

Coventry City Council
Minutes of the Meeting of Cabinet Member for Housing and Communities held at
2.30 pm on Thursday, 3 March 2022

Present:

Members: Councillor D Welsh (Chair)

Other Members:

Councillor J Blundell
Councillor M Heaven (petition sponsor)
Councillor T Sawdon

Employees Present:

M Bajway, Law and Governance
S Chantler, Streetscene and Regulatory Services
G Curtis-Wheeler, Law and Governance
U Patel, Law and Governance

In Attendance:

H Butcher, BID Interpreting Service
A Kenny, BID Interpreting Service

Apologies:

Councillors R Bailey and M Lapsa (Shadow Cabinet Members)

Public Business

30. Declarations of Interest

There were no declarations of interest.

31. Minutes

The minutes of the meeting held on 18 November 2021 were agreed and signed as a true record. There were no matters arising.

32. Petition for Proposed Ban on Houses in Multiple Occupancy (HMOs) in Moreall Meadows Estates

The Cabinet Member considered a report of the Director of Streetscene and Regulatory Services which responded to a petition that requested a ban on Houses in Multiple Occupancy (HMOs) in Moreall Meadows estates.

The petition bearing 137 signatures was submitted on 7 September 2021 and was sponsored by Councillor M Heaven, a Wainbody Ward Councillor. Councillor Heaven and the petition organiser attended the meeting and spoke in respect of the petition. Councillors J Blundell and T Sawdon, also Wainbody Ward Councillors attended the meeting and spoke in respect of their concerns about HMOs in the area.

The petition was as follows:

“We the undersigned petition to ban the licensing of any HOMs in the Moreall Meadows estates which covers Moreall Meadows, The Arboretum, Russet Grove, Cassandra Close, Poppyfield Court and Heritage Court.

The area already has a restrictive covenant that has been placed on the development area by the land deed agreement which was dated 27 March 1997 between David Wilson, developer and the private owners and Coventry Council. The tile number of WM44722. The restrictive covenant means that all houses must be occupied by single households and is supposed to last for 80 years before they would then be expired. The Blanket Banned HMO proposal would cover Moreall Meadows, The Arboretum, Russet Grove, Cassandra Close, Poppyfield Court and Heritage Court”.

The petition organiser read a statement that focused on the restricted covenant that was the subject of the petition. She also spoke of the residents’ concerns over a particular HMO in the area. All three Ward Councillors spoke in support of the petition and their concerns in relation to the problems caused by HMOs in the area such as people, taxis and deliveries coming and going all hours of the day and night. In addition, they referenced case law in relation to HMOs and requested that the Cabinet Member consider expediting the introduction of Article 4 Direction at the earliest opportunity.

The licensing of HMOs is undertaken in accordance with the Housing Act 2004 legislation (the Act) which provides for the Council to administer Mandatory Licensing (a national scheme covering larger HMOs) and Additional Licensing (a discretionary scheme which requires other types of HMOs to be licensed where the Council has designated such a scheme). Additional Licensing came into force in Coventry on 4 May 2020.

Section 64 of the Act places a duty on the Council to either grant or refuse a HMO licence where an application for such a licence is made to the Council. Under Section 64 (2) and (3), the Council must grant a licence where it is satisfied that the house is reasonable suitable for occupation by not more than the maximum number of households being requested and the persons involved in the licence and the management of the HMO are fit and proper persons.

If these tests of suitability are met, the Council has a duty to grant a licence and failure to do so could result in the Council acting ‘*ultra vires*’ or beyond its powers.

Failure to licence a HMO is an offence under Section 72(1) of the Act, and the Council, if satisfied that the offence has been committed, could impose a financial penalty of up to £30,000 or pursue a prosecution in the Magistrates Court.

The restrictive covenant contained within the 27 March 1987 transfer deed between the Council and the developer of Moreall Meadows development states that the land cannot be used “for any purpose other than that of a private residence....”. Given the vague wording of the covenant, the Council would not be able to enforce it with regard to a HMO as the High Court ruled that a HMO falls within the definition of a “private residence” in *Roberts V Howlett [2002]*.

In any event, the transfers between the developer and the freeholders of the individual plots within Moreall Meadows development are between the developer

and the freeholder. The Council is not party to these individual agreements and therefore would be unable to enforce any restrictive covenant contained therein. The benefit of the restrictive covenant lies with the developer and therefore any enforcement would be the responsibility of the developer.

In law, it is the responsibility of the beneficiary of a restrictive covenant to enforce its particulars through the civil courts. Therefore, the existence of a restrictive covenant on the streets referred to in the petition could not be considered in either the issuing of HMO licences or planning permission where sought.

In considering the petition and the legal position outlined above, the Cabinet Member reiterated the Council's position in relation to HMOs and restrictive covenants. The Cabinet Member stated that work was currently underway on introducing an Article 4 Direction in Coventry and whilst once implemented, it would not be able to prevent new HMOs by itself, it would require small HMOs to apply for planning permission (currently planning permission is not required for small HMOs), thus allowing the Council to consider the application in light of local and national policies. And once licenced, the Council would be able to monitor and undertake enforcement action where necessary.

RESOLVED that the Cabinet Member having considered the report and the representations made at the meeting:

- 1. Considered the content of the petition and notes the concerns of the petitioners.**
- 2. Notes that the Council's Additional Licensing Scheme regulates the suitability of landlords and adds conditions to licences.**
- 3. Notes that officers carry out proactive and reactive visits to potential unlicensed and licensed HMOs in response to complaints made by residents and where necessary takes a robust approach to enforcement.**
- 4. Notes that officers are to bring forward options for implementing an Article 4 Direction and this work is currently underway.**
- 5. Notes that the existence of an HMO on Moreall Meadows estates is not a breach of the covenant and that because the Council is not a beneficiary of the covenant it cannot take any enforcement action against the freeholders with regard to the restrictive covenants' as detailed in Section 6 of the report.**
- 6. Notes the limitations of the Housing Act 2004 to refuse a HMO licence as detailed in para 1.2 of the report.**
- 7. Notes that as a result of recommendations 5 and 6 it is not possible to ban the licensing of all HMOs in Moreall Meadows estates**

33. **Outstanding Issues**

There were no outstanding issues.

34. **Any other item of public business which the Cabinet Member decides to take as matters of urgency because of the special circumstances involved**

There were no other items of business.

(Meeting closed at 3.35 pm)