

# **Lenton Drives & Neighbours Residents' Association**

## **Members Meeting**

### **9th November 2017**

#### **Attending:**

Kate Lowenthal (Chair of Association) [KL]

Melany Pemberton (Chair of Meetings)

Virginia Rochester (Secretary)

Aran Hennessy, Principal Environmental Health Officer, Nottingham City Council [AH]

Martin Poole, Area Planning Manager, Nottingham City Council [MP]

Members of the Association

#### **Apologies:**

Martin Kinsella (Treasurer)

Des Storey, Community Protection

#### **Acronyms:**

ASB - Anti-social behaviour

CPNW - Community Protection Notice Warning

CPN - Community Protection Notice

CPO - Community Protection Officer

FPN - Fixed Penalty Notice

HMO House of Multiple Occupation

PSPO - Public Space Protection Order

UoN - University of Nottingham

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## **Item 1: Questions about Planning and HMO Licensing matters**

KL introduced Martin Poole, from the Planning Department and Aran Hennessy, from the HMO Licensing Team, and both from Nottingham City Council. A number of questions about Planning and HMO restrictions and how they related specifically to the Lenton area had been collated from members and given to Aran and Martin before the meeting, for them to address. KL warned that they may not be able to answer everything in the time they had.

### **Questions on HMO Properties**

***Question: How many 'strikes' is a landlord allowed before receiving a penalty?***

***What is the escalation process?***

Answer: Technically only one - and even then they can be issued with with a civil penalty notice. In law there is provision for 'reasonable excuse'. There could be a prosecution or a civil penalty notice issued for non-compliance. HMO Licensing will visit a property to check it; if they find something wrong, they will give the landlord a chance to correct it. There may be a second a warning, but on third time this would result in a penalty of some kind for the landlord. However if the matter is serious, a penalty can be issued immediately. Some landlords can be quite naive about what needs to happen. If the CPOs issue a CPNW for ASB this is now sent on to HMO team and the landlord is written to. This has happened since September 2017.

***Question: What kind of misdemeanours would lead to a license being revoked?***

Answer: An HMO license could be revoked for a breach of license conditions or the license holder not being a 'fit and proper' person: this would emanate from being involved in fraud, sexual, discrimination, etc. offences.

It is an offence to provide false information, which could be seen as fraud. Also they need to not contravene housing law: i.e. they need to maintain the property in a proper condition.

Further Questions: what if an HMO license for a property is for X and they put X+1 tenants in? A: the letter of the law has to be followed. Breach of planning law doesn't contravene housing law. Generally the landlord would be allowed to vary their HMO license. Q: if the landlord has tried to evade, by not being honest about the number of tenants, how long are they given? A: Technically the landlord should not be renting until the correct license is in place. They are given one shot to comply before prosecution.

If a license is revoked for not being fit and proper person, the license can be transferred to someone else. This is not allowed to be a family member or business associate. Q: What about when the license is passed onto letting agency? A: HMO Licensing would have to find evidence that the management is not suitable for the property again to revoke the license. If the landlord or agency have multiple properties all HMO licenses are revoked. If a house is not suitable a fine can be issued.

Q: What if a landlord is not experienced? A: it's hard to tell from the application form but all the technicalities they have to adhere to as part of the application makes landlords normally seem like they know what they are doing to have got all their certificates and evidence in place.

Recently a tribunal took place in a London Borough which found that not having planning permission was a reason not to grant a HMO license. The landlord can have a temporary license for 1 year but if planning permission is not granted in that time, the license is revoked. The HMO Licensing team are looking at recent applications and whether they could apply precedent to them.

**Question: Could there be a system put in place such as**

- **2 complaints and the landlord gets a warning and an inspection from the HMO Team about compliance.**

Answer: If there is a complaint about ASB, the HMO team have written to landlords since September. 99% of landlords are getting back to the team straight away being apologetic. Landlords need to take reasonable steps to prevent ASB - otherwise it is a criminal offence under their licensing conditions. AH is looking forward to seeing if this new working relationship between CP and HMO impacts the level of ASB. Landlords will be keen to warn the students about ASB, so the students don't put the landlord's HMO license in jeopardy. The HMO Licensing Team can fine up to £30,000 for license contraventions.

Further Questions: But what can landlords do about ASB - they can't be at their properties the whole time? A: The written tenancy contract has to reference ASB. Landlords have to show this agreement within 7 days of being written to about ASB. The HMO Team ask what steps landlords are taking to address ASB, which usually means landlords going round to the house.

**Question: What steps are taken by the HMO licensing Team when assessing whether a landlord is suitable?**

Answer: All the checks that are relevant to an HMO application - this generally covers the right number of amenities in the building, safety certificates for things like gas etc.

Further Questions: Several complaints are made over the years about the same landlord and nothing happens. Student groups come and go but it is often the same dwellings that cause the problem. A: contact [hmo@nottinghamcity.gov.uk](mailto:hmo@nottinghamcity.gov.uk) with any concerns and the HMO Team can generally tackle issues

**Question: Does dishonesty constitute not being a fit and proper person?**

Answer: YES

**Question: Could there be an overarching tenancy contract produced for all HMO landlords, specifying acceptable behaviours with regard to asb, noise and waste management where tenants have to sign to say they agree to specified behaviour and taking responsibility for their waste, agreeing to a charge from the landlords if they have to come to manage their waste for them.**

**Eg**

**We will not play music or make noise that will be heard from the street or neighbouring properties.**

**We will not invite more than xxx people to our house at any one time.**

**We will make every effort to leave and return to the property quietly with due regard for those living around us**

**We will not use illegal substances in any part of the property and if evidence is found or identified to the contrary, we understand we will be liable for immediate eviction.**

Answer: Landlords do need to reference ASB in tenancy contracts to prevent and reduce it. Some of the suggestions in this list would overreach what can be specified in tenancy contracts within the law..

**Question: When do HMO records go back to?**

Answer: 7 Years

**Question: Is there a way to check back over the last 4 years to see which properties have increased licenses from 6 to above, therefore changing use to suis generis through permitted development. Maybe just in a test area such as The Drives to start off with.**

Answer: AH said he would find out if the data could be reported on like this - how bed spaces have increased.

**Question: Can HMO inspect a property without warning if they believe the landlord is in breach of his/her license by having too many students?**

Answer: Yes - HMO team can inspect the management of the HMO property. Ordinarily they have to give notice, unless to do so would negate the point of inspection.

**Question: How many properties are you currently investigating regarding numbers of students compared to numbers licensed for?**

Answer: It is free of charge to vary an HMO license - so most landlords come forward to declare this. There are very few that don't comply.

**Question: Would numbers of students in each property from each university be helpful in identifying which properties conditions are in breach?**

Answer: Yes that information would be helpful, however one university are more helpful in giving data than the other.

## **Questions on Planning Policy**

***Question: Is your default position now and in the future to reject applications for C4 and SG in Lenton, Dunkirk, Radford and Park and if not why not?***

Answer: Each application is considered on its own merit. But having said that any C3 house would normally be refused permission to change to C4 in the Lenton area. C4 use might be granted for flats above shops and other locations where it is not ideal for a family house -e.g. on a busy road. Comments on applications is encouraged, although the Planning Dept will make a decision even if no objections or supporting comments. However having public comments helps set the scene and adds weight to decisions.

Further Questions: Should we make a general statement as an association about conversion from C3 to C4? A: If a standard objection is on file, it loses its weight as it is not specific to a planning application. What does help is to understand the particular concern to the specific application. A standing objection is devalued.

Q: Manchester City Council has core strategy on policy where change to C4 (from C3) is refused in areas of student concentration greater than 20%.

A: Nottingham has a similar policy under the balanced communities agenda.

***Question: Where a landlord has purposefully 'covered up' in planning applications or gone ahead with their plans despite being denied permission, does that not prove them to be an unfit and proper landlord – surely being deceitful and thinking they are above the law has account for something?***

See AH answer.

Further Questions: what about when landlords rip buildings apart and make them unsuitable for a family home?

A: you can't control what people do on layout of rooms. HMO Licensing won't give a license for 8 if planning permission is only for 6 tenants. If there is a deliberate attempt to get round the 4 year rule (once you have used a property for a certain purpose for 4 years, it gets permission to remain in that use), they would look to investigate.

***Question: If a landlord puts in retrospective planning permission which is refused, what can be done to ensure they correct whatever was refused?***

Answer: Serve planning enforcement notice. The owner has the right of appeal but if upheld, it becomes an offence which can be prosecuted. A couple of prosecutions are being looked at locally - but they need to be thorough on evidence. A lot of cases are resolved by letting the property as C3, this may not be as a family house, but something that fits in the rules. Serving notices also affects the tenants, so the planning department try to not disrupt student studies.

Further Questions: If a notice is served, is that enough evidence to show landlord is not a fit and proper person?

A: yes- recently the law has changed.

***Question: Where a property is sold, it is now common place for the C3 or C4 classification to be given by the Estate agent. This is still a very grey area and many properties are being sold on with supposed 'historic HMO use' which therefore automatically gives it the C4 classification. Is there any way that when sold, those who have not officially received planning permission to convert to c4 or suis generis, have to pass back to C3 use? How much is done to check that their 'evidence', in terms of bills, council tax etc is genuine?***

Answer: From a planning perspective, the lawful use is matter of fact. If the property is used as an HMO for several years, it's not necessary for planning permission to be sought.

The person buying can seek a certificate of lawfulness for use, where the applicant has to demonstrate with evidence the use. Ultimately it is 'buyer beware' on buying property. There is nervousness amongst landlords about buying properties if they don't think the property has the right evidence / certificates. Council tax records are checked. But if lots of tenancy records are shown, the planning department have to take it at face value. However the permission can be revoked if later shown to be false.

Further Questions: Can we shine a spotlight on the houses which are uncertain between C3 and C4 use? A: Selective Licensing could uncover this if it is implemented.

A: Relieving the demand for accommodation will be the best way forward - the planning department are looking at developments that meets the demands of 2nd/3rd year students. They are trying to make the right conditions for students to want to be in purpose built accommodation - but they have to work within the rules that apply.

***Question: For university developments, can section 106 contributions be attached such as for every additional 250 students which will bring £6,750, 000 over 3 years to the university, the university has to fund 1 full time police post and 2 CPOs and purchase xxx number of C4 properties to convert back into family residence?***

Answer: The Universities are important to the city economy. The need for accommodation for students has in the past been satisfied by HMOs but this wasn't historically dealt with by planning because no planning permission was needed until more recently. There are 2,000 bed spaces being applied for to build purpose-built student accommodation in the city centre. Section 106 contributions have to be directly relevant to a development. At the moment there is no policy base for this. This would be quite an involved question.

#### **Questions on covering both HMO Licensing and Planning Issues**

***Question: Since beginning to work more closely with the planning department, have the HMO department now shared all new applications for HMO licenses with Planning that have been made over the last 4 years to enable planning to check whether or not these properties have either C4 or suis generis status?***

Answer: The HMO Licensing Team have regularly been sending applications to the Planning Department. Planning work through the anomalies and investigate them. (However this takes second place to day-to-day work, and can only occur when there is time and resources.)

Further Questions: Can we help as a Residents' Group?

A: the key thing is really clear evidence of how a property has been occupied. The Planning Department use sources like Facebook. If we can provide hard facts it can assist. The best course of action is to email the HMO Licensing team for them to investigate properties as they want to get the license application; however if not got planning permission the application can then be refused.

*This part of the meeting finished. Aran and Martin were thanked for coming, and left. The Annual General Meeting took place next which is minuted separately.*