

Decision by Portfolio Holder



Report reference: HCS-000-2020/21

Date of report: 22 June 2020

**Epping Forest
District Council**

Portfolio: Housing & Community Services – Councillor H Whitbread

Author: Rachel Smith (Ext2710) Democratic Services: J Leither

Subject: Small-Scale Care Facility – Variation of Restrictive Covenant.

Decision:

1. That an agreement is entered into between the freeholder / owner of 30 Buxton Road, Waltham Abbey and the Council, varying the restrictive covenant to grant permission for either its current use or as a small-scale care facility (Children's Home), rather than releasing the covenant in full, ensuring that the Council maintains control over any future changes of use to the property; subject to the following conditions being met:
 - (a) 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;
 - (b) That the agreement be terminated if there are any justified complaints from the local community;
 - (c) That the Council's reasonable legal and management fees relating to the execution of the agreement are met by the owner;
 - (d) That Planning Permission is granted for use as a small-scale care facility.
 - (e) That the Director of Property & Housing is satisfied that the small-scale care facility has the relevant licences in place related to its operation.
 - (f) That the Director of Housing has no reasons why the Council should not vary the covenant.

ADVISORY NOTICE:	
<i>A Portfolio Holder may not take a decision on a matter on which he/she has declared a Pecuniary interest. A Portfolio Holder with a non-pecuniary interest must declare that interest when exercising delegated powers.</i>	
I have read and approve/ do not approve (delete as appropriate) the above decision:	
Comments/further action required: None	
Signed: Councillor H Whitbread	Date: 1 st July 2020
<i>Non-pecuniary interest declared by Portfolio Holder/ conflict of non-pecuniary interest declared by any other consulted Cabinet Member:</i>	<i>Dispensation granted by Standards Committee: Yes/No or n/a</i>
None	N/A
Office use only: Call-in period begins: 2 nd July 2020	Expiry of Call-in period: 9 th July 2020

After completion, one copy of this pro forma should be returned to Democratic Services IMMEDIATELY

Reason for decision:

To allow the owner/freeholder of a former Council property to use the property for either its current use or as small-scale care facility (a Children’s Home).

Options considered and rejected:

1. Not to vary the restrictive covenant and not enter into an agreement granting permission for the property to be used as a small-scale care facility (a Children’s Home)
2. To release the restrictive covenant.

Background Report:

1. The owner/freeholder of a former Council property, 30 Buxton Road, Waltham Abbey, has opened a business from the dwelling house, changing its use from a single family accommodation dwelling, to a small scale care facility, providing care and accommodation for up to three children with emotional and behavioural difficulties between the ages of 5-18 years, without the Council’s permission which is required under a restrictive covenant included in the sale agreement.
2. The property is a three-bedroom semi-detached house, sold under the right to buy scheme in 1990. A location plan is attached as an appendix to the report.
3. The terms of the restrictive covenant are as follows: *“Not to trade or carry on business upon the Premise or any part thereof, nor use the same otherwise than as a private dwelling house for single family occupation”*.

<p>Initialed as original copy by Portfolio Holder:</p>

4. The owner/freeholder of the property was not aware of the restrictive covenant until the Council wrote to him and has since applied to release or vary the restrictive covenant, to allow him to run a small care facility from the Premises.
5. It is the intention of Lavender Groves Care to provide a home to three young people between the ages of 5 and 18 years old with social, emotional and complex needs. Lavender Groves Care states that their aim is to provide *“children and young people with the kind of parental support, attention and stability of which they may have had limited experience. Their circumstances have led to trauma and trauma led behaviours; difficulties in regulating their emotions, understanding social cues and often their self-esteem and confidence. We aim to give them security so they can stay ‘still’ and feel safe, so they can feel cared for and understand that Lavender Grove Cares will not ‘give up’ wanting the very best for them”*.
6. The small-scale care facility has been registered as Lavender Groves Care, and formally registered as an Ofsted Registered Provider on 21st April 2020 (Ofsted Certificate of Registration No. 256 9520). The Ofsted certificate of registration stipulates that *“the registered person may provide care and accommodation for children with emotional and/or behavioural difficulties”*. Further, *“that it is an offence for a registered person not to comply with the conditions of registration, without reasonable excuse”*. It is understood that as young people are placed at the facility, the facility will be visited by a social worker and Essex County Council will monitor and visit as needed.
7. The owner/freeholder made an application for a Lawful Development Certificate, related to the proposed use of dwelling house (C3 use), for use as a small-scale care facility use class C3(b), which was granted on 1st November 2019 (EPF/1930/19 CLD). In deciding whether to grant the certificate or lawfulness, the Planning Officer noted *“that the layout of the property is largely what one would expect of any family home with a communal lounge, kitchen and garden area. The level of noise arising from the proposal would not be any different to the level achieved if the property was used as a typical family house. Based on the supporting documentation and plans submitted, the proposal would fall within the confines of use class C3 (b). The purpose of the carers is largely to assist the residents in day to day tasks as opposed to undertaking those tasks themselves on behalf of the residents, akin to ‘supported living’. There is no adaptation required to use this as a residential children’s home. The home will have similar footfall as a normal residential property”*.
8. The facility started taking residents around April 2020, and between 14th May 2020 and 8th June 2020, it is understood that Essex Police have responded to seven separate incidents involving the welfare of residents living at the new facility. Further, the Council has heard from local residents who are not supportive of the change of use. Mindful of the specific needs of the client group being supported, residents are concerned about safety and potential nuisance / anti-social behaviour. Whilst residents suggest that there has been an increase in noise levels associated with the facility, no formal complaints have been received by the Council and therefore this remains unsubstantiated.
9. Lavender Groves Cares has provided the Council with a copy of its Behaviour Management Policy and Location Risk Assessment, demonstrating its commitment to managing the behaviour of its residents. The Freeholder has explained how he has responded to initial concerns raised around elevated noise levels and his commitment toward the local community.

10. 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 a small scale care facility, 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 and parking stress. It will be made clear in the agreement that if there are justified complaints from the local community or partner agencies, the agreement will be terminated.

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

Resource Implications:

No resource implications, as due to case law there is no financial value for the variation of the covenant. The owner will be required to pay all the Council's reasonable legal and management fees.

Legal and Governance Implications:

Housing Act 1985, Housing Act 2004, The Management of Houses in Multiple Occupation (England) Regulations, the Care Standards Act 2000, The Children and Families Act 2014 and the Children's Homes (England) Regulations 2015.

Cabinet Decision, Restrictive Covenants – Houses in Multiple Occupation of 12.09.11(C-002-2011/12 refers).

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:

None

Background Papers: N/A

Impact Assessments:

Risk Management:

Key Decision Reference (Y/N): No

Equality Analysis:

The Equality Act 2010 requires that the Public Sector Equality Duty is actively applied in decision-making. This means that the equality information provided to accompany this report is essential reading for all members involved in the consideration of this report. The equality information is provided as an Appendix to the report.