# Appeal of decision to refuse access to legal advice regarding Shannon House

Cllr Oliver Cooper

1. Shannon House, Station Road, WD4 8SE was converted into 74 flats below the Nationally-Described Minimum Space Standard in breach of Article 3(9A) of the General Permitted Development Order.

2. The Council has refused to procure external legal advice regarding its decision not to take enforcement action against the conversion, including councillors voting at full council against the Budget proposal in my name to procure external advice.

3. The Council has furthermore refused to disclose on request the internal considerations that it has made, even after the case was presented to council officers, verbally and in writing, that the opening of flats at Shannon House was unlawful.

4. The area is significantly harmed by the council making this mistake. Crime has increased several-fold in the area around Shannon House, especially on Station Road itself. Covering it up and doubling down does not help Abbots Langley or Kings Langley. It is transparently in the public interest and necessary to my role to scrutinise and challenge the council's decision.

5. As well as being the Leader of the Opposition, and therefore responsible for scrutinising the council's activities, I sit on the Policy & Resources Committee, which is responsible for legal services and the Budget; and I sit on the Planning Committee, which is responsible for decisions about enforcement action. I therefore will need to scrutinise the council's legal services, Budget, and planning enforcement decisions on this key issue.

**Shannon House – unlawfully converted into tiny flats**

6. Shannon House was unlawfully converted into small flats in 2023. None of the 74 tiny flats inside meet the Nationally-Described Minimum Space Standard, despite that being required of any flats created within former office space under Article 3(9A) of the General Permitted Development Order, which reads:[1]

> "**3(9A)** Schedule 2 does not grant permission for, or authorise any development of, any new dwellinghouse—

[1] General Permitted Development Order 2015, Article 3(9A)

(a) where the gross internal floor area is less than 37 square metres in size; or

(b) that does not comply with the nationally described space standard issued by the Department for Communities and Local Government on 27th March 2015."

7. The only exception to that requirement is where the Prior Approval – which is required for the conversion of offices into self-contained accommodation – that was implemented was applied for before 6th April 2021, per the provisions on Transitional and Saving Provisions under the 2020 Regulations that created the requirement to meet the Nationally-Described Minimum Space Standard:[2]

> "**12(2)** The amendment made by regulation 3 of these Regulations does not have effect in relation to development under—
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> (a) Class M, N, O, P, PA or Q of Part 3 of Schedule 2; or
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> (b) Class A, ZA, AA, AB, AC or AD of Part 20 of Schedule 2,
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> where an application for prior approval is submitted before 6th April 2021."

8. Whilst a different Prior Approval was applied for before 6th April 2021,[3] it was not implemented, so it is irrelevant. The simple fact that it was not implemented is proven by the requirement that conversions be completed within three years of granting of permission,[4] and the conversion was not completed by then.[5] As it was not completed within three years of completion, it is not permitted and would have required express permission. If the applicant did indeed rely on that prior approval, then Enforcement Action can be taken.

9. Instead, the permission that was implemented was applied for on 27th February 2023.[6] This was an application under section 73 of the Town and Country Planning Act. It is legally uncontroversial – as stated in section 73

[2] Town and Country Planning (General Permitted Development) (England) (Amendment) Regulations 2020, Regulation 12(2)
[3] 20/0369/PDR
[4] Town and Country Planning (General Permitted Development) (England) (Amendment) Regulations 2020, Schedule 2, Paragraph MA2(5)
[5] Email from the Head of Regulatory Services of 20th September 2024
[6] 23/0343/FUL

itself, by the Supreme Court,[7] and as agreed by council officers[8] – that a permission under section 73 constitutes a new, independent permission.[9]

10. As it is a new permission, not merely a variation of an old one, that is unambiguously the permission that was implemented.[10] As it was applied for after 6th April 2021, it was required to comply with the National Described Minimum Space Standard. As it did not, it was unlawful.

**Analogous applications**

11. That this is how the transitional arrangements are meant to work with regards section 73 applications is obvious from how they are drafted in other instances. For example, the Biodiversity Net Gain Commencement Regulations have a Regulation specifying (emphasis mine):[11]

> ***4.***— *(1) The biodiversity gain planning condition does not apply in relation to a section 73 planning permission where—*
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> > *(a) the original planning permission to which the section 73 planning permission relates was granted before 12th February 2024; or*
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> > ***(b) the application for the original planning permission to which the section 73 planning permission relates was made before 12th February 2024.***

12. If the date that a section 73 application is made were simply the date that the original application is made, that paragraph would not be necessary. However, it *is* necessary because the date that a section 73 application is made is unambiguously the date that the section 73 application is made. This clearly makes Shannon House unlawful.

**Dialogue with the council**

13. The above legal explanation was shared with a planning barrister, who informally advised that it was correct. Upon confirmation of this, this explanation was shared with Three Rivers District Council via phone and via email in September 2024.[12]

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[7] Carnwath LJ at [11] in *Lambeth v Secretary of State* [2019] UKSC 33
[8] Email from the Head of Regulatory Services, 20th September 2024
[9] If an applicant wishes to amend an existing permission, the amendment must be non-material under section 96A.
[10] Email from the Head of Regulatory Services, 11th October 2024
[11] The Environment Act 2021 (Commencement No.8 and Transitional Provisions) Regulations 2024, Regulation 4
[12] Call and email to the Head of Regulatory Services, 16th September 2024

14. Despite extensive correspondence, the council reiterated its view that a permission applied for in 2023 qualified as being made before 6th April 2021, and did not explain this.[13] I was not permitted to talk to any legal officer about this subject, despite requesting it on several occasions.[14]

15. When I spoke to the Head of Regulatory Services,[15] she said to me that the council had not considered the argument that I had made. Furthermore, no attempt to engage with the argument has been made since then, with the council relying repeatedly on its unsubstantiated claim that the relevant application was made before 6th April 2021.

16. The admission that it was not considered at the time the application was made and the refusal to engage afterwards creates a strong presumption that the Leader of the Council – who has claimed to know the contents of the legal advice – knows that it was wrong and is trying to cover up the mistake. To ensure that reasonable inference isn't drawn, it should disclose the primary sources on which its conclusion was drawn.

**Why it matters now**

17. The council can still take enforcement action against this unlawful development. The council appears significantly confused by this, including stating that enforcement action cannot now be taken because the Prior Approval was given, and that as no resident brought a Judicial Review claim (minimum total cost to resident and council: £50,000), it would not revisit it.[16]

18. However, unlike planning permissions, developments that have been incorrectly granted Prior Approval are not immune from enforcement action, including where they breach the restrictions in Article 3.[17] Prior Approval expressly cannot grant permission for, or authorise any development if it does not meet the requirements in Article 3.[18] As a result, enforcement action can still be taken if the decision made an error.

19. Enforcement action would likely be revenue-positive for the council. The issuance of an Enforcement Notice for unlawful development makes continued use of the building for residential accommodation a criminal offence. All rents from it would be the proceeds of crime and can be subject to a confiscation order. Under the Asset Recovery Incentivisation Scheme, the council is entitled to keep 37.5% of proceeds. Across 74 flats, this share

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[13] Email to the Head of Regulatory Services, 21st October 2024
[14] And as reiterated to the email to the Monitoring Officer, 21st October 2024
[15] Call to the Head of Regulatory Services, 16th September 2024
[16] Email from the Head of Regulatory Services, 20th September 2024
[17] *Keenan v Woking and Secretary of State* [2017] *EWCA Civ 438*; *RSBS Developments v Secretary of State* [2020] EWHC 3077 (Admin), etc
[18] General Permitted Development Order 2015, Article 3(9A)

would account to tens of thousands of pounds a month. There is therefore a strong financial incentive to take action.

20. However, the council appears strongly opposed to enforcement action, with the Leader individually and the Liberal Democrats as a party repeatedly refusing to look further into this and demanding silence.

**Why Policy & Resources Committee members are entitled to the information**

21. I am a member of the Policy & Resources Committee, which is responsible for the overseeing and procurement of legal services in the council.[19] It is the body responsible for scrutinising internal legal functions and whether to procure external legal advice.

22. I had asked the council to procure external legal advice, but they refused, saying that regardless of what the external advice said, "It will not change the outcome."[20] This predetermination requires scrutiny, and disclosure of the internal advice would either confirm or disprove an ulterior motive on the council's leadership's part.

23. Since 1907, there has existed a right in common law for councillors to access information held by the local authority on which they sit.[21] While the common law right is not untrammelled, there is a *very* high bar against disclosure of information to councillors who sit on the relevant committee.

24. In the leading case,[22] the Court of Appeal found that a member of a children's services committee was entitled to see *incredibly* sensitive (and highly confidential) information related to individual child adoption cases. In justifying this, Brightman LJ said, "There is no room for any secrecy as between a social worker and a member of the social services committee."

**Why Planning Committee members are entitled to the information**

25. I am also a member of the Planning Committee, which is responsible for decisions regarding the issuance of enforcement notices for breaches of the Town and Country Planning Act, as this is.[23]

26. The Planning Committee is furthermore responsible for the grant of permission under section 73 and prior approvals under the General Permitted Development Order.[24]

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[19] Constitution, Article 6.02
[20] Email from the Head of Regulatory Services of 23rd October 2024
[21] *R v Southwold Corporation* [1907] 97 LT 431
[22] *R v Birmingham City Council, ex parte O* [1983] 1 AC 578
[23] Constitution, p.3/9
[24] Constitution, p.3/8

27. The Planning Committee is therefore the client receiving the legal advice, and legal professional privilege therefore cannot be a bar to the Planning Committee seeing that advice.[25]

**Why this information is specifically needed**

28. That legal advice is confidential is not a bar to disclosure. This is not only *obvious* from the fact legal advice is disclosed to councillors when the press and public are excluded (Part II), but *necessary* where the committee in question is given responsibility for procurement of legal services under the Constitution. It is simply not possible for the committee to scrutinise legal services if it cannot ask for the basis for the decision not to procure external legal advice.

29. The only substantial bar to disclosure is against 'fishing expeditions', i.e. requests for non-specific information in the hope of finding something indirectly. However, this is the opposite of a fishing expedition – a single, specific piece of advice has been requested for reasons that have been directly specified. It is being requested because there is a substantiated and externally endorsed view that it is either wrong or does not say what the council's Liberal Democrat leadership claims that it does.

30. The Leader of the Council has himself admitted that Cllr Vicky Edwards and I have "repeatedly … raised this in correspondence with officers", so the Council is aware that this is not a fishing expedition, but a specific document that has been sought at great expense of my and other Conservative councillors' time.[26]

31. The Leader of the Council and other Liberal Democrat councillors have deliberately sought to downplay the negative consequences of the council's decision to allow the Shannon House development. That includes claiming that there has been no increase in crime locally, despite official crime statistics showing that it has increased several-fold. This lack of interest in the consequences of Shannon House's conversion into flats shows that the Leader of the Council does not want the flats closed, even if the Council *could* close them: suggesting that the Council *can* close them. It is in the public interest to challenge this.

32. There is clearly a public interest in disclosure, as it is in the public interest to shut down Shannon House and only by disclosure can the council change the Liberal Democrat administration's decision not to procure external legal advice and not to take action.

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[25] *The RBS Rights Issue Litigation* [2016] EWHC 3161

[26] Questions to the Leader of the Council, 10th December 2024

33. As a result, the legal advice should no longer be withheld by the council's administration, and should be disclosed to me as it is necessary to fulfil my functions as the Leader of the Opposition, as a member of the committee that makes decisions on legal services and the budget, and as a member of the committee that makes decisions regarding planning enforcement action.

Cllr Oliver Cooper

Leader of the Opposition, Three Rivers District Council