IN THE HIGH COURT OF JUSTICE **Claim No. CO/1878/19**
QUEEN'S BENCH DIVISION
PLANNING COURT

IN THE MATTER OF A CLAIM FOR JUDICIAL REVIEW
BETWEEN:

GLENN KINNERSLEY

Claimant

- and -

MAIDSTONE BOROUGH COUNCIL

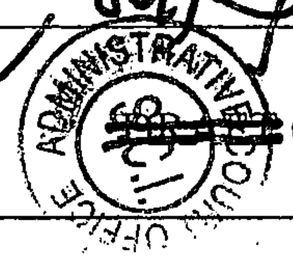
Defendant

- and -

PAUL DIXON

Interested Party

Rhodri P. Thomas, sitting as a Deputy High Court Judge
1-vii-2019



~~ORDER~~ CONSENT ORDER

1. UPON the Claimant having lodged this claim on 10 May 2019 for judicial review of the Defendant's decision, dated 29 March 2019, to grant planning permission for development at Courtyard Studios, Hollingbourne Hill, Hollingbourne, Kent ME17 1QJ ("the application site") under reference 18/506662/FULL (**"the Decision"**);

2. AND UPON the Defendant and the Interested Party having indicated that they will not contest the claim;

3. AND UPON considering the matters set out at Schedule 1 to this order, being the statement of reasons for making this order.

BY CONSENT IT IS ORDERED that:

4. Permission to apply for judicial review is granted.

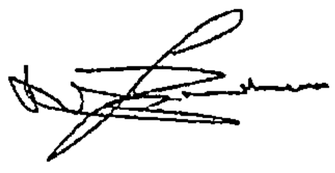
5. The Claim is allowed.

6. The Decision is hereby quashed.

7. There be no order as to costs.

Richard Buxton Solicitors /LF

RICHARD BUXTON SOLICITORS for the CLAIMANT



MID KENT LEGAL SERVICES for the DEFENDANT

PAUL DIXON for the INTERESTED PARTY

RICHARD BUXTON SOLICITORS for the CLAIMANT

MID KENT LEGAL SERVICES for the DEFENDANT

P. R. Dixon

PAUL DIXON for the INTERESTED PARTY

Approved by
Robin T. Knapp
Sitting as a
Deputy High Court Judge
1-vii-2019

By the Court

SCHEDULE 1 - Statement of reasons for making the order

The following is agreed between the Claimant and the Defendant:

1. In December 2018, the Interested Party applied to the Defendant for planning permission for "the conversion and adaptation of the existing photographic studios into 2no dwellings." The works proposed involve the demolition of the rear section of the application building and the demolition and relocation of part of the listed wall. The application was given reference 18/506662/FULL.

2. Hollingbourne House is a Grade II listed building owned and occupied by the Claimant and his family. The application site consists of a barn and adjoining land within the ownership of the Interested Party. The Claimant and Defendant agree that the application site falls within the curtilage of Hollingbourne House. The Interested Party does not agree that the application site falls within the curtilage of Hollingbourne House and reserves his position in this respect.

3. On approximately 26 February 2019, the description of the development was amended to read:

   "Demolition of the rear section of the building and erection of replacement structure, and conversion of front section of building including external alterations, to facilitate the creation of 2 dwellings with associated parking and garden areas."

4. The Claimant submitted multiple letters of objection, including by planning consultants Kember Loudon Williams and heritage expert, Ms Liz Vinson of Heritage Collective.

5. On 29 March 2019, the Council issued a decision notice granting planning permission to application 18/506662/FULL ("the Decision").

6. The Decision was taken by an officer of the Council exercising delegated powers. The Council was therefore required by Regulation 7 of the Openness in Local Government Regulations 2014 to record its reasons for the decision. These are

found within the 9-page officers' report which recommended that planning permission be granted. [CB/2/301]

7. On 7 May 2019, the Claimant's solicitors wrote to the Defendant in accordance with the Pre-Action Protocol for Judicial Review setting out four proposed grounds of challenge. The letter also noted that the Claimant's solicitors had been instructed very recently and, in light of the pending deadline to lodge the claim (which was 10 May 2019), indicated that if the Defendant confirmed in writing by 21 May 2019 that it would not contest the claim, the Claimant would not seek an order for the recovery of his costs from the Defendant incurred up to and including the lodging of the claim.

8. On 10 May 2019, the Claimant lodged Judicial Review proceedings challenging the claim on four grounds – the same four grounds that had been set out, in outline, in the Claimant's pre-action letter of 7 May 2019. The four grounds are as follows:-

i) The Planning Authority failed to address the question whether or not the proposal "accorded with" the Development Plan as a whole, in breach of its statutory duty under section 38(6) of the Planning and Compulsory Purchase Act 2004.

ii) It is clear from a fair reading of the officer's report that the Planning Authority's decision was tainted by significant errors of policy interpretation and/or failures to take account of material considerations in the application of policy to the facts of the case. The Claimant's Statement of Facts and Grounds ("SOFG") identified six significant failings (SOFG paragraphs 37-43).

iii) The Council adopted a flawed approach to the assessment of heritage impact and in so doing acted in breach of its statutory duty under section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 The Claimant relied on seven errors in this regard (SOFG paragraphs 52-58).

iv) The Planning Authority failed to comply with its duty to give reasons for its decision under Regulation 7 of the Openness in Local Government Regulations 2014 (SOFG, paragraph 61).

9. By letter dated 16 May 2019 and emailed to the Claimant on 17 May 2019, the Defendant indicated that it accepted that *"there has been a failure to clearly identify what the setting to the listed building is in order to then set out how any impact, if any, to the setting of the Listed Building is mitigated by the proposed development."* The Defendant therefore accepted that for this reason it would not contest the claim, which should succeed under the Claimant's grounds 2 and 3.

10. This consent order is made without prejudice to the parties' positions on the other grounds.

11. The Defendant agrees that it will reconsider the application in accordance with the law and without any reliance on any part of the reasoning in the officer's report associated with the impugned decision notice.

12. On 31 May 2019, the Interested Party, Mr Dixon, indicated his consent to the draft order, in light of the agreement set out above between the Claimant and the Defendant.

Conclusion

In light of the above, the Parties are agreed that it would be appropriate for the Court to make an order in the terms set out.

By the Court