

Decision By Portfolio Holder
Report reference: PHD-000-2010
Date of meeting: 12 February 2010

Portfolio: Housing – Councillor D Stallan

Author: Roger Wilson (Extension 4419) Democratic Services: R Perrin

Subject: Release of Restrictive Covenant – Denny Avenue, Waltham Abbey

Decision:

- 1) That the restrictive covenant not be released, but;
- 2) That an agreement be entered into between the Council and the owner/freeholder of the property, varying the restrictive covenant to grant permission for either its current use or as privately rented shared accommodation;
- 3) That the agreement includes conditions to ensure that the occupiers of the accommodation do not cause any management problems, nuisance or anti-social behaviour;
- 4) That the Director of Housing is satisfied that the use of the property complies with the Housing Act 2004 and the Houses in Multiple Occupation (England) Regulations 2006; and
- 5) That authority be delegated to the Director of Housing, to agree future requests for changes of use under the restrictive covenant, provided the requirements set out in the report are complied with.

Reasons for Proposed Decision:

To allow the owner/freeholder of a former Council property to let the premises as privately rented shared accommodation.

Other Options for Action:

1. Not to vary the restrictive covenant and not enter into an agreement granting permission for the property to be used as privately rented shared accommodation.
2. To release the restrictive covenant.

Background Report:

1. It has been brought to the Council's attention that the owner/freeholder of a former Council property in Denny Avenue, Waltham Abbey has converted the property and is letting it as privately rented shared accommodation, without the Council's permission.
2. The property is a three bedroom house, sold under the right to buy scheme in 1979, and subsequently purchased on the open market by existing owner. A location plan is attached as an appendix to the report.

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 number as specified in the Sixth Schedule of the Housing Act 1957 (now incorporated in the Housing Act 1985).”

4. The owner of the property wishes to continue to let the premises for privately rented shared accommodation which comprises 5 single and 2 double rooms. The Private Sector Housing Team has visited the accommodation and are satisfied that the property meets the majority of the legislative requirements relating to fire, amenity and spacing. The outstanding matters can be reasonably met and works are in progress to ensure compliance.

5. 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 privately rented shared accommodation, rather than releasing the restrictive covenant in full. This would ensure that the Council would 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. It will be made clear in the agreement that if there are justified complaints from the local community, the agreement will be terminated.

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

7. The Portfolio Holder is asked to note that, had the owner approached the Council originally seeking permission for the change of use, officers would have made the same recommendations.

8. The Housing Portfolio Holder is asked to agree that the covenant be varied in this way.

Resource Implications:

No resource implications as due to case law there is no financial value for the variation of the covenant.

Legal and Governance Implications:

Housing Act 1985.

Housing Act 2004

The Management of Houses in Multiple Occupation (England) Regulations

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:

No consultation undertaken.

Background Papers:

Conveyance document for the premises.

Impact Assessments:

Risk Management

As set out under Safer, Cleaner and Greener Implications.

Equalities Issues

None identified

Key Decision: Y/N

Not a Key Decision.