

EPPING FOREST DISTRICT COUNCIL COMMITTEE MINUTES

Committee: Housing Appeals and Review Panel **Date:** Thursday, 27 March 2008

Place: Committee Room 1, Civic Offices, High Street, Epping **Time:** 2.30 - 3.40 pm

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

Other Councillors:

Apologies: R D'Souza

Officers Present: P Pledger (Assistant Head of Housing Services (Property and Resources))
and G Lunnun (Democratic Services Manager)

117. MINUTES

RESOLVED:

That the minutes of the meetings of the Panel held on 13 and 14 February 2008 be taken as read and signed by the Chairman as correct records.

118. SUBSTITUTE MEMBERS

There were no substitute members.

119. DECLARATIONS OF INTEREST

No declarations of interest were made pursuant to the Code of Conduct for Members.

120. 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 Numbers
6	Appeal No.5/2008	1 and 2

121. APPEAL NO. 5/2008

The Panel considered an appeal against a decision made by officers under delegated authority requiring the appellant to meet the cost of removing kerbstones to enable her to provide vehicular access to the rear of her property across Council-owned land. The appellant attended the meeting to present her case accompanied by a family friend. 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 national and local housing policies relative to the appeal. The Chairman introduced the members of the Panel and officers present to the appellant and outlined the procedure to be followed in order to ensure 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) the application to the Housing Appeals and Review Panel dated 4 December 2007;
 - (ii) a photograph showing a vehicle parked within the curtilage of the appellant's property;
 - (iii) letter dated 23 July 2007 from the appellant to the Assistant Head of Housing Services;
 - (iv) letter dated 5 July 2006 from the Area Housing Manager (North) to Bill Rammell MP;
- (b) the case of the Area Housing Manager;
- (c) copies of documents submitted by the Area Housing Manager, namely:
 - (i) letter dated 10 July 1975 from the Area Housing Manager to the appellant's late brother;
 - (ii) three photographs showing the rear of the appellant's property and the garage forecourt at the rear of her property;
 - (iii) letter dated 20 October 2005 from a Housing Officer (Management) to the appellant;
 - (iv) letter dated 5 July 2006 from the Area Housing Manager (North) to Bill Rammell MP;
 - (v) letter dated 23 August 2007 from the appellant to the Assistant Head of Housing Services;
 - (vi) letter dated 5 September 2007 from the Assistant Head of Housing Services (Operations) to the appellant.

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

- (a) the appellant's late brother had obtained permission from the Council in 1975 when he had occupied the appellant's property for the construction of a garage and a car hardstanding in the rear garden of the property; there had been no reference in the letter giving permission for the hardstanding to the need to remove kerbstones;
- (b) the appellant's late brother had parked his Mini Metro car on the hardstanding as shown on the submitted photograph; he would not have been able to gain access to the hardstanding if the kerbstones had been in place at that time;
- (c) the Council officers had stated that the area between the garage forecourt and the boundary of the appellant's property was of an appearance that suggested it had never been covered and crossed by a vehicle; the photograph disproved that assertion;
- (d) the access to the rear of the appellant's property originally had been an unmade road and this had been its condition when the appellant's late brother had parked his vehicle in the rear of his property; the access had been tarmaced subsequently and possibly the kerbstones had been laid at that time;
- (e) the appellant's neighbours had confirmed that the appellant's late brother had used the hardstanding for parking a vehicle on a regular basis;
- (f) one of the appellant's neighbours could recall cycling across the garage forecourt and straight into the rear garden of her property; this would not have been possible if the kerbstones had been in place at that time;
- (g) it was not clear why the appellant's late brother had not contested the installation of the kerbstones; however those who had known the appellant's late brother would not have been surprised about his lack of action;
- (h) the Council's officers had commented on the delay between 2005 when the appellant had first applied to have the kerbstones removed and 2007 when she had appealed to the Assistant Head of Housing Services against the initial officer decision; the appellant had engaged a supplier to provide a garage and the supplier had undertaken to communicate with the Council about the issues; the supplier had failed to fulfil this undertaking and the appellant was now proposing to find a new supplier;
- (i) the appellant wished to erect a garage in the rear garden of her property; she was prepared to pay a licence fee for crossing the Council's land but considered it unreasonable to pay for the removal of the kerbstones and the provision of a dropped kerb as the kerbstones had been laid by or on behalf of the Council at some time after the appellant's late brother had obtained permission to construct a hardstanding and a garage in the rear garden of the property.

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

- (a) You have indicated that some of your neighbours support your views about the time when the kerbstones were laid; do you have any evidence to support this claim? - My letter dated 23 August 2007 to the Assistant Head of Housing Services states that the occupiers of three of the neighbouring properties can confirm that my late brother used the hardstanding to park his car on a regular basis;

(b) Are any of your neighbours able to provide evidence as to when the garage forecourt area was tarmaced? - I am not sure I can only rely on what my neighbour who rode a bicycle across the land has said;

(c) Can you confirm that your neighbours comments are restricted to saying that your late brother used the hardstanding to park his car on a regular basis? – Yes, and one has said that she rode her bicycle into her back garden which would not have been possible if the kerbstones had been in place;

(d) Your late brother purchased the property in 1979; what is your recollection of the condition of the rear of the property at that time? - It is not good; however, my late brother did construct a hardstanding in the rear garden of his property and did use that hardstanding for stationing a motor vehicle; he also constructed a car port;

(e) The photographs submitted by the Area Housing Manager suggest that it would not have been possible to drive a vehicle into the rear garden of the property as they show two rows of brickwork across the width of the site near to the site boundary; can you explain the position? - The rows of bricks were not there originally; they represent two retaining walls which were built to increase the level of the hardstanding; the rows of bricks were not present when my late brother parked his vehicle on the site; subsequent to parking his vehicle on the site my late brother had the use of an off-site garage;

(f) Would it be possible to provide a ramp enabling vehicle access to the rear of your property rather than removing the kerbstones? - There would be a slope to the proposed garage which might affect the opening of the garage door.

(g) Can you explain where the photograph which you have submitted in support of your case was taken from? - It was taken from the upstairs window of an adjoining property;

(h) Are the retaining walls which have been erected on your land higher or lower than the kerbstones? - I am not sure, they were built for the purpose of increasing the height of the hardstanding;

(i) How long is it since a vehicle was parked in the rear garden of your property? - I am not sure, my late brother used a Council garage after parking in the rear garden;

(j) How many years was a car stationed on the hardstanding? - My late brother was using it in 1987 when there was a gale because the roof of the car port was blown off at that time;

(k) Do you have any recollection as to how your late brother got his vehicle onto the hardstanding? – No, but the kerbstones could not have been present at that time as it would not have been possible to drive his vehicle over them;

(l) Is the surface of your garden flat? - The garage forecourt adjoining the rear of my property is higher than the garden but the surface of the garden is completely flat.

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

(a) the kerbstones do not represent the boundary between Council-owned land and the appellant's property; there is an area of land approximately one metre wide between the kerbstones and the appellant's property; this one metre strip is owned by the Council;

(b) in July 1975, the appellant's late brother sought permission from the Council to construct a parking space in the rear garden of his property; access to the garden area can be gained from a block of Council garages which run behind the appellant's property; permission was given in a letter dated 10 July 1975; that letter made no mention of the need for a dropped kerb, the construction of a crossover of the land between the garage forecourt and the rear garden, the need for a licence to use the garage forecourt for access, or covenant consent for any building works; all of these matters would have been listed if a similar application had been made today;

(c) the appellant's late brother had purchased the property from the Council in May 1979; the sale plan gave no indication that a parking area had been built in the garden but it did refer to access to a Council garage plot along the rear boundary line;

(d) in 2005, Housing Management had been advised that the appellant's late brother had died and that the appellant had inherited the property; in May of that year, the appellant had applied to the Highways Service of Essex County Council to have kerbstones removed from the area between the garage forecourt and her garden; she had been referred to Housing Services as the area in question belonged to the District Council;

(e) on inspecting the area it appeared that the kerbstones had always been in situ and photographs of the area were taken at that time; these photographs were the ones before the Panel;

(f) the photographs clearly showed a line of kerbstones to the whole length of the garage forecourt;

(g) the Council's position had been explained to the appellant in a letter dated 20 October 2005; some nine months had elapsed after the date of that letter before a telephone call had been received from the appellant and a letter had been received from the local Member of Parliament on 29 June 2006; it was then claimed that at some time in the more recent past, the Council had installed the kerbstones and it was felt that the Council should pay to have them removed; a quotation had been requested from a contractor who had stated that the work would cost £560 plus VAT; the appellant had given no explanation as to why her late brother had not taken up this matter with the Council if he had suddenly found that he could no longer use the parking area following the installation of the kerbstones;

(h) a check of the Council's Repairs Service record had been carried out; this had not revealed any work being carried out to the kerbstone since at least 1999;

(i) on 23 August 2007, the appellant had appealed to the Assistant Head of Housing Services (Operations) against the original officer decision; on 5 September 2007 the Assistant Head of Housing Services (Operations) had upheld the original decision;

(j) there was no explanation available as to why the original letter giving permission for parking in the rear garden had not been more specific; whilst no mention had been made of kerbstones, it was clear that they had been there for many years; if they had been provided after the appellant's late brother had parked his vehicle in the rear of his property it was reasonable to assume that he would have complained about their installation; a more likely explanation was that the kerbstones had always been present and that the appellant's late brother had driven his vehicle over the kerbstones in order to gain access to the rear of his property; this

explanation was supported by the fact that the area between the garage forecourt and the garden did not appear to have ever had a crossover built on it to take the weight of a motor vehicle;

(k) the granting of a licence to cross the garage forecourt, the construction of a garage, which would need covenant consent, and the provision of a dropped kerb would undoubtedly increase the value of the property; in the circumstances and the lack of evidence to support the appellant's claims it was considered reasonable that the appellant should meet the cost of altering the kerb line.

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

(a) Is the suggestion of a ramp rather than the removal of the kerbstones feasible? - No, it has merits but is not achievable as it would affect the turning circle for others using the garage forecourt;

(b) It is now some 30 years since the appellant's late brother made his application; is it usual for there to be such a lack of records on the Housing file? - The only record in this case is the letter dated 10 July 1975;

(c) Is there any record of when the kerbstones were installed? - The garages were built some 50 years ago when the houses were built; the garage forecourt surface was apparently re-surfaced approximately 20 years ago and it is alleged by the appellant that the kerbstones were laid at that time; the Council has no record that this is the case;

(d) Is it possible that the kerbstones were put in when the forecourt was re-surfaced? - It is a possibility;

(e) Were the photographs which you have submitted taken recently? - Yes;

(f) You have submitted a copy of your letter dated 5 July 2006 to Bill Rammell MP; do you have a copy of the letter received from the Member of Parliament? - Yes, it is on file dated 21 June 2006; the letter based on the information provided by the appellant suggested that the garage forecourt area had been re-surfaced approximately five years before the date of the letter not 20 as the appellant had indicated today (with the consent of the Chairman, the appellant advised that this had been her mistake; she had only been able to place a more accurate date on the occurrence following a discussion with one of her neighbours);

(g) Can you clarify what other consents would be required for the appellant to gain vehicular access to the rear of her property? - It would be necessary for a licence to be drawn up to cross the garage forecourt at a cost of approximately £80; this licence would be renewable on an annual basis and subject to an annual fee of approximately £80; covenant consent would be required for the erection of a garage and there would be a covenant consent administration charge of £48.10;

(h) Is it normal for there to be sparse records of what happened in 1975? - No, there are licences going back further than that year which are detailed;

(i) Would there be a fee payable by the appellant to cross the Council-owned strip of land between the kerbstones and the boundary of the appellant's property? - No.

The Chairman asked the appellant if she wished to raise any further issues in support of her case. The appellant submitted that her late brother had been meticulous in keeping paperwork and that the only document which had been found regarding vehicular access to the rear of the property had been the letter from the Council dated 10 July 1975. She submitted that if there had been any other paperwork it would have been attached to that letter. As the letter did not refer to the kerbstones it was unlikely that they were in existence at that time.

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 if the appellant built a garage in the rear garden of her property it would add substantially to the value of the property and be considerably more than the cost of removing the kerbstones and providing a dropped kerb. Taking this into account and the fact that there was no evidence to support the appellant's assertions, it was reasonable that the appellant should be expected to meet the cost of altering the kerb line.

With the consent of the Chairman, the appellant was allowed to state that she was not looking to add value to her property but was only seeking to achieve vehicular parking within the curtilage as it was becoming more difficult to find a parking space in the locality.

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 and the Area Housing Manager then left the meeting.

The Panel considered all of the evidence and the views which had been expressed by the appellant and the Area Housing Manager. In view of the lack of evidence to support the claims made by either party and the reliance of the appellant on hearsay evidence from neighbours, the Panel determined that the Council should meet the cost of removing the kerbstones and providing a dropped kerb but that the appellant should meet the costs of providing a crossover between the kerbstones and the boundary of her property as well as entering into a Licence to cross the Council's garage forecourt and obtaining covenant consent for the erection of a garage. The Panel requested that the appellant be made fully aware of the ability of the Council to withdraw the licence to cross the garage forecourt which would result in her being unable to gain vehicular access to the rear of her property. The Panel also requested that the appellant be made aware of the possible need for other consents in order to carry out her proposals e.g. planning, building regulation.

RESOLVED:

That, having taken into consideration the information presented by and on behalf of the appellant and by the Area Housing Manager, in writing and orally, the appeal against the officer decision that the appellant be required to meet the cost of removing kerbstones at the rear of her property and providing a dropped kerb in order to create off-street parking in the rear garden of her property be allowed subject to the following conditions:

- (a) the Council will obtain separate quotations for:
 - (i) the removal of the kerbstones and their replacement with a dropped kerb; and
 - (ii) the formation of a vehicular crossover using porous materials to the rear of the appellant's property over Council-owned land;

(b) the Council will arrange for the works specified in (a) above to be carried out following:

(i) receipt from the appellant of the cost of forming a vehicular crossover to the rear of her property over Council-owned land;

(ii) the appellant entering into a licence with the Council to cross the Council-owned garage forecourt in order to gain vehicular access to the rear of her property at a cost of £83.20 per annum (subject to annual review) and a one off payment of £83.20 for the licence itself;

(iii) the appellant and future occupiers of the appellant's property being responsible for the maintenance of the crossover;

(iv) the appellant obtaining covenant consent for the erection of a garage and meeting the cost of the covenant consent administration charge of £48.10 in the event of wishing to construct a garage within the curtilage of her property and obtaining any other necessary consents for the garage, e.g. planning, building regulation.

CHAIRMAN