

Extract from the Overview and Scrutiny Minutes from 15 April 2011

Call-in - Release of Restrictive Covenant - 35 Denny Avenue, Waltham Abbey

The Committee considered the call-in of a decision by the Housing Portfolio Holder, approving a variation of the restrictive covenant placed on the sale of 35 Denny Avenue in order to grant permission for either its current use or as privately rented shared accommodation, subject to conditions ensuring that the occupiers of the accommodation do not cause any management problems, nuisance or anti-social behaviour.

The lead member of the call-in, Councillor John Wyatt, was asked to open the discussion. He started by saying that the covenant had originally been put in place for the benefit and protection of the neighbours when this property had been owned by the Authority. He noted that Decision 2 and 3 of the original Portfolio Holder's report, (to grant permission for either its current use or as a privately rented shared accommodation; and that conditions are included to ensure that occupiers do not cause any management problems, nuisance or anti-social behaviour) were to be enforced only after they had occurred. He noted that the property had been granted planning consent on four occasions and had now been extended to have seven bedrooms, a communal lounge and kitchen. It had already been advertised 'to let' via a sign post at the rear of the property. He understood that at present there are nine unrelated occupants there, who share the kitchen and the communal lounge; this regularly leads to high noise levels. Planning consent had recently been refused and an enforcement notice had been served. He suggested that the Council was in danger of acting in an inconsistent manner by Planning refusing permission and then Housing preparing to grant a variation on the covenant. This could cause bad press.

He urged that the Committee refer this report to full Council so that it could be fully debated.

The responsible Portfolio Holder for Housing, Councillor David Stallan, was then asked to make his opening statement. He started by saying that he knew of only two other planning applications that had been approved for the premises. The Housing Directorate only became aware of any planning action, when Planning Enforcement Officers informed it of an application for a change of use. He stressed that the variation to the restrictive covenant would only be effective when and if the owners obtain planning approval. He noted that the premises had a garage, but had no access from the front and that an application for access had been refused by the Housing Directorate. He had the option to release the covenant in full, but by just varying it the Council could deal with any issues that may arise.

If the decision was confirmed the Portfolio Holder said he would be agreeable to amending recommendation 5 so that all future decisions of this type would be made by the Portfolio Holder instead of under delegated powers to the Director of Housing as originally proposed and he urged the Committee to confirm the decision.

Councillor Mrs Wagland said that she had been informed that the imposition of existing covenants had been overruled by the courts elsewhere after applications by the tenants in the past. She expressed concern about the legal position of varying such a covenant and that some members were confusing it with the quite separate issue of planning consent, the two should not be conflated. She commented that there could be good and proper reasons why two directorates could approve and refuse consents for the same

property in respect of different regulatory issues. She suggested that the Committee defers for further legal advice on the issues relating to the variation of the covenant.

Councillor Stallan asked the Committee to note the legal outcome of a case involving Braintree DC, when a covenant was put on a property when it was sold under the Right to Buy, only to be found unlawful at a later date. He pointed out that the Legal section had already been consulted on the variation of the covenant. It had been decided that the best approach was for the Council to keep the covenant and only vary it so that the Council could enforce such things as parking in the area.

Councillor Mrs Grigg, referring to Recommendation 3, asked which directorate would carry out the monitoring and whether the applicant would have a right of appeal. Councillor Stallan said the Housing Directorate would enforce those conditions and that they could appeal.

Councillor Knapman said it would make more sense if Housing and Planning were pulling in the same direction. Things should be left as they are until the Planning Issues had been concluded. Councillor Stallan reminded him that he was not seeking to remove the covenant, just to vary it so that the Housing Directorate retained some sort of control over it. Councillor Knapman appreciated that they were after some sort of compromise but the council was sending out the wrong sort of signals on this. A house of multiple occupancy would have a lot more cars than a single family. Councillor Stallan replied that car parking in itself was not an anti social issue, it was a Planning and/or Highways issue.

Councillor Mrs Wagland was concerned that legally the Council may be obliged to vary the covenant. In any event she thought that the covenant had originally been imposed for good housing management reasons.

Councillor Mrs Collins pointed out that the householder did not receive planning consent nor had they appealed against the planning refusal to date. She would like further clarification from Housing, Planning and Legal Services.

The Director of Housing Services, Alan Hall reiterated that there were two separate issues:

- The property needed planning permission from the Council to become a house in multiple occupation; and
- It also needed the Council's agreement to release or vary the covenant.

He emphasised that these are two separate issues and it was quite possible for two different services to properly reach different conclusions on these two issues. He also stressed that consent to vary the covenant would only be given if planning permission was granted. The applicants could still appeal against the non-granting of planning permission, but he understood that they had not yet submitted an appeal.

Councillor Philip admitted he was confused especially about the legal side. He proposed that the decision be referred to full Council with a full legal report included.

However, Councillor Wyatt said that he would be agreeable to no decision being taken on the variation of the covenant until the issues relating to the Planning consent had been concluded and confirmed. Councillor Mrs Wagland said that there were consequences to the appellant winning their Planning appeal as they would get the covenant released automatically.

Councillor Wyatt suggested that the Committee should recommend to the Housing Portfolio Holder that no decision on the covenant should be made at present, until the outcome of the planning issues had been resolved and confirmed. Councillor Knapman

pointed out that the Committee had three options and that they should use Councillor Wyatt's proposal.

In pursuance of this proposal, Councillor Stallan suggested that the Committee went for option two, to refer the decision back to the decision taker. For clarity sake he could then defer reviewing the decision until all the Planning issues had been resolved. The Assistant Director of Planning confirmed that the applicants had six months to lodge an appeal.

Councillor Knapman made a formal proposal that the decision be referred back to the decision taker for further consideration and that he would defer re-examining this decision until a final decision has been taken on the Planning issue, including the time it would take to lodge an appeal.

Councillor Stallan agreed that he would look at it again once, or if, an appeal had gone to the Secretary of State and would then come back to this forum with appropriate legal advice.

RESOLVED:

(1) That the decision be referred back to the Housing Portfolio holder for further consideration and review once any Planning appeal had been determined by the Secretary of State; and

(2) That the Housing Portfolio holder would bring the issue back to the Overview and Scrutiny Committee along with appropriate legal advice, prior to making any final decision