on 17 September 2021.

10. The Planning Committee considered the application, with the amendments, at a planning meeting on 19 May 2022. The committee had the benefit of the Planning Officer's Report ("the OR") which recommended the grant of permission. Planning permission for 8/21/0387/HOU was granted on 24 May 2022.

11. In his report the OR had set out that the revised plan reflected *"design similarities with the LDC scheme, with previously proposed rooflights being removed and replaced with a rear dormer."* The OR summarised in his report the response of the conservation officer in the following way:

> "*With the lack of heritage statement, it appears that little consideration has been given to the context of the property in drawing up the proposed scheme. If however the works can be amended/scaled back to ensure the property remains in keeping with the street scene, then the impact upon the adjacent heritage asset should be negligible.*"

That is an accurate report of the conservation officer's conclusion to her report.

The OR did give consideration to the impact of the proposed development upon the Conservation Area. In paragraph 35 of his report he set out that the proposed alterations to the bungalow *"will result in a design of more contemporary appearance, and also increased height. This would give the proposal a similar appearance to properties which have already been extended/redeveloped on Wick Lane, which share a boundary with the Conservation Area."* Further, the OR set OUT that there was a distinct change at the boundary of the Conservation Area:

> "*Here it changes from the more modest historic terraced properties that fall within the Conservation Area in the adopted Conservation Area Appraisal – such as 40-48 Wick Lane opposite the site – to the more modern bungalows located on the edge of the Conservation Area. Whilst the proposals will add bulk to the existing property by increasing the eaves line, ridge height and through the addition of two dormer windows to the front elevation, such alterations already prevail within the street scene.*"

12. Ultimately, the OR came to this conclusion in his report:

> "*As such, taking into consideration the similarities of the present scheme with those which have been completed in the immediate vicinity outside of the Conservation Area it is not considered the proposals would result in any significant impacts on the character and appearance of the adjoining Conservation Area and whilst the Council's Conservation Officer expressed concerns regarding the scale of the proposals, the nature of the property is such that the proposals are considered to be in keeping with those which have previously been completed to neighbouring properties and as a result would not be harmful to the setting of the Conservation*

> *Area and would comply with the provisions of Policy HE1 of the Core Strategy*"

and permission was formally granted on 24 May 2022.

The Law

13. Planning determinations are to be made in accordance with the development plan, unless there are material considerations to indicate otherwise (section 38(6) of the Planning and Compulsory Purchase Act 2004).

14. The claimant contends that there was a failure to take into account the advice of the conservation officer or were misled with respect to that advice. To make good that allegation, the claimant relies upon the guidance given by Pill LJ in *R (on the application of Lowther) v Durham County Council* [2001] EWCA Civ 781, with respect to the duty of the planning officer when reporting to the Planning Committee:

> "*That duty is broader than a duty not actively to mislead. It includes a positive duty to provide sufficient information and guidance to enable the members to reach a decision applying the relevant statutory criteria. In the end, it is a matter of fact and degree for the members. However, where, as in the present case, the decision- making body is required to apply a legal test to the facts as the members find them, it includes a duty to provide guidance as to what legal test is appropriate.*"

15. The authoritative case with respect to how the court should consider a planning officer's report is set out by Lindblom LJ, as he then was, in *R (Mansell) v Tonbridge & Malling BC* [2019] PTSR 1452. The key features of his judgment are as follows:

> "*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… Unless there is evidence to suggest otherwise, it may reasonably be assumed that, if the members followed the officer's recommendation, they did so no the basis of the advice that he or she gave… 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 the that the decision itself was rendered unlawful by that advice.*"

16. With respect to consultation responses, James Strachan KC (sitting as a Deputy Judge of the High Court) in *R (on the application of Zins) v East Suffolk Council & Ors*

[2020] EWHC 2850 set out (in a case dealing with matters that an Environmental Health Officer had been consulted about):

> "*… it is important that officers do not materially mislead members on relevant issues, such as advice from the EHO on the issue of noise in this case; but there is no legal requirement to set out verbatim everything that has been said by an EHO in consultation responses or in correspondence with the planning department. It is legitimate, and it may often be desirable (to avoid reports from becoming unwieldy and less able to fulfil their true purpose) to summarise the advice that has been received. A summary must not materially mislead members as to the substance of the advice. But by its very nature, a summary will not set out every word of the advice that it is summarising.*
>
> *The fact that the Report …does not set out verbatim the EHO's consultation response … does not of itself mean that members would have been materially misled… It is important to consider whether the summary communicated to members the substance of the EHO's advance and concerns.*"

17. The position of the EHO can be substituted for the conservation officer on the facts of this case.

18. In *R (Kinsey) v Lewisham LBC* [2021] EWHC 128, Lang J quashed the granting of planning permission where, although the officer's report made express reference to the objections of the conservation officer, including that the development proposal would result in less than substantial harm, the court found that the members had been misled. Lang J held that:

> "*The SCO is employed by the Council for her professional conservation expertise, and the purpose of the consultation was to draw upon her expertise, to assist the Council in discharging its duties under the Listed Buildings and Conservation Areas Act 1990 and the Framework. Thus, that advice ought to have been available to Members when they were deciding the application… The SCO's advice on justification … and her formal objection to the proposal, were considerations which Members ought to have taken into account, in a fair and balanced decision-making process, but they did not do so, because they were not informed of the existence of the SCO's comments. The planning officer was, of course, entitled to differ from the SCOs views and advise Members accordingly, but he should not have withheld the SCOs advice from them, as the Members were the ultimate decision-makers, not the planning officer*
>
> *[...]*

> *Although the OR fully set out the SCO's description of the significance of the heritage assets, and much of her description of the impact, I consider that the omissions in respect of the impact […] meant that the Members were given an incomplete picture. Certain aspects of the harm to heritage assets were simply left out, for no apparent reason.*"

19. *Kinsey* does not alter the fundamental issue for determination, namely whether the members have been materially misled. Whether that requires the conservation officer's views to be repeated in full will depend upon the circumstances of each particular case and the planning officer's report is to be read with benevolence. Planning decisions themselves are not to be read with the kind of scrutiny appropriate to the determination of the meaning of a contract or a statute (see *Seddon v Secretary of State for the Environment* (1981) 42 P & CR 26) and decision letters are to be read fairly and as a whole and without excessively legalistic textual criticism (see *South Lakeland District Council v Secretary of State for the Environment* [1992] 2 AC 141).

20. It is also important to note that the report of the planning officer is to the Members of the Planning Committee who are to be treated as a well-informed and knowledgeable readership and as Sullivan LJ set out in *R (on the application of Siraj) v Kirklees Metropolitan Borough Council & Bennett* [2011] JP 571:

> "*It has been repeatedly emphasised that officers' reports such as this should not be construed as though they were enactments. They should be read as a whole and in a common-sense manner, bearing in mind the fact that they are addressed to an informed readership, in this case the respondent's planning committee.*"

Sullivan LJ referred to Judge LJ in *R v Selbey District Council ex p Oxton Farms* [1977] EGCS 60

> "*In my judgment an application for judicial review based on criticisms on the planning officer's report will not normally begin to merit consideration unless the overall effect of the report significantly misleads the committee about material matters which thereafter are left uncorrected at the meeting of the planning committee before the relevant decision is taken.*"

21. In order to establish that there was insufficient information to make an informed decision, the claimant needs to establish that "*no reasonable planning authority could suppose that it had sufficient material available upon which to make its decision to grant planning permission and impose conditions*" per Lang J in *R (on the application of Hayes) v Wychavon District Council* [2019] PTSR 113.

22. The report has to "*be clear and full enough to enable [the decision making body]to understand the issues and make up their minds within the limits that the law allows them.*" Per Baroness Hale in *R (on the application of Morge) v Hampshire CC* [2011] 1 WLR 268.

23. With respect to designated heritage assets, section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 provides as follows:

> "*72. – General duty as respects conservation areas in exercise of planning functions*
>
> *(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.*"

24. The Claimant relies upon *Barnwell v East Northamptonshire DC* [2014] EWCA Civ 137, where in consideration of section 66(1) of the PCLBA, dealing with listed buildings, the Court of Appeal made it clear that decision-makers are required to give "considerable importance and weight" to the desirability of preserving listed buildings. Further reliance is placed upon the provisions of the NPPF where, in paragraph 195, the approach to establishing whether a development proposal would lead to harm to a heritage asset is by identifying and assessing the heritage asset and considering the impact of a proposal on the heritage asset so as to avoid or minimise any conflict between conservation and any aspect of the proposal.

25. With respect to the correct approach to identifying material considerations, reliance is placed upon Holgate J's decision in *R (on the application of Client Earth) v Secretary of State for Business, Energy and Industrial Strategy* [2020] EWHC 1303, that "*it is necessary for a claimant to show that the decision-maker was expressly or impliedly required by the legislation (or by a policy which had to be applied) to take the particular consideration into account, or whether on the facts of the case, the matter was so "obviously material" that it was irrational not to have taken it into account.*"

26. Finally, when dealing with adequacy of reasons, the Supreme Court considered whether the giving of reasons is required for the granting of planning permission even though there is no statutory duty to do so. No definitive guidance was provided by the Supreme Court, as it was determined that what is required for fairness will differ from case to case, but in general the cases that might require reasons would typically those cases where "*permission has been granted in the face of substantial public opposition and against the advice of officers, for projects which involve major departures from the development plan, or from other policies of recognised importance.*" If reasons are required then they should be intelligible and adequate and enable the reader to understand what conclusions were reached on the principal important controversial issues, disclosing how issues of law and fact were resolved "*… an adverse inference will not readily be drawn. The reasons need refer only to the main issues in the dispute, not to every material consideration.*"

<u>The Grounds</u>

<u>Ground 8: Failure to take into account a relevant consideration</u>

27. Ground 8 became the principal ground in the Claimant's judicial review challenge. The challenge is that the conservation officer objected to the proposed development on the basis that it would have a slight adverse impact to the setting of the

conservation area as the proposal was overscale with the host property with large front dormers and the sides adding significantly to the bulk with "*the former bungalow becoming unrecognisable.*" The conservation officer's recommendation was that the proposal be scaled back. That original recommendation was not altered as a consequence of the revised proposal.

28. The complaint by the Claimant is that the OR failed to set out the findings of the conservation officer but rather "*copied and pasted the CO's comments under her heading "Conclusion"*". It is alleged that the OR failed to set out that while these indicated that revision was advised, the OR did not set out the conservation officer's finding of harm or the reasons why she considered that such harm would arise. It is argued on behalf of the Claimant that the members therefore did not have sufficient information to be able to exercise their own planning judgment in a properly informed way and that this was a material error given the great weight to be attached to any harm to a Conservation Area, regardless of how slight that harm might be, and that the objection to the proposal and the basis for that objection was, as per Holgate J in the *Client Earth* case "*so obviously material*" that the law required it to be taken into account by the members of the Planning Committee.

29. The Claimant contends that a seriously misleading impression was given. Even with the conclusion being reported, the failure to provide details of the conservation officer's advice with respect to the proposal being too bulky in the context of the modest scale of number 23, failed to convey the conservation officer's concerns that the proposal was out of keeping with the street scene and that it was in that way that the setting of the Conservation Area was harmed.

30. The concern raised by the conservation officer about the scale of the proposals was in fact referred to in the OR. The OR included reference to the consultation report: "*If however the works can be amended/scaled back to ensure the property remains in keeping with the street scene, then the impact upon the adjacent heritage asset should be negligible.*" That reference to scaling back is a clear reference to the scale of the proposals and there is a later reference to the conservation officer's expression of concern "*regarding the scale of the proposals*" in the OR.

31. The conservation officer's concern about the scale of the proposals being out of keeping with the street scene is clear from the wording of the conclusion lifted from the conservation officer's report and the suggestion that the proposals be scaled back for the purpose of ensuring "*that the property remains in keeping with the street scene*" is a clear reference to her opinion that the current proposal would not be in keeping with the street scene. The planning committee can be expected to have the intelligence and understanding to know that is what is being said and there was no need for the OR to make even more explicit reference to the fact that the opinion of the conservation officer was that the site would not be in keeping with the street scene if the proposal proceeded without amendment or that the current "*modest scale of no.23 helps it to sit comfortably within the street scene.*"

32. The inclusion of the conservation officer's conclusion within the OR, stating her objection to the proposal, is evidence that the conservation officer did consider that the proposal would cause harm. It does not matter the extent of the harm, and the most minor harm must be taken into account. Her objection is sufficient to establish that she considered there to be harm from the proposal. Otherwise, she would not

have put forward any objection or would have removed her objection upon receipt of the amendments. The inclusion of the conservation officer's summary in the OR is, in my judgment, sufficient for the planning committee to know that she did have concern that there would be harm to the Conservation Area if the proposal were to be approved. The planning officer's determination that "*it is not considered the proposals would adversely impact on the character and appearance of the area*" and that "*There is not an adverse impact on the setting of the Conservation Area*" are planning conclusions that the OR was properly entitled to reach on the evidence available. The conservation officer's conclusion was included in full and reference was made to the proposal increasing the bulk of the property.

33. While it can properly be said that the OR could have been worded in a different way, the issue for the court is whether there had been significantly misleading advice with respect to material matters. On careful consideration I do not consider that there was such a significant misleading of material matters – the summary of the outcome of the conservation officer's report was included and, while there was no annexing of the actual report, there was no necessity to do so as it was a document that the Planning Committee could easily have accessed on-line. There is no requirement to set out verbatim everything that has been said by a specialist officer who is consulted with respect to a planning proposal.

34. In *Zins,* the judge made it clear that the question was "*whether, on a fair reading of these reports as a whole, members were materially misled …*" and in *Kinsley* the judge was concerned that the OR had made some significant changes and omissions. I am satisfied that the concerns of the conservation officer are sufficiently included in the OR and that there was nothing that materially misled the members of the Planning Committee.

35. Ground 8 of this judicial review challenge therefore does not succeed.

<u>Ground 7: Failure to give reasons for disagreeing with the Conservation Officer</u>

36. The Claimant challenges the decision on the basis that the OR fails to set out adequately why the proposal was being recommended to the Planning Committee when the conservation officer had expressed concerns about harm to the conservation area as a consequence of the proposed bulky development overscaling the host property. Further, the conservation officer had expressed concern that, notwithstanding changes to neighbouring properties, the development of this particular site would be out of keeping given the "*bulking*" of the existing property which would result in harm to the setting of the Conservation Area.

37. The conservation officer had recognised that the site of the proposal was within "*a run of bungalows of which a number have been changed to a chalet style with dormers or roof extensions*" but that this particular proposal was bulky and would overscale the host property. The concern of the Claimant is that the OR failed to take into account that the conservation officer's objection was based on her concern that, despite the development of neighbouring properties, this development would result in harm to the Conservation Area, albeit slight harm.

38. The Planning Committee did not diverge from the recommendation in the OR, and the requirement to give reasons for coming to a different decision to that recommended

by a specialist officer who has been asked for input is dependent upon the circumstances. In *R (on the application of CPRE Kent) v Dover District Council* [2017] UKSC 79 Lord Carnwath set out that there was no statutory duty to give reasons, but the obligation to give reasons in common law would arise where openness and fairness required the members' reasons to be stated and that while "*it would be wrong to be over-prescriptive in a judgment on a single case and a single set of policies*" a council should be able to identify cases which call for a formulated statement of reasons beyond the statutory requirements. Those cases would be "*where it was in the face of substantial public opposition and against the advice of officers, for projects which involve major departures from the development plan, or from other policies of recognised importance… Such decisions call for public explanation, not just because of their immediate impact; but also because, as Lord Bridge pointed out… they are likely to have lasting relevance for the application of policy in future cases.*" This is not such a case. While there were 34 objections to the development, there were 32 letters in support and this is not a development which amounts to a major departure from the development plan or a decision which is likely to have lasting relevance for the application of policy in future cases. I do not consider that the claimant can properly establish that the OR failed in fulfilling a duty to give reasons for departing from the view of the conservation officer in the circumstances of this matter.

39. Even though the conservation officer is asked for input as a consequence of that officer's specialist knowledge and understanding, the OR is entitled to reach his own view on the impact of the development. It was the OR's advice that the Planning Committee followed in reaching the decision to grant permission. The OR provides information as to why the planning officer, who authored the report, took the view that the proposed development was consistent with the other properties in the street. He referred to the eaves height being only slightly higher than the neighbouring properties; that the design and appearance of the extensions are similar to the immediate neighbour (see paragraphs 28 and 29 of the OR) and not incongruous or out of keeping with the character of the area. It is acknowledged that the "*host dwelling*" occupies a relatively small plot and that the garden extension extends to within close proximity of the rear boundary but that the proposed developments would not be considered overdevelopment of the site due to its acceptable scale, mass and bulk (see paragraph 30 of the OR).

40. The OR does, therefore, deal with the issue of whether the size of the plot is such that it could not accommodate the proposal without harm to the street-scene and the Conservation Area. The OR came to a different conclusion to the one reached by the conservation officer, but it was a rational conclusion and one that the planning officer was entitled to reach. The planning officer sets out in the OR that the conservation officer had expressed concerns regarding the scale of the proposals. His view is different to hers. He advises that "*the nature of the property is such that the proposals are considered to be in keeping with those which have previously been completed to neighbouring properties and as a result would not be harmful to the setting of the Conservation Area.*"

41. The planning officer in compiling the OR has to give advice to the Planning Committee. He did not need to go any further in his reasons for considering the scale

and bulk of the proposal to be appropriate contrary to the view of the conservation officer that the proposal would cause harm (albeit slight).

42. In the circumstances, ground 7 of this judicial review also fails.

Ground 6: Departure from policy in assessing impact on the Conservation Area

43. The NPPF provides that any harm to the setting of a Conservation Area needs to be identified, and that any degree of harm is to be afforded great weight. Harm is substantial, less than substantial or no harm. Even if the less than substantial harm is "*… very much less than substantial. There is no intermediate bracket at the bottom end of the less than substantial category of harm for something which is limited, or even negligible, but nevertheless has a harmful impact. The fact that the harm may be limited or negligible will plainly go to the weight to be given to it …*" (per HHJ Belcher, sitting as a Judge of the High Court, in *R (James Hall) v City of Bradford* [2019] EWHC 2899).

44. It is clear that the conservation officer considered that there was harm if the proposal was not amended. It did not matter that she did not consider that to be significant harm. The planning officer took a different view. He set out in the OR that "*... the nature of the property is such that the proposals are considered to be in keeping with those which have previously been completed to neighbouring properties and as a result would not be harmful to the setting of the Conservation area.*" He further set out in the Executive Summary that "*There is not an adverse impact on the setting of the Conservation Area.*"

45. That conclusion differed from the conclusion of the conservation officer but it is a matter of planning judgment that cannot be challenged in these proceedings. The Claimant accepts that to be the case but is challenging the decision to grant permission on the basis that there was a failure to understand the policy framework, however it is clear that the planning officer reminds himself of the policy (see paragraph 34 of the OR) where he recites the relevant part of the NPPF "*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.*" His conclusion is that there is no harm and there is, and could not be, a challenge on the basis that the determination is an irrational one. He has come to a different conclusion to that of the conservation officer but he was entitled to.

46. In the circumstances, therefore, the challenge on this ground does not succeed.

Conclusion

47. For the reasons set out in this judgment, the three remaining grounds of challenge do not succeed and the planning permission granted is not to be quashed.

48. I would be grateful if the parties could agree a form of order for the purpose of formal handing down on Friday this week.