Complaint by Mr Paul Cox against Warwick District Council

Report on Investigation

Warwickshire Legal Services
Warwickshire County Council
Shire Hall
Warwick
CV34 4RL

1. Introduction

1.1 This report relates to a complaint made by Mr Paul Cox to Warwick District Council ("the Council") in respect of the grant of planning permission for development at 10 Newgale Walk, Leamington Spa (the "Planning Permission"). The development consists of a change of use of a property at 10 Newgale Walk, Leamington Spa from use as a single dwelling house to a four bedroom house in multiple occupation ("HMO").

1.2 On 20 December 2016 I was instructed to investigate this matter by the Council in accordance with Stage 2 of its Corporate Complaints Procedure. Helpfully, Mr Cox had already set out a summary of his complaint in an email to the Council of the same date. The summary is as follows;

1. You failed to follow Council policy (the Article 4 direction) and failed to give due weight to the reasons the Council enacted that policy i.e that HMO's are inherently problematic and therefore, by definition, not like family homes. This is perverse.

2. You have created your own unofficial "policy" which runs counter to Council policy i.e. because there were no objections to this application, you decided to apply your own 'made-up' criteria without any evidence to support them i.e. (a) that an HMO is "little different" to a family home and (b) that an action which breaches the '10% rule' by 50% is okay. This is unjustifiable.

3. You have created a Catch-22 situation for local residents, in that you have a process which is determined by whether you receive objections yet deny residents the information they need to consider whether objections are justified under the Article 4 direction - specifically, withholding the details of where unlicensed HMO's (i.e. the overwhelming majority of HMO's) are located. This is unfair and unreasonable. Whilst Data Protection is cited as the reason, the release of simply the addresses of the unlicensed HMO's and the number of tenants they house would deal with the data protection issue and give residents the information they need to consider an objection.

4. You failed to consider 3. (above) as a significant reason for why there may have been no objections in this specific case. (How can I, or anyone else, consider objecting if I don't know where most of the HMO's in Sydenham are?) You also disregarded the very well-known concerns of residents about the proliferation and impact of HMO's. You

therefore reached the unreasonable and contrary conclusion that there was "no sense of concern."

1.3 I subsequently spoke with Mr Cox on the telephone on 13 January 2017 and agreed to investigate the complaint on the basis of this email, in addition to one other ground of complaint raised initially by Mr Nick Bond in an email to the Council dated 1 January 2017.

1.4 The additional ground of complaint raised by Mr Bond is that a representation made by Leamington Town Council was not taken into account, because it arrived after the Planning Permission was issued. It is alleged that this is because the Town Council was not advised that there would be any difficulty in submitting its representation on 9 December, after its meeting on 8 December. It is suggested that if the Town Council had been made aware that this would have been too late, it would have made arrangements for its representation to have been submitted earlier.

1.5 I also agreed to take into consideration other comments made by Mr Bond in his email of 1 January 2017, which largely support and expand upon the complaint of Mr Cox, particularly in relation to Grounds (1) and (2).

1.6 As part of my investigation, in addition to speaking with the Complainant on the telephone, I held separate meetings with Mr Andrew Jones (WDC Deputy Chief Executive and Monitoring Officer), Mr Gary Fisher (WDC Development Control Manager) and Mrs Tracy Darke (WDC Head of Development Services). I corresponded with Mr Paul Hughes (WDC Private Sector Housing Officer) by email in respect of Ground 3 and spoke with Graham Leach (Democratic Services Manager & Deputy Monitoring Officer), also in respect of Ground 3. The Case Officer is no longer employed by the Council and so it has not been possible for me to speak with him.

1.7 Before dealing with the individual grounds of complaint, it is perhaps helpful to summarise the basis upon which the Council must determine applications for planning permission.

1.8 In dealing with any application for planning permission the Council, as local planning authority, is required to have regard to the provisions of its “Development Plan” so far as

it is material to the application. Further, the determination must be made in accordance with the Development Plan unless "material considerations" indicate otherwise.

1.9 "Material considerations" are matters which relate to development and the use of land. They can include, but are not limited to, matters such as parking, highway safety, noise and loss of light. Examples of considerations that are not usually material to planning include loss of property value or private disputes between neighbours. Importantly, for the purposes of this report, emerging policies in a *draft* local plan are capable of being material considerations.

1.10 Case law has established that a local planning authority must interpret its planning policies correctly, and it must also determine;

(a) whether the individual material policies support or count against the proposed development, or whether the development is consistent or inconsistent with them and;

(b) whether or not the proposed development is in accordance with the development plan as a whole.

1.11 Against that background, I set out my findings and conclusions below in the order in which they appear in Mr Cox's email.

2. **Ground 1.**

"You failed to follow Council policy (the Article 4 direction) and failed to give due weight to the reasons the Council enacted that policy i.e that HMO's are inherently problematic and therefore, by definition, not like family homes. This is perverse".

2.1 Mr Cox's reference to the "Article 4 Direction" means Article 4 of the General Permitted Development Order 2015 ("the "GPDO").

2.2 The GPDO is national legislation which effectively grants planning permission for certain forms of development which would otherwise require express planning permission from the Council.

2.3 Article 4 of the GPDO enables the Local Planning Authority ("LPA") to stipulate that certain classes of development will require express planning permission notwithstanding the permission granted by the GPDO. Effectively, it allows the Council to regain local control over certain forms of development where it is satisfied that it is expedient for it to do so.

2.4 Change of use of a building from use as a single dwelling house to use as a small house in multiple occupation[1] is one of the classes of permitted development granted planning permission by the GPDO[2]. Consequently, such changes of use do not normally require an application to be made to the LPA.

2.5 On 25 March 2011 Warwick District Council made an Article 4 Direction ("the Direction") in respect of changes of use of single dwelling houses to small houses in multiple occupation. As a consequence of the Direction, such changes of use now require express planning permission from the Council.

2.6 The Direction is not planning policy. Its sole effect is to require that changes of use from dwelling houses to small HMOs are subject to a planning application to the Council. It does not have any impact on how those applications are to be determined. Therefore, to the extent that the complaint is that the Council failed to follow the Direction "as policy", it is misconceived.

2.7 However, as Mr Cox clarified on the telephone, at the heart of this ground of complaint is the suggestion that the Council made the Direction because it considered that HMOs are inherently more likely to give rise to adverse impacts such as increased noise, litter and anti-social behaviour than family homes. It is alleged that the grant of the Planning Permission and, more particularly, the Council's reasons for granting permission in this instance, represents a departure from, and is inconsistent with, the Council's previously expressed views on the impact of HMOs.

2.8 Put simply, this ground of complaint is that the Council failed to have regard to the views it adopted when making the Direction, i.e. that HMOs are inherently more likely to give rise to adverse effects that harm local amenity than single dwelling houses. Instead, it is

[1] A House in Multiple Occupation with no more than six residents.
[2] Town and Country Planning (General Permitted Development) (England) Order 2015/596 Schedule 2 Part 3 Class L

suggested that the Council has now adopted a different view, i.e. that HMOs have no adverse impact on amenity beyond that of a family home. The complainant is concerned that this sets a precedent for the way such applications will be dealt with in future.

2.9 In terms of the reasons for making the Direction, the Council's web site states that;

Most HMOs in the District are small shared houses occupied by up to 6 people. They are concentrated in certain parts of Leamington Spa and these concentrations have lead (sic) to issues such as pressures on parking, noise, increased crime and a decline in the more settled population. Whilst the Council accepts that HMOs play an important role in providing low cost housing, particularly for young people, it wishes to ensure that HMOs are more evenly dispersed throughout the town.

2.10 On 26 January 2011 the Council took a report to its Executive Committee, which decided to make the Direction. The report stated that;

A concentration of HMOs can harm residential amenity, particularly by way of increased noise nuisance, anti-social behaviour, incidences of crime and adverse impacts on the physical environment. This is largely due to:

• an imbalance in the mix of the population with higher proportions of young, single people living student lifestyles, and
• a high proportion of privately rented accommodation with short-term lets where the standards of upkeep of the property are generally lower.

Research by Officers shows that there is clear evidence of harm to local amenity where student accommodation is concentrated. This research is documented in the report attached as Appendix 1.3.6 It should be noted that an Article 4 Direction does not prevent the development to which it applies, but instead requires that planning permission is first obtained from the local planning authority. In the case of Leamington Spa, an Article 4 Direction will enable the authority to prevent existing concentrations from worsening and prevent new concentrations forming in other areas.

(my emphasis)

2.11 The report expresses the Council's concern that concentrations of HMOs may cause cumulative harm and unbalanced communities. It makes clear that the Direction does not prevent new HMOs, but has the effect that they will require planning permission from the Council.

2.12 Turning now to the Officer's Report, in respect of likely harm to amenity, it states;

It is not envisaged that a four bedroom HMO is likely to generate significantly more noise than the existing house. Consequently, it is contended that allowing it to be so used is unlikely to harm the amenities of neighbouring residents.

2.13 The report does not make any reference to the Direction. As it is not planning policy there is no requirement for it to do so. Further, in my view, there is no necessary inconsistency between the conclusion as to harm reached in the Officer's Report, in relation to a proposal for a particular HMO, and the making of the Direction.

2.14 This is because the objective of the Direction is to avoid harmful concentrations of HMOS, which may have cumulative adverse effects. However, it is conceivable that there will be circumstances in which a proposed HMO will not, in fact, cause more harm to local amenity than a dwelling house, or add unacceptably to the cumulative impacts of HMOs in the vicinity. This will depend on the particular facts of the case.

2.15 That is not to say that the conclusions as to the likely harm to amenity in respect of 10 Newgale Walk are correct. This is a planning judgement for the Council on which I am unable to comment. However, as a matter of law, the Council is not bound to conclude that every HMO will give rise to increased harm to local amenity simply because of the making of the Direction.

2.16 Further, the Council is not bound to have regard to the reasoning behind the making of the Direction when determining individual planning applications. That reasoning may not be applicable to specific planning applications submitted after the making of the Direction. Each planning application must be treated on its merits.

2.17 In conclusion on this ground;

(a) The Direction is not Planning Policy to which the Council must have regard when determining individual planning applications;

(b) The making of the Direction does not mean that the Council *must* conclude that every change of use from a dwelling house to a small HMO will cause harm to amenity. This is a something that must be determined on the facts pertaining to individual applications;

(c) there is no necessary inconsistency between the Case Officer's conclusion that this particular HMO would not cause unacceptable harm to amenity and the reasons for making the Direction;

(d) The complaint on Ground 1 is not upheld.

3. **Ground 2.**

"You have created your own unofficial "policy" which runs counter to Council policy i.e. because there were no objections to this application, you decided to apply your own 'made-up' criteria without any evidence to support them i.e. (a) that an HMO is "little different" to a family home and (b) that an action which breaches the '10% rule' by 50% is okay. This is unjustifiable".

3.1 The only official policy that the Council has in relation to HMOs is Policy (H6) in the Council's *emerging* Local Plan ("ELP").

3.2 How much weight is to be attached to policy in an ELP will vary, and will depend on factors such as what stage the plan has reached in the adoption process and the level of objection to the particular policy during the consultation stage.

3.3 The Council's ELP has undergone examination by the Secretary of State in a Public Inquiry and is likely to be adopted before the summer, subject to modifications to be made at the request of the Planning Inspector.

3.4 Consequently, it is accepted by Mrs Darke and Mr Fisher that the HMO Policy in the ELP is uncontentious, and almost certain to form part of the new Local Plan. Therefore, they are both of the view that emerging Policy H6 should be afforded significant weight in the decision making process.

3.5 Policy H6 states that Planning Permission will only be granted for Houses in Multiple Occupation, including student accommodation, where:

(a) the proportion of dwelling units in multiple occupation (including the proposal) within a 100 metre radius of the application site does not exceed 10% of total dwelling units;

(b) the application site is within 400 metres walking distance of a bus stop;

(c) the proposal does not result in a non-HMO dwelling being sandwiched between 2HMO's;

(d) the proposal does not lead to a continuous frontage of 3 or more HMOs; and

(e) adequate provision is made for the storage of refuse containers whereby the containers are not visible from an area accessible by the general public, and the containers can be moved to the collection point along an external route only

3.6 The Officer's report acknowledges that criterion (a) would not be met but, at the same time, expresses the view that the application would meet the requirements of the policy. It says;

Policy H6 of the Emerging Local Plan relates to proposals for Houses in Multiple Occupation. It is considered that this proposal will essentially meet the requirements of this policy for the following reasons:-

Whilst slightly more than 10% of the dwelling units within a 100 metre radius of these premises will be in use as an HMO if this application is approved this figure will not be greatly exceeded. In those circumstances the figure will be approximately 15%.....

The proposal is considered to be in accordance with the requirements of…..Policy H6 of the emerging Warwick District Local Plan 2011 – 2029

(my emphasis)

3.7 In fact, given the Council's conclusion that granting the application would result in more than 10% of the properties within a 100m radius of the application premises being in use as HMOs, the application is plainly not in accordance with emerging Policy H6.

3.8 Both Mrs Darke and Mr Fisher agreed that the proposal is not in accordance with emerging Policy H6. They both also confirmed that there is no "unofficial policy" to the effect that HMOs should be treated as "little different to family homes" or that it is "okay" to breach the emerging policy.

3.9 Mr Fisher, the supervising officer who checked and signed off the report, acknowledged that, with the benefit of hindsight, the report should have been drafted so as to make it clear that the application was not in accordance with the emerging policy.

3.10 However, Mr Fisher's view is that the Case Officer was aware of the breach of emerging policy H6, but decided that departure from it was justified by his view that the proposal was unlikely to cause any additional harm to local amenity. Whilst the report should have been clearer as to the breach of emerging Policy H6, Mr Fisher is of the view this is down to poor drafting rather the Case Officer misdirecting himself as to the meaning of the policy.

3.11 Mrs Darke and Mr Fisher both expressed the view that each case must be treated on its merits and that, whilst Policy H6 will be the starting point for HMO applications, there will be cases where the likely harm of a proposal will mean that it should be refused even though it does not breach emerging policy H6. Equally, they take the view that there will be cases where it is appropriate to grant planning permission even though Policy H6 is breached, either because it can be demonstrated that the proposal would not add to the potential cumulative harm of HMOs in the area, or because any potential harm is outweighed by other material considerations specific to a particular development.

3.12 In my view, it is correct to say that (even when it becomes adopted policy) there is no absolute "10% Rule", in the sense that there may be instances where other material considerations mean that it is appropriate to grant planning permission, even though the development is not strictly in accordance with the policy. For example, it may be either that a particular development is not considered to add to the cumulative impact of HMOs in the area, or that any harm is outweighed by other material considerations specific to the development.

3.13 Having said this, the Council has decided, as a matter of policy, that concentrations of HMOs above 10% in a 100m radius are to be avoided due to the likely cumulative adverse effects of such concentrations and this must be given weight in the decision making process. The explanatory text to emerging policy H6 sheds some light on what these cumulative impacts may be;

> *One of the main problems for more settled residents living in these areas is the anti-social behaviour in the streets in the early hours of the morning as young people return from the pubs and clubs, often on mid-week mornings. Other issues include noise from neighbouring properties, poor attendance to waste storage, increased burglaries, increased street parking and poor property maintenance*

3.14 This being the case, it would have helped local residents to understand the Officer's decision had his report contained a fuller explanation of why he considered that this particular HMO would not add to these cumulative impacts and should be treated as an exception to the policy. This could, perhaps, have been done through an analysis of reported issues in the vicinity of the proposal, the way in which the HMO was to be run, or proposed mitigation or control measures.

3.15 For example, whilst the officer concludes that "amenities" would not be harmed, the only specific type of harm to amenity directly addressed in the report (save for parking) is the potential harm arising from noise, in respect of which the report says only that "it is not envisaged" that the proposal will generate significantly more noise than the existing use as a family home. No further explanation is given for this conclusion, and what it does not appear to address is the potential cumulative impacts (anticipated by emerging Policy H6) of a 15% concentration of HMOs, in addition to the potential impact of this development taken in isolation.

3.16 If the Council has accepted that concentrations above the level of 10% in a 100m radius should normally be refused due to their cumulative adverse impact, then, in my view, the reasons for allowing that concentration to be exceeded in this case should, ideally, have been subject to fuller explanation and justification.

3.17 In summary, planning applications must be determined in accordance with the local plan unless material considerations indicate otherwise. Consequently, (once H6 becomes adopted policy) the correct approach would seem to be;

(a) for the Council to decide whether or not the application is in accordance with Policy H6 and the development plan as a whole and;

(b) if it finds that it is not in accordance with the development plan, then it must it then go on to consider other material considerations and decide whether they are sufficient to justify a departure from the development plan in all the circumstances of the case. If they are not, then the application should be determined in accordance with the development plan and refused.

3.18 In this case, in terms of (a), it is accepted that the application was not in accordance with Policy H6. The Officer's Report ought to have made this clear and, given the weight to be attributed to the emerging policy, gone on to provide a clearer and more detailed justification for departing from it.

3.19 In conclusion on this Ground;

(a) The Officers Report is incorrect in stating that the application is in accordance with emerging Policy H6;

(b) It was open to the Case Officer to legitimately conclude that other material considerations justified a departure from emerging policy H6 in the particular circumstances of the application;

(c) However, the officer's reasons for departing from emerging Policy H6 should have been fuller and clearer. In particular, given that the HMO would have resulted in a concentration of HMOs in excess of that set out in emerging Policy H6, the Report should have explained why it was considered unlikely that this HMO would add to the cumulative impact of the HMOs already in the vicinity;

(d) There is no evidence to suggest that the officer was of the view that it would always be "okay" to exceed the "10% Rule" or that the Council has an unofficial policy to the effect that HMOs have similar impacts to family homes;

(e) The complaint on Ground 2 is upheld to the extent that the Officer's Report states that the application would comply with emerging Policy H6 when in fact it would not, and on the basis that the justification for departing from the emerging policy should have been expressed clearly and in more detail.

4. **Ground 3**

"You have created a Catch-22 situation for local residents, in that you have a process which is determined by whether you receive objections yet deny residents the information they need to consider whether objections are justified under the Article 4 direction - specifically, withholding the details of where unlicensed HMO's (i.e. the overwhelming majority of HMO's) are located. This is unfair and unreasonable. Whilst Data Protection is cited as the reason, the release of simply the addresses of the unlicensed HMO's and the number of tenants they house would deal with the data protection issue and give residents the information they need to consider an objection."

4.1 During our telephone discussion, Mr Cox confirmed that he has not made a formal request for disclosure of information held by the Council in respect of HMOs. However, he has been made aware that Warwick District Councillors have been given a list of unlicensed HMOs in the District. When asked to provide the list to members of the public, Councillors are said to have advised that it cannot be disclosed due to restrictions in the Data Protection Act 1998.

4.2 Mr Cox confirmed that he has no interest in the disclosure of particular landlords' or tenants' details. He and other local residents would simply like to be able to ascertain how many unlicensed HMOs there are in a particular area, for the purposes of determining whether planning applications are in accordance with emerging Policy H6.

4.3 In respect of this ground of complaint, I spoke with Paul Hughes (WDC Private Sector Housing Officer) and Graham Leach (WDC Committee Services Officer).

4.4 Mr Hughes confirmed that there is no duty on landlords of non-licensable HMOs to notify the local authority of their existence. He stated that the Council has had many requests from Councillors and the general public to disclose details of all HMOs. However, the internal advice from Mr Leach (given on the basis of the Council's legal advice) was not to disclose the list of unlicensed HMOs due to the fact that it contained personal data, such that disclosure would breach restrictions in the Data Protection Act.

4.5 However, it was agreed that some lists and maps specific to certain electoral wards could be provided to Councillors of those wards, on the understanding that they did not make the information public.

4.6 Mr Leach has confirmed that the effect of the advice is that it may be possible to disclose the list whilst redacting personal data.

4.7 Mrs Darke acknowledges that it would be helpful if residents could be provided with some information on the number of HMOs within the vicinity of a proposed development. She confirmed that it is the Council's intention to publish information in relation to whether the "10%" element of Policy H6 would be infringed at an early stage in the application process, in order to give the public an opportunity to comment.

4.8 I accept that it won't be possible for the Council to disclose a list of unlicensed HMOs which the Council believe to be in a particular area where that list contains personal data. However, where such information is held, it may be possible for the Council to provide a redacted list containing only the locations of HMOs in a particular vicinity.

4.9 In conclusion on this ground;

(a) the decision to refuse to disclose the information held as to the locations of unlicensed HMOs was based upon reasonable concerns about the protection of personal data;

(b) however, it appears that there may be ways of assisting residents in obtaining sufficient information for them to be in a position to make fully informed representations on planning applications. This may be possible either through the planning process (as suggested by Mrs Darke) or by the disclosure, in suitably redacted form, of information held by the Council as to the location of unlicensed HMOs.

(c) This ground of complaint is not upheld, but the disclosure of the location of unlicensed HMOs should be subject to a review by the Council with the objective of providing local residents with the required information where it is legally possible to do so.

5. **Ground 4**

"You failed to consider 3. (above) as a significant reason for why there may have been no objections in this specific case. (How can I, or anyone else, consider objecting if I don't know where most of the HMO's in Sydenham are?) You also disregarded the very well-known concerns of residents about the proliferation and impact of HMO's. You therefore reached the unreasonable and contrary conclusion that there was "no sense of concern."

5.1 The Officer's Report makes no reference to public objections to the Application, save for saying "None" under the heading of "Public Response". The Case Officer makes no comment in relation to the existence, or non-existence, of a "general sense of concern" about HMOs. As I have been unable to speak to the Case Officer, it is not possible for me to draw a conclusion as to what weight, if any, he attached to the lack of public response to the application.

5.2 Mrs Darke, in an email to the complainant dated 18 December 2016, advised that;

We often find that on HMO applications where there is significant concern, we are usually inundated with objections very early on in the process (and on some occasions even before the application hits our desk). We had no sense of concern on this particular application, and so the officer made his assessment balancing it against the policy and the lack of objection at that time.

5.3 Mr Cox is of the view that the Council should have considered the fact that the list was unavailable to local residents as an explanation for the seeming lack of concern about the application.

5.4 However, there is no suggestion that the planning application was not publicised in accordance with the statutory requirements, and the Case Officer is entitled to rely on the responses to the statutory consultation without being obliged to investigate the reasons for a lack of responses.

5.5 I can draw no conclusion in respect of whether there would have been more representations had it been widely known that it would have resulted in a breach of emerging policy H6.

5.6 The other element to this ground of complaint is that the Council disregarded the "well known concerns of residents about the proliferation of HMOs".

5.7 Mrs Darke has stated that her view that there was "no general sense of concern" was expressed against the background of other applications for HMOs where there have been a significant number of objections, and that it was not intended to dismiss general concerns over the number of HMOs in the District. However, her view is that this general concern is not a matter to be dealt with at the level of individual applications, but at policy level.

5.8 I agree with this view, to the extent that generally expressed concerns cannot be treated as a "standing objection" to each individual application for an HMO. Officers' Reports on specific planning applications are not all required to refer to the fact that unspecified general concerns have been expressed about the number of HMOs in the District.

5.9 Rather, the Council's response to the "sense of general concern" has been the introduction of emerging policy H6 and the making of the Direction. This has resulted in changes of use from single dwelling houses to small HMOs falling under the control of the Council, and means that those applications must take account of the cumulative impact of HMOs in the area.

5.10 In conclusion on Ground 4;

(a) The Case Officer was not obliged to go behind the reasons for the lack of objections to the applications provided that the statutory consultation had taken place;

(b) A "general level of concern" about the number of HMOs in the District, without further specificity, is not something that had to be expressly referred to in the Case Officer's report;

(c) This Ground of complaint is not upheld.

6. **Ground 5**

6.1 In summary, this ground of complaint is that the Town Council objection was not taken into account because it arrived at the Council after the decision was made. The Town

Council has previously advised the Case Officer that it would not be in a position to respond to the complaint until 9 December, and had not been advised that this would present any difficulties. It is suggested that a response should have been sent to the Town Council to enable it to make arrangements to submit its response sooner, or alternatively that the decision should have been delayed until the response had been considered.

6.2 On 16 November 2016 an email was sent by Katherine Geddes, Democratic Support Officer at Leamington Spa Town Council to the Case Officer. The email states;

"Dear Ian

The above application arrived too late to be included for discussion at the Planning Meeting due on Wednesday 16 November. It will now be discussed on Thursday 8 December 2016.
I should be grateful if you would note your records accordingly."

6.3 No reply was sent to this email, and Mr Fisher and Mrs Darke confirmed that the Case Officer sent his report to Mr Fisher for checking on 6 December. The Decision was subsequently published on 9 December without further reference to the Town Council.

6.4 On 12 December, the Town Council sent a further email to the Case Officer ;

"Good morning Ian,

I was very surprised to see the town council's comments had not been shown on this decision. I informed you as below that the town council could not consider the application until the 8th December as it arrived too late for the November meeting. I entered a "no objection subject to not breaking the 10% rule" on Friday 9th December. This is not showing on the portal despite me being able to enter comments on Friday.
You did not inform me that submitting comments after the 6th December would be a problem – if you had, I would have tried to contact my members about it urgently. Please let me know that the 10% rule has not been breached here."

6.5 The Council has statutory targets for the time period in which it determines planning applications, and it must not determine the application until the statutory consultation period has expired. However, the Council is not obliged to contact consultees to chase

them should no response be received within the statutory period. It is the responsibility of the Town Council to ensure that it has internal arrangements in place to ensure that it can respond to planning applications in a timely manner.

6.6 However, on this occasion, the Town Council explicitly advised the Case Officer that it was not in a position to respond by the 9 December deadline. In these circumstances, it was reasonable for it to expect a response from the Case Officer in the event that he intended to publish the decision before then. Mrs Darke and Mr Fisher agreed that a response should have been sent to the Town Council before the decision was issued.

6.7 In conclusion on Ground 5;

(a) The Case Officer should have responded to the Town Council to advise them that they would need to submit their representation sooner than 9 December. Alternatively, the Council should have delayed issuing the decision until it had received the Town Council's response;

(b) This ground of complaint is upheld to the extent that a reply should have been sent to Ms Geddes' email of 12 December.

7. Summary

7.1 The complaint is upheld in part.

7.2 Ground 2 of the complaint is upheld to the extent set out above.

7.3 Ground 5 of the complaint is upheld for the reasons set out above.

7.4 Grounds (1), (3) and (4) are not upheld for the reasons set out above.

8. Recommendations

8.1 Mr Cox has confirmed that he is not directly affected by the grant of Planning Permission and does not seek financial recompense.

8.2 Ideally, Mr Cox is of the view that the Planning Permission should be revoked, but he understands that this may not be possible in the circumstances.

8.3 Mr Cox is concerned that the Planning Permission will set a precedent for the way that similar applications are dealt with in future.

8.4 I cannot recommend revocation of the planning permission, as it involves an assessment of the planning merits of the development and this is a matter for the Council. It should be noted that, whilst my report is critical of the way in which parts of the report were drafted, this does not necessarily mean that planning permission should not have been granted, or should be revoked. In this respect, the Council has expressed the view that, notwithstanding the drafting of the Officer's Report, planning permission is likely to have been granted for the development. It should also be noted that, if the change of use has already occurred, then the planning permission cannot be revoked.

8.5 However, I recommend that;

8.5.1 within 3 months, the Council provides internal guidance or training to planning officers in respect of how the application of Policy H6 is addressed in Officer's Reports;

8.5.2 within 2 months, the Council undertakes a review in respect of how it can provide local residents with meaningful information on the number of unlicensed HMOs in the vicinity of proposed developments, and advises the Complainant of the outcome of this review;

8.5.3 within 2 months, the Council reviews its internal procedures to ensure effective communication with Parish and Town Councils where they have advised that they cannot comply with the deadline for responses to consultations. I would make clear that this does not mean that the Council are obliged to chase Parish and Town Councils where no communication has been received from them, or that the Council is under an obligation to extend the deadline for responses when asked to do so.

John Gregory
Senior Solicitor
27 January 2017