

Decision by Portfolio Holder



Report reference: HSS-008-2021/22

Date of report: 17-May-2022

**Epping Forest
District Council**

Portfolio: Housing Services – Councillor H Whitbread

Author: Rachel Smith (Ext 2710) Democratic Services: J Leither

Subject: Housing Of Multiple Occupation 46 Ibbetson Path, Loughton – Variation of Restrictive Covenant.

Decision:

1. That an agreement is entered into between the freeholder / owner of 46 Ibbetson Path, Loughton, and the Council, varying the restrictive covenant to grant permission for either its current use or use as a House of Multiple Occupation, rather than releasing the covenant in full, ensuring that the Council maintains control over any future changes of use to the property; subject to the following conditions being met:
 - (a) That the agreement includes conditions to ensure that occupiers do not cause any general management problems including anti-social behaviour, or excessive noise nuisance, or that their occupation does not create excessive parking problems in the area;
 - (b) That the agreement be terminated if there are any justified complaints from the local community;
 - (c) That the Council's reasonable legal and management fees relating to the execution of the agreement are met by the owner;
 - (d) That Planning Permission is granted for use as a House of Multiple Occupation.
 - (e) That the Director of Property & Housing is satisfied that the House of Multiple Occupation has the relevant licences in place related to its operation.
 - (f) That the Director of Property & Housing has no reasons why the Council should not vary the covenant.

ADVISORY NOTICE:	
<i>A Portfolio Holder may not take a decision on a matter on which he/she has declared a Pecuniary interest. A Portfolio Holder with a non-pecuniary interest must declare that interest when exercising delegated powers.</i>	
I have read and approve/ do not approve (delete as appropriate) the above decision:	
Comments/further action required: None	
Signed: Councillor H Whitbread	Date: 25 th May 2022
<i>Non-pecuniary interest declared by Portfolio Holder/ conflict of non-pecuniary interest declared by any other consulted Cabinet Member:</i>	<i>Dispensation granted by Standards Committee: Yes/No or N/A</i>
None	
Office use only: Call-in period begins: 25 th May 2022	Expiry of Call-in period: 1 st June 2022

After completion, one copy of this pro forma should be returned to Democratic Services IMMEDIATELY

Reason for decision:

To allow the owner/freeholder of a former Council property to use the property for either its current use or as a House of Multiple Occupation.

Options considered and rejected:

1. Not to vary the restrictive covenant and not enter into an agreement granting permission for the property to be used as a House of Multiple Occupation
2. To release the restrictive covenant.

Background Report:

1. The owner/freeholder of a former Council property, 46 Ibbetson Path, Loughton, has converted their single family dwelling accommodation into a House of Multiple Occupation. The owner/freeholder has been operating as a House of Multiple Occupation since 1st August 2021. The dwelling house will provide accommodation for up to six occupants.
2. The property is a three-bedroom semi-detached house, sold under the right to buy scheme in 1971.
3. The terms of the restrictive covenant are as follows: *“Not to use the property other than as a private dwelling house for occupation by a single family subject nevertheless to the number of persons occupying the property not exceeding the permitted number as specified in the 6th Schedule of the Housing Act 1957”.*

<p>Initialed as original copy by Portfolio Holder:</p>

4. The owner/freeholder of the property was not aware of the restrictive covenant until the Council advised him and has since applied to release or vary the restrictive covenant, to allow him to use the property as a House of Multiple Occupation.
5. Whilst the Director of Property & Housing has delegated authority to consider applications to vary the terms of a restrictive covenant, in accordance with Cabinet's decision of 12 September 2011 (minute 46 refers) the Director of Property & Housing does not have delegated authority to consider requests which result in more than five houses being used as privately-rented shared accommodation within a 400 metre radius, and in these situations a report shall be submitted to the Housing Portfolio Holder for consideration and decision. In this case there are 18 Houses of Multiple Occupation operating within a 400 metre radius of 46 Ibbetson Path. A location plan is attached as an appendix to the report, showing all of the Licenced Houses of Multiple Occupation as yellow stars.
6. Any House of Multiple Occupation that houses five or more occupants must be Licenced by the Council's Private Sector Housing Team. As such the owner has made an application for the relevant Licence. The Private Sector Housing team have inspected the property and are mindful to grant a Licence to the owner for a period of five years. They advise that the property has been renovated to an extremely high standard, is fully compliant with the requirements for use as a House of Multiple Occupation and strongly recommends that the covenant be varied to allow the owner to operate as such, stating that "*it is providing good quality affordable accommodation to the students of East 15 acting school*". They mention that "*there is currently no accommodation at the University, so students have no choice but to rent privately*". This information is particularly relevant considering the close proximity of this accommodation to a number of educational settings in the area.
7. Planning permission is required to be sought for conversions that accommodate seven or more occupants. As the dwelling house will accommodate a maximum of six occupants, planning permission is not required.
8. Between August 21 when the first the accommodation was first let and now, the Council has only been made aware of one complaint. This complaint related to noise nuisance attributed to a one-off Christmas party, which was dealt with to a satisfactory conclusion. There have been no further complaints. This is co-ordinated by residents living in the locality.
9. With regard to the future management of the House of Multiple Occupation and dealing with any anti-social behaviour which may arise, the owner has provided a copy of his standard tenancy agreement which contains appropriate clauses around nuisance and anti-social behaviour and has explained his approach to enforcement should that be necessary. The owner has demonstrated his continued commitment to the management of his accommodation by attaining accreditation from the National Residential Landlords Association. He intends to manage the property himself, however has undertaken to contract out the management of the property should he ever find this to be too big of a challenge.
10. The owner has recently converted the front garden into four car park spaces. Parking stress will be minimised through a local lettings policy, which will restrict the number of vehicles kept at the premise by its occupants to four.
11. If the Housing Portfolio Holder agrees that the accommodation can be used for this purpose, an agreement should be entered into between the owner and the Council, varying the restrictive covenant to grant permission either for its current use or as House of Multiple Occupation, rather than releasing the restrictive covenant in full. This would ensure that the Council maintain control over any future changes of use to the property. The agreement would also include conditions to ensure that occupiers do not cause any general

management problems including anti-social or noise nuisance and parking stress. It will be made clear in the agreement that if there are justified complaints from the local community or partner agencies, the agreement will be terminated.

12. The Council's reasonable legal and management fees will be charged to the owner.

Resource Implications:

No resource implications, as due to case law there is no financial value for the variation of the covenant. The owner will be required to pay all the Council's reasonable legal and management fees.

Legal and Governance Implications:

Housing Act 1985, Housing Act 2004, The Management of Houses in Multiple Occupation (England) Regulations, the Care Standards Act 2000, The Children and Families Act 2014 and the Children's Homes (England) Regulations 2015.

Cabinet Decision, Restrictive Covenants – Houses in Multiple Occupation of 12.09.11(C-002-2011/12 refers).

Safer, Cleaner and Greener Implications:

Potential implications of anti-social behaviour to the local community if the property is let as privately rented shared accommodation. However, safeguards will be put in place by only varying (rather than releasing) the restrictive covenant, with conditions being placed within the agreement between the owner and the Council.

Consultation Undertaken:

None

Background Papers:

Impact Assessments:

Risk Management:

Key Decision Reference (Y/N): No

Equality Analysis:

The Equality Act 2010 requires that the Public Sector Equality Duty is actively applied in decision-making. This means that the equality information provided to accompany this report is essential reading for all members involved in the consideration of this report. The equality information is provided as an Appendix to the report.