
Cabinet Member for Housing and Communities

26 January 2022

Name of Cabinet Member:

Cabinet Member for Housing and Communities - Councillor D Welsh

Director Approving Submission of the report:

Director of Streetscene and Regulatory Services

Ward(s) affected:

No

Title: Petition for proposed ban on Houses in Multiple Occupancy (HMOs) in Moreall Meadows estates

Is this a key decision?

No

Executive Summary:

This report responds to a petition containing 137 signatures which was submitted to Coventry City Council on 7th September 2021. The petition is sponsored by Councillor M. Heaven, a Wainbody Ward Councillor and requests that the licensing of all Houses in Multiple Occupation (HMO) in the Moreall Meadows estates be banned.

The petition reads:

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

The petition provides a justification as follows:

The area already has a restrictive covenant that has been placed on the development area by the land deed agreement which was dated 27th March 1997 between David Wilson, developer and the private owners and Coventry Council. The tile number is 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.

Recommendations:

The Cabinet Member for Housing and Communities is recommended to:

1. Consider the content of the petition and note the concerns of the petitioners.
2. Note that the Council's Additional Licensing Scheme regulates the suitability of landlords and adds conditions to licences.
3. Note 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. Note that officers are to bring forward options for implementing an Article 4 Direction, and this work is currently underway.
5. Note 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. Note the limitations of the Housing Act 2004 to refuse a HMO licence as detailed in para 1.2 of the report
7. Note that as a result of recommendations 5 and 6 it is not possible to ban the licensing of all HMOs in the Moreall Meadows estates.

List of Appendices included:

None

Other useful background papers:

None

Has it been or will it be considered by Scrutiny?

No.

Has it been or will it be considered by any other Council Committee, Advisory Panel or other body?

No.

Will this report go to Council?

No.

Report title: Petition for proposed ban on HMOs in Moreall Meadows estates

1. Context (or background)

- 1.1 The licensing of HMOs is undertaken in accordance with the Housing Act 2004 legislation 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). In Coventry Additional Licensing came into force on the 4th May 2020. The Council has a duty to administer HMO licences under both schemes and when it receives an application for a licence it must either grant or refuse a licence.
- 1.2 When deciding whether to refuse or to grant a licence the Council must satisfy itself that, a) the property is reasonably suitable for occupation by the number of people being applied for based on the level of amenities and facilities present in the HMO i.e. if there is a suitable kitchen and adequate bathing and toilet facilities then the property is suitable to be licensed and b) where the licence holder and manager are considered to be “fit and proper persons” – in other if they have a criminal record or have breached certain provisions relating to housing or other landlord and tenant law. Where these “tests” are met then there is no basis within the legislation to refuse to licence and noting that the restrictive covenant does not have a bearing on this matter, such a ban could not be reasonably implemented.
- 1.3 In cases where the Council is satisfied that the property meets the requirements described above then it must grant a licence. The licence can include conditions requiring the licence holder and manager to comply with certain responsibilities and complete any specified work ensuring that the property is brought up to standard and maintained effectively. Where a person fails to licence a HMO he commits an offence under section 72(1) of the Housing Act 2004 which the Council, if satisfied that the offence has been committed may impose a financial penalty of up to £30,000 or pursue a prosecution in the magistrate’s court.
- 1.4 Where the Council is unable to grant the licence for an HMO then it may take over the management responsibility for the property until circumstances change and it can then be licensed. There are special rules that apply when a Council takes over the management of an HMO in this situation.
- 1.5 In case where landlords do not licence their HMOs then the Council will carry out enforcement activity to enforce the requirement to licence. This is a staged approach based on the seriousness of the case. There are a range of enforcement options available to the Council, including punitive measures such as higher licence fees for shorter licences, revoking licences, financial penalties and, in more serious cases prosecutions.
- 1.6 As a matter of last resort where an HMO remains unlicensed then the Council can take over control of the HMO by making an Interim Management Order (IMO). The effect of this order is that the Council becomes the manager of the HMO and ensures that standards of management and any necessary repairs are maintained.

- 1.7 Where a conversion of a dwelling to a large (i.e. housing six or more unrelated persons) HMO then planning permission is required, and assessed against local and national policies, especially Local Plan Policy H11. Conversion from a residential dwelling to a small HMO is a Permitted Development Right and therefore does not require planning permission.
- 1.8 Councillor Welsh, as Cabinet Member for Housing & Communities, stated in Full Council on 07 September 2021 that he had instructed officers to bring forward options for implementing an Article 4 Direction, and this work is currently underway. An Article 4 Direction removes Permitted Development Rights such as the one noted in para 1.4 above.
- 1.9 Once implemented an Article 4 Direction by itself does not prevent new HMOs. Instead, it requires small HMOs to apply for permission which would otherwise happen without planning permission being required. The application would then be judged against policies in local and national policy.
- 1.10 The Council met with 12 residents and Councillor Heaven on the 16th June 2021 at Moreall Meadows and discussed concerns regarding a number of matters around planning and HMO licensing.

2. Options considered and recommended proposal

- 2.1 The Cabinet Member could ask officers to implement a comprehensive ban on the licencing of HMOs in the area detailed in the petition. However, as mentioned earlier under the Housing Act 2004 where the Council receives an application for a HMO licence it only has an option to either grant or refuse a licence. It cannot prevent landlords from applying for licences or ban licensing of HMOs and it should encourage landlords to make applications so that they are complying with their legal responsibilities. This option is therefore not recommended.
- 2.2 The Cabinet Member could ask officers to enforce the restrictive covenants placed on the properties, however, as can be seen from the legal implications below the Council is not beneficiary of the covenant and therefore it does not have the ability to enforce the covenant against the developer or those using their properties as HMOs. This option is therefore not recommended.

The Cabinet Member is therefore recommended to note the petition and its justification and to conclude that it is not possible to implement the requested actions. However, given the Cabinet Member's direction for officers to bring forward proposals that would deliver an effective Article 4 Direction, the issues relating to HMOs raised in the petition will be considered as part of the detailed work required for the implementation of an article 4 direction.

3. Results of consultation undertaken

- 3.1 There is no statutory requirement to consult on the measures set out in this report.

4. Timetable for implementing this decision

- 4.1 There is no timetable for implementing this decision as no actions are recommended.

Comments from the Director of Finance and Director of Law and Governance

5. Financial implications

None

6. Legal implications

- 6.1 Section 64 of the Housing Act 2004 places a duty on the Council to either grant or refuse an HMO licence where an application for such a licence is made to the Council. Under Section 64 (2) & (3) the Council must grant a licence where it is satisfied that the house is reasonably suitable for occupation by not more than the maximum number of households being requested and that the persons involved in the licence and the management of the HMO are fit and proper persons.
- 6.2 If these tests of suitability are met, then 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.
- 6.3 Where a person fails to licence a HMO he commits an offence under section 72(1) of the Housing Act 2004 which the Council, if satisfied that the offence has been committed may impose a financial penalty of up to £30,000 or pursue a prosecution in the magistrate's court.
- 6.4 The assumption among the petitioners is that the transfer deed between the Council and the developer of Moreall Meadows contains covenants restricting each unit within the development for "use by a single-family" unit is incorrect.
- 6.5 The restrictive covenant contained within the 27 March 1987 transfer deed between the Council and the developer of the 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 an HMO as the High Court ruled that an HMO falls within the definition of a "private residence" in *Roberts V Howlett [2002]*.
- 6.6 In any event the transfers between the developer and the freeholders of the individual plots within the Moreall Meadows development are between the developer and the freeholder. The Council is not a 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.
- 6.7 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 detailed in the petition's justification could not be considered in either the issuing of HMO licences or planning permission where sought.

7 Other implications

None

7.1 How will this contribute to achievement of the Council's key objectives / corporate priorities (corporate plan/scorecard) / organisational blueprint / Local Area Agreement (or Coventry Sustainable Community Strategy)?

This report itself does not respond to any of the council key priorities or objectives within the One Coventry Corporate Plan.

7.2 How is risk being managed?

There are no risks associated with this report.

7.3 What is the impact on the organisation?

There is no direct impact on the organisation.

7.4 Equalities / EIA

A full Equality and Impact Assessment (ECA) was undertaken as part of developing the Additional Licensing scheme and the Local Plan. As part of that analysis, the Council had due regard to its public sector equality duty under section 149 of the Equality Act (2010).

7.5 Implications for (or impact on) climate change and the environment

There are no implications identified

7.6 Implications for partner organisations?

There are no implications identified.

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