

Report to the Cabinet

Report reference: C-022-2011/12
Date of meeting: 12 September 2011



**Epping Forest
District Council**

Portfolio: Housing.
Subject: Restrictive Covenants – Houses in Multiple Occupation
Responsible Officer: Roger Wilson (01992 564419).
Democratic Services Officer: Gary Woodhall (01992 564470).

Recommendations/Decisions Required:

- (1) That, subject to (2) below, authority be delegated to the Director of Housing to agree future requests to vary restrictive covenants on former Council houses, in order to grant permission for its use as privately-rented shared accommodation, provided all of the conditions set out in Paragraph 4 of the report are met; and**
- (2) That if any request results in more than 5 houses being used as privately-rented shared accommodation within any 400 metre radius, a report be submitted to the Housing Portfolio Holder for consideration.**

Executive Summary:

The purpose of the report is for the Cabinet to consider agreeing a policy for approving the variation of restrictive covenants placed on any sale of a former Council house, in order to grant permission for its use as privately-rented shared accommodation.

The Director of Housing does not currently have delegated authority to vary the restrictive covenant that prevents houses being used for privately-rented shared accommodation. It is suggested that delegated authority be granted to the Director of Housing to vary this restrictive covenant on request, provided that a number of requirements are met by the owner/freeholder, which are set-out in the report. It is also suggested that should any request result in more than 5 houses being used as privately-rented shared accommodation within any 400 metre radius, a report be submitted to the Housing Portfolio Holder. Furthermore, restricted covenants on leasehold flats would not be released due to legal complications

If the Cabinet decides that covenants should not be varied for this purpose, it is important that it should be aware that any owner/freeholder may apply to the Upper Tribunal who would take into account all of the circumstances. If the Upper Tribunal considered that some agreement should have been reached, then it can order the variation and substantial costs could be incurred by the Council.

Housing Management staff are aware of a large number of former Council houses on estates that appear to be being used as privately-rented shared accommodation without the covenant referred to being varied. If the policy is agreed and delegated authority is granted, then officers will contact the owners of these properties and make arrangements for the covenant to be varied, provided the new policy is being complied with.

Reasons for Proposed Decision:

In order that the Council can have a clear policy on when restrictive covenants, preventing a former Council house from being used for privately-rented shared accommodation, will be varied.

Other Options for Action:

- Not to vary restrictive covenants and not to allow former Council houses to be used for privately-rented shared accommodation.
- To vary restrictive covenants preventing the owners/freeholders of former Council houses to use the property for privately-rented shared accommodation under different conditions to those set-out in the report.
- Not to submit a report to the Housing Portfolio Holder on whether the restrictive covenant should be varied should any request result in more than 5 houses being used as privately-rented shared accommodation within any 400 metre radius.

Report:

1. At its meeting on 28 February 2011, the Overview and Scrutiny Committee considered the call-in of the decision of the Housing Portfolio Holder, approving the variation of a restrictive covenant placed on the sale of a former Council house in Waltham Abbey, in order to grant permission for either its current use or as privately-rented shared accommodation. The Committee referred the decision back to the Housing Portfolio Holder requesting that the decision be taken after certain conditions had been met by the owner and that the decision be published in the Council Bulletin. The Housing Portfolio Holder further agreed that a report be submitted to a future Cabinet meeting to consider a policy on the Council's approach in the future, to changes of use under the restrictive covenant, hence the need for this report.

2. The relevant term of the restrictive covenant included in the sale of former Council properties is 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).”

3. The Director of Housing does not currently have delegated authority to vary this restrictive covenant on request, which does not allow a property to be used for privately rented shared accommodation. However, it is accepted that, nationally, properties are often used in this way. When a request is received from an owner/freeholder of a former Council property requesting that the Covenant be released, in every case a report currently has to be submitted to the Housing Portfolio Holder for consideration.

4. It is suggested therefore that delegated authority be granted to the Director of Housing to vary restrictive covenants in response to such requests, provided the following requirements are met by the owner:

- (a) That an agreement is entered into between the owner and the Council, varying the restrictive covenant to grant permission for its use as privately rented shared accommodation, rather than releasing the covenant in full, ensuring that the Council

maintains control over any future changes of use to the property.

(b) 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.

(c) That the agreement be terminated if there are any justified complaints from the local community.

(d) That the Council's reasonable legal and management fees relating to the execution of the agreement are met by the owner.

(e) That Planning Permission is granted for the change of use, which would also take into account available parking at the property and the surrounding area.

(f) That the Director of Housing is satisfied that the property complies with the Housing Act 2004 and the Houses in Multiple Occupation (England) Regulations 2006

(g) That the Director of Housing has no reasons why the Council should not vary the covenant.

5. It is further suggested that should any request result in more than 5 houses being used as privately-rented shared accommodation within any 400 metre radius, a report be submitted to the Housing Portfolio Holder for a decision on whether the restrictive covenant should be varied.

6. The Cabinet is asked to note that, on 8 August 2011, the Housing Portfolio Holder agreed a report on the introduction of a Student Accommodation Accreditation Scheme for students of the East 15 Acting School in Loughton, which is part of the University of Essex. The Scheme is purely voluntary and designed to help students of the University of Essex and their parents to make informed decisions about the quality of private sector accommodation available, and requires landlords to meet a clearly defined set of standards. As the Council has supported this Scheme, effectively encouraging students to be housed in accommodation across the District, including shared housing, it appears inconsistent not to agree to vary covenants for the same purpose (subject to the conditions set out in Paragraph 4) to enable students to live in former Council accommodation.

7. If the Cabinet does not agree a policy on the varying of this restrictive covenant and decides that covenants should not be varied for the purpose, it is important that it should be aware that any owner/freeholder may apply to the Upper Tribunal who would take into account all of the circumstances. If the Upper Tribunal considered that some agreement should have been reached, then it can order the release and substantial costs could be incurred by the Council.

8. The proposed policy on varying the restrictive covenant only applies to former Council houses. Although the same restrictive covenant is applied when flats are sold under a leasehold agreement, due to legal complications with other leaseholders in the block needing to be consulted and having to give their consent, any request would have to be refused. If any leaseholder of a flat applied to the Upper Tribunal, the Council would be able to argue that the property was not suitable for this purpose. No requests have been received from leaseholders for the restrictive covenant to be varied, and officers are not aware of any flats that are being used for this purpose without permission.

9. Housing Management staff are aware of a large number of former Council houses on

estates that appear to be being used as privately rented shared accommodation without the covenant referred to being varied. Many of these properties are around the Epping Forest College site and are used as student accommodation. If the policy is agreed and delegated authority is granted, then officers will contact the owners of these properties and make arrangements for the covenants to be varied, provided the new policy is being complied with.

Resource Implications:

Income of around £70 for each covenant varied, with the owner/freeholder meeting all of the Council's reasonable legal and administrative costs

Legal and Governance Implications:

Housing Act 1985
Housing Act 2004
Houses in Multiple Occupation (England) Regulations 2006

Safer, Cleaner and Greener Implications:

Conditions in any Agreement varying the restrictive covenant to ensure there are no anti-social behaviour, noise or excessive parking issues

Consultation Undertaken:

The Tenants and Leaseholder's Federation will be consulted on the report at their meeting on 7 September 2011; any comments will be report to the Cabinet orally.

Background Papers:

Report to the Housing Scrutiny Panel 28 February 2011

Impact Assessments:

Risk Management

The main risk to the Council is if agreement is not given to vary covenants in appropriate cases, and the owner submits a successful application to the Upper Tribunal and is awarded costs against the Council.

There is also a risk that, in some cases where a variation is approved, it results in anti-social behaviour from the occupants. However, this would be overcome by the separate agreement with the owner, which would allow the agreement to vary the covenant to be terminated.

Equality and Diversity:

Did the initial assessment of the proposals contained in this report for relevance to the Council's general equality duties, reveal any potentially adverse equality implications? No

Where equality implications were identified through the initial assessment process, has a formal Equality Impact Assessment been undertaken? No

What equality implications were identified through the Equality Impact Assessment process?
N/A.

How have the equality implications identified through the Equality Impact Assessment been addressed in this report in order to avoid discrimination against any particular group?
N/A.