

DEVELOPMENT CONTROL COMMITTEE – 7 MAY 2020

ITEM 4 – PUBLIC PARTICIPATION – QUESTIONS

Question Received from Mr A Herman

In respect of Enforcement and planning appeals;

In relation to 5 Rowton Heath investigations at the property had been historically instigated and closed since 2012, however it is not conclusive why previous action was not taken. The latest investigation in 2018 indicated that the property was still being used as a HMO without planning permission. On reviewing the site history it became apparent that although the property had been used as a HMO for a significant period of time there had been a retrospective application refused in April 2010 for a Sui generis HMO and there was allegedly still a breach of planning control.

Although no action had been taken by previous enforcement teams it was not because the use was considered to be immune from action. On this basis we were satisfied that the use did not have planning permission and was unauthorised. Therefore on the basis that the alleged Sui Generis use was refused within the ten years for taking action, and that there was an existing breach of planning control, and we had received reports the HMO was still continuing and causing nuisance, it considered to be expedient to pursue further action.

A Planning Inspector recently allowed a planning appeal for the change of use to an HMO at 52 Bossiney Place in Fishermead. In his decision letter, the Inspector highlighted that the Council used the wrong buffer for HMO concentrations in its evidence and it also failed to respond to his request for comments on the appellant's evidence. Why did the Council use the wrong buffer and why did the Council not respond to the Inspector's request for comments on the appellant's evidence

RESPONSE

As standard for the written representation procedure, the Case Officer submitted a copy of the delegated report, the Decision Notice and a list of suggested conditions as the Council's statement of case. It should be noted that PINS state that post the final comments deadline on the 4th February, no new evidence is allowed at that stage. All PINS deadlines were met by the Case Officer.

However, on the 13.02.2020 PINS emailed the generic appeals inbox requesting policy documents and comments on 5 specific paragraphs of the appellant's statement of case. On the 14.02.2020 the Technical Support Unit Officer forwarded the email onto the Planning Policy Officer for response to the policy documents, but omitted to note the final paragraph of the email regarding the request for comment on the appellant's statement of case.

These paragraphs (5.13 – 5.17) referred to the Council's analysis of the HMO concentration and the appellants suggested inaccuracies in the Council's figures. They based this on findings on house move websites and by arguing the exact siting of the analysis calculation radius area.

Section 7 of the Council's delegated report sets out the calculation for the HMO concentration in relation to the application property. It breaks down the total number of houses, flats etc of HMOs in the area but not the specific addresses of the properties. The Planning department work closely with the licensing department to ensure that the Council have an up to date list of HMOs that are

licensed and unlicensed across the borough. This is more accurate and reliable to what is stated on property adverts online. Also in accordance with policy both licensed and unlicensed HMOs are included in the calculation of concentration levels of HMOs. Therefore if comment was provided to PINS on the appellant's calculations and analysis, as requested, the Council would simply have referred to what was already set in the delegated report and policy documents that had previously been provided to PINS.

In this instance, the Case Officer was not made aware of the email and the request for comment on the appellant's statement of case, and although the TSU Officer was trying to help by sourcing the policy documents and responding to PINS, unfortunately this resulted in something being missed.

The appeal has been allowed. With regard to the HMO concentration analysis the Inspector concludes that, 'there is no substantive evidence to demonstrate that the proposal would result in an over concentration of HMOs within the area.....The evidence puts the figure at between 31-47% but this is within a smaller 50m radius. Nevertheless, it is agreed by the main parties that within 50m of the site a maximum of 3 HMOS have been identified. Therefore, I am satisfied that given this relatively low number an undue concentration of such properties would not result'. Therefore the Inspector considers the HMO acceptable at both the appellants and Council's HMO analysis calculation outcome. Furthermore, if the radius was extended to 100m, the concentration of HMOs reduces further to 39% (at a 50m radius the Council calculated the concentration at 47%). This is still within the 31-47% figure that PINS considers acceptable in this case. Therefore it would be concluded that despite no response being provided to the further email request from PINS, we consider that the outcome of the appeal would likely have remained the same.

As a result of this situation TSU Officers have been instructed that future requests received from PINS must be reviewed by the planning case officer before any response is sent.