



Appeal Decisions

Hearing and site visit held on 3 December 2024

by M Madge Dip TP MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 December 2024

Appeal A Ref: APP/G2625/C/24/3347331

Appeal B Ref: APP/G2625/C/24/3347168

Appeal C Ref: APP/G2625/C/24/3347169

Appeal D Ref: APP/G2625/C/24/3347172

Land at 89 Oak Street, Norwich NR3 3FG

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended) (the 1990 Act). Appeal A is made by Mr Guy Mitchell of the Simon Mitchell Heritage Trust, Appeal B is made by Mr Stefan Markovic of Norwich VR, Appeal C is made by Mr Glenn Humphrey of WorldOfMusic LTD, and Appeal D is made by Miss Kariss Appadoo of Pineapple Sun Ltd against an enforcement notice issued by Norwich City Council.
- The notice was issued on 3 June 2024.
- The breach of planning control as alleged in the notice is:
 - a) Without planning permission, the change of use of the land from sui generis employment use to mixed use: virtual reality escape room, café/bar, salon and storage business (sui generis).
 - b) Without planning permission, the creation of a canopy and decked terrace to the western end of the building (see Appendix 1).
- The requirements of the notice are:
 - Step a) To cease the use of the building as virtual reality escape room, café/bar, salon and storage, or any combination of those uses;
 - Step b) To remove the canopy and decked terrace on the western end of the building (see Appendix 1).
- The periods for compliance with the requirements are Step a) six months and Step b) three months.
- Appeal A is proceeding on the grounds set out in section 174(2)(b), (c), (e) and (f) of the 1990 Act, and Appeals B, C and D are proceeding on the grounds set out in section 174(2)(c) of the 1990 Act.

Summary of Decision: Appeal A succeeds in part on ground (b) and the enforcement notice is upheld as corrected and varied in the terms set out below in the Formal Decision.

Preliminary Matters

1. A Hearing was held for Appeals A and B, while Appeals C and D followed the written representation procedure. My Pre-hearing Note, dated 7 November 2024, invited the appellants for Appeals C and D to attend the Hearing, or appoint a representative if they so wished. It confirmed that if they did not attend, I would rely on their written submissions to determine their appeals. It also confirmed that only one accompanied site visit (the ASV) would be carried out and this would be done as part of the Hearing, on 3 December 2024.
2. Pineapple Sun Ltd were not represented at the Hearing. They were also not represented at the ASV and I was informed, and saw, that they had vacated the premises. WorldOfMusic Ltd was also not represented at the Hearing, nor

at the ASV. I was however able to access all parts of the appeal site during the ASV.

3. For ease of reference, during the Hearing it was agreed that the area of the property occupied by appellants C and D would be referred to as '89 Oak Street' and the rest of the property would be referred to as 'St Crispins'. I shall continue to use these labels in my decision.
4. I saw the internal layout of 89 Oak Street to be in a state of flux, with additional escape rooms being constructed at ground and first floor level. The Council confirmed that these did not exist at the time the notice was served. I shall therefore disregard their presence for the purpose of determining these appeals.

The ground (e) appeal

5. An appeal on this ground is that the notice was not served as required by s172 of the 1990 Act. S172(2)(a) requires a copy of the notice to be served on the owner and on the occupier of the land to which it relates.
6. The plan attached to the notice identifies the land affected with a red outline. The land within the red outline includes land adjacent to the River Wensum, which is owned by Norwich City Council. A copy of the notice was not served on Norwich City Council, they were however aware of the notice as they issued it.
7. It is not the Council's case that land in their ownership was being used as part of the alleged mixed use or that operational development has taken place on their land. Having regard to s176(5) of the 1990 Act, the Council has not therefore been prejudiced by the failure to be served.
8. It was agreed at the Hearing that there is no reason why land in the Council's ownership should be included within the red outline on the plan attached to the notice. For clarity, it shall be removed from the red outline. Measurements were taken on site and agreed between the appeal parties as to where the amended red outline should be drawn. The plan attached to the notice shall be replaced with the plan attached to my decision.
9. For these reasons, appeal A on ground (e) fails.

The ground (b) appeal

10. An appeal on this ground is that the corrected matter alleged has not occurred. Appellant A does not dispute that a canopy and decked terrace has been created to the western end of the building as shown in the photograph at Appendix 1 to the notice.
11. The ground (b) appeal therefore only relates to the matter alleged in section 3.a) of the notice. As written in the notice, allegation 3.a) does not amount to development as defined in s55(a) of the 1990 Act. Discussion at the Hearing confirmed that it is the Council's case that activities carried out by the former occupier of the land were sufficiently different to the activities taking place at the date the notice was issued to constitute a **material** [my emphasis] change in the use of the land. The appellants' cases all address the issue of whether a material change of use has occurred. As such, no prejudice would arise from

the insertion of the word '*material*' into allegation 3.a) and I shall proceed on that basis.

12. Where a material change of use is alleged, it can be helpful for an enforcement notice to identify the preceding use of the land, however it is not a statutory requirement. The former use of the land identified in the notice is disputed by the appellant. For simplicity, the former use shall be deleted from the allegation.
13. In a ground (b) appeal the onus of proof is on the appellant and the relevant test is the balance of probability. It is for the appellant to show that the use of the appeal site as a mixed use: virtual reality escape room, café/bar, salon, and storage business (*sui generis*) has not occurred.
14. Where the use of land is in dispute, it is necessary to identify the extent of the planning unit or units. *Burdle v SSE* [1972] 1 WLR 1207 (Div Court) sets out three criteria to determine the planning unit:
 - (a) Wherever it is possible to recognise a single main purpose of the occupier's use of his land to which secondary activities are incidental or ancillary, the whole unit of occupation is the planning unit.
 - (b) Even though the occupier carries on a variety of activities, and it is not possible to say that one is incidental or ancillary to another, the entire unit of occupation should be considered the planning unit (in mixed use).
 - (c) Where there are two or more physically separate and distinct uses, occupied as a single unit but for substantially different and unrelated purposes, each area used for a different main purpose (together with its incidental and ancillary activities) is considered a separate planning unit.
15. The property is owned by the Simon Mitchel Heritage Trust (the SMHT), who leases St Crispins to Norwich VR (NVR) and 89 Oak Street to WorldOfMusic Ltd (WOM). WOM sublet the first-floor accommodation in 89 Oak Street to Pineapple Sun Ltd (PS). NVR operates a virtual reality gaming and escape room business. WOM sells cables, chargers and gaming accessories to members of the public, predominantly on-line. While a tenuous connection could be claimed between WOM and NVR, there is no substantive evidence to show that customers of NVR would purchase goods from WOM or customers of WOM frequent NVR. PS operated a beauty salon and tanning shop, and I was told at the Hearing that they offered beauty treatments to visiting customers and had several tanning beds.
16. No business or other connection between NVR, WOM and PS is claimed. Given the differences in activities and services taking place and being offered, I am satisfied that NVR, WOM and PS operate unrelated and substantially different businesses. There is therefore no functional connection between the three primary activities taking place on the appeal site. The Council do not dispute that three independent businesses were operating from the appeal site at the time the notice was issued.
17. NVR occupies St Crispins, which includes a virtual gaming area, two pool tables, a bar, seating area, storerooms, office, technical room and toilet

facilities at ground floor level. The first-floor mezzanine contains a virtual gaming room, technical room and storage area. Outside, there is the decked terrace and canopy, which provides additional seating for customers.

18. The 'café/bar' referred to in the allegation is the bar located in St Crispins. The only food available is pre-packaged snacks, as there is no kitchen. If customers have booked a gaming room for an event, Appellant B advised that food deliveries, for example by Deliveroo, are permitted. In the absence of facilities to make and supply cold and/or hot food on the premises, in my judgement, there is no café use taking place at the appeal site. While there is no dispute that non-gaming customers can make use of the bar, seating, and decked terrace, such use is incidental to the primary gaming activity. There is therefore no primary café/bar use taking place on the appeal site.
19. I saw two internal pedestrian access doors joining St Crispins to 89 Oak Street. One door has no mechanism on the St Crispins side to allow it to be opened. I was told it is a means of fire escape from 89 Oak Street. The second door has a coded lock, which Appellant B did not appear to know. Taking this evidence at face value, and in the absence of any evidence to the contrary, I find no physical connection between the use taking place at St Crispins and the uses taking place at 89 Oak Street.
20. From the written evidence submitted and the Hearing discussion, WOM occupies the ground floor accommodation at 89 Oak Street, while PS occupied the first-floor accommodation. The pedestrian access into 89 Oak Street opens into a lobby from which the ground floor accommodation can be accessed. A staircase leading off the lobby provides access to the first-floor accommodation. The roller shutter entrance provides access directly into the storeroom utilised by WOM.
21. While various floor plans are before me, they formed part of planning application submissions for proposed developments or to regularise elements of the activities alleged. I do not find these plans to provide substantive evidence of how the appeal site was occupied at the time the notice was issued.
22. For the above reasons, I find that there were three physically separate and distinct uses, which occupied the appeal site for substantially different and unrelated purposes. Further, each of the three areas; St Crispins, the ground-floor of 89 Oak Street, and the first floor of 89 Oak Street, were used for different main purposes. In my judgement, each area used for a different main purpose constitutes a planning unit. The appeal site has therefore been divided into 3 planning units used for their own primary purpose.
23. The next question is whether the allegation in the notice can be corrected to reflect my finding on the use of the land. I have the power to correct any defect in the notice, but only if doing so would not cause injustice to an appellant or the Council.
24. A material change of use brought about by the subdivision of the property is significantly different to the building being put to a mixed use as alleged. An appeal on ground (a), and thereby a deemed application for planning permission, could not be introduced at the Hearing as the time for paying the relevant fee had passed. Due to their absence and lack of representation at

the Hearing, Appellants C and D also had no opportunity to comment on such a correction. Injustice to Appellants B, C and D would therefore arise from a correction along these lines as they would, more likely than not, have brought appeals on ground (a), as confirmed by Appellant B at the Hearing.

25. Appellant A has therefore demonstrated, on the balance of probability, that a material change of use to a mixed use: virtual reality escape room, café/bar, salon and storage business (*sui generis*) has not occurred as a matter of fact. Further, I cannot correct the allegation without causing injustice.
26. Appeal A on ground (b) succeeds to this limited extent.

The ground (c) appeals

27. Given the partial success on ground (b), the notice shall be corrected by deleting the words '*Without planning permission, the material change of use of the land to a mixed use: virtual reality escape room, café/bar, salon and storage business (sui generis)*'. The ground (c) appeal therefore only relates to the creation of a canopy and decked terrace to the western end of the building.
28. The cases made out in appeals C and D under this ground relate only to the alleged material change of use not amounting to development. As I have already found that the alleged material change of use has not occurred as a matter of fact, there is nothing further for me to consider in respect of appeals C and D.
29. The canopy and decked terrace are constructed in timber, the building materials do not however change the fact they were formed through the carrying out of a building operation. As such, they amount to development as defined in s55(1) of the 1990 Act and they require planning permission.
30. It was suggested the canopy and decked terrace could be temporary structures due to their construction materials. However, they were not provided temporarily in connection with, and for the duration of, operations being or to be carried out on the land, which themselves benefit from planning permission. As such, they are not temporary structures.
31. Class A, Part 7 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the GPDO) relates to extensions etc of commercial premises. Paragraph A.1(f) confirms that development consisting of or including the construction of a raised platform is not permitted by Class A. The decked terrace is a raised platform. There is no substantive evidence to show the canopy and decked terrace were not constructed as one building operation. As such, the canopy and decked terrace do not fall to be permitted development and do not benefit from the deemed planning permission granted by virtue of Article 3 and Class A, Part 7 of Schedule 2 of the GPDO.
32. For these reasons, the appeal on ground (c) fails.

The ground (f) appeal

33. The requirements should reflect and follow logically from the allegation. It is within my power to make consequential changes to the requirements pursuant

to my correction of the allegation. Requirement 5.a) shall therefore be deleted and Appellant A's ground (f) argument does not need to be considered.

34. While an appeal has not been brought on ground (g), 'Step a)' of the time for compliance shall also be deleted to reflect the corrected allegation.

Overall Conclusion

35. From the evidence before me, I conclude that the alleged breach of planning control set out in section 3.a) of the enforcement notice and the plan attached to the notice are incorrect. Appeal A succeeds on ground (b) to that extent. For the reasons given above, I conclude that Appeals A, B, C and D on ground (c) shall not succeed. I shall uphold the enforcement notice with corrections and variations.

Formal Decisions

36. It is directed that the enforcement notice is corrected by:

In section 3. THE BREACH OF PLANNING CONTROL ALLEGED, delete all the words and substitute the words 'Without planning permission, the creation of a canopy and decked terrace to the western end of the building (see Appendix 1).'; and

The substitution of the plan annexed to this decision for the plan attached to the enforcement notice.

And varied by:

In section 5. WHAT YOU ARE REQUIRED TO DO, delete the words 'a) To cease the use of the building as virtual reality escape room, café/bar, salon and storage, or any combination of those uses; b)'; and

In section 6. TIME FOR COMPLIANCE, delete the words 'Step a) to be complied with in full within six months of the date on which this Notice takes effect. Step b) to' and substitute the word 'To'.

37. Subject to the corrections and variations, Appeals A, B, C and D are dismissed, and the enforcement notice is upheld.

M Madge

INSPECTOR

Plan

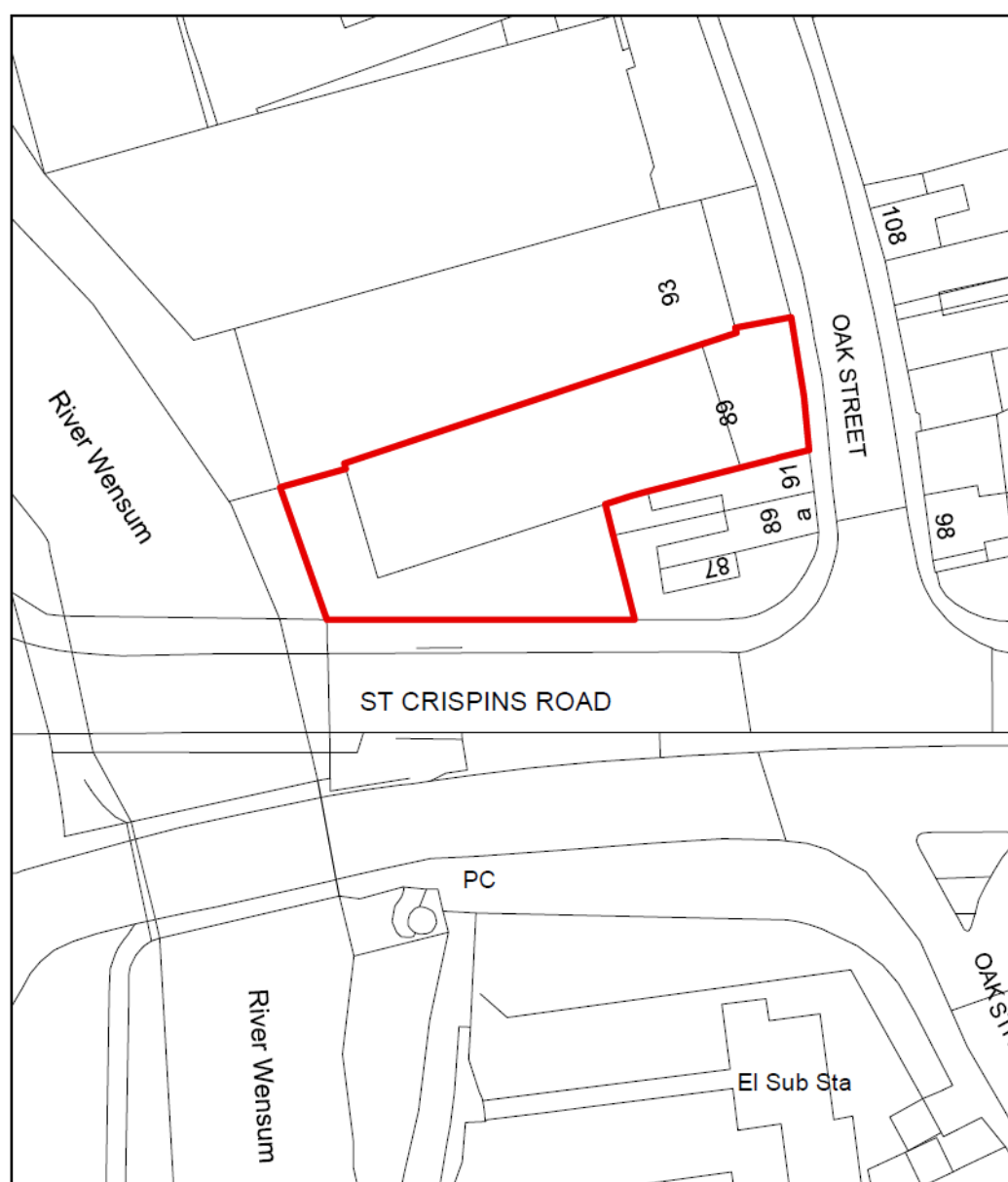
This is the plan referred to in my decision dated: [20 December 2024]

by M Madge Dip TP MA MRTPI

Land at: Land at 89 Oak Street, Norwich NR3 3BP

Reference: APP/G2625/C/24/3347331, APP/G2625/C/24/3347168, APP/G2625/C/24/3347169 and APP/G2625/C/24/3347172

Scale: Not to Scale



APPEARANCES

FOR THE APPELLANTS:

Mr John Sharman	Simon Mitchell Heritage Trust
Mr Guy Mitchell	Simon Mitchell Heritage Trust
Ms Joanna Scott	Simon Mitchell Heritage Trust
Mr Stefan Markovic	Norwich VR Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Mr Stephen Little	Planning Enforcement Officer
Mr Robert Webb	Senior Planner

DOCUMENTS

HD1 Brandon Hire Station information document

PLANS

HD2 Land Registry extract and City Council Terrier extract