010 CONFIDENTIAL

cc HAP
S. Ingham

28 November 1981

Prime Minister

We have now come to the point where I have to decide whether or not to use my powers of intervention under S.23 of the Housing Act 1980 in respect of Norwich. I am writing to you in view of the significant bearing of this decision on progress with the right to buy in the country generally.

Norwich's performance to date is amongst the worst in the country of those authorities whose progress has been taken up by the Department. But more significant still is the fact that, despite only having just under 900 right to buy applications, the Council is insisting on taking until June 1982 (21 months after the start of the right to buy) just to complete the issue of S.10 offer notices for these applications, and even that timetable is qualified by the absence of any commitment to issue offer notices for approximately 100 'difficult cases' (principally flats) by a specific date.

If we fail to intervene in Norwich who have widely publicised their refusal to accelerate their timetable any further, we shall give grounds for all the many Labour authorities who have given very materially better timetables than Norwich to slow down to Norwich's unacceptable pace. I must make it clear that the complexity of carrying sales through to completion after intervention, in the face of likely non-co-operation by the local authority, means that it will be administratively impossible for the Department to start intervening across the board if the right to buy is slowed down in dozens of Labour authorities. It is therefore imperative at least to maintain the present rate of progress in authorities generally if the right to buy is to be successfully delivered in this Parliament.

If we intervene in Norwich, and Norwich's challenge in the Courts, which they have already said they will make, is unsuccessful, all is well. Indeed, successful intervention in a relatively straightforward authority like Norwich with a fairly small number of applications is likely materially to improve progress generally and to reduce the likelihood of having to intervene elsewhere.

If on the other hand, we intervene in Norwich and are unsuccessful in Court, our position will be seriously weakened. Intervention will be represented as an empty threat and an increasing number of Labour authorities could be expected to seek to defy the Government on the right to buy or at least to slow down their progress significantly.

The key judgement therefore is whether we will win in Court. I have of course been working very closely with the Attorney General whose advice in his letter of 19 November I attach. As you will see, regarding our chances of success in litigation, Michael Havers states:

> "I believe that you are more likely than not to succeed, your chances of success are certainly better than evens."

We clearly have a difficult judgement to make. If we do not intervene the implementation of the right to buy is likely to slow down significantly. If we do intervene and then lose in the Courts implementation will again be slowed down significantly. on the other

hand, if we do intervene and successfully withstand a challenge, the right to buy will be strengthened nationally.

Subject to the views of yourself and colleagues, my judgement in the light of Michael's assessment of the probability of our being successful is that we should intervene. I would propose therefore to announce this, after consultation with Francis Pym, by way of a Statement in the House next week.

I am copying this letter to the Home Secretary, the Attorney General, to the Lord President, the Secretaries of State for Wales and Scotland, and to the Chief Whip.

MH

MH

SD

Housing

10 DOWNING STREET

From the Private Secretary

27 November, 1981.

Housing Act 1980: Right to Buy (Norwich City Council)

The Prime Minister has seen your Secretary of State's minute of 20 November. She is content for him to use his powers of intervention under Section 23 of the Housing Act 1980 in respect of Norwich. She also agrees that he should announce this by way of a Statement in the House next week which I now understand is scheduled for Thursday.

I am sending copies of this letter to John Halliday (Home Office), Jim Nursaw (Law Officers' Department), David Heyhoe (Lord President's Office) John Craig (Welsh Office), Muir Russell (Scottish Office), and Murdo Maclean (Chief Whip's Office).

W. F. S. RICKETT

David Edmonds, Esq.,
Department of the Environment.

B/F for any comment from departments

PRIME MINISTER

cc: Mr Ingham
Mr Pattison

In the attached minute, Mr Heseltine says that he should use his powers of intervention under Section 23 of the Housing Act 1980 to speed up the sale of council houses in Norwich. If you agree, he proposes to make a statement in the House on Wednesday or Thursday of next week.

The background is that at the end of October, Mr Heseltine held a meeting with the Norwich City Council. He told them that he was not satisfied with their timetable for selling council houses. He followed this up with a letter setting out the sort of timetable that he would find acceptable. The Leader of the Council replied on 11 November saying that the Council would not revise their timetable, and that they would challenge the Secretary of State in the courts if he used his powers of intervention under Section 23 of the 1980 Act. This exchange of letters has naturally become public. It is, therefore, public knowledge that the Norwich City Council are in confrontation with Mr Heseltine, and a decision on whether or not he should intervene is clearly needed.

Mr Heseltine's judgement that he should intervene is based partly on the Attorney-General's advice at Flag B, which is that, if we are challenged in the courts by the Norwich Council, the Government is "more likely than not to succeed" and that "our chances of success are certainly better than evens". Mr Heseltine also takes the view that failure to intervene will slow down significantly the implementation of the right to buy, since many other Labour authorities will take their lead from Norwich.

This is clearly a high risk decision, and you will particularly want to read the Attorney-General's letter, which sets out in full his view of the likelihood of success in the courts, and the consequences of defeat.

The colleagues to whom Mr Heseltine has copied his minute will almost certainly have comments to make, and you may wish to await these before taking a final decision. But have you any initial views which you would like me to put to colleagues at this stage, and before

/you

you get tied up with the European Council?

No - I hope Ch. H. will go ahead.

WSR

24 November, 1981

CONFIDENTIAL

Urgent advice pl
Mr Sharp

B

ROYAL COURTS OF JUSTICE
LONDON, WC2A 2LL

01-405 7641 Extn 3201

19 November 1981

cc PS/Mr Stanley
PS/Sir George Young
Mr McTindor
Mr Graham

The Rt Hon Michael Heseltine MP
Secretary of State for Environment
Department of Environment
2 Marsham Street
LONDON S W 1

Dear Michael,

HOUSING ACT 1980 : RIGHT TO BUY (NORWICH CITY COUNCIL)

John Stanley came to see me yesterday to discuss the current position of tenants in Norwich. Now that the issue has come to a head with the letter of 11 November from the Leader of the Council, you have to reach a decision as to whether to intervene, using the powers given by s.23 of the 1980 Act. In my view, this decision should not be delayed.

In order for you to be able to intervene, it must appear to you that the tenants of Norwich City Council are having or may have difficulty in exercising the right to buy effectively and expeditiously. If you intervene, it looks almost certain that Norwich will challenge you in the High Court (alleging upon whatever basis that no reasonable Secretary of State could have formed that view if he had taken into account the relevant considerations). However, I believe that you do have sufficient evidence to enable you to reach that view and I consider that you have a reasonable chance of successfully resisting such a challenge. There are risks in any litigation, none more so than in this area. However, I believe that you are more likely than not to succeed, your chances of success are certainly better than evens.

I reach this assessment in the light of:

/(i)

CONFIDENTIAL

P.T.O.

ROYAL COURTS OF JUSTICE
LONDON, WC2A 2LL

01-405 7641 Extn

(i) the evidence which I am told is either available or will be forthcoming of complaints against the Council and of the blocking tactics which are being used in the valuation of property and the imposition of unreasonable conditions upon the sale of the freeholds; and

(ii) the prima facie inferences to be drawn from the comparison of past and projected performance by Norwich with that of the other local authorities which have come to the Department's attention.

I think that before intervening you should obtain confirmation from Mills and Reeve that (assuming the Council cooperates fully) they would expect to offer to sell faster than the Council.

The Council's stand is based upon their determination that they will not deploy more internal resources nor use the services of the district valuer's office to speed up the service of notices on tenants under s.10 of the Act. It is important that it be regarded by the Courts as lawful for a local authority to use the DV's services for individual valuations in the manner you have already suggested. In the light of the correspondence, this point is bound to be argued in this case. I should point out that if we are wrong, it would have important repercussions in that any adverse remarks by the Judges on this point would:

(i) weaken the case against Norwich,

(ii) negate comparisons with other authorities where the DV's services are in fact being used, and

/(iii)

ROYAL COURTS OF JUSTICE
LONDON, WC2A 2LL

01-405 7641 Extn

(iii) put a stop to the practice, slowing the process down throughout the country.

Such remarks could also throw into doubt the validity of the work already done through the use of those services.

However, I consider that sections 10 and 11 taken together will, on balance, be accepted by the Courts as enabling local authorities to do as you have suggested and as the majority are now in fact doing. I say this so long as the district valuer himself can discharge his functions under s.11 without having previously considered the individual valuation himself.

I should add that once the case comes to Court the key point will be to produce to the Court evidence that the reality is that Norwich is being obstructive to the tenants' right to buy wherever possible and are certainly out of line with the general level of performance of other authorities. We must be able to point out the falsity of the suggestion contained in page 3 of the Norwich letter of 11 November that the Council is making a "reasonable fist" at complying with their statutory duty under the Act.

Best wishes

Yours ever.

Michael