



Epping Forest District Council

HOUSING APPEALS AND REVIEW PANEL Thursday, 23rd August, 2007

Place: Civic Offices, High Street, Epping

Room: Committee Room 1

Time: 4.00 pm

Democratic Services Officer Graham Lunnun, Research and Democratic Services
Tel: 01992 564244 Email: glunnun@eppingforestdc.gov.uk

Members:

Councillors Mrs P K Rush (Chairman), Mrs R Gadsby (Vice-Chairman), R D'Souza, Mrs P Richardson and J Wyatt

1. APOLOGIES FOR ABSENCE

2. MINUTES (Pages 5 - 22)

To agree the minutes of the meetings of the Panel held on 21 June 2007 and 26 June 2007 (attached).

3. SUBSTITUTE MEMBERS

(Head of Research and Democratic Services) To report the attendance of any substitute members for the meeting.

4. DECLARATIONS OF INTEREST

To declare interests in any item on the agenda.

5. EXCLUSION OF PUBLIC AND PRESS

Exclusion: To consider whether, under Section 100(A)(4) of the Local Government Act 1972, the public and press should be excluded from the meeting for the items of business set out below on grounds that they will involve the likely disclosure of exempt information as defined in the following paragraph(s) of Part 1 of Schedule 12A of the Act (as amended) or are confidential under Section 100(A)(2):

Agenda Item No	Subject	Exempt Information Paragraph Number
6	Appeal No. 7/2007	1 and 2
7	Appeal No. 8/2007	1 and 2

The Local Government (Access to Information) (Variation) Order 2006, which came into effect on 1 March 2006, requires the Council to consider whether maintaining the exemption listed above outweighs the potential public interest in disclosing the information. Any member who considers that this test should be applied to any currently exempted matter on this agenda should contact the proper officer at least 24 hours prior to the meeting.

Confidential Items Commencement: Paragraph 9 of the Council Procedure Rules contained in the Constitution require:

- (1) All business of the Council requiring to be transacted in the presence of the press and public to be completed by 10.00 p.m. at the latest.
- (2) At the time appointed under (1) above, the Chairman shall permit the completion of debate on any item still under consideration, and at his or her discretion, any other remaining business whereupon the Council shall proceed to exclude the public and press.
- (3) Any public business remaining to be dealt with shall be deferred until after the completion of the private part of the meeting, including items submitted for report rather than decision.

Background Papers: Paragraph 8 of the Access to Information Procedure Rules of the Constitution define background papers as being documents relating to the subject matter of the report which in the Proper Officer's opinion:

- (a) disclose any facts or matters on which the report or an important part of the report is based; and
- (b) have been relied on to a material extent in preparing the report and does not include published works or those which disclose exempt or confidential information (as defined in Rule 10) and in respect of executive reports, the advice of any political advisor.

Inspection of background papers may be arranged by contacting the officer responsible for the item.

6. APPEAL NO. 7/2007 (Pages 23 - 38)

To consider a restricted report.

7. APPEAL NO. 8/2007 (Pages 39 - 50)

To consider a restricted report.

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EPPING FOREST DISTRICT COUNCIL COMMITTEE MINUTES

Committee: Housing Appeals and Review Panel **Date:** Thursday, 21 June 2007

Place: Committee Room 2, Civic Offices, High Street, Epping **Time:** 1.30 - 2.55 pm

Members Present: Mrs P K Rush (Chairman), Mrs R Gadsby (Vice-Chairman),
Mrs P Richardson, B Rolfe and J Wyatt

Other Councillors:

Apologies: R D'Souza

Officers Present: R Wilson (Assistant Head of Housing Services (Operations)) and G Lunnun (Democratic Services Manager)

49. MINUTES

RESOLVED:

That the minutes of the meeting of the Panel held on 22 May 2007 be taken as read and signed by the Chairman as a correct record.

50. SUBSTITUTE MEMBERS

It was noted that Councillor Rolfe was substituting for Councillor D'Souza at this meeting.

51. DECLARATIONS OF INTEREST

No declarations of interest were made pursuant to the Council's Code of Member Conduct.

52. EXCLUSION OF PUBLIC AND PRESS

RESOLVED:

That, in accordance with Section 100(A)(4) of the Local Government Act 1972, the public and press be excluded from the meeting for the item of business set out below as it would involve the likely disclosure of exempt information as defined in the paragraphs of Part 1 of Schedule 12A of the Act indicated and the exemption is considered to outweigh the potential public interest in disclosing the information:

Agenda Item No	Subject	Exempt Information Paragraph Nos
6	Application No 4/2007	1 and 2

53. APPLICATION NO. 4/2007

The Panel considered an application for a review of a decision made by the Assistant Housing Needs Manager (Homelessness) acting under delegated authority that the applicant had made himself homeless intentionally. The applicant attended the meeting to present his case accompanied by his mother. Mr J Hunt (Assistant Housing Needs Manager (Homelessness)) attended the meeting to present his case. Mr R Wilson (Assistant Head of Housing Services (Operations)) attended the meeting to advise the Panel as required on details of the national and local housing policies relative to the application. The Chairman introduced the members of the Panel and officers present to the applicant and outlined the procedures to be followed in order to ensure that proper consideration was given to the review.

The Panel had before them the following documents, which were taken into consideration:

- (a) a summary of the application together with the facts of the case forming part of the agenda for the meeting;
- (b) the case of the Assistant Housing Needs Manager (Homelessness);
- (c) copies of documents submitted by the Assistant Housing Needs Manager (Homelessness) namely:
 - (i) applicant's completed housing and homelessness application form dated 17 January 2007 together with notes of an interview of the applicant by a case officer dated 16 January 2007;
 - (ii) letter dated 15 January 2007 from the applicant's mother to whom it may concern;
 - (iii) letter dated 15 January 2007 from the Chelmsford Youth Offender Team to the Council's Homelessness Section;
 - (iv) applicant's birth certificate;
 - (v) letter dated 14 March 2007 from the Assistant Housing Needs Manager (Homelessness) to the applicant;
 - (vi) decision of NACRO not to house the applicant;
 - (vii) letter dated 6 March 2007 from the Children's Legal Centre to the Council's Homelessness Section;
 - (viii) letter dated 15 March 2007 from the Assistant Housing Needs Manager (Homelessness) to the Children's Legal Centre;
 - (ix) letter dated 19 March 2007 from the Children's Legal Centre to the Assistant Housing Needs Manager (Homelessness);

- (x) letter dated 20 March 2007 from the Housing Needs Manager to the Children's Legal Centre;
- (xi) letter dated 29 March 2007 from the Children's Legal Centre to the Housing Needs Manager;
- (xii) a copy of the application to the Housing Appeals and Review Panel by the applicant dated 26 March 2007;
- (xiii) letter dated 2 April 2007 from the Head of Housing Services to the Children's Legal Centre;
- (xiv) letter dated 9 May 2007 from the Democratic Services Manager to the Children's Legal Centre;
- (xv) undated letter handed to the applicant on 9 February 2007 by the Assistant Housing Needs Manager (Homelessness);
- (xvi) Chapter 11 of the Homelessness Code of Guidance for Local Authorities;
- (xvii) letter dated 6 February 2007 from the applicant's doctor;
- (xviii) letter dated 25 April 2005 from the Department for Work and Pensions to the applicant's mother;
- (xiv) file notes associated with the applicant's homelessness application;
- (d) the case of the appellant;
- (e) copies of documents submitted by the applicant, namely:
 - (i) a copy of the application to the Housing Appeals and Review Panel dated 26 March 2007;
 - (ii) letter dated 29 March 2007 from the Children's Legal Centre to the Council's Housing Needs Manager.

The Panel considered the following submissions in support of the applicant's case;

- (a) the applicant was 16 years of age and had a diagnosis of ADHD; he was in receipt of Income Support and Incapacity Benefit; until recently he had been in receipt of Disability Living Allowance and was registered disabled;
- (b) the applicant had been educated at an EDB school, which was a residential school for boys with emotional and behavioural problems; he had a statement of educational needs; he had been at the residential school since he was 8 years old; he had left the school when he was 15; when he came home his mother had found it difficult to cope with him and it had been hard for his mother and his two younger brothers to cope with his aggression;
- (c) since leaving school the applicant considered that he had not received much help from statutory authorities;

(d) in January 2007 there had been an incident during which the applicant had damaged his mother's home following an argument with her; as a result he had appeared in court and was now having an input from the Youth Offending Team;

(e) Social Services were looking to organise a support package for the applicant; they now recognised that he did need help and assistance whereas previously he had been left to his own devices and had been sleeping in a car;

(f) the applicant had sought legal advice and did not consider that the decision that he was intentionally homeless was reasonable; the applicant did not consider that his actions which had led to his mother saying that he could no longer stay at her house should be treated as deliberate; the applicant did not think that he could have stopped acting as he did because of his medical condition and emotional condition; the applicant considered that the act he had carried out was as a result of limited mental capacity or a temporary aberration or aberrations caused by mental illness or frailty;

(g) the applicant's medical condition meant that when he was disturbed emotionally or had to handle stressful situations he could not cope very well and acted in a way that led to problems;

(h) in future, it was possible that the applicant might return home to live with his mother; however this was not considered a good idea at the present time because of the need for the applicant to receive proper support;

(i) the applicant was seeking to control his behaviour and was starting to manage better with the help he was receiving.

The applicant and his mother answered the following questions of the Assistant Housing Needs Manager (Homelessness) and the Panel:-

(a) Your doctor's letter dated 6 February 2007 states that at that time you were waiting to be taken on by Adult Mental Health; have you yet been assessed and are you currently receiving help from Adult Mental Health? – The applicant's mother indicated that her son had been seen once by Adult Mental Health and had another appointment within a few weeks; no diagnosis had yet been made;

(b) Is your mother's home still your family home? – Yes;

(c) What did you do at home when you were there during school holidays etc? – I tried to get out of the house as I could not cope with being in one place for a long period;

(d) You were at school for long periods; how did you cope there? – I had the benefit of supervision 24 hours a day, 7 days a week and had the opportunity to be taken out into a nearby forest;

(e) How long had you been at home when the incident occurred which resulted in your mother asking you to leave? – 10 months;

(f) How many incidents have there been at your mother's home? – Quite a few;

(g) When did you stay at your mother's home during term time? – Every other Friday evening until Sunday afternoon; during school holidays I was there all the time;

- (h) What accommodation would you like? – A flat, where I could look after myself and come and go as I wish;
- (i) Why did you leave your school? - I was excluded, was taken back for 10 days and then excluded permanently;
- (j) Do you know when you are about to lose your temper? – It just happens;
- (k) Why do you find it difficult to remain in a room for a long period? – I am hyperactive and I like to go out with my friends or take the dog out;
- (l) Are you involved in any sporting or similar activities? – No, because I cannot concentrate for long periods;
- (m) How long have you been on medication? – From age 5 until 15;
- (n) Why were you excluded from your school? – I could not conform to the rules, could not sit in a classroom for a long period; it was expensive for the Education Authority and a waste of their money to fund someone who was not prepared to do the work;
- (o) Did you always take your medication while at school? – No, nobody supervised this and I took it now and again; I am not taking medication at present because I suffered bad side effects from it;
- (p) What side effects have you suffered? – Heartburn;
- (q) Have you told anyone about these side effects? – Yes, but the issue was not pursued; my body is now used to the medication; its speeds up adults but has a reverse effect on children;
- (r) Has your doctor suggested any other medication? – No, I am happy with my current situation but the process with the Mental Health Authority is longwinded; I waited a year to see them and they now want to reduce the time of my appointment from one hour to 30 minutes;
- (s) What damage have you caused at your mother's home? – I put my head through the wall and the last time I drove my motorbike through the fence;
- (t) Do you have any contact with your father? – I talk to him on the phone sometimes;
- (u) How are your brothers affected when you are at home? – When I lose my temper they lock themselves in their bedroom and it worries me that I scare them;
- (v) Do you think you are capable of living alone in a flat? – Yes, I need more space and more responsibility;
- (w) Why did you not like the bed and breakfast accommodation provided by the Council? – It was too small and full of drug addicts; I did not want to be there and it was in my best interests to move out as I was threatened by others;
- (x) In what area would you like to live? – Loughton or Buckhurst Hill;
- (y) Would you like to be in a building with other young people? – No, because I would be likely to get into trouble;

(z) You appear to have suffered some injuries recently; how did those happen? – I fell off my motorbike;

(aa) How long did you have a motorbike? – Four weeks, before I smashed it up.

The Panel considered the following submissions of the Assistant Housing Needs Manager (Homelessness):

(a) the applicant had made a homelessness application to the Council on 16 January 2007, completed a medical assessment form and signed the interview notes taken by his Case Officer;

(b) the applicant was a single young man aged 17 (16 when he made his application) who had been living at home with his mother; on 15 January 2007 the applicant's mother had asked the applicant to leave home;

(c) the applicant's mother had stated that she had asked her son to leave because he had damaged her property; the applicant had received a referral order from Chelmsford Magistrates Court because of the damage to his mother's property;

(d) the Council had accepted that the applicant was eligible for assistance as he was British, was homeless as he had been excluded from his home, and was in priority need because he was 16 years of age;

(e) on 14 March 2007, it had been decided that the applicant had made himself homeless intentionally as he had deliberately damaged his mother's property which had resulted in him ceasing to occupy his home;

(f) the applicant had been offered advice and assistance and referrals had been made to NACRO for accommodation; the applicant had been offered an additional period in bed and breakfast accommodation whilst he pursued alternative accommodation and the applicant had been made aware of his entitlement to seek a review of the decision to deem him intentionally homeless; a copy of the letter had also been sent to the Children's Legal Centre who had expressed concern about the applicant's situation;

(g) the applicant had been asked to leave the bed and breakfast accommodation as a result of his behaviour and he had been informed that the Council would not provide further interim accommodation pending the outcome of enquiries;

(h) Chapter 11 of the Code of Guidance on Homelessness advised local authorities on the interpretation of intentionally homeless and this had been taken into account;

(i) the applicant had damaged his mother's property following an argument with her and it was considered that the damage had been a deliberate act; the accommodation would have continued to be available to the applicant for his occupation had he not damaged the property; it was considered reasonable for the applicant to occupy the accommodation as this was his family home where he normally resided;

(j) consideration had been given to the applicant's personal circumstances; the applicant's GP had advised that the applicant was known to have a diagnosis of Attention Deficit Hyperactivity Disorder and learning difficulties and had previously attended a child development clinic; account had also been taken of the fact that the

applicant's mother received disability living allowance for the applicant and that the applicant had attended a residential school because of difficulties he had experienced in his education; however, taking all these matters into account it was considered that the applicant would still have had the mental capacity to understand that damaging his mother's home would have had the likely consequence of him being asked to leave and result in his homelessness.

The Assistant Housing Needs Manager (Homelessness) answered the following question of the Panel:-

(a) Can you clarify the timescale in relation to the homelessness application, the applicant's doctor's comments and the decision made on the homelessness application? – The applicant made a homelessness application to the Council on 16 January 2007; the Council received a letter dated 6 February 2007 from the applicant's GP; the decision that the applicant had made himself homeless intentionally was made on 14 March 2007.

The Chairman asked the applicant if he wished to raise any further issues in support of his case.

The applicant's mother stated that two days prior to asking her son to leave, two youths looking for her son had attempted to kick in her front door and had damaged her garage door. The applicant had asked her to install CCTV to capture any further such incidents but she had refused. Matters had escalated from that incident and when the applicant had damaged the property she had reached breaking point and had asked him to leave.

The Chairman asked the Assistant Housing Needs Manager (Homelessness) if he wished to raise any further issues in support of his case.

The Assistant Housing Needs Manager (Homelessness) pointed out that the applicant was currently spending some time at the family home and some time with friends.

The Chairman indicated that the Panel would consider the matter in the absence of both parties and that the applicant and the Assistant Housing Needs Manager (Homelessness) would be advised in writing of the outcome. The applicant, his mother and the Assistant Housing Needs Manager (Homelessness) then left the meeting.

The Panel focussed on the applicant's behaviour in the family home which had led to him leaving that accommodation, the advice included in the Code of Guidance on Homelessness relating to a deliberate act, and the representations made about the applicant's medical history. The Panel concluded that the applicant had become intentionally homeless.

RESOLVED:

(1) That having regard to the provisions of the Housing Act 1996, as amended, and the Code of Guidance on Homelessness, and having taken into consideration the information presented by and on behalf of the applicant and by the Assistant Housing Needs Manager (Homelessness) in writing and orally, the decision of the Assistant Housing Needs Manager (Homelessness) that the applicant had become intentionally homeless, be upheld for the following reasons:

(a) the applicant failed to conduct himself in an acceptable manner in the family home and as a result he was told to leave the property by his mother; there is no evidence to suggest that the act which led to the applicant having to leave the property was made when the applicant was under duress;

(b) had it not been for the applicant's unacceptable behaviour in the family home, the property would have been available and reasonable for him to have continued to occupy;

(c) account has been taken of the submissions about the applicant's medical history; on balance, there is no reason to believe that the applicant is incapable of managing his affairs, by reason of age or mental illness; on balance, it is considered that the applicant has the mental capacity to understand the likely consequences of damaging the family home;

(2) That no deficiency or irregularity has been identified in the original decision made by the Assistant Housing Needs Manager (Homelessness) or the manner in which it was made; and

(3) That the officers refer the applicant to Social Care to seek their assistance under the terms of the Children Act 1989.

CHAIRMAN

EPPING FOREST DISTRICT COUNCIL COUNCIL MINUTES

Committee: Housing Appeals and Review Panel **Date:** 26 June 2007

Place: Committee Room 1, Civic Offices, High Street, Epping **Time:** 4.00 pm - 6.45 pm

Members Present: Councillors Mrs P K Rush (Chairman), Mrs R Gadsby (Vice-Chairman), Mrs J Lea, Mrs P Richardson and J Wyatt

Apologies: Councillors R D'Souza

Officers Present: P Pledger (Assistant Head of Housing Services (Property and Resources)), (for agenda item 6 only), C O'Boyle (Head of Legal, Administration and Estates)(for agenda items 1-5 only) and G Lunnun (Democratic Services Manager)

54. SUBSTITUTE MEMBERS

It was noted that Councillor Mrs Lea for substituting for Councillor D'Souza at this meeting.

55. DECLARATIONS OF INTEREST

No declarations of interest were made pursuant to the Council's Code of Member Conduct.

56. EXCLUSION OF PUBLIC AND PRESS

RESOLVED:

That, in accordance with Section 100(A)(4) of the Local Government Act 1972, the public and press be excluded from the meeting for the items of business set out below as they would involve the likely disclosure of exempt information as defined in the paragraphs of Part 1 of Schedule 12A of the Act indicated and the exemption is considered to outweigh the potential public interest in disclosing the information:

Agenda Item No	Subject	Exempt Information Paragraphs Nos
5	Appeal No 6/2007	1 & 2
6	Appeal No 5/2007	1 & 2

57. APPEAL NO. 6/2007

Members were advised that the appellant had stated on her application form to the Panel that she intended to attend the meeting in order to present her case. The Panel noted that the appellant had been advised to attend at 4 pm but was currently not present at the Civic Offices.

The Panel adjourned the meeting to enable the Democratic Services Manager to attempt to contact the appellant by telephone.

The meeting was reconvened and the Democratic Services Manager advised that he had been unable to contact the appellant who was still not present at the Civic Offices.

RESOLVED:

(1) That consideration of Appeal 6/2007 be deferred to the next meeting of the Panel; and

(2) That the appellant be advised that her appeal will be determined at the next meeting of the Panel whether or not she is in attendance.

58. APPEAL NO. 5/2007

The Panel considered an appeal against a decision made by the Area Housing Manager acting under delegated authority to refuse a request to sell land in front of the appellants' property. The appellants attended the meeting to present their case accompanied by Councillor D Stallan. Mr N Taylor (Area Housing Manager) attended the meeting to present his case. Mr P Pledger (Assistant Head of Housing Services)(Property and Resources) attended the meeting to advise the Panel as required on details of the Council's housing policy relevant to the appeal. The Chairman introduced the members of the Panel and officers present to the appellants and outlined the procedures to be followed in order to ensure that proper consideration was given to the appeal.

The Panel had before them the following documents, which were taken into consideration:

(a) a summary of the appeal together with the facts of the case forming part of the agenda for the meeting;

(b) the case of the Area Housing Manager;

(c) copies of documents submitted by the Area Housing Manager namely:

(i) a plan showing the appellants' property and adjoining properties;

(ii) letter dated 28 July 2005 from the appellants to the Area Housing Manager;

(iii) letter dated 4 August 2005 from the Housing Officer (Sales and Leasehold) to the appellants;

(iv) letter dated 29 March 2006 from the appellants to the Council's Housing Services;

- (v) letter dated 4 April 2006 from the Housing Officer (Sales and Leasehold) to the appellants;
 - (vi) letter dated 22 May 2006 from the appellants to the Area Housing Manager;
 - (vii) letter dated 30 May 2006 from the Area Housing Manager to the appellants;
 - (viii) letter dated 10 April 2007 from the Assistant Head of Housing Services (Operations) to the appellants;
- (d) the case of the appellants;
- (e) copies of documents submitted by the appellants, namely:
- (i) a copy of the application to the Housing Appeals and Review Panel dated 7 March 2007;
 - (ii) letter dated 23 April 2007 from the previous owner of the property to the appellants;
 - (iii) licence dated 8 November 2006 between the appellants and the Council;
 - (iv) copy of a plan dated April 2005 obtained from HM Land Registry showing the appellants' property and adjoining properties and a right of way;
 - (v) copy of a plan dated 11 March 2003 produced by the Council in relation to the property;
 - (vi) copy of a title plan in relation to the property adjoining the appellants' property and showing a right of way;
 - (vii) copies of photographs showing the land subject to the appeal;
 - (viii) copy of another plan lodged with HM Land Registry showing the property adjoining the appellants' property and a right of way.

The Panel considered the following submissions in support of the appellants' case:

- (a) the area of land had been offered to the previous owners of the property by the Council in 1994;
- (b) the equivalent area in front of an adjoining property had been sold to the owners of that property by the Council, admittedly in error; as a result they owned half of a shared entrance and path;
- (c) children ran across the appellants' lawn area and played around the appellants' cars stationed on the land; the appellants felt unable to tell the children not to do so because they did not own the land;
- (d) there was an increasing demand for off-street car parking spaces; when the appellants had visitors there was nowhere for their visitors to park;

- (e) the Council had never maintained the lawns or hedges forming part of the land and had not painted white lines or a house number on the parking bays on the land;
- (f) the Council's waste contractors would not collect waste or recycling materials unless it was placed in front of the hedges, on the highway;
- (g) the previous owners of the property had confirmed that the Council had not maintained the land or the parking bays in question since 1947; the Council had effectively had no interest in the land for 58 years;
- (h) it was possible that the Council could decide that the appellants could no longer use the parking bays on the land and they would be left with nowhere to park their vehicles;
- (i) the land could not be built on;
- (j) the right of way through the land had only been in existence for a few years and was not shown on many plans; it was hardly ever used and was practically overgrown; the right of way in front of other properties in the locality had been maintained by the Council as had hedges and lawns in front of those properties;
- (k) the Council had placed too much emphasis on the suggestion that the appellants wished to bury a television service cable within the land; the enquiry made by the appellants had only been to ascertain how a cable would cross the land.

The Area Housing Manager advised that he did not wish to ask the appellants any questions. The appellants answered the following questions of the Panel:-

- (a) Your current licence enables you to have certain rights over the land at a cost of £80 per annum; why do you wish to own the land as this would be much more expensive? – We look after the land and want to make it better so that it looks part of the rest of our property; to do so we need to have greater control over the land;
- (b) What is the depth of the land in question? – Approximately 16½ metres from the front boundary line to the highway;
- (c) Are the parking bays on the land marked out for your use? – No, the parking bays on the land are the only ones in the locality which are not marked;
- (d) The property adjoining yours appears to have a lot of building materials present; can you explain why this is so? – They are having an extension built;
- (e) Are the parking bays on the land the only readily available off-street parking facilities for your vehicles? – Yes.

The Panel considered the following submissions of the Area Housing Manager:

- (a) an area of land approximately 78 metres long and 18 metres wide formed a buffer between houses and the highway in front of and in the locality of the appellants' property;
- (b) in 1989, the Council had constructed 20 parking bays and 5 access points from the highway on this land; since then, alterations had been made to the layout, with the footpath that ran along the boundaries of the residential properties appearing

to have been removed from in front of the appellants' property and their immediate neighbours' property;

(c) of the 10 houses abutting the area of land, six were now in private ownership; since 1989 at least three of the home owners had applied to the Council to purchase the land between their boundary and the highway; these requests had been refused; the former owners of the appellants' property and the appellants had since then had licences to use the relevant access point and parking spaces in front of their property;

(d) in April 1994, the then owner of the appellants' property had applied to the Council to purchase the land in front of her home and following due consideration the Council had agreed to sell it to her; this would seem to have been a departure from the normal practice and the reasons for this offer were not recorded on the Housing file; in the event the then owner of the property had not taken up this offer;

(e) on 1 August 2005, prior to taking up ownership of their property, the appellants had enquired about the possibility of purchasing the land in front of their property including the two parking spaces; the appellants had been advised on 4 August 2005 that the Council would not wish to sell this land;

(f) on 30 March 2006 a further application had been received from the appellants who had pointed out that the owners of an adjoining property had been allowed to purchase the land in front of their house when they had purchased their house from the Council; the appellants had again been advised that the Council did not wish to sell the land in front of the appellants' property; the appellants had also been advised that the sale of the land in front of their neighbours' property had been made in error;

(g) a further enquiry had been received from the appellants on 24 May 2006 and a reply had been sent on 30 May 2006 clarifying the Council's reasons for refusal to sell the land;

(h) the matter had been raised again subsequently following an approach by Councillor D Stellan; a response to this approach had been sent on 10 April 2007 setting out the Council's position;

(i) since that time the appellants had sought to get permission from the Council to bury a television service cable in the ground on the land between their house and the highway; this served to highlight the problems that could occur if the strip of land were to become a chequerboard in terms of ownership; it was quite possible that other services such as gas and water were also buried in the land, which might be problematical if a decision was made to sell the land to the appellants;

(j) if this appeal was allowed it was envisaged that at least two or three other residents in the locality would make similar requests; this would result in a situation where a large strip of land would be divided amongst a number of owners; any attempts in the future to utilise this land for any sort of development, including more public parking, would require the Council to repurchase individual plots;

(k) the appellants already had sufficient control through their licence to prevent their neighbours' children from playing on the land; it was not necessary for the appellants to purchase the land in order to prevent such a use.

The Area Housing Manager answered the following questions of the appellants and the Panel:-

(a) In the letter dated 10 April 2007, the Assistant Head of Housing Services stated that it was unlikely that the Council would wish to develop this area in terms of providing more accommodation but that it might be possible that the land could be used to extend the existing off-street parking scheme at some time in the future; bearing in mind that six of the 10 properties in this location are privately owned and the area in front of the appellants' and their immediate neighbours' properties is separated by a hedge, do you not agree that it is unlikely that the area will be required for off-street parking in the future? – The Council has a programme for improving off-street parking and a scheme can proceed in an area where there are no Council tenants;

(b) Why was the previous owner of the appellants' property offered the land in front of the property? – I have no knowledge of that offer; I assume it was against Council policy at the time although I cannot say what the policy was in 1994; there is now a general presumption not to sell land and if this policy is not followed it could result in a situation where there is little or no green areas left;

(c) You do not seem to have ruled out the possibility of using the land to provide more accommodation; how would this be possible bearing in mind that the land is immediately in front of our property? – It might be possible to design a suitable scheme eg bungalows;

(d) If the land was developed for more accommodation how would this affect access and egress to our property? – Access and egress would be maintained to your property but you must bear in mind that the Council is under pressure to provide more houses in the District and so there is particular pressure to build on Council-owned land;

(e) If the land were to be used by the Council for additional off-street parking where would we park our vehicles? – It would be additional parking for residents in the locality including yourselves; there is constant pressure to provide more off-street parking, particularly for the children of owners/tenants;

(f) The appellants' neighbours who were allowed to purchase the land in front of their property only have access to two spaces; where are their children expected to park? – It has already been explained that an error was made in allowing the appellants' neighbours to purchase that land;

(g) Were any conditions placed on the sale of the land to the appellants' neighbours? – It was sold under the Right to Buy with no specific conditions; I do not know whether a covenant was placed on the sale but if it was it is unlikely that it could be enforced after say 10 years;

(h) The letter dated 10 April 2007 from the Assistant Head of Housing Services refers to a letter dated 10 May 1994 in which it was stated that the Council did not wish to sell the car parking area for management reasons; what were those management reasons? – I cannot say what they were in 1994;

(i) What is the current value of the land in question? – I have no idea but we could be talking about tens of thousands;

(j) What need is there in the locality for additional off-street parking? – An adjoining road and the estate opposite the appellants' property are likely to need more off-street parking in the future; the adjoining road is one of the Council's priorities for more provision;

(k) If the land were sold, what provision would be made to have access to any public services contained therein? – The Council would not normally sell land where it had to impose access rights; it should be understood that the provision of broadband is not a public service;

(l) Did the sale of the land in front of the appellants' neighbours' land take place at the same time as the offer was made to the previous owner of the appellants' property? – No;

(m) Reference has been made to the possibility of requiring the land for highway improvements; what improvements do you envisage? – Possibly a mini roundabout or road widening; this is my personal opinion;

(n) In the event of the land being sold, would it be necessary for land to be bought back in order to undertake highway improvements? – Yes;

(o) Is there a public right of way along the footpath immediately in front of the front boundary of the appellants' property? – Yes, the footpath is open to the public and rights would need to be maintained; the footpath would need to be excluded from any sale;

(p) One of the plans which you have submitted showing the land the appellants wish to acquire also includes the footpath in front of their property; is this correct? – No, the hatching on the plan should not extend over the footpath;

(q) Other parking spaces in front of the properties in this locality are marked with the appropriate house number; why are the spaces in front of the appellants' property not marked? – I cannot say; however, no one else is likely to park in those spaces because the land has the appearance of being in private ownership;

(r) When the land was offered to the previous owner of the appellants' property did it include the parking spaces? – No;

(s) How long have the parking spaces been in existence? – They were provided approximately 15 years ago;

(t) When the land in front of the appellants' neighbours' property was sold to them did it include the parking spaces? – Yes, but this sale was made in error;

(u) Do the owners/tenants of other properties in the vicinity have similar licences to the appellants if they do not already own the land in front of their properties? – Yes; they have similar licences but in the main the land in front of their properties is not cultivated;

(v) Why was the land in front of the appellants' neighbours' property sold in error? – In considering the Right to Buy application, the surveyor measured up the land and included the area in front of the property erroneously.

The Chairman asked the appellants if they wished to raise any further issues in support of their case.

Councillor Stallan on behalf of the appellants stated that he did not envisage the land being required for off-street parking in order to meet the requirements of an adjoining road due to the distance of that road from the land. Similarly, he indicated that he did not envisage off-street parking places being provided for the owners of private properties. Further he queried the status of the footpath in front of the appellants'

and their immediate neighbours' properties as it was not shown on ordnance survey plans.

The Chairman asked the Area Housing Manager if he wished to raise any further issues in support of his case.

The Area Housing Manager advised that the submitted plans did not provide a definitive answer to the status of the footpath. He pointed out that there was a general presumption not to sell such land and that if this appeal was allowed it would result in similar requests being received from the owners of other properties in the immediate locality. He pointed out that one further application had already been received since this appeal had been lodged.

The Chairman indicated that the Panel would consider the matter in the absence of both parties and that the appellants and the Area Housing Manager would be advised in writing of the outcome. The appellants, Councillor Stallan and the Area Housing Manager then left the meeting.

The Panel focused on the background to the request, the possible uses of the land and the likelihood of similar requests being received from other residents in the locality. The Panel concluded that this was a special case in view of the offer made to the previous owner of the property albeit in error. The Panel noted the restricted terms of the licence granted to the appellants in respect of the land.

Taking all matters into account, the Panel concluded that the land should be offered to the appellants. The Panel considered the conditions to be imposed on the offer.

RESOLVED:

(1) That, subject to (2) below, having taken into consideration the information presented by and on behalf of the appellants and by the Area Housing Manager in writing and orally, the appeal be allowed, in part, subject to the following conditions:

(a) the sale shall not include the two parking bays and the access to these bays from the highway which forms part of the land; these areas shall continue to be subject to the terms of the licence dated 8 November 2006 between the Council and the appellants;

(b) the sale will include rights of way over relevant footpaths within the appellants' ownership for others to cross as required with the appellants being responsible for the maintenance of the same;

(c) the Council and statutory undertakers shall be entitled to have full and free access (with all necessary materials, apparatus, plant and equipment) in order to cleanse, repair or carry out other works on the land;

(d) no buildings, hard standings, structures or fencing shall be erected on the land;

(e) in the event that the land or part of the land is required by the Council in the future for the purposes of off-street parking or highway improvements, the appellants and their successors in title shall offer the required land to the Council at market value at that time;

(f) the appellants shall pay the Council's and their own costs in relation to the sale of the land;

(g) the sale price shall be set by the Council's Estates and Valuations Section; and

(2) That, if the appellants confirm that the above conditions are acceptable and that they still wish to acquire the land, the Estates and Valuations Service be asked to value the land and the Council's Cabinet be recommended to agree to the sale of the land, subject to the conditions set out in (1) above.

CHAIRMAN

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