Neutral Citation Number: [2017] EWHC 3345 (Admin)

Case No: CO/1136/2017

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 19 December 2017

Before :

MARTIN RODGER QC,
(Sitting as a Deputy Judge of the High Court)

- -

Between :

THE QUEEN ON THE APPLICATION OF NORTH NORFOLK PLANNING WATCH LTD	**Claimant**
- and -	
NORTH NORFOLK DISTRICT COUNCIL	**Defendant**
- and -	
(1) ROSS MCINTYRE **(2) RACHAEL THROWER**	**Interested Parties**

- -
- -

John Pugh-Smith (instructed by **Greene & Greene**) for the **Claimant**

Clare Parry (instructed by **Eastlaw**) for the **Defendant**

Hearing date: 29 November 2017

- -

Approved Judgment

Mr Martin Rodger QC :

1. This is an application for judicial review of a decision of North Norfolk District Council to grant planning permission for the demolition of a house at 8 Wiveton Road, Blakeney, Norfolk, and the erection of a modern replacement on the same site. The decision notice itself was issued on 20 January 2017 and permission to make the application was granted on the papers by Collins J on 24 May 2017.

2. The claimant, North Norfolk Planning Watch Ltd CIC describes itself as a company formed by residents of the Glaven Valley to channel their concerns about the manner in which the Council has handled applications for planning permission for developments within and around the Glaven Valley and Blakeney Conservation Areas and the North Norfolk Coast Area of Outstanding Natural Beauty ("the AONB").

3. Mrs Barendina Smedley is a director and member of the claimant. She lives at the Old Rectory in Blakeney, a Grade II* listed building built in 1518 which was sold off by the Church of England in 1925. The house at 8 Wiveton Road which is the subject of these proceedings was built in the same year as a replacement for the Old Rectory and I will refer to it, as the parties have, as the New Rectory. It is a two-storey detached house of conventional design.

4. Planning permission for the demolition of the New Rectory and the erection of a replacement dwelling was granted on 20 January following a resolution of the defendant's Development Committee taken at a meeting on 19 January. The development was permitted subject to conditions including one which required that prior to their first use on site samples of the facing materials to be used for the external walls and roofs of the replacement dwelling were to be submitted to and approved by the defendant in writing with the development then being constructed in accordance with those approved details. The reason for the condition was to enable the defendant to be satisfied that the materials to be used "will be visually appropriate for the approved development and its surroundings."

5. On behalf of the claimant Mr Pugh-Smith submitted that the grant of planning permission was unlawful for four reasons. In outline they were:

   i) That the use of an incorrect application form deprived the Council of the necessary jurisdiction to permit the New Rectory's demolition.

   ii) That the Committee had been provided with insufficient information to enable it properly to consider whether the demolition of the New Rectory was justified.

   iii) That inadequate consideration had been given to the issue of local listing raised by objectors.

   iv) Finally, that in giving approval to the use of "Corten" steel on the replacement building the defendant had failed to consider the preservation or enhancement of the Conservation Area as required by section 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

The facts

6. The village of Blakeney is within the North Norfolk AONB and lies about a mile from the coast. The parish church of St. Nicholas, its adjoining primary school, the Old Rectory and its associated sixteenth century tithe barn (all of which are listed buildings) are situated on the south side of the village within the Blakeney Conservation Area. The New Rectory is a few hundred metres further south and is within the Glaven Valley Conservation Area. The New Rectory is not a listed building.

7. The New Rectory was designed for the rector of Blakeney by a local architect and provided accommodation for the incumbent and his successors from 1925 until the end of 2014. It was then unoccupied until it was offered for sale in May 2015. On 25 February 2016 it was sold to Mr McIntyre and Ms Thrower, the interested parties, who did not move in. On 5 April their architect, Mr Hudson, sought pre-application advice from the defendant with a view to demolition and the construction of a striking modern replacement on the site.

8. As part of the pre-application process the defendant's Conservation and Design Officer, Mr Paul Rhymes, made two visits to the New Rectory. He made a third visit in October, after the interested parties' application for planning permission had been received. On each occasion Mr Rhymes was able to view the building only from the outside.

The application and objections

9. On its website the defendant provides a link to the Planning Portal online application service. The Portal provides a form specifically for use in connection with applications for planning permission which include demolition of an unlisted building in a conservation area. When interested parties made their application for planning permission on 12 October 2016 their architects did not use that form. Instead Mr Hudson used the standard application form provided by the defendant which made no reference to demolition. I will refer to the other differences between the two forms when considering the claimant's first ground.

10. The application was submitted electronically and was accompanied by a design and access statement prepared by the architects and an ecology report prepared by Wild Frontier Ecology Ltd, also filed electronically. The form of the proposed dwelling was said to resemble a barn on two-storeys, occupying the footprint of the New Rectory, but featuring an entrance tower. The roof and walls of the barn element are to be of Corten steel to provide "a contemporary interpretation of terracotta roof and red brick wall tones of North Norfolk."

11. Historic England ("HE") was consulted on the proposal by the defendant. On 28 November it responded stating that it did not wish to oppose the application in principle, being satisfied that there was no strong visual link between the proposed new building and the listed buildings nearby. Nevertheless HE's inspector suggested that "the Council should still give careful consideration if the proposed use of materials somewhat alien to the area (especially Corten Steel) on a large scale for the new building is appropriate to its setting."

12. Although submitted on 12 October the application did not come to the attention of Mrs Smedley or other local residents until early December 2016. On 7 December Mrs Smedley wrote to the defendant raising objections. She referred to the impact which the demolition proposal would have on the listed buildings and the effect which the intended replacement would have on the designated areas due to its prominence and design.

13. On 8 December Mrs Smedley informed the defendant that she and her husband had commissioned professional research into the New Rectory's architectural history and in particular its relationship with the Old Rectory. She asked that any decision on the application be postponed to enable the product of that research to be properly considered.

14. By 14 December the defendant's planning officers had prepared a report which recommended approval, but in view of the number of local objections the application was called in for consideration by the Development Committee, before whom it was listed for consideration on 19 January.

The Officer's Report

15. The officers' report for the meeting of the Committee was published in its final form on 10 January. It was a thorough report running to 14 pages and continued to recommend approval.

16. The report identified the application as being for the erection of a replacement dwelling following the demolition of an existing dwelling and explained that the reason for reference to the Committee was to enable it to consider the impact on settlement character of the proposed new materials. The report described the New Rectory and the proposed replacement in some detail drawing attention to the intended use of Corten steel mesh for the roof and Corten steel panels for the wall finish.

17. Ten letters of objection were summarised in the report. These focussed on the contrast between the New Rectory (variously: harmonious with its neighbours, delightful) and the intended replacement (unsympathetic, unsuitable, obtrusive, overbearing, contemporary and aggressive, and completely out of character). The suggestion of one objector that "the New Rectory should be considered a heritage asset in its own right given its history as a former rectory and forming an important part of the social history" was noted.

18. The report then made reference to the views of Mr Rhymes as Conservation and Design Officer. Because of the criticism made of the report as a whole it is necessary to set out at length how those views were reported to the Committee:

> "The existing Rectory has fallen into poor state of repair and whilst offering a degree of local interest and architectural character, the building cannot be considered sacrosanct to change or indeed demolition. The building's position within the conservation area and notably on a key approach to the village makes this a particularly sensitive site. When approaching the Rectory from the south, the building is very

> much revealed within the landscape and it is this principal view against the backdrop of the mature trees which makes the site distinctive and the building a rather powerful presence.
>
> Whilst the plot lies in relatively close proximity to both the Grade II* Old Rectory and the Grade I St Nicholas Church, the interrelationship and site lines between these assets and the development site is somewhat limited. With this in mind, the impact of the development on the setting of those designated heritage assets is relatively minor.
>
> In regards to the design of the replacement dwelling, the concept of a contemporary style building raises no Conservation and Design cause for concern in principle. The overall height, scale and massing of the development is not dissimilar to that of the existing rectory and follows almost the same footprint. The principal concern relates to the buildings elevational treatments and the predominant use of the Corten steel cladding which is clearly not a material grounded within this predominantly vernacular context. The Corten itself is a material that will weather over time and will portray a degree of colour variation and depth. With this in mind, whilst its profile and finish will be a distinct move away from the traditional roof finish, the end result will not necessarily be jarring or clinical in appearance. Furthermore, the use of the coursed flint work beneath the Corten should assist in grounding the building and offering that local connection which might otherwise be missing.
>
> ....
>
> By virtue that the application will not harm the significance of the heritage assets, Conservation and Design raise no objection to the application. In the event of the application being approved, appropriate conditions would be attached regarding materials and rain water goods."

19. The report next drew attention to the observations by HE and specifically to its suggestion that the Council may wish to consider the building as a potential non-designated heritage asset in its own right.

20. Having identified relevant policies and paragraphs from the NPPF, the report then embarked on a lengthy appraisal of the application. Under the heading "design" the use of Corten steel cladding was acknowledged to be a distinctive move away from traditional finishes but "the colour, tone and weathering of the Corten references that of the terracotta roof and red brick wall tones of North Norfolk and is not considered out of place when viewed against the backdrop of mature trees."

21. A significant portion of the report dealt with the topic of "heritage impact." Attention was drawn to sections 66(1) and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990. The Committee was advised that if it considered the

proposed development would harm the setting of a listed building or the character or appearance of a conservation area "it must give that harm considerable importance and weight." The report noted the historic and ecclesiastical connections between the New Rectory as well as architectural links with the old rectory before explaining:

> "However, the building is not identified by the Local Planning Authority as a Non-Designated Heritage Asset (i.e. local list) and the building cannot be considered sacrosanct to change or indeed demolish."

22. After further consideration of the relationship of the New Rectory with the Old Rectory and the parish church, the views of officers were summarised in the following two paragraphs:

> "Whilst there is no overriding Conservation and Design objection to the demolition of, and replacement dwelling, it is acknowledged that these issues are finely balanced given the concerns regarding the appearance of the dwelling and setting of heritage assets. Given the prominent position of this building when approaching from the south from Wiveton and long distance views from the south west, any redevelopment of this site needs to give careful consideration to the impact on adjacent heritage assets. Taking account of the above the demolition and replacement of 8 Wiveton Road is not considered to harm the significance of the Old Rectory or Parish Church of St Nicholas, a view expressed by both the Council's Conservation and Design Officer and Historic England.
>
> It is therefore considered that the proposal would not result in significant harm being caused to the character and appearance of the Glaven Valley conservation area, other heritage assets (including the Old Rectory and St Nicholas Church) and the wider countryside and as such would accord with the requirements of core strategy policy EN4, EN8 and NPPF (paragraphs 132 and 134). This view is shared by the Council's Conservation and Design Officer."

23. The report concluded by stating that "on balance it is considered that the dwelling would not distract from the special qualities of the AONB and would not harm the character and appearance of the Glaven Valley conservation area or other heritage assets" and recommended approval.

The site visit, Mr Bradbury's report and Mr Rhymes' response

24. On 10 January 2018 Mrs Smedley wrote a lengthy letter of objection addressed "Dear Councillors". I take this to be the letter referred to in the minutes of the Committee meeting as having been received directly by its members. In it she anticipated receipt of the report of her architectural historian and informed the Committee that it would demonstrate that the New Rectory made an important contribution in its own right to Blakeney's distinctive architectural character, and should therefore be retained. She

also attached a detailed critique of the proposal and of the Design and Access Statement which ran to 19 pages prepared by a planning consultant, referring to each of the relevant policy considerations.

25. Armed with the officers' report and the detailed objections, members of the Committee visited the site on 12 January and inspected the New Rectory both internally and externally. Watching from her home, Mrs Smedley was able to observe the members of the Committee walking around the building before entering and remaining inside for several minutes.

26. In its response of 12 December HE had been untroubled by the effect the proposal might have on the Old Rectory or the parish church, but shortly before the meeting two other heritage bodies intervened in support of the retention of the New Rectory on account of its own intrinsic merits. On 10 January Save Britain's Heritage ("Save") expressed the view to the defendant that the New Rectory made a positive contribution to the conservation area and should be retained and brought back into beneficial use rather than being demolished. On the following day the 20th Century Society ("C20") wrote referring to the New Rectory as a "non-designated heritage asset" whose loss should be resisted because of the harm that would cause to the setting of the Old Rectory and the parish church. It advocated sympathetic refurbishment and suggested that no adequate reason had been given to doubt that the building remained fit for its original purpose. The Society also criticised the design and materials intended to be used in the proposed replacement, suggesting in particular that concerns had been raised over the use of Corten steel in coastal locations which might have an impact on the long term appearance of the new building.

27. At 4.33 am on the morning on 16 January Mrs Smedley emailed the report of her architectural historian, Mr Bradbury, to the planning officer, Ms Smith. The report runs to 50 pages, providing information about the work of the local architect of the New Rectory, putting the building in its historical and ecclesiastical context, and describing it as a noteworthy and well-preserved example of an interwar rectory which made a contribution to the setting of the adjacent listed buildings.

28. On receiving the report Ms Smith described it as "a lot of information rather late in the day." In an email to Mr Rhymes, Ms Smith asked him to consider whether the New Rectory should be considered for local listing. She observed that if there was anything in Mr Bradbury's report which raised a doubt "we may need to pull the application to fully review this new information." On the other hand if officers were confident that the building did not merit consideration for local listing "that is a view we can make on the day at Committee."

29. At 10.40 the same morning, 16 January, Mr Rhymes informed Ms Smith that he had read Mr Bradbury's report and "can't see that the contents of this latest appraisal really added anything to our understanding of the site or change our assessment of the application." He considered that "it is border-line whether the building is locally listable" but remained of the view that the assessment in his original report to the Committee had considered all the main issues and that the assessment it contained was balanced and fair in its conclusion. All that was required, he thought, was for the Committee to be updated on the additional information concerning the architects and the historic connection between the old and new rectories.

30. In response to Mr Rhymes comments Ms Smith drafted the outline of a reasoned response to Mr Bradbury's report. She suggested that this be turned into a formal comment from Mr Rhymes, which should appear on the defendant's website to demonstrate that the information had been fully considered.

31. Mr Rhymes duly prepared a memorandum in email form in which he considered the New Rectory as a subject for local listing. The email was circulated at the end of the afternoon on 18 January and is believed to have appeared on the Council's website at the same time. In it Mr Rhymes assessed the information provided by Mr Bradbury concerning the architects responsible for the design of the New Rectory and considered the contribution which the building made to the setting and historic appreciation of the three listed buildings. His memorandum went on:

> "In terms of the building's status, it should be clarified that 8 Wiveton Road is not a designated heritage asset, nor it is a non-designated heritage asset. Having carried out an initial assessment against the Council's adopted Local Listing Criteria, [I] have come to the conclusion that the building is not worthy of inclusion onto the North Norfolk local list."

32. Mr Rhymes then listed the 9 criteria which were taken into account in considering the suitability of a building for inclusion in the local list. He described the New Rectory as not a good example of a regional or local style, as portraying limited intrinsic design value and as being of modest architecture. Its relationship to the neighbouring properties was limited to filtered views from the Old Rectory and long distance glimpses of the church. He acknowledged the historic association of the building with the neighbouring listed buildings and the local connections of the architects but pointed out that those architects were not well known or renowned. The building itself was "built to be functional and constructed on a budget", with limited rarity or landscape value, and despite having a prominent position on Wiveton Road it was not a landmark structure. Some further details of the process of local listing were then provided before Mr Rhymes concluded that despite the limited historic and social interest created by the ecclesiastical relationship with the nearby listed buildings and local architectural links his initial recommendation remained unchanged.

33. Although Mr Rhymes' additional observations were published on the Council's website they were not drawn specifically to the objectors' attention and Mr Smedley was unaware of them when he was permitted to address the Development Committee at its meeting on 19 January.

The meeting

34. The minutes of the meeting record that the Committee had been "heavily lobbied" on the application. Mr Smedley and Mr Hudson, the applicant's architect, made short presentations followed by a presentation by Ms Medler, the development management team leader. She is recorded in the minutes as dealing with issues raised at the site inspection by members of the Committee and as reporting that a further 30 letters of objection had been received. These were summarised and it was said that they raised similar points to those already dealt with in the officers' report. The fact that objections had been received from the C20 and Save was also reported.

35. The minutes then recorded that an architectural appraisal had been submitted by one of the objectors. The minuted reference to this appraisal (Mr Bradbury's report) was as follows:

> "The Development Management Team Leader reported that the Conservation and Design Officer had been re-consulted on further information which had been received. The dwelling was not a designated heritage asset nor locally listed. An assessment had been carried out against local listing criteria and the dwelling was not considered to be worthy of local listing. The Conservation and Design Officer had no objection to this application."

Councillor Ward, who had called the application in, then referred to information that had come forward relating to the social and historical importance of the building (which I take to be a further reference to Mr Bradbury's report).

36. The discussion which followed appears to have centred on the design of the replacement building and in particular on the suitability of the proposed materials. Specific concern was raised by one councillor who asked how the steel cladding would weather. In response Ms Medler explained that the Corten steel finish had a matt appearance, terracotta red in colour, which was not dissimilar to the existing roof materials and that it weathered very well.

37. Following the discussion the Committee resolved unanimously that the application be approved.

Legal principles

38. There was no disagreement on the relevant legal principles between Mr Pugh-Smith and Miss Parry, who appeared on behalf of the defendant.

39. For the principles applicable to challenges based on the adequacy of officers' reports to a planning committee I was referred to the summary at paragraphs [90] to [98] of the decision of Holgate J in *The Queen (Luton Borough Council) v Central Bedfordshire Council* [2014] EWHC 4325. The following propositions taken from that summary were emphasised:

i) In the absence of contrary evidence, it is reasonable to infer that members of a planning committee followed the reasoning of the case officer's report, particularly where its recommendation was adopted.

ii) An officer's report is to be read as a whole and is not to be subjected to the same exegesis that might be appropriate to the interpretation of a statute. Thus:

> "An application for judicial review based on criticisms of 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."
>
> (Oxton Farms, Samuel Smiths Old Brewery (Tadcaster) v Selby District Council, 1997 WL1106106, per Judge LJ).

iii) A planning officer's report is addressed to an informed readership with substantial local and background knowledge. It is therefore unnecessary for the report to set out in great detail background material with which the committee members will be familiar. It is part of the officer's expert function to make an assessment of how much information needs to be included in a report in order to avoid burdening a busy committee with excessive and unnecessary detail.

40. Mr Pugh-Smith supplemented these propositions by referring to observations on the duty of a planning officer by Pill LJ in *R (Lowther) v Durham County Council* [2001] EWCA Civ 81. at [9]:

> "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."

41. I was also referred to the very recent decision of the Court of Appeal in *St Modwen Developments Ltd v Secretary of State for Communities and Local Government* [2017] EWCA Civ 1643 in which, at [6], Lindblom LJ referred to the "seven familiar principles" that would guide the court in handling a challenge to a decision of the Secretary of State to refuse planning permission. Amongst those principles, which the Court of Appeal restated and reinforced was the following, at paragraph 6(3):

> "The weight to be attached to any material consideration and all matters of planning judgment are within the exclusive jurisdiction of the decision-maker. They are not for the court. A local planning authority determining an application for planning permission is free, "provided that it does not lapse into *Wednesbury* irrationality" to give material considerations "whatever weight [it] thinks fit or no weight at all" (see the speech of Lord Hoffmann in *Tesco Stores Ltd v Secretary of State for the Environment* [1995] 1 WLR 759, at p.780F-H). And, essentially for that reason, an application under section 288 of the 1990 Act does not afford an opportunity for a review of the planning merits of an inspector's decision…"

42. Finally, both parties drew my attention to a passage in the decision of Sullivan J in *R v Mendip DC ex p. Fabre* (2000) 80 P&CR 500, 515 in which he said this about the treatment by officers of information received at a late stage before a planning committee meeting is due to take place:

> "The solicitor's letter was sent to the Council. It is inevitable that this will in many cases lead in turn to the need for some further input from the responsible officer. That input may be given orally on the day, or it may be more helpful to set it out in writing a little time in advance. It is important that members are not "bounced" with new information which they do not have time to digest. But I am satisfied that this is not the case here. The update report was available on the 23rd. The meeting did not take place until 27. It must have been far better to provide the additional information in writing a little time in advance of the meeting than to deploy it orally at the meeting."

Policy

43. The Committee was required by section 38(6) of the Planning and Compulsory Purchase Act 2004 to determine the application in accordance with any applicable development plan policy unless material considerations indicated otherwise. The only relevant policy to which I was referred was Policy EN8 of the defendant's Core Strategy, which requires that in a Conservation Area:

> "Proposals involving the demolition of non-listed buildings will be assessed against the contribution to the architectural or historic interest of the area made by that building. Buildings which make a positive contribution to the character or appearance of an area should be retained. Where a building makes little contribution to the area, consent for demolition will be given provided that, in appropriate cases, there are acceptable and detailed plans for any redevelopment or after use."

44. Policy EN8 of the Core Strategy also included a commitment to the preparation of a local list of buildings of special architectural or historic interest. Although local listing is not a specific statutory process, local planning authorities are encouraged by the NPPF to give consideration to it.

45. The paragraphs of the National Planning Policy Framework concerning heritage assets were also agreed to be relevant to this challenge. "Heritage asset" is an expression defined in the NPPF and, so far as relevant, means "a building …identified as having a degree of significance meriting consideration in planning decisions, because of its heritage interest. Heritage asset includes designated heritage assets and assets identified by the local planning authority (including local listing)." A "designated heritage asset" includes a listed building or a Conservation Area. The New Rectory is not a designated heritage asset, but the Glaven Valley and Blakeney Conservation Areas are.

46. A local planning authority determining a planning application should take account of the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation (paragraph 113). Great weight should be given to the conservation of a designated heritage asset when considering the impact of a proposed development on that asset (paragraph 114). A proposed development which will lead to substantial harm to, or significant loss of

significance of, a designated heritage asset should be refused consent unless it can be demonstrated that the substantial loss or harm is necessary to achieve substantial public benefit outweighing that loss or harm (paragraph 133). Where less than substantial harm will be caused by a development proposal, it should be weighed against the public benefit of the proposal, including securing the optimum viable use of the asset (paragraph 134).

47. Mr Pugh-Smith drew my attention in particular to paragraph 135 which provides as follows:

> "The effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that affect directly or indirectly non-designated heritage assets a balanced judgment will be required having regard to the scale of any harm or loss and the significant of the heritage asset."

48. Paragraph 138 is also material. It notes that not all elements of a Conservation Area will necessarily contribute to its significance, and recommended that "loss of a building (or other element) which makes a positive contribution to the significance of the Conservation Area" should be treated either as substantial harm under paragraph 133, or as less than substantial harm under paragraph 134.

Ground 1

49. The Enterprise and Regulatory Reform Act 2013 removed the separate requirement to obtain conservation area consent but (with exceptions not relevant to this case) introduced a requirement to obtain planning permission for the demolition of an unlisted building in a conservation area.

50. Mr Pugh-Smith submitted that the defendant had lacked jurisdiction to permit the demolition of the New Rectory because the application submitted by Mr Hudson had used the wrong form. Before examining that submission it is convenient to refer to the statutory basis of the jurisdiction to grant planning permission in the Town and Country Planning Act 1990 ("the 1990 Act").

51. Section 58 of the 1990 Act provides:

> 58 Granting of planning permission: general.
>
> (1) Planning permission may be granted—
>
> …;
>
> (b) by the local planning authority (or, in the cases provided in this Part, by the Secretary of State) on application to the authority in accordance with a development order;
>
> …
>
> (3) This section is without prejudice to any other provisions of this Act providing for the granting of permission.

52. Section 62(1)-(2) of the 1990 Act provide that a development order may make provision as to applications for planning permission including provision as to the form in which the application must be made, the particulars to be included in the application and the documents or other materials which are to accompany the application.

53. The relevant Order is the Town and Country Planning (Development Management Procedure) (England) Order 2015, in which Article 7 lays down the following general requirements for applications:

> "7.—(1) Subject to paragraphs (3) to (5), an application for planning permission must—
>
> (a) be made in writing to the local planning authority on a form published by the Secretary of State (or a form to substantially the same effect);
>
> (b) include the particulars specified or referred to in the form;
>
> (c) [irrelevant exceptions] … be accompanied, whether electronically or otherwise, by—
>
> (i) a plan which identifies the land to which the application relates;
>
> (ii) any other plans, drawings and information necessary to describe the development which is the subject of the application;
>
> …."

54. The standard form of application published on the Planning Portal and made available by the defendant *via* its own website contains no indication that its use is restricted to a particular type of application, but it does emphasise that the accompanying guidance notes should be read before completing the document. The notes on the website warn that "you must apply for the correct consent, otherwise your application will be invalid." By navigating deeper into the Portal a list of consent types can be accessed; this identifies five alternative types, one of which is planning permission for relevant demolition in a conservation area. Further navigation leads to information stating that "the application for planning permission for relevant demolition in a conservation area should be used for proposals which involve substantial demolition of any unlisted building or structure in a conservation area."

55. The "enhanced" application form (as Mr Pugh-Smith described it) includes a box, missing from the standard form, requiring the applicant to provide "a description of the proposal, including details of the proposed demolition." An applicant seeking guidance on the amount of detail required could refer to notes on a separate page which ask that the proposal be described "accurately and concisely, including the extent and degree of demolition." How concise the description may permissibly be is apparent from a number of examples given; these suggest "demolition of existing dwelling and erection of five, two storey, three bed houses" or "part demolition of existing boundary wall …" as acceptable.

56. The only other significant difference between the standard form and the enhanced form is the inclusion in the latter of a requirement to provide an explanation for the proposed demolition work. The form asks: "why is it necessary to demolish all or part of the building(s) or structures?" The accompanying notes elaborate on this requirement:

> "Please provide a reasoned justification for the proposed works. In order for the authority to assess an application for demolition properly, it may be necessary to supply additional information such as a structural survey or other analysis of the character or appearance of the area or building. If you need more information please contact your planning authority."

57. Returning to the standard form, this is to be signed by the applicant after a statement that "I/we apply for planning permission/consent as described in this form and the accompanying plans/drawings and additional information." The form makes no reference to demolition, or to conservation areas.

58. The form completed by Mr Hudson described the proposal for which permission was sought as: "demolition of existing dwelling and construction of replacement dwelling." It correctly identified the fact that pre-application advice had been sought and referred the reader to the Design and Access Statement for details of that advice.

59. The Design and Access Statement which accompanied the application referred to the fact that the site was in the Glaven Valley Conservation Area and included the following information about the New Rectory, provided under the heading "Context":

> "There is nothing distinctive about the building externally. The internal layout no longer reflects the needs of current living styles and requires upgrading to current energy standards. In the Full Blakeney Parish Council Meeting dated 6 May 2014, it was noted that the property was not fit for occupation due to fuel poverty and is in a poor state of repair."

60. The ecology report which was filed with the application focussed on the impact of the proposal on the local bat population and, as part of its assessment of the need for a licence to disturb their roosting, considered the alternatives to demolition. One of these was to extend the existing building, as to which the report said this:

> "The house has been extended previously and theoretically it could be extended again, plus the interior refurbished etc. However, given the age, materials, low aesthetic value and condition of the original house, this option is economically impractical and unrealistic."

Submissions

61. In the claimant's original grounds of application the first ground, (the use of the wrong form), was presented largely as an introduction to the second ground (that as a result the defendant had had insufficient information to determine the application) and it was suggested in only the briefest outline that, in law, the use of the correct form

was essential to confer jurisdiction on the defendant and that the planning permission for demolition was therefore a nullity. In his skeleton argument and in his oral submissions Mr Pugh-Smith nevertheless made clear his position that, no matter what information had been provided in support of the application, the use of the wrong form was sufficient in itself to deprive the defendant of jurisdiction to grant planning permission.

62. The key difference between the forms was the requirement to explain why it is said to be necessary to demolish the building. Mr Pugh-Smith pointed out that it remains a criminal offence under section 196D(1) of the 1990 Act to demolish an unlisted building in a conservation area without the required planning permission. As a matter of jurisdiction the defendant needed to have all relevant materials before it to fulfil both its development management function and its duty as the local government regulator of heritage resources. In order to comply with Article 7 of the 2015 Order an application for planning permission had to be submitted on "a form published by the Secretary of State" which meant *the* form published for the purpose of the particular type of application which was being made. The standard form was not compliant, nor was it "substantially to the same effect" as the required form, because it did not address the specific questions concerning the nature and extent of the intended demolition and the need for it.

63. Moreover, Mr Pugh-Smith submitted, the claimant and local residents had a procedural legitimate expectation, based on the material obtained through the defendant's website, that any application for demolition in the conservation area would be made using the correct form.

64. On behalf of the defendant Miss Parry submitted that the use of the standard application form was all that was required to confer jurisdiction since it met the requirements of article 7 of the 2015 Order that an application be made in writing to the local planning authority on a form published by the Secretary of State, or on a form to substantially the same effect. The standard form was such a form and was therefore sufficient; alternatively, completed as it had been by Mr Hudson, the standard form was substantially to the same effect as the "enhanced" form.

Discussion

65. I do not accept Miss Parry's submission that the article 7 requirement to apply for planning permission on a form published by the Secretary of State is satisfied by the use of a form which is not designed for the type of application being made, in circumstances where different forms are published for different types of application. I agree with Mr Pugh-Smith's submission that "a form" does not mean any form, but means the form designed for the purpose for which it is being used. Article 7(1) requires not only the use of a published form but also the provision of the particulars specified or referred to in the form and any other particulars required to describe the development which is the subject of the application. Where a form is published which requires specific information concerning an application of a particular type, such as for the demolition of an unlisted building in a conservation area, the information and particulars required by article 7(1) are as specified in that form and not in some different form designed for an application of a different type.

66. On the other hand I do not accept Mr Pugh-Smith's submission that a form cannot be to the same effect as the published form unless it makes provision, in different language or format perhaps, for the same information as is required by the specific form designed to be used for the type of application in question. Whether one form is to substantially the same effect as another invites a comparison between the effect of the prescribed form and the effect of the form used, and a consideration of the extent of the differences. In making that comparison it must be relevant that the purpose of the form is to convey information. The appropriate comparison must be between the form received by the local planning authority, containing the information which it contains, and the correct published form. Mr Pugh-Smith acknowledged that a form which supplied the required particulars by reference to a separate document, such as a design and access statement, would not be defective. I do not see how that acknowledgement can be reconciled with his submission that the provision of all the information required for a particular type of application, but using an inappropriate form, would deprive the planning authority of jurisdiction to consider the application.

67. Comparing the form completed by Mr Hudson with the enhanced form published on the defendant's website, Mr Hudson's form and its supporting material appear to me to be to the same effect as the enhanced form. Only two relevant differences were relied on in submissions.

68. First, the request for a description of the proposal in Question 3 of the completed form omitted the printed words "including details of the proposed demolition" which appear on the enhanced form. Despite that omission, the description inserted in response to the request so closely mirrors the concise descriptions given as model examples in the guidance notes on the defendant's website (see para. 49 above), that no objection can be taken to it. Mr Pugh-Smith did not suggest that it was impermissible to limit the description to "demolition of existing dwelling and construction of replacement dwelling."

69. Secondly, Question 9 on the enhanced form, requiring an explanation of the proposed works and why demolition was necessary, has no equivalent on the printed form used by Mr Hudson, but the extracts from the Design and Access Statement and the ecology report supplied with the application (and cited at paras 53 and 54 above) provided a more than sufficient description to meet the purpose explained in the guidance note. The guidance required no more than "a reasoned justification for the proposed works." It is true that the notes warned that the authority may require an applicant to supply additional information such as a structural survey or other analysis of the character or appearance of the area or building, but that was clearly intended to be at a second stage, in response to the material supplied with the form, rather than being a requirement of the form itself.

70. The material supplied by Mr Hudson explained that the New Rectory was undistinguished, old-fashioned, and energy-inefficient, as well as being in a poor state of repair. Those were the applicants reasons for considering it necessary to demolish the New Rectory and in my judgment they more than satisfied the requirements of Question 9, despite being included in the supporting documents (and in this regard I bear in mind that the proposal had been the subject of pre-application advice from a named officer who had already had an opportunity to discuss the proposal with Mr Hudson). It was then for the defendant to consider what it made of the applicants' justification. Given what they had been told it is inconceivable that the planning

officers could properly have rejected the application as failing to provide the particulars demanded by article 7(1) and their own guidance.

71. I am therefore quite satisfied that the form completed by Mr Hudson was a form to the same effect as the form required by the defendant (and by article 7) where a proposal involved demolition of an unlisted building in a conservation area. Any procedural legitimate expectation which may have existed in the mind of someone who had carefully picked their way through the relevant websites to discover the appropriate forms and their associated notes was therefore satisfied. That is enough to dispose of the first ground of challenge.

72. For that reason it is unnecessary for me to consider Mr Pugh-Smith's submission that the effect of using the standard, rather than the enhanced, form (or one substantially to the same effect) was to deprive the local planning authority of jurisdiction to grant planning permission. Mr Pugh-Smith emphasised the word "must" in article 7(1) as indicating that the use of the relevant form was mandatory, but the question whether a failure to take a particular procedural step is fatal to the jurisdiction of a decision-maker does not begin and end with the language in which that step is described. The modern approach requires consideration of a much broader question, namely "whether it was a purpose of the legislation that an act done in breach of the provision should be invalid" (*Project Blue Sky Inc v Australian Broadcasting Authority* (1998) 194 CLR 355 at paragraph 93; referred to with approval by Lord Steyn in *R v Soneji* [2006] 1 AC 340, at paragraph [21], and more recently by Sir Terence Etherton C. (as he then was) in *Natt v Osman* [2014] EWCA Civ 1520 at paragraphs [24]-[29]). The application before me was not argued by reference to that question and the relevant authorities were not referred to. I therefore say no more about them.

Ground 2

73. The claimant's second ground, to which many of Mr Pugh-Smith's submissions on the first ground were preparatory, was that the information supplied to the Committee was insufficient to justify the case for demolition of the New Rectory. This deficiency was traced back to the use of the standard form with the result that the "reasoned justification" for demolition of the New Rectory required by the notes accompanying the enhanced form was missing. Neither the officers nor the Committee was provided with all the necessary information to enable an informed and balanced judgment to be made as required by paragraph 135 of the NPPF. It is said that the Committee therefore erred in law by proceeding to make a decision on that basis.

Submissions

74. In support of this ground Mr Pugh-Smith took particular issue with the statement concerning the condition of the New Rectory in the consultation response from Mr Rhymes, the defendant's Conservation and Design Officer, recorded in the officers' report. Mr Rhymes referred to the building as "having fallen into disrepair" but there was no "empirical evidence", such as a surveyor's report, in support of that assessment. Mr Rhymes had not inspected the building internally, had not identified specific defects, and had not explained why it merited demolition. This was consistent with the officers' acceptance of the application on the wrong form and their lack of attention to the need for a reasoned justification for the proposed demolition.

75. The information supplied in the Design and Access Statement, referred to in paragraph 54 above, was also criticised as self-serving and misleading. The Parish Council had indeed been informed by the Diocesan Surveyor in May 2014 that the property was not fit for occupation due to fuel poverty and was in a poor state of repair, but the Surveyor had explained that the Diocese intended to build another smaller rectory and also suggested that either the Parish Council or a local housing association might be able to turn the New Rectory into affordable housing for local people. He had not suggested that it was fit only to be demolished and when the building was offered for sale it was described by the selling agents as offering scope for updating and refurbishment.

76. Mrs Smedley estimated in her first letter of objection sent to the defendant on 7 December that expenditure of only about £50,000 would be required to refurbish the New Rectory, but Mr Rhymes had made no assessment of his own and in his witness statement he referred to the defects he had observed on his external inspections (missing, cracked and damaged tiles; stained render and faulty rainwater goods) as "largely cosmetic … short-term repair issues" and the building as a whole as "in a poor condition [but] not beyond meaningful repair."

77. Mr Pugh-Smith suggested (without much enthusiasm) that the Committee should have been invited by officers to consider whether the condition of the New Rectory was due to "deliberate damage to or neglect of a heritage asset in the hope of making consent or permission easier to gain." Planning Policy Guidance would then have required that the deteriorated state of the building be disregarded. In the view of the chronology of a building vacated as uneconomic to heat, then left unoccupied by the Church for 14 months before being sold to purchasers who almost immediately embarked on the process of seeking planning permission, there were no credible grounds on which a case could be made for assuming it to be in a better condition than in reality.

78. The result of the inadequate advice of officers, and failure to challenge incomplete information provided by the applicants, was that the Committee was unable to consider the benefit, in the public interest, in retaining the New Rectory, or to weigh that benefit against the public benefits of the proposal. It was clear from the officers' report that the recommendation had been "finely balanced" (see para. 22 above) and it therefore could not be said that the report, or the decision to grant planning permission, would have been the same if more thorough consideration had been given to the true condition of the New rectory and its capacity for retention and refurbishment.

Discussion

79. I cannot accept Mr Pugh-Smith's submissions. In my judgment the Committee was appropriately informed by the officers' report concerning the condition of the New Rectory. More importantly, members were in a position to appreciate that condition for themselves at their own site visit and to determine what contribution the non-listed building made to the setting of the listed buildings and to the character and appearance of the Conservation Area as a whole. Armed with that material it was for them to undertake the balanced assessment required.

80. Mr Pugh-Smith and Mrs Smedley in her letters of objection and her evidence made much of the absence of any assessment by the officers or the applicants of whether the New Rectory was beyond economic repair. I am satisfied that no such assessment was necessary. The building was not a designated heritage asset and paragraphs 132, 133 and 134 of the NPPF did not apply directly to the proposal to demolish it. It was not necessary for the case for demolition to demonstrate that the building could no longer be used, or that the cost of work required to cure the problems identified by the Diocesan Surveyor were prohibitive.

81. The NPPF policies were relevant to the proposal only to the extent that the demolition of the New Rectory might cause harm to the Old Rectory, or to the church, the school or the tithe barn. What made the assessment of whether to approve the proposal "finely balanced" was not the quality of the New Rectory itself, but the concerns regarding the appearance of the replacement dwelling and the impact on the setting of the designated heritage assets. The officers' report considered that question in terms which have not been criticised, and accurately reported the views of HE and Mr Rhymes that there would be no adverse impact.

82. The fact that the building had been neglected and unsympathetically improved before 2014 was acknowledged by Mrs Smedley in her own letter of opposition. That it had been vacated on the grounds that it was too expensive to heat ("fuel poverty") and had then remained unoccupied for an extended period was also not in dispute. It was no part of the interested parties' case that the New Rectory could not be made habitable. On the contrary, the ecology report had assessed that option and had confirmed that "theoretically it could be extended again, plus the interior refurbished." The poor quality of the structure was said to make such an approach "economically impractical and unrealistic". The design and access statement did not seek to justify the project on the grounds that the building was derelict, but said that it "requires upgrading."

83. I reject the complaint that the application presented the views expressed at the 2014 Parish Council meeting in a misleading way. The intention of the Diocese to replace the building was irrelevant to the relevant qualities of the New Rectory itself, and the possibility that it might be used by the Parish Council or a housing association for affordable housing was speculative; had there been any substance in the suggestion, at least as far as the Parish Council was concerned, it could have been expected to make the point in response to the consultation.

84. The fact that the members of the Committee were able to inspect was said by Mr Pugh-Smith to be incapable of curing the inadequacies of the advice they had received, but I disagree. The officers advised, on the basis of Mr Rhymes inspections, that the building was in a poor state of repair; it is not suggested that that was not Mr Rhymes' true view, and the description in his witness statement of what he observed is not at odds with that view. Alerted to Mr Rhymes' assessment, the members were able to form their own opinion and to take it into account in considering the contribution which the New Rectory made to the Conservation Area and the harm its loss would cause, as they were required to do by Core Strategy EN8. The officers' report specifically counterbalanced the building's condition with the "degree of local interest and architectural character" it offered, and the suggestion that the Committee were significantly misled, whether by the report as a whole or specific aspects of it, is unsustainable.

85. I therefore reject ground 2.

Ground 3

86. The claimant's third ground focussed on the consideration give by the defendant to the possibility of adding the New Rectory to the "local list", which would have conferred on it the status of a non-designated heritage asset to which paragraph 135 of the NPPF applied. As this ground was developed in his submissions, Mr Pugh-Smith relied on three distinct points:

i) Whether Mr Rhymes, as Conservation and Design Officer, had the delegated authority to reject the objectors' request for local listing.

ii) Whether the defendant should have consulted on the request.

iii) Whether the presentation made by officers at the Committee meeting on the heritage value of the New Rectory was "legally sound".

87. I asked Mr Pugh-Smith to identify the request for local listing on which he relied as the basis of his complaint that such a request had not been properly considered. He referred me to the email sent by Mrs Smedley to the planning officer at 4.33am on 16 January, three days before the Committee met to consider the panning application. That email does not refer to local listing, nor did Mr Bradley's report which was attached to the email, although it provided much information about the building and explained the author's views on its significance. Mr Pugh-Smith submitted that it had nevertheless been treated by officers as a request for local listing, as was apparent from Ms Smith's email to Mr Rhymes on the morning of 16 January referred to in paragraph 27 above. Mr Bradley's report certainly caused officers to give more structured consideration to the possibility of local listing, and to request Mr Rhymes specifically to consider the New Rectory in light of the criteria for that designation.

88. Local listing had also been raised by HE on 12 December when its inspector had suggested to officers that, although he was satisfied that the proposed development represented no risk to the setting of the designated heritage assets, "the Council may wish to consider the building as a potential non-designated heritage asset in its own right." A more positive case for extending protection to the building was made by Save in its contribution on 10 January, while C20 referred to the New Rectory as a non-designated heritage asset.

The authority point

89. Mr Pugh-Smith's submissions under ground 3 must therefore be examined against the background that the issue of local listing arose as part of the officers' consideration of a planning application, rather than in response to a distinct request for listing in its own right. That possibility had been anticipated by the defendant's Cabinet in a resolution in 2011 which laid down a procedure for local listing of buildings of special architectural or historic interest and identified 9 criteria which ought to be considered. One route to entry in the local list recognised by the Cabinet was where the assessment of a planning application led to the conclusion that a building should be included. It was resolved that inclusion in the local list would have to be ratified in each case by the Cabinet.

90. All statutory functions of the Council acting as the local planning authority were the responsibility of the Head of Planning. Mr Rhymes' delegated authority included considering planning applications and making recommendations on design acceptability and conservation best practice. It made no specific mention of a role in relation to local listing. That was the basis of Mr Pugh-Smith's submission that Mr Rhymes had no authority "in effect, to reject an application for local listing." Although his function of assessing the heritage aspects of a planning application overlapped with the determination of local listing issues, the two processes were separate and distinct. It was submitted that there should, at least, have been some positive endorsement of Mr Rhymes' assessment by the Head of Planning to render the defendant's disposal of the issue lawful.

91. I do not accept that the legality of the defendant's approach to local listing of the New Rectory was undermined by lack of appropriate authority, largely for the reasons given by Miss Parry in her submissions. The issue arose as one aspect of the determination of an application for planning permission, and Mr Rhymes' role in that determination was recognised in his own job description and delegation. Part of his function was to assess the merits of the building for which consent for demolition was sought and to consider the effect which its loss would have on the Conservation Area. If, as a result of that assessment, he had concluded that the building merited inclusion in the local list, a decision to add it to the list would have required Cabinet ratification. But he reached the opposite conclusion and, having undertaken an assessment against the local listing criteria, he explained in his consultation response and in his subsequent memorandum on the defendant's website why he had done so. I do not accept that he was engaged in two separate procedures, giving advice on the heritage aspects of the planning application, and determining an application for local listing. In substance and in form there was a single application, for planning permission, which raised the same considerations as were material to local listing and in respect of which Mr Rhymes was properly authorised to give advice to the Committee.

The further consultation point

92. Mr Pugh-Smith drew attention to the fact that the defendant's local listing criteria which had been approved by the Cabinet in 2001 did not appear on its own website at the time of the application for permission to demolish the New Rectory. That was contrary to the defendant's advertised commitment to provide clear information to enable the public to make informed choices when replying to its consultations. The same commitment (contained in its Statement of Community Involvement (SCI) of January 2016) spoke of re-advertising and re-consulting the public where significant amendments were made to a proposal which might have an adverse effect.

93. It was also submitted that the publication of Mr Rhymes' memorandum on the defendant's website on the day before the meeting had been unfair to the objectors, who were unable to challenge the accuracy of its contents. The Committee itself had been "bounced" into a decision in the manner disapproved of in *Fabre*, and was given no proper opportunity to assess the significance of the information provided in Mr Bradbury's report or to consider the issue of local listing in light of it. Had the objectors been properly consulted on the applicability of the local listing criteria to the New Rectory, or had the Committee been given fuller and more timely advice, the outcome of the application may have been different, bearing in mind that Mr Rhymes

had advised his colleagues that "it is borderline whether the building is locally listable".

94. Miss Parry submitted that the relevant Planning Practice Guidance, and the defendant's SCI, contemplated a second round of consultation only where changes were made to a proposal by an applicant, and then only when those changes were significant. There was no expectation that the submissions of late objections would result in a further period of consultation, and it was a matter of judgment whether something sufficiently important had arisen to make such repeat-consultation appropriate.

95. In this case there was no change to the application itself and officers had given proper consideration to the relevant question when they received Mr Bradbury's report, namely, whether the information in it raised new issues which had not previously been considered and reported on to the Committee. Mr Rhymes' advice was that it did not, and his memorandum clearly explained why, taking into account all material considerations. Miss Parry submitted that there were therefore no grounds on which the court could intervene.

96. I do not accept Mr Pugh-Smith's submission that the appearance of Mr Bradbury's report was such a game-changer that it was necessary for the defendant again to seek the views of the heritage bodies (HE, Save and C20) on the application. HE had made clear its own conclusion that the proposal did not put the designated heritage assets at risk, and that consideration of the suitability of the New Rectory for inclusion in a local list was a matter on which it did not have a view. The enthusiasm of other bodies for the retention of the building was already on record and while there is much interesting background information in Mr Bradbury's report, there does not appear to be much new material on the merits of the building itself.

97. It was for the defendant's officers with relevant expertise, especially Mr Rhymes, to consider whether a further consultation exercise could be expected to yield contributions of value to the Committee's consideration of the application. Mr Pugh-Smith suggested that officers had already made up their minds in December and were under pressure to meet deadlines for determination of the application, but there is nothing in the material I have seen to justify any inference that proper consideration of Mr Bradbury's report was blocked by performance pressure. If anything, the contrary impression is created. In their email exchanges on 16 January the officers were open to the possibility that there might be new information in Mr Bradbury's report which might require that they "pull" the application from the agenda to allow re-consideration. Mr Rhymes' subsequent memorandum was thorough, and I have no reason to doubt that it was anything other than a conscientious assessment of the limited merits of the building as he saw them. In particular, the fact that his original view did not change on reading Mr Bradbury's report creates no such doubt.

98. It would have been preferable had Mr Rhymes' memorandum been published sooner than it was, and brought to the attention of the objectors, but it was responding to material supplied at the eleventh hour and the defendant cannot seriously be criticised for its appearance on the eve of the meeting. Whether the timing of the memorandum caused unfairness to the objectors depends on whether the response it contained was addressing new points which had not already been considered in the officers' report, or providing new answers to points previously made. Mr Pugh-Smith did not point to

specific examples of any such new material, and I am satisfied that the views of officers, which did not change after the receipt of Mr Bradbury's report, were clear enough to objectors to allow them a proper opportunity to respond effectively at the meeting on 19 January.

99. I therefore accept Miss Parry's submission that the absence of a further round of consultation did not render the decision unlawful or deprive the Committee of material which it ought to have been able to consider.

The officers' presentation point

100. The final topic addressed by Mr Pugh-Smith under his third ground focussed on what he described as inadequate briefing which failed to equip the Committee to undertake the balancing exercise required by Core Strategy Policy EN8 and paragraph 135 of the NPPF. The Committee should have been invited to consider whether the New Rectory was a heritage asset in its own right and to weigh the harm which its loss would result in under paragraph 135. They should have considered properly whether it made a positive contribution to the character or appearance of the Conservation Area and been advised that, if it did, it should be retained (EN8).

101. Mr Pugh-Smith pointed out that the defendant's officers had been alerted in early December to the objectors' intention to commission an architectural appraisal of the New Rectory, and to HE's suggestion that the defendant might want to do the same. Why, he asked rhetorically, had no assessment been made against the local listing criteria at that time, so that a proper appraisal could have been included in the officers' written report, published on 10 January? His answer led back to the objectors' overarching complaint that officers had never given proper consideration to the quality of the New Rectory or the benefits of its retention, and as a result had misled or failed properly to brief the Committee. The minutes of the meeting also suggested that the Committee was informed only of the existence of Mr Bradbury's report and not properly briefed on its contents. As a result of this succession of errors the presentation as a whole was "legally unsound."

102. In my judgment the minutes of the meeting do not support Mr Pugh-Smith's submission that the Committee was inadequately briefed on developments since the officers' report, or that it was "bounced" or ambushed by late information. *Fabre* provides no support for the proposition that an oral report can never be used to supplement an officers' report, and whether it is appropriate will depend on the nature and extent of the new information; the exchanges between officers on 16 January show that they had this well in mind.

103. The officer's report had explained clearly that the New Rectory had not been identified as a non-designated heritage asset but specifically drew the attention of the Committee to the suggestion by HE that they may wish to consider the building as such an asset in its own right. The members of the Committee can be taken to have understood the implications of that suggestion and to have had in mind the possibility of local listing. The members had also received Mrs Smedley's letter of 10 January and the detailed critique of the application by her planning consultant, including extensive reference to architectural history and significance of the building which had clearly been written with the benefit of a draft of Mr Bradbury's report. They had there fore been well briefed on the rival views of the merits of the building when they

undertook their site visit on 12 January and were not coming to the subject cold when they received the oral report of Ms Medler at the meeting.

104. Consistent with the legal principles agreed between the parties, it was for officers to assess the amount of detail which should be laid before the Committee to supplement the report they had already received, the heavy lobbying referred to by the Chairman in opening the discussion and the views they had already been able to form on their site visit. The arrival of 30 additional letters of objection was reported, and it was recorded that in addition to points previously made these also suggested that the New Rectory was of local architectural importance so that the proposal was contrary to Policy EN8. The objections of C20 and Save and Mr Bradbury's appraisal were also referred to. What precisely was said about those contributions is not recorded in the minutes, but it was apparent that they were identified as adverse to the proposal. More importantly from the Committee's perspective was the fact that officers had gone back to Mr Rhymes to consult him on the new information received and his conclusion had been that the building was not worthy of local listing.

105. I am satisfied that none of the limbs of ground 3 is sustainable. The members of the Committee were well able to make a properly informed determination of the proposal, to disagree if they wished with the officers' view that the building was not of such merit as to require to be retained, and to reach the balanced judgment required by EN8 and by NPPF paragraph 135 (had they taken the view it should be regarded as a non-designated heritage asset).

Ground 4

106. In ground 4 attention is switched away from the merits of the New Rectory and the consideration given to its retention, and on to the consideration given by officers to the use of unorthodox materials in the design of the replacement dwelling.

107. Section 72(1) of the Listed Building and Conservation Areas Act 1990 imposes a general duty on a local planning authority in the exercise of its planning functions in respect of a conservation area requiring that "special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area." Policy EN8 imposed a similar requirement.

108. The claimant asserted that the Committee had therefore been under a duty to weigh whether the positive contribution made by the New Rectory to the Conservation Area would be equalled or bettered by the proposed replacement. It was said that it had failed to do so, or alternatively had failed to pay sufficient regard to the immediate and long-term visual acceptability of the design and choice of materials for the replacement. The specific focus of this complaint was the intended use of "Cor-Ten" steel, the trademarked name for a range of weathered steel products manufactured in the United States.

109. Attention had been drawn to the proposed use of Corten steel by HE in its inspector's email of 28 November, in which he invited the defendant to give careful consideration to whether the use on a large scale of "materials somewhat alien to the area" was appropriate to the setting of the Conservation Area. Save voiced the same concern and C20 questioned the use of the material in a coastal location and suggested that it may have an impact on the long-term appearance of the building.

110. In their report to the Committee the officers had identified the use of Corten steel on the proposed buildings' elevations as "the more contentious element to the scheme" but had assessed the material in relatively favourable terms (see paragraphs 18 and 20 above). The officers had drawn attention to the importance of preserving appearance of the Conservation Area and the considerable weight which should be given to any harm which the proposal might do to it. After recording Mr Rhymes' view that the proposal "will not harm the significance of the heritage assets", officers had concluded that "subject to appropriate conditions, on balance it is considered that the dwelling would not … harm the character and appearance of the Glaven Valley Conservation."

111. A condition requiring the provision of sample materials to be used for the external walls and roof was included in the permission.

112. The planning consultant's detailed objections which had accompanied Mrs Smedley's letter sent directly to each member of the Committee on 10 January had challenged the applicants' views on the weathering qualities of Corten steel, describing it instead as having "the appearance of rusted steel rather than red brick or pantiles." It was also said that "many sources recommend against using Corten steel within one mile of the sea" because contact with salts was thought to harm its aesthetic and structural qualities. A retailer of the product was quoted at some length alerting users to "protective issues with salt deposition … in areas located within 1 mile from the ocean shore that receive continual salt spray." An alternative coated version of the product ("Corten AZP") was referred to as being available for architectural applications.

113. Visual representations of the proposed building were available at the meeting, and the suitability of materials was specifically discussed. Councillor Ward, who had called the proposal in, informed her colleagues that most of the comments she had received had been on that subject. Another Councillor asked for advice on how the Corten steel would weather (see paragraph 35 above).

114. The claimant's original grounds suggested that the Committee was misled by the failure of the officers' report to reflect the views of HE and C20 or to highlight the concerns of objectors about the suitability of the Corten product. Having described the materials and the extent of their use at the start of their report, and having identified them as "the more contentious element" of the application, I do not think that is a criticism that can fairly be levelled at officers. The objectors' views that the material was "alien", "inappropriate" and "unsympathetic" were recorded and it was acknowledged that there were "subjective elements to the scheme." Reference was made to the cautionary notes sounded by HE and to the objections of Save and C20. The use of unconventional materials was balanced against the "contribution to this sensitive setting" which the "higher quality modern design" would make. In my judgment the complaint that the Committee was misled or improperly briefed is unfounded.

115. The claimant also suggested that the absence of specific advice on materials as part of the assessment of "heritage impact" was a defect in the report, but once again I cannot accept that submission. The materials had been considered under the heading of "design" and the discussion of visual separation and "filtered views" as part of the heritage impact of the proposal was obviously relevant to the same assessment.

116. In his oral submissions Mr Pugh-Smith adopted a more nuanced approach to this ground. He submitted that the use of Corten steel was untried and untested in the defendant's area and the particular concern over its long term weathering properties in this location had not been addressed. It was therefore impossible for the Committee to make an informed judgment of whether the character or appearance of the Conservation Area would be preserved or enhanced as required by section 72(1) and Policy EN8. The imposition of a condition requiring the production of samples did not meet the objection since it did not allow for testing

117. I do not accept Mr Pugh-Smith's submissions. As Miss Parry pointed out, the Committee was directed in terms on the requirement of section 72(1). Both the Committee and the officers were aware that this was a coastal location and the discussion of the suitability of the material and its weathering properties took place against that informed background. Officers were entitled to form the view that they did and to advise the Committee that the material weathered well.

118. The officers' assessment that the proposed dwelling would not harm the character and appearance of the Conservation Area was arrived at on balance and was said to be "subject to appropriate conditions." Condition 3 left open the question whether the defendant was satisfied that the proposed materials were "visually appropriate for the approved development and its surroundings" (that being the stated reason for including the condition). I do not accept that a condition requiring approval of materials which was expressly justified in those terms prevented the defendant from taking into account any concerns which may have been expressed on possible long term weathering: "visually appropriate" includes consideration of both now and in the future. It would be for the applicants to satisfy any concerns on that front in order to obtain the approval they required.

119. I can see no need for the defendant itself to undertake testing or require that the applicants do so and I reject the complaint that, without a specific testing requirement, the condition was toothless. The doubts which the objectors had raised were based on the manufacturer's own recommendations on appropriate uses for the material and its variants, published on its website, and on the observations of a major supplier, which were also in the public domain. Until those concerns were addressed, approval could be withheld if officers considered it appropriate to do so.

120. For these reasons I do not accept any of the claimant's grounds of challenge and the claim is dismissed.