


Case Details

CASE CITATION click case name for history	KEYWORDS
Mitchell v Secretary of State for the Environment (1994) 69 P & CR 60	TOWN AND COUNTRY PLANNING - DEVELOPMENT PLANS - MEANING OF 'DEVELOPMENT PLAN'; EXERCISE OF FUNCTIONS - MATERIAL CONSIDERATIONS — NEED FOR HOUSING OF A PARTICULAR TYPE
<div data-bbox="1090 622 1366 656">VIEW ANNOTATIONS</div> <p data-bbox="220 667 1366 790">The  Town and Country Planning Act 1990 s 70(2) provides that in dealing with an application for planning permission, a local planning authority must have regard to the provisions of the development plan, so far as material to the application, and to any other material considerations.</p> <p data-bbox="220 819 1366 1384">The appellant applied to the local authority for planning permission to change the use of his property from a house in multiple occupation, namely 20 bedsitting rooms, to seven self-contained flats. When the local authority failed to determine the application within the prescribed period, the appellant appealed to the Secretary of State. It was the local authority's policy that there was a need for all types of housing in the area in which the appellant's property was situated, in particular for cheap multiple occupation housing, and the proposed conversion of his house into more expensive accommodation was therefore contrary to that policy. Although the policy was not part of the local authority's official development plan, it was included in its draft unitary development plan. The Secretary of State agreed with the policy, and therefore refused to grant planning permission. On appeal, the issue was whether the policy was a material consideration within the meaning of the 1990 Act s 70(2): Held material considerations were those which served a planning purpose, and a planning purpose was one which related to the character of the use of the land. Material considerations included not only matters relating to the environment or amenities, but also to the need for housing in a particular area, as such a need related to the character or the use of the land. There was no distinction between a need for housing generally and a need for a particular type of housing, and the fact that the need for housing was dictated by cost or type of tenure was irrelevant. Moreover, the local authority's policy was not an attempt to transfer its statutory obligations as regards the provision of housing to the private sector. Accordingly, the appeal would be dismissed.</p> <div data-bbox="220 1451 424 1478">ANNOTATIONS</div> <p data-bbox="220 1518 730 1545">There are no Annotations for this Summary</p> <div data-bbox="1137 1597 1366 1630">VIEW SUMMARY</div>	

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1994 WL 1062819 (CA (Civ Div)), [1994] N.P.C. 87, (1995) 69 P. & C.R. 60, [1994] 2 P.L.R. 23

(Cite as: (1995) 69 P. & C.R. 60)

***60 Mitchell v. Secretary of State for the
Environment and Another**

Court of Appeal

CA (Civ Div)

(Balcombe and Saville L.JJ. and Sir Roger Parker):

June 16, 1994

Town and Country Planning--Appeal against non-determination of application for change of use--Council policy to resist change from multiple occupation to self-contained accommodation--Policy not set out in current development plan--Secretary of State dismissed appeal and refused permission on the basis of the council policy--Decision of Secretary of State quashed--Whether need for a particular type of housing a material consideration--Whether council trying to transfer public housing obligations on to the private sector

Mr Mitchell had applied to the council of the Royal Borough of Kensington and Chelsea for planning permission for the change of use of 13 Collier Road, London SW5. The application was for the conversion of 20 bedsitting rooms, in multiple occupation, into seven self-contained flats. The council failed to determine the application within the prescribed time and Mr Mitchell had appealed to the Secretary of State against the non-determination of the application. The council had a policy to resist such changes of use, which was not incorporated in the current development plan, but which was clearly set out in a draft unitary development plan and in the written submissions made by the council. The Secretary of State dismissed the appeal and refused permission by decision letter dated March 6, 1992. The reason for his decision was his agreement with the view of the council as to the particular need in the area for cheap multiple occupation housing. Mr Mitchell then challenged this decision arguing that the policy of the council was not a material consideration. He submitted that the Secretary of State had based his decision on factors of cost and type of tenure, and that by refusing permission the respondent had sought to cast some of the council's public housing obligations on to the private sector, neither of which were legitimate planning purposes. Mr Roy Vandermeer, Q.C. sitting as a deputy judge of the High Court, agreed and had quashed the decision of the respondent. On appeal to the Court of Appeal:

Held, allowing the Secretary of State's appeal, that the need for housing in a particular area is a well established material consideration in planning terms, and that it is a fallacy to confuse the question whether a need exists, which is a legitimate consideration, with the reasons for that need. The fact that the need for a particular type of housing may be dictated by considerations of cost or type of tenure is immaterial. P.P.G. 3 gives express authority for taking into account the economic considerations of the need for affordable housing as a material consideration. There was no substance before the court to suggest that in formulating such a policy the council had attempted to transfer their own statutory obligations with regard to the provision of housing.

Cases referred to:

(1) Clyde and Company v. Secretary of State for the Environment [1977] J.P.L. 31.

(2) Westminster City Council v. British Waterways Board [1985] A.C. 676; [1984] 3 W.L.R. 1047; (1984) 128 S.J. 783; [1984] 3 All E.R. 737; (1985) 49 P. & C.R. 117; (1984) 272 E.G. 1279; (1985) 83 L.G.R. 113; [1985] J.P.L. 102; (1984) 81 L.S.Gaz. 3501, H.L.

(3) Westminster City Council v. Great Portland Estates Plc [1985] A.C. 661; [1984] 3 W.L.R. 1035; (1984) 128 S.J. 784; [1984] 3 All E.R. 744; (1984) 49 P. & C.R. 34; [1985] J.P.L. 108; (1984) 81 L.S.Gaz. 3501, H.L.

Appeal by the Secretary of State against the decision of Mr Roy *61 Vandermeer, Q.C. sitting as a deputy judge of the High Court, whereby he quashed a decision made by letter dated March 6, 1992, dismissing an appeal of Mr Mitchell against non-determination of his planning application by the Council of the Royal Borough of Kensington and Chelsea for change of use of 13 Collier Road, London SW5 from multiple occupation to self-contained flats. The facts are stated in the judgment of Saville L.J.

Representation

Christopher Katkowski for the appellant.

Richard Drabble and Jonathan Karas for the respondent.

Balcombe L.J.

I will ask Saville L.J. to give the first judgment.

Saville L.J.

In this case Mr Mitchell applied to the council of the Royal Borough of Kensington and Chelsea for planning permission to change the use of 13 Collier Road, London SW5 from a house in multiple occupation (that is to say a house containing some 20 bedsitting rooms) to seven self-contained flats.

The council did not determine this application within the prescribed period, and Mr Mitchell exercised his right under section 78 of the Town and Country Planning Act 1990 to appeal to the Secretary of State for the Environment. By letter dated March 6, 1992, the Secretary of State dismissed the appeal and refused to grant planning permission for this change of use.

It is clear that the reason for this decision of the Secretary of State was that he accepted the view of the local authority that there was a need in the area for all types of housing, including, in particular, multiple occupation housing for those who require cheap rented accommodation; and that the conversion into more expensive self-contained accommodation and the consequent loss of housing of this kind, which met or was capable of meeting Housing Act standards for multiple occupation, should accordingly be resisted.

The Secretary of State was satisfied on the balance of probabilities that if planning permission were refused the house in question would continue to be used for multiple occupation.

Section 70(2) of the Town and Country Planning Act 1990 stipulates that in dealing with an application for planning permission, the local planning authority shall have regard to the provisions of the development plan so far as material to the application "and to any other material considerations". By virtue of section 79(4) of the same Act, the Secretary of State must do the same when determining an appeal.

There was nothing in the council's then current development plan which specifically spelt out the policy of the council to resist the change of use under consideration, or the reasons for such a policy. It is clear, however, that the Secretary of State correctly identified the current view and policy of the council, and the reasons for it, which

were to be found in a draft unitary development plan prepared by the council and, indeed, in the written submissions made by the council on the matter of the application.

The question which arises is whether the policy of the council was a material consideration within the meaning of section 70(2) of the Act. Mr Vandermeer, Q.C. sitting as a deputy High Court judge concluded that this was not the case and quashed the decision of the Secretary of State on the ground that that decision was based on a consideration which should not have been taken into account. The Secretary of State now appeals to this court.

*62 It is common ground between the parties, as I understand it, that material considerations are those which serve a planning purpose, and that a planning purpose is one which relates to the character of the use of land: see in particular the speech of Lord Scarman in Westminster City Council v. Great Portland Estates PLC. [FN1]

FN1 [1985] 1 A.C. 661 at 670.

As will be seen from the immediately preceding paragraphs of that speech, the same considerations apply to the question whether there would be a material change in the use of any buildings so as to make any such change a development within the meaning of section 55, thus requiring planning permission under section 57. In other words, a change in the use of a building which did not relate to the character of use of land would not require planning permission, unless, of course, it also involved other factors which amounted to development under section 55.

It is accepted on behalf of Mr Mitchell that the proposed change from multi-occupation to self-contained flats amounts to a material change in the use of the building in question, that is to say that such a change is a change in the character of the use of the land.

Counsel's submission however, which the deputy judge seems to have accepted, is that the decision of the Secretary of State was based upon the factor of price (that is to say the difference in rent payable for the two respective types of residential accommodation) and tenure, namely the differences between the letting or licensing arrangements for those two types, and that since these factors have nothing to do with the character or use of the land, they do not amount to legitimate planning purposes.

In addition it is suggested, and indeed the

learned judge appears to have accepted, that what in truth the Secretary of State has sought to do by withholding planning permission is to cast some of the local authority's public housing obligations upon Mr Mitchell, which, again, is not a legitimate planning purpose.

It is undoubtedly the law that material considerations are not confined to strict questions of amenity or environmental impact, and that the need for housing in a particular area is a material consideration within the meaning of what is now section 70(2) of the 1990 Act (see Clyde & Co. v. Secretary of State for the Environment, [FN2] approved by the House of Lords in Westminster City Council v. British Waterways Board [FN3]).

FN2 [1977] 1 W.L.R. 927.

FN3 [1985] 1 A.C. 676.

On the law as it presently stands, therefore, the need for housing in a particular area is a planning purpose which relates to the character or the use of land. Given that this is so, the proposition advanced on behalf of Mr Mitchell is that the need for a particular type of housing in an area is not a planning purpose which relates to the character of the use of land if that need is itself dictated or generated by considerations of cost or type of tenure.

I cannot accept this argument. To my mind there is no sensible distinction to be drawn between a need for housing generally, and a need for particular types of housing, whether or not the latter can be defined in terms of cost, tenure or otherwise. In each case the question is whether, as a matter of planning for the area under consideration, there is a need for housing which the grant or refusal of the application would affect.

The fact that the need may be dictated by considerations of cost or type of *63 tenure seems to me to be immaterial. Indeed, were this not so, then it is difficult to see how Re Clyde could have been decided as it was, for given enough money, it would virtually always be open to those in need of housing in an area to obtain it.

In my judgment the fallacy in the argument is that it simply confuses the need for housing (which on the authorities is a legitimate consideration) with the reasons for that need, and concentrates exclusively on the latter while effectively ignoring the former.

I now turn to the suggestion that the policy in question was calculated to transfer to the private

sector--in this case Mr Mitchell--the public housing obligations of the council. Suffice it to say on this point that I can find nothing in the material shown to us today to suggest that in formulating its policy the local authority was seeking to transfer and impose upon the private sector their own statutory obligations with regard to the provision of housing. In those circumstances, I take the view that there is no substance in the second point.

Accordingly I would allow this appeal.

Sir Roger Parker.

I agree.

Balcombe L.J.

In my judgment, it is unrealistic to say that economic considerations do not relate to the character or use of land. I refer to the document entitled P.P.G. 3, issued by the Secretary of State, paragraph 38 of which, under the heading "Affordable Housing" says:

The community's need for affordable housing is a material planning consideration which may properly be taken into account in formulating development plan policies.

Paragraph 4 of the consultation paper issued in January 1993 develops that by saying:

On some sites it would be possible by controlling density to encourage the developer to provide a sufficient proportion of smaller houses at the lower cost end of the market.

In my judgment these provisions recognise correctly that the density of permitted development will inevitably have an effect on the cost, and therefore on the price, of the houses likely to be erected on the land, but nevertheless are matters relating to the character and/or use of the land.

In like manner, to retain a house in multiple occupation is likely to provide housing of a type and of a cost available to a particular section of the community.

For those reasons, which are really no more than an elaboration of what my Lord, Saville L.J., has said, I agree that this appeal should be allowed.

Representation

Solicitors--Treasury Solicitor; Bennet Taylor Tyrrell, London.

Order

Reporter--Fiona Shotton.

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Appeal allowed.

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