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APPENDIX 1

Mr and Mrs Wisbey
72 Green End Road
Cambridge
CB4 1RY

Independent
Complaints
Investigator

19 July 2013

Dear Mr & Mrs Wisbey

Remedy for nuisance caused by use of Guest House at 70 Green End Road by Cambridge City Council (CCC).

I write further to Simon Payne's request that I consider appropriate action and redress in relation to the above matter. I have now completed my review and set out my conclusions below.

My role

My role is to investigate complaints concerning administrative and procedural actions and decisions that have failed to resolve at departmental level. As the Independent Complaints Investigator I try to resolve the matter as the final stage in the City Council's internal complaints procedure. Whilst I am able to recommend the level of monetary compensation, the decision to make payment is a matter for CCC.

Please note that in this case, given that CCC have accepted failure, apologised and implemented enforcement action, I have restricted my investigation to an assessment of the impact on you together with recommendations for action.

My Review

I have met with you and, at your request, Clare Blair, who also attended our meeting. I have received a summary and chronological record of your contact with the Anti Social Behaviour (ASB) team and a file of documents from Simon Payne. I have also considered two, well documented, files of your own; one detailing the planning history of the Guest House and the other a record of your contact with the various departments of CCC.

I have also considered the Local Government Ombudsman (LGO) guidance on remedies.

History and Summary of Findings

As the facts of this matter are well known to all interested parties I shall only set out a brief summary of your problems with the Guest House and CCC's delay in resolving the matter.

You have lived in your house since 1989, investing much time and money in making the home and garden a family home and somewhere you wish to spend your retirement. When you moved to your home the property next door, at number 70, (the Guest House) was a family run bed and breakfast establishment, restricted by planning permission to four guest bedrooms. This did not cause you any problems. In 2000 the Guest House was sold to the current owner and you immediately noticed an increase in traffic and neighbour disturbance. CCC inspected the property and in August 2001 issued an enforcement notice confirming the letting restrictions.

The Guest House then submitted plans to extend the house and to remove the restriction. The applications were refused, appealed and finally refused by the Planning Inspectorate in June 2002.

You have advised me that you continued to experience disturbances at the property and to notice a regular police presence. It was not until 2005 that CCC entered into an agreement with the owner to use the Guest House as temporary accommodation solely for (primarily) vulnerable homeless people. However the Housing Advice team were placing people in the Guest House before this date.

I understand that Housing Advice requested Environmental Services to carry out an inspection of the premises in 2000 and in 2004. In 2004 there were four tenants, the staff from a local bus company. Environmental Services considered the house to be an unregistered HMO and advised Housing Needs not to place any further tenants in the property.

I have had sight of a letter dated 7 March 2005 from CCC's Environmental Services confirming a visit with [REDACTED] of the Housing Needs Team. This letter sets out the terms of the agreement with CCC for the Guest House to be used as a House in Multiple Occupation (HMO) on condition that it accommodate only CCC or Local authority clients and no more than 9 people. This was clearly in breach of the planning restriction.

On 7 July Environmental Services sent the owner of the Guest House a Certificate confirming registration as an HMO suitable for 9 persons. Once the property was registered Housing Needs were informed that it was now suitable to be occupied under the Housing Act 2004. I am told that Environmental Services do not have the

legal authority to refuse to register a property as an HMO, even if it does not have planning permission.

On 14 July 2005 a Senior Planning Investigation officer [REDACTED] wrote to the owner of the Guest House stating he had received the application to register the property as an HMO. The officer reminded the owner of the restriction to 4 rooms, asked him to revert to that use and advised of the need to submit a planning application for consideration as an HMO. If this letter was sent to anyone in Environmental Services or Housing Needs I have not seen a record of it. The letter does not show any evidence of it being copied to anyone within CCC. Later, in a sworn statement in support of an application for a Certificate of Lawfulness (dated 8 November 2012), the owner stated that he had met with [REDACTED] following receipt of this letter and [REDACTED] had, "conceded that the property had an established use as an HMO." I do not know if [REDACTED] spoke with Housing Needs or any other senior officers in the before reaching this conclusion.

In any event your nuisance disturbances worsened from 2005 onwards. I note from a letter, dated 7 September 2012, sent by an ASB officer in response to an enquiry by Julian Huppert M.P. that Cambridgeshire County Council referrals included young people placed by the 16+ team, the Youth Offending Team and the Children's and Young People's service. I understand that CCC would not necessarily have been aware of young people being placed in the Guest House by other local authorities. I am told they were careful about placing young people themselves but it did happen on occasion.

The record shows that in or around May 2008 a meeting took place with the Guest House owner to agree the employment of a night manager between the hours of 7/8p.m. and 6a.m. I understand this followed consultation with other residents and was thought to offer a good solution. You reported an improvement and the ASB case was closed in October 2008. It was not re-opened until April 2010. You have advised that although initially there was some improvement the situation steadily got worse until eventually you contacted the ASB team again. You have also advised that the hours of the night manager were frequently not adhered to and did not appear to be monitored by CCC.

A second inter-agency meeting took place with the Guest House owner in 2010. This established a complaints procedure, an incident log, a set of house rules, a clear policy on resident eviction and reiterated the need for night porters. You were informed of this and again reported a quietening down of the situation. You advised me that, again, matters gradually (and more speedily) worsened. You have also said how you tried approaching the owner to deal with issues face to face but found his response intimidating. By April 2010 you had contacted the ASB team again. The case was closed again in December 2011 and re-opened in May 2012.

You have said that throughout all of this time you did not feel able to relax in your home. You have given details of, in your view, trivial incidents that occurred

frequently, none of which you felt warranted bothering either the Environmental Health or the ASB team, but which left you with a continual sense of anxiety.

You have told me of the costs incurred in building a wall after residents of the Guest House had kicked it down and of the cost of trellising to add height to your existing fence in order to prevent unpleasant items being thrown into your garden. Various, offensive, detritus was thrown into your property and on one occasion a stainless steel dish narrowly missed Mrs Wisbey. You have cited how your garage was flooded by a Guest House resident laying a hosepipe alongside it and your electrical tools destroyed. Your car suffered damage to the roof from so many beer cans being thrown over the boundary. One night you were woken by loud thuds on your window as eggs were thrown at it. On another night the police were called when residents were found trying to climb over your six foot high gates.

It is the case that the ASB team along with Environmental Services responded to escalating incidents and did work towards a cessation of the nuisance. Unfortunately noise nuisance was difficult to establish and not detected by Environmental Services when they visited in 2008. In 2012 Environmental Services contacted the landlord who, I am advised, addressed the issue, albeit temporarily. You have advised me that you declined monitoring equipment because it could not capture the overall problem and you felt it would contribute to your sense of unease in your own home.

The ASB team record shows your first contact with them was in April 2007. This was on the advice of the police. (You have told me that you had contacted the police on a number of occasions prior to this and feel sure you contacted CCC prior to this date.) Mrs Wisbey, in particular, was feeling very vulnerable. During some of this time Mr Wisbey was working away from home and the incidents of aggression were frightening. Furthermore in the early years Mrs Wisbey was still working full time and finding it increasingly difficult to get through the day having had so little sleep. You have said how you both became depressed and very anxious. I have seen the letter written by your G.P. in 2012 which clearly sets out the effect on Mrs Wisbey's health. You describe how you stopped having any enjoyment in your home and no longer used the garden. You told me how you also felt unable to move house as no-one would buy a house with such severe nuisance problems.

The ASB record shows regular contact from 2007 (with two breaks, from October 2008 until April 2010 and another between December 2011 and May 2012) until the decision of North Area Committee to refuse a Certificate of Lawfulness in November 2012. Your record also shows contact with the police (who regularly attended the premises), Environmental Services and Housing Needs along with City Councillors and finally your local M.P. During this time you endured a wholly unacceptable level of hostility, aggression (including personal threats and damage to property) and disturbance. Throughout this time you were asked to complete records monitoring each incident as if each were an isolated event. You completed separate records for the ASB team and for Environmental Services. There was no single point of contact and there does not appear to have been any coordination between the different departments although I understand Environmental Services and the ASB team do, and did, liaise. [REDACTED] of Housing Needs, agreed to monitor the incident logs.

However no action seems to have followed from this. I am told this is because there was insufficient data in the log to assist monitoring work.

I am in no doubt that you complied fully with all CCC requests to report, record and monitor.

It is extremely unfortunate that no-one within CCC thought to check the planning status of the Guest House. Instead regular discussions took place between the owner of the Guest House, and different CCC departments (the ASB team, Environmental Services and, on at least one occasion, Housing Needs) in an attempt to regulate behaviour. From the evidence of the ASB team record all of these attempts had short lived impact. The problem was exacerbated by the fact that other local authorities were also using the Guest House and, although their referrals were causing problems, they had no involvement. I have seen no evidence of any communication between the local authorities concerning the issues raised until the breach of planning consent became known. Furthermore CCC had no power to force the owner to evict individual residents. This is confirmed in a letter to residents dated 8 August 2012 from the ASB team.

Eventually a newly appointed ASB team officer, [REDACTED], requested clarification, from the Planning Department, of the number of rooms that could be let in the Guest House. I have not seen the response to [REDACTED]' request but I have seen the email sent to you, in June 2012, concerning this. This states that she had spoken to both the Planning Department and Environmental Services and their view was that the Guest House was classed as an HMO and not a Bed and Breakfast establishment. [REDACTED] email continues, "*This means that the Planning Department cannot look into how many rooms are being used in the house as it is not being used as a Bed and Breakfast. It isn't clear whether the owner should have applied for planning consent to change the use (of the B&B) but as other parts of the Council, Housing and Environmental Health inspect the property as per the rules of an HMO, there wouldn't be a case for planning to take action ...*"

I do not know who furnished [REDACTED] with this advice. Suffice to say it is astonishing, particularly when in the light of remarks made by the Planning Inspectorate in 2002 refusing the application to extend permitted room use. He wrote, "*I consider condition 3 (the bedroom restriction to four) is not only necessary but relevant to planning and the permitted development. It is also enforceable, (my underlining) in that a breach would be easily detected, preciseand reasonable in terms of residential amenity.*"

In dealing with the loss of residential accommodation caused by any extended use the Planning Inspectorate continued, "*It would not provide a separate unit for the use of persons employed on the property.*" Plainly this was an important consideration for a small Guest House quite apart from a HMO housing vulnerable people in a residential area.

The decision of the Planning Inspectorate took account of, "..... *the character and appearance of the area, and on the living conditions of local residents with particular regard to noise and disturbance, respectively.*"

I find it extraordinary that CCC not only failed to uphold the decision of the Planning Inspectorate but encouraged use of the property in direct contravention of it.

I am also concerned that, (despite your continuous involvement with three separate departments of CCC over many years) had it not been for the involvement of your local M.P. local councillors, your G.P. and the Cambridge News, this breach may have continued unabated, resulting in you suffering further ill health and injury.

As you are aware following Patsy Dell's (Head of Planning) confirmation that the 'Guest House' were in breach of planning permission (in October 2012) successful enforcement action has been taken. Given the potential for the owner to obtain a Certificate of Lawfulness, based on the number of years of the breach, this process in itself was extremely stressful for you.

I understand you have now received assurances that CCC will not be placing homeless people in the Guest House. However I understand CCC cannot prevent other local authorities from using the Guest House to accommodate other homeless people.

Conclusion

There are three areas in which CCC failed you. The failure to monitor and enforce a planning breach; the encouragement of that breach by Housing Needs and the failure to deal effectively with chronic neighbour nuisance over a long period of time, by Housing Needs, Environmental Services and the ASB team. I appreciate the limitations under which the latter two departments were working and note the work done by the ASB team, and in particular [REDACTED], in attempting to put the planning issue to the fore.

I am concerned that [REDACTED] enquiry into planning status did not result in a proper review.

I find the failure to take action by Housing Needs of most concern. You have advised that you found the attitude of Housing Needs to be dismissive and this you have evidenced by an email from [REDACTED] dated 18 April 2012 in which he responded to a report, by you, of an intimidating conversation with the Guest House owner. The detail is on file. Housing Needs plainly had a conflict of interest. They wished the HMO to continue in order to meet their duty to house. It is certainly arguable that had the Guest House not been used by Housing Needs the disturbance may well have resulted in appropriate enforcement action earlier.

Recommendations

In reaching my recommendation on remedy I have considered the Local Government Ombudsman (LGO) guidance on remedies.

I have advised you that although CCC's use of the Guest House as an HMO began in 2005 it is equitable for any compensation to run from when CCC first had knowledge of the problem. This, from the ASB record, is in early 2007; a period of five years in total.

I consider the statutory nuisance you endured over time to have been severe and to have been compounded both by CCC's own actions in designating the Guest House as an HMO with use of nine rooms (in breach of planning permission) and by its failure to take enforcement action. I also consider you fully complied with all requests to monitor and report matters.

For all elements I recommend compensation of £2000.00 per year for five years. A total of £10,000.00. In addition I recommend the sum of £250.00 as a time and trouble payment in consideration of the time taken in pursuing your complaint. You will be notified, by Simon Payne, of CCC's decision concerning this recommendation.

In the light of the above I propose the department consider the following recommendations. It may be that much of the following is already in place, in which case ways in which to improve the effectiveness of these procedures should be considered. I am also aware of resource limitations and the need to prioritise:

- That an internal investigation seeks to establish how, given the Planning Inspectorate decision of 2002, a change of status to an HMO with nine rooms, was permitted in 2005.
- That when any licence for an HMO, or any other form of emergency accommodation is issued, the Planning Service provide written advice to the applicant about the status of the planning position and any subsequent action is followed up, as necessary, by the Planning Service.
- That a designated officer, within planning, is assigned to maintain, update and monitor a central record for this purpose.
- That a full review of staffing needs in such premises is undertaken and made conditional on the granting of a licence. This should be recorded where all involved departments can access it and be properly monitored.
- Before any referral is made to premises used for temporary accommodation, a note should be put on file showing a planning status check has been done together with a note of the number of rooms already occupied to avoid any use beyond that permitted.
- That an agreement is reached between Local Authorities concerning ASB and lack of management. There was no effective co-ordination in this case even though one of the most disturbed and disturbing occupants was a South Cambridgeshire referral.
- That effective monitoring of conditions and requirements takes place. The owner of the Guest House frequently failed to comply with conditions and no action was taken.

- Where different departments are involved a single point of contact should be established and a central register of complaints kept. I appreciate this was arranged for Mr & Mrs Wisbey but not until 2012. Prior to this time there was a lack of communication between different departments.

Please be advised that if you are dissatisfied with the outcome of my investigation, you may refer your complaint to the Local Government Ombudsman whose contact details are:

Dr Jane Martin
Local Government Ombudsman
PO Box 4771
Coventry CV8 0EH
Tel: 0300 061 0614 www.lgo.org.uk

Yours sincerely

Corinne Hibbert
Independent Complaints Investigator