

EPPING FOREST DISTRICT COUNCIL COMMITTEE MINUTES

Committee: Housing Appeals and Review Panel **Date:** Thursday, 14 February 2008

Place: Committee Room 1, Civic Offices, High Street, Epping **Time:** 3.30 - 4.25 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: A Hall (Director of Housing) and G Lunnun (Democratic Services Manager)

107. SUBSTITUTE MEMBERS

It was noted that Councillor B Rolfe was substituting for Councillor R D'Souza.

108. DECLARATIONS OF INTEREST

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

109. 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 Paragraph Numbers
5	Appeal No: 2/2008	1 and 2
6	Appeal No: 4/2008	1 and 2

110. APPEAL NO: 2/2008

Members were advised that following the decision of the Panel at its meeting the previous week to commence all future meetings at 2.30 p.m. the appellant in this case had been notified of the revised time for consideration of her appeal. Unfortunately, she had advised that she could not attend at the earlier time as she had already a meeting at work which could not be re-arranged. As a result it had

been agreed with the Chairman of the Panel that consideration of this appeal would be deferred and would be considered at a future meeting.

RESOLVED:

That the decision to defer consideration of this appeal be noted.

111. APPEAL NO: 4/2008

The Panel considered an appeal against a decision made by officers under delegated authority to refuse permission for a vehicular crossover to the appellant's property. The appellant attended the meeting to present his case accompanied by his wife. Mr D Barrett (Area Housing Manager) attended the meeting to present his case. Mr A Hall (Director of Housing) attended the meeting to advise the Panel as required on details of the national and local housing policies relative to the appeal. The Chairman introduced the members of the Panel and officers present to the appellant and his wife and outlined the procedure 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) copies of documents submitted by the appellant, namely:
 - (i) a copy of the application to the Housing Appeals and Review Panel dated 24 September 2007 including a letter with that date and a photograph showing the existing footpath and the area of green required to be removed in order to provide a vehicular crossover;
 - (ii) letter dated 24 August 2007 from the Assistant Head of Housing Services (Operations) to the appellant and his wife;
 - (iii) copy of the appellant's application for a vehicular crossover dated 18 June 2007;
 - (iv) further photographs circulated at the meeting by the appellant and retained by the appellant;
- (b) the background to the case;
- (c) the case of the Area Housing Manager.

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

- (a) the existing footpath leading to the appellant's property only needed to be widened by taking a triangular shaped piece of grass verge approximately 2.5 metres x 2.5 metres x 1.5 metres adjoining the footpath immediately in front of the appellant's property which would have a minimal effect on the appearance of the grass verge;
- (b) nearly all of the households in the road in which the appellant lived now owned two vehicles and if the appellant and his wife were able to park their vehicles off-street it would benefit their neighbours by easing parking congestion on the highway, especially at weekends; the trend was for older occupiers to move out of properties in the locality and for younger people to move in with more vehicles;

(c) if the appellant and his wife were able to park off-street they would benefit from cheaper car insurance premiums; they had both had their vehicles damaged recently by careless drivers when their vehicles had been parked on-street;

(d) residents in the locality already took vehicles across the grass verge in an attempt to alleviate parking problems on the highway and as a result the grass verge had been damaged;

(e) the submitted photographs showed access arrangements for other properties in the locality which resembled what was already in place with the footpath to the appellant's property; in at least one case the width of the hard surface was narrower than the existing footpath to the appellant's property.

The appellant and his wife answered the following questions of the Area Housing Manager and the Panel:-

(a) Is the footpath leading to your property used by pedestrians? - We use it but our neighbours do not; relations of our neighbours park vehicles on the footpath when visiting our neighbours;

(b) Can you confirm that the gates and vehicular access to your neighbour's property were removed some years ago? - At that time our neighbour was a single mother who received regular visitors; there was a tendency for the visitors to bring vehicles onto the property which caused nuisance to the neighbours and it is our understanding that was the reason why a wall was built;

(c) In the photographs you have produced some of the crossovers have dropped kerbs; is there a dropped kerb for the footpath between the highway and your property? - No;

(d) When vehicles are parked on the highway is it difficult for through traffic to travel along the highway? - No;

(e) Why have you used the term "existing crossover" in your application for a vehicular crossover? - We understand that this is a term which was used years ago;

(f) Is the width of the existing footpath wide enough for a standard vehicle without any of the wheels of the vehicle being on the grass verge? - Yes;

(g) If a vehicle is parked on the existing footpath is there still room for a pedestrian to walk past it on the footpath? - Yes;

(h) Is the triangular shaped piece of land needing to be removed simply to enable vehicles to be manoeuvred into your property without going over the grass verge? - Yes;

(i) How long have you lived at your property? - 25 or 26 years;

(j) In one of the photographs you have submitted showing vehicular access to another property in the locality it appears that vehicular access is not available; can you clarify? – It is difficult but they can gain access by manoeuvring their vehicles.

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

(a) the appellant's property was a three bedroom end of terrace former Council owned house sold under the Right to Buy in January 1995;

(b) on 27 July 2007 the appellant had submitted an application for permission to install a vehicular crossover to the front garden of his property over an existing footpath across Council housing owned land;

(c) on 31 July 2007 the application had been refused on the grounds that the construction of the crossover would require the removal of an additional section of green over 12 metres in length; this would have been in excess of the maximum permitted length of 6 metres in accordance with Council policy as agreed by the former Housing Committee on 23 March 1999 and re-affirmed by the Cabinet on 25 November 2002 and 10 April 2006;

(d) the appellant had appealed against that decision and the case had been reviewed by the Assistant Head of Housing Services (Operations) who had subsequently upheld the original decision on 24 August 2007;

(e) the area in which the appellant's property was situated had been built between 1948 and 1952 and had been designed along garden village principles with cul-de-sacs, greens and grass verges; with the subsequent growth in car ownership, problems were currently being experienced in many areas on the estate where both on and off-street parking was at a premium;

(f) when the original decision had been made it had been assumed that there would be a need to widen the existing footpath throughout its full length; it was now apparent that the appellant was only seeking to widen the footpath for a length of approximately 2.5 metres immediately in front of his property;

(g) in October/November 2007, Essex County Council had commented that the existing footpath had probably been constructed originally as a vehicular crossover some 30 years ago in order to serve the appellant's neighbour's property; Essex County Highways had stated that they would accept the existing structure which with some modifications at the property boundaries could serve the appellant's and his neighbour's properties;

(h) officers had considered it necessary to seek clarification of the Council's policy in relation to this case and similar situations which existed throughout the Council's estates;

(i) on 9 January 2008, the Council's Housing Portfolio Holder had considered a report on whether existing footpaths of this nature across housing owned green areas could be used for the purposes of a vehicular crossover; the Portfolio Holder had decided that the construction of vehicular crossovers would not be permitted on any existing footpath used for pedestrian access across housing owned grassed amenity land.

The Area Housing Manager answered the following questions of the appellant, his wife and the Panel:-

(a) When I spoke to you on the telephone you advised me to defer proceeding with an appeal to the Panel because the policy was being reviewed and could be changed to our advantage; you are now attempting to justify your decision by a policy decision made after your decision; we have been disadvantaged by following your advice to await a decision on the policy review - do you agree? - You could have proceeded to the Panel prior to the Portfolio Holder reviewing the Council's policy; officers were of the view that the Council's policy needed to be reviewed rather than

a decision made on your appeal in isolation otherwise an unfortunate precedent might be set;

(b) Do you agree that our appeal would have been more likely to be granted if we had not agreed to its consideration being delayed? – The decision to seek a review of the Council's policy was not mine alone; it was the view of Housing Officers generally that there was a need to review the policy in order to clarify the situation in cases such as this one;

(c) You have said that Essex County Council Highways considered that the footpath was probably constructed as a vehicular crossover; is there any documentary evidence available or have they based that conclusion on the construction of the footpath? - There is no documentary evidence available as the County Council's records do not go back far enough;

(d) If it was constructed as a vehicular access was it to the appellant's neighbour's property rather than the appellant's property? - Yes;

(e) Is there any evidence that the footpath has been constructed to a higher standard than for a normal footpath? - It is not constructed to current standards for a vehicular crossover but County Council Highways are unlikely to require any reconstruction if the appeal is allowed;

(f) Do the County Council Highways have any objection to this proposal? - They have no objection on highway grounds.

The Chairman asked the appellant if he wished to raise any further issues in support of his case. The appellant stated that there were already vehicular crossovers across the grass verge in the locality. The suggestion that there might be conflict between vehicles and children playing on the grass area would not be an issue. The appellant's grandchildren played on the grass area and the appellant and his wife were not reckless drivers and would take great care when driving along the footpath. The appellant stated that only domestic vehicles would be parked within the curtilage of his property if the appeal was allowed.

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 this matter had been carefully considered and the Council's policy had been clarified in relation to the appellant's situation. It had been concluded that permission should not be granted for the construction of vehicular crossovers on any existing pathway used for pedestrian access across housing owned grassed amenity land.

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

The Panel considered all of the evidence and focused on the background to the provision of the existing footpath, the amount of green area required to be removed in order to achieve vehicular access to the appellant's property, and the Council's recent policy decision on the use of footpaths for vehicular crossovers.

RESOLVED:

(1) That, having taken into consideration the information presented by the appellant and by the Area Housing Manager in writing and orally, the appeal

be allowed and the decision of the Area Housing Manager that permission not be granted for the provision of a vehicular crossover to the appellant's property be not upheld for the following reasons:

(a) although the proposal does not comply with the conditions which normally have to be met for permission to be granted for the provision of a vehicular crossover over Council-owned housing land, it is considered that the following special circumstances in this case justify an exception being made to the Council's policy:

(i) the existing footpath over which the vehicular access is proposed is wider than a normal footpath (being between 2.4 metres and 2.6 metres wide) and is able to fully accommodate an average sized family vehicle without any wheels encroaching onto the adjoining grass areas;

(ii) the existing footpath is not adopted and as a result is not maintained by the Highways Authority;

(iii) the evidence indicates that the existing footpath was probably originally constructed and used as a vehicular crossover some 30 years ago;

(iv) in view of the width and location of the existing footpath only a small triangle of grassed area needs to be removed to achieve a vehicular crossover to the appellant's property;

(2) That the permission for a vehicular crossover be subject to the following conditions:

(a) the standard conditions relating to vehicular crossovers over Council-owned housing land as varied by this decision;

(b) the crossover shall be for the use of the occupiers of the appellant's property only; and

(c) the appellant and future occupiers of the appellant's property shall be responsible for the maintenance of the crossover; and

(3) That the Area Housing Manager be asked to survey the locality and to check the records in order to establish which households are crossing the Council's grassed area in vehicles without authority and to take action to prevent such unauthorised access.

CHAIRMAN