Ministerial Planning Decisions*

Extracts from planning decisions given by the Secretary of State for the Environment, or Secretary of State for Wales in the case of decisions relating to land in Wales, or by an Inspector of the Department of the Environment or Welsh Office, as the case may be.

DETERMINATIONS WHETHER DEVELOPMENT REQUIRING PLANNING PERMISSION INVOLVED

Alterations to rooms in dwelling-house in multiple occupation, to form rooms into self-contained units: meaning of "used as a single dwelling-house"

Ref. APP/G/91/N1405/2
October 31, 1991

Appeals against (1)a determination by Brighton Borough Council under section 64 of the Town and Country Planning Act 1990 that a proposal to carry out alterations to self-contain the rooms on the ground first and second floors at 21 Russell Square, Brighton, to form five bed-sitting rooms and one one-bedroom flat, would constitute development for which planning permission is required; and (2)a decision of the Council to refuse planning permission for the alterations.

Section 64 appeal

"In support of your client's appeal, it was submitted that planning permission was not required for the proposed self-containment of the six bed-sitting room flatlets. It was explained that the appeal property was built as a Victorian single dwelling-house and over the years has been converted into a house in multiple occupation. The lower ground floor of the property had been self-contained some time ago and this floor is excluded from consideration in these appeals. The third-floor flat is also self-contained, but you understand the Council contest that this was carried out under an earlier planning consent. The present proposal involved only the improvement and upgrading of existing facilities, on the ground, first and second floors of the property, by self- containment of the residential rooms concerned. You set out what you regarded as the legal considerations of this case and cited two previous appeal decisions of the Secretary of State concerning the same type of development as proposed by your client, both involving Brighton Borough Council. You considered that the nature of your client's proposal was identical to that in the cited cases and a similar determination should therefore be given.

"On behalf of the Council, it was submitted that the proposed works in creating two or more separate dwellings from a single dwelling-house, would involve a material change of use of

* We are indebted to correspondents for copies of decision letters and trust that a copy of any decision involving a point of law or of general interest will be sent to the Editor with a view to publication.

the appeal building, constituting development not permitted by any Order. The Council did not regard the existing property as a single dwelling-house, since no facilities are provided for use by a single household occupying the whole building. But it is equally clear that the building is not arranged wholly as units of accommodation, each having such facilities which enable each unit to be used in a self-contained manner. The Council accepted that the use of the property is in multiple occupation. The creation of self-contained units of accommodation within the property will constitute a material change of use involving development requiring planning permission. It was the Council's view that a material change of use would occur even by virtue of internal works (to a single dwelling-house) which create two or more separate dwellings. They did not accept that *Winton* v. *Secretary of State* (1982) established any planning principle, but that it could apply to a certain set of circumstances—which do not necessarily apply in this case.

"The above summaries of the main points of the parties' submissions and the officer's appraisal of the issues have been carefully considered. As recorded by the officer in his appraisal, there appears to be some confusion between the parties concerning the precise extent of the proposed development to which the section 64 determination and the section 78 appeal apply. It is noted that the basement of the appeal building is already self-contained, as is the third floor of the property, although certain alterations are proposed to this floor, which do not form part of the planning application or the request for a determination. It is therefore proposed to determine your client's appeals in the terms of development involving alterations only to the ground, first and second floors of the appeal property, as described in paragraph 5 of the officer's report. It is also agreed with the officer that none of the proposed works involve any alterations to the external appearance of the property. The view is therefore taken that, as the proposed works to the appeal building would affect only the interior of the premises, with no material effect in planning terms on its external appearance, the main issues to be determined are the implications of the change of use of the property by the creation of additional self-contained units of residential accommodation within the appeal building, and the significance in planning terms of the increase in self-contained accommodation units from the present accommodation with shared facilities.

"For the avoidance of doubt, it is necessary to consider whether the provisions of section 55(3)(a) of the 1990 Act would apply to the carrying out of the proposed alterations to the appeal property. Section 55(3)(a) states that 'the use as two or more separate dwelling-houses of any building previously used as a single dwelling-house involves a material change in the use of the building and each part of it which is so used.' The present use of the property has been described as already consisting of self-contained flats in the basement and on the third floor, with six other rooms, two each on the ground, first and second floor with shared bathroom, kitchen and toilet facilities. It is therefore necessary to determine whether this use of the property could, by definition, be regarded as a 'single dwelling-house' within the meaning intended by section 55(3)(a). The Town and Country Planning Act does not, however, define a 'dwelling-house.' Whether a particular building is a 'dwelling-house' or not, is therefore a matter of fact. It is accepted, on the evidence in this case, that the appeal property is in a 'residential use,' and *R.G. Backer* v. *Secretary of State for the Environment and Camden L.B.C.* [1983] J.P.L. 167 is a relevant authority that not every residential use is necessarily a use as a dwelling-house. The view is taken, having regard also to the judgments of the Divisional Court in *Birmingham City Council* v. *Habib Ullah and Another* [1963] 3 All E.R. 608 and *Duffy and Banks* v. *Pilling* [1976] J.P.L. 575 that the existing use of the appeal

property can properly be described as a house in 'multiple paying occupation' and, notwithstanding that this is a residential use, the view is taken that it is materially different from a use as a 'single dwelling-house.' Moreover, the word 'single' in section 55(3)(a) is considered to denote a single family occupation or occupation by not more than six persons living together as a single household. For this reason, the provisions of section 55(3)(a) of the 1990 Act are not considered to apply to the facts of this appeal.

"It is contended by the Council that a material change of use will occur as a result of the subdivision of the present use of the property, which they regard as a single 'planning unit.' As recorded by the officer, this would appear to take no account of the basement flat which has been self-contained for a number of years. The proposed alterations to self-contain the residential units on the ground, first and second floors, is considered to result in the creation of six additional 'planning units' to those which presently exist within the building. Whether the act of division of a single 'planning unit,' into two or more separate units, amounts to a material change of use is a matter of fact and degree. It is noted that in *Winton & Others* v. *Secretary of State for the Environment & Guildford B.C.* (1982), the High Court considered that where the division of a single 'planning unit' into two or more separate units 'produced no planning consequences,' it was unlikely to amount to development which required planning permission.

"The officer's appraisal in para. 13 of his report states that the proposed alterations to the appeal property would not substantially change the character of the property so as to amount to a material change of use requiring planning permission. This appraisal is accepted. Consideration has also been given to the possible impact upon the immediate residential area in terms of traffic and parking problems, in comparison with such activity associated with the present use. The officer's appraisal, in para. 12 of his report, of car ownership by occupants of the property, brought about by the proposed change in accommodation, and the proposed change in on-street parking in the Regency Square conservation area, is noted and accepted in this respect. Whilst this is difficult to quantify in the absence of submitted traffic information and other relevant material, there is no evidence otherwise to support the conclusion that this will have a more detrimental effect on the existing character and amenity of the neighbourhood than results from use by the present occupiers. The view is therefore taken, in agreement with the officer's appraisal, that the proposal will not, as a matter of fact and degree, be materially different in character and scale from the present multiple occupation of the property. It is concluded that the proposed alterations to the property do not involve development for which an application for planning permission is required.

Section 78 appeal

"In view of the determination given on the section 64 appeal above, no further action will be taken on your client's section 78 appeal against the Council's refusal of planning permission to self-contain the bed-sitting room accommodation on the ground floor, first and second floor at 21 Russell Square, Brighton.

Formal decision

"For the reasons given above, the Secretary of State hereby allows your client's appeal and determines that the proposal to carry out alterations to self-contain the rooms on the first and second floors at 21 Russell Square, Brighton, to form five bed-sitting rooms and one

one-bedroom flat, as shown on the submitted plans 232/1 and 232/2A, would not amount to development requiring an application for planning permission under Part III of the Town and Country Planning Act 1990.

"This determination is given on the basis of the law applicable at the date of this letter. If the determination is not acted upon promptly, anyone proposing to carry out the works to which it relates will be well advised to check, before doing so, that the statutory provisions have not changed in the meantime."

[*By courtesy of Dean-Wilson, Solicitors of Brighton.*]

DL687AW.MD8

The Planning Inspectorate

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Our Reference:
T/APP/C/93/G2625/630108

Council Reference:
PJM/WLC/7/20/38/134

Date:
16 MAR 94

Dear Sir

TOWN AND COUNTRY PLANNING ACT 1990, SECTION 174 AND SCHEDULE 6
PLANNING AND COMPENSATION ACT 1991
APPEAL BY MR M J DANIELS
LAND AND BUILDINGS AT 91 CARROW ROAD, NORWICH

1. I have been appointed by the Secretary of State for the Environment to determine your client's appeal, against an Enforcement Notice, issued by the Norwich City Council, concerning the above mentioned land and buildings. I conducted a hearing into the appeal on 8 February 1994, at the City Hall, Norwich, and I inspected the site on the same day.

2. (a) The notice was issued on 23 July 1993.

(b) The breaches of planning control alleged in the notice are:-

(i) The change of use and conversion of the single dwellinghouse to three self-contained flats without the benefit of planning permission.

(ii) The erection of meter box housing and the attachment of gas and waste/soil vent piping to the front elevation of the house without the benefit of planning permission.

3. The requirements and periods for compliance with the notice are:-

(1) To cease the unauthorised use of the property as three self-contained flats within four months after the notice takes effect.

(a) Removing the internal bathroom and internal kitchen area from the first floor front room.

(b) Removing the kitchen and bathroom from the first floor rear room.

(c) Removing the side entrance door to covered passageway, (ie the existing access to the first floor units), and reinstatement of wall.

(d) Removing the partitions on either side of the side entrance hall at bottom of staircase and reinstatement of doors.

All within six months after the notice takes effect.

(3) To remove from the front elevation of the property:-

(a) The electricity meter housing and equipment contained therein.

(b) The gas meter housing and equipment contained therein and associated external pipework.

(c) The waste and soil vent pipe.

All within six months after the notice takes effect.

4. Your client's appeal was originally made on grounds (a), (c) and (f), as set out in Section 174(2) of the amended Act. Ground (c) was later withdrawn, in order to allow the appeal to proceed by way of hearing rather than local inquiry. In view of the legal complexities arising, ground (c) was reinstated at the hearing, and ground (d) was added, with the agreement of the Planning Authority, the Assistant Director of Law and Administration being present throughout the hearing. As the matter proceeded by way of hearing, evidence was not taken on oath.

5. No. 91 Carrow Road is a 2-storey inner terraced late victorian cottage, one of a block of four. They have pleasing elevations of weathered grey stock brick, with dentilled cornice, flat arches above the windows, and stilted arches above the front doors, picked out in white paint. The plot has a frontage of about 4.5 m and a depth of about 35 m. The front is set back about 1.8 m from Carrow Road, part of the de-trunked A47, which is one of the main approaches to the City of Norwich from the east. To the right of the front door is a narrow arched covered passage which gives pedestrian access to the backs of the terrace, and to the gardens which run back to a slope above the main railway line. The site is about 1.8 km east of the City Centre, at the southern edge of an area of closely built housing. A little way to the east is a former factory and depot, which is being redeveloped with a mix of housing and industry. The majority of the nearby dwellings appear in single family use, but the properties on the two corners of Cedar Road, opposite the appeal site, are in multiple occupation.

not reside on the premises. They traded from the shop, and used the front room of No. 93 as a cutting room. They let out the whole of No. 91 and most of 93 to residential tenants. They also had large freezers in the back garden areas which caused some annoyance to other residents.

11. Miss Merchant, who has lived all her life at No. 89 said that in Mr & Mrs Utting's time the middle ground floor room and the back room in the projecting part of No. 91 were joined as a kitchen, with a bathroom at the very back. After Messrs Odey and Rayner took over she thought this arrangement probably continued, with each of the other rooms in both houses let as bed sitters, except for the front room in No. 95. There were 5 or 6 people in the two houses at any one time. They were most uncouth and irresponsible people, who caused great inconvenience and distress to other residents.

12. Rating records show that on 1 April 1980 No. 91 was rated as a house with a value of £148. As from 8 May 1983 it was described as fully commercial, as a house occupied in parts. The documentation is not clear but it seems likely this included No. 93. No. 93 was rated separately as a dwellinghouse from 9 February 1990.

13. On to September 1984 Messrs Odey and Rayner responded to a notice under Section 22 of the Housing Act 1961, referring to the City of Norwich (Registration of Houses in Multiple Occupation) Informatory and Regulatory Scheme of 1972 (Document 4). The notice showed that Nos 91-95 Carrow Road comprised 8 rooms, with one kitchen, one bathroom, one fixed bath or shower, one external and one internal WC, two fixed sinks, and two fixed wash hand basins.

14. By 10 September 1986 91-93 Carrow Road had been sold to a new owner, Mr Davidson. A report by the Chief Environmental Health Officer on 10 September 1986 referred to the two properties as being registered as a house in multiple occupation, believed to comprise five lettings. An inspection by an Environmental Health Officer showed that the ground floor of No. 91 comprised an empty bedroom, kitchen and bathroom. The upper floor comprised a bedroom at the front, with the two rooms at the back being let together at £30 per week. In No. 93 the ground floor front room was used in conjunction with the shop at No. 95, with a lounge and bathroom at the rear, while the upper floor at 93 had a bedroom in the front, and a bedroom and bathroom, (shown bracketed together), at the rear.

15. The only sink, cooking and food storage facilities were shown as being in the middle ground floor room in No. 91. There was a bath, WC and wash basin in the bathroom at the back of the ground floor in No. 91. In No. 93 there was a shower and WC in the back room on the ground floor, and a bath, WC and basin in the back room on the first floor. The only letting of which details were given, of the two rear rooms on the first floor of No. 91, apparently included electricity charges in the rent.

16. From the description it appears that at that time No. 91 comprised one unit on the ground floor and two on the first floor, and that there were two lettings on the upper floor of No. 93, with a shared lounge on the ground floor of 93 and shared kitchen in 91, probably linked by a connecting door. A planning officer visited the premises on 23 September 1986, and his conclusion at that stage was that "this property remains broadly similar to a normal family dwelling and therefore planning permission is not required in this instance" (Document 5). The electoral roll for the years 1983-90 shows only 2 entries for No. 91; in 1985 a man and a woman are shown in "flat 3" and in 1986 a different man in "flat 4". There were no entries for 93.

17. In the subsequent years 1986-90 Mr Davidson appears to have started work on some improvements. In 1990 your client purchased No. 91 as a vacant house, and No. 93 was sold as a dwellinghouse, and continues to be occupied as such. Your client's intention at the outset was to improve the property to provide three units of a good standard, which would be let to responsible tenants on six month shorthold tenancies. The ground floor was suitable for a couple, the upper floor only for two single people, so the maximum number of occupants would be 4.

18. The external works involved the provision of the soil/vent pipe, gas mains and meter box housings referred to in the notice, and the provision of new windows with ventilators in the easterly walls of the back kitchens on both floors. The existing door onto the stairs from the front room was blocked-up, and a new door provided to give access directly onto the staircase from the covered passage. New doorways were provided under the staircase to give access between the front and back ground floor rooms, the shower, WC, sink and kitchen fitment were installed in the first floor front room, and new fitted kitchens were installed at the rear of both floors, with new fixed baths, WC's and washhand basins in the two bathrooms furthest to the rear of the house at each level, (Plan B(i)). The works all took some time and the property was empty for most of 1990-1.

19. At the request of the Planning Authority a planning application was made for the conversion of the property from multiple occupancy into three self-contained flats for 4 occupants. This was refused, (Document 7 (iii)), on 28 November 1991, on the grounds of conflict with deposit Local Plan Policy H27, which seeks to retain smaller family housing by preventing the conversion of 2 storey terraced dwellings, and on the grounds that no off-street parking could be provided. Your client contended at the time that no planning permission was required, and received the necessary forms to apply for a certificate of lawful existing use, but did not pursue the matter. However he reserved his rights in that respect.

20. Your client said that he had bought the property on the basis that it was a house in multiple occupation. He pointed out that the doors leading off the staircase to the two upper rooms had been of the insulated fire proof type, with yale locks which were still installed. There had been coin in the slot

electricity meters fitted, which he had removed. Gas was connected to the ground floor rear room only.

21. The Planning Authority maintain that the existence of a shared lounge and kitchen prior to your client's ownership brought the premises within Class C3 of the schedule to the Town and Country Planning (Use Classes) Order 1987. The provision of wholly separate facilities resulted in the creation of three planning units where there had been one, and a material change of use of the whole from a shared house to three separate dwellinghouses.

22. My conclusions in respect of the allegation of a material change of use are that the Environmental Health Department of the Council clearly regarded the premises as being a house in multiple occupation in 1984, and registerable as such. The date of the change, May 1983, can be pinpointed from the rating records. Whilst the existence of a shared lounge and kitchen appeared to satisfy the Planning Department in 1986, I do not consider that this necessarily meant that the house was not in multiple occupation. In the absence of any other evidence, the facts that from 1983 onwards the premises were owned by an absentee landlord, with unrelated people living in what were described at various times as "flats 3 and 4", indicate multiple occupation rather than a dwellinghouse, occupied by a single household. There is no indication that there was any arrangement whereby a head of household took responsibility, as in the case of Duffy v Pilling, (1976 JPEL 575), and from the Environmental Health Officer's notes it appears that the occupant of the rear unit of No. 91 paid a separate and inclusive rent. On the balance of probabilities I conclude that the use of the premises from May 1983 onwards was for multiple occupation, with three separate lettings.

23. I now compare the present regime with the former use. There are still three lettings, by a landlord who lives elsewhere. The areas of these three lettings are roughly the same. There is no longer any access to a common lounge in No. 93 and the ground floor kitchen is no longer shared. The access arrangements have altered, in that the ground floor now has access only from the rear, and the two upstairs units share a new doorway from the covered passage on to the original stairway. The two upstairs units share a central heating system, and all three occupiers share the garden, the grass being cut by the owner. Otherwise all three units are entirely self-contained. However none of these changes affect the external appearance or the character of the house in any way.

24. I accept there are now two planning units, although in view of the shared facilities it seems to me the upper floor is one rather than two units. However the mere fact of subdivision of the planning unit does not of itself bring about a material change of use, unless it has other planning consequences, (see Winton v SSE 1984 JPEL 188). In the present case the property still provides three units for rent, albeit with better facilities. The self-containment of the units has no implications for car ownership, and brings no greater pressure on

parking in the area. There is no loss of a small family dwellinghouse because the premises were already in use for multiple occupation. I do not consider that there are any planning consequences arising from the provision of desirable self-contained facilities in the three units of this multi-occupied house. Nor do I consider that the severance of No. 91 from No. 93 has any planning consequences because No. 91 was in multiple occupation before and after the severance.

25. In Lipson v SSE, (1976, 33 P and CR 95), it was decided that the term multiple occupation did not necessarily exclude self-contained flats. The provisions of Section 55(3)(a) are not relevant, because a house in multiple occupation is not a single dwellinghouse for the purposes of that section. I conclude therefore that the matters referred to in the enforcement notice did not constitute any material change from the existing use. I am supported in this approach by the Secretary of State's decision in the case of 42 Stanford Avenue, Brighton, reported at 1991 JPEL 1991, and by the High Court decision in the case of R v SSE and Gojkovic, ex-parte Kensington and Chelsea RBC, reported at 1993 JPEL 139, to which I drew attention at the hearing.

26. Furthermore at the date the notice was issued, the use for multiple occupation had become immune from enforcement under Section 171B(3) of the amended Act, having subsisted for more than 10 years since May 1983. I appreciate that for at least 2 years in 1990-1 the premises were vacant while renovation works were being carried out, but this break was not long enough to constitute abandonment, and there was no suggestion of the premises being put to any other use. Section 191(2)(a) of the 1991 Act provides that once the time for enforcement action has expired a use becomes lawful. Your clients appeal therefore succeeds on ground (c) in respect of the allegation of a material change of use, in that the use referred to in the allegation is not materially different from what had already become a lawful use. Grounds (d), (a) and (f), and the deemed application for planning permission, do not need to be considered in respect of that allegation.

27. As to the operational development, I consider the changes to the front of the house, namely the electricity meter box housing, the gas pipes and meter boxes, and the soil/vent pipe, when taken together, have a material effect on the external appearance of the dwelling. They are not excluded from the definition of development by virtue of Section 55(2)(a) of the amended Act. They are not permitted development under the General Development Order, because the house is in multiple occupation. There is no dispute the work was carried out in 1990, within 4 years of the issue of the notice. Accordingly grounds (c) and (d) fail in respect of these matters.

Ground (a)

28. On Ground (a) in respect of the operational development, policy B18 of the deposited Local Plan provides that any new development should seek to establish a quality of design and townscape which complements the character of the city. Whilst I

appreciate that these are small matters, No. 91 Carrow Road is a pleasant looking modest terraced cottage, widely visible on a main route into the city, and it should be protected from insensitive utilitarian additions.

29. The electricity and gas meter boxes seemed to me to be sympathetic in design and materials, and it is clearly desirable that the meters can be read easily from outside. Many design guides incorporate a requirement that meters be housed in this way. I see no objection to these small structures, given my finding on the main issue as to the use of the premises, and I am therefore granting planning permission for them. Ground (a) succeeds in that respect.

30. As to the soil/vent pipe, the use of grey UPVC is unsympathetic, and in sharp contrast to the adjacent black plastic rain water downpipe. As it is the pipe detracts very considerably from the overall appearance of the terrace as a whole. The present position of the gas pipes also spoils the appearance of the facade, and introduces a rainshackle element into the pleasant regular proportions of the building, particularly where it runs diagonally across the painted arch above the door. At the hearing your client thought it likely they could be re-routed, by taking them through the wall and boxing them internally. I consider the harm to the appearance of the terrace is such that this should be done. I am therefore refusing planning permission for the retention of the soil/vent pipe and gas pipes as they are at present.

31. The ground (f) appeal refers to these remaining items. As to the soil vent pipe this is essential to serve the first floor front unit, and there is no other practicable place for it. I consider the harm to amenity will be greatly reduced if the pipe is painted black, and I am varying the requirement accordingly. The appeal on ground (f) succeeds to that extent, and permission for the soil/vent pipe will be deemed to have been granted under Section 173(11) once that requirement has been met. As to the gas pipes the requirement to remove them from the front elevation of the building is necessary to remedy the harm to amenity which has been done, and the appeal on ground (f) fails in respect of the gas pipes.

32. I have carefully considered everything else which was said at the inquiry, and mentioned in the representations, but find nothing to make me change my mind.

FORMAL DECISION

33. In exercise of the powers transferred to me, and for the reasons given above:-

(1) I allow your client's appeal on ground (c) in so far as it relates to the change of use and conversion of the single dwellinghouse to three self-contained flats at 91 Carrow Road, Norwich.

(2) I allow your clients's appeal in so far as it relates to the erection of electricity and gas meter box housings, and grant planning permission on the application deemed to have been made under Section 177(5) of the amended Act for the erection of those structures at the front of the house at 91 Carrow Road Norwich aforesaid.

(3) I vary the enforcement notice by the deletion of the whole of paragraph 5, and the substitution therefore of the following requirements and period for compliance:-

(a) To remove the external gas pipework from the front elevation of the property.

(b) To paint the waste and soil vent pipe black.

Time for compliance; six months after the notice takes effect.

(4) I dismiss your client's appeal in so far as it relates to the gas pipework and the waste and soil vent pipe and uphold the enforcement notice as varied. I refuse to grant planning permission on the application deemed to have been made as aforesaid in respect of those items.

34. This decision does not convey any approval or consent required under any enactment, byelaw, order or regulation other than Section 57 of the Town and Country Planning Act 1990.

RIGHT OF APPEAL AGAINST DECISION

35. This letter is issued as the determination of the appeal before me. Particulars of the Rights of Appeal to the High Court are enclosed for those concerned.

Yours faithfully

C RUSSELL Solicitor
Inspector