



# **Epping Forest District Council**

## **COMPLAINTS PANEL Monday, 29th November, 2010**

**Place:** Civic Offices, High Street, Epping

**Room:** Committee Room 1

**Time:** 4.30 pm

**Democratic Services Officer** Graham Lunnun – The Office of the Chief Executive  
Tel: 01992 564244 Email: glunnun@eppingforestdc.gov.uk

### **Members:**

Councillors D Wixley (Chairman), P Gode, B Judd, G Mohindra and B Sandler

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### **1. APOLOGIES FOR ABSENCE**

### **2. MINUTES (Pages 3 - 10)**

To approve the minutes of the meeting of the Panel held on 2 July 2007 (attached).

### **3. DECLARATIONS OF INTEREST**

To declare interests in any item on the agenda.

### **4. COMPLAINT NO 1/2010 (Pages 11 - 12)**

To consider the attached report.

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## EPPING FOREST DISTRICT COUNCIL COMMITTEE MINUTES

**Committee:** Complaints Panel **Date:** Monday, 2 July 2007

**Place:** Committee Room 1, Civic Offices, High Street, Epping **Time:** 4.30 - 6.30 pm

**Members Present:** Councillors Mrs P Brooks (Vice-Chairman, in the Chair), K Chana, Mrs P Smith and M Woollard

**Other Councillors:**

**Apologies:**

**Officers Present:** R Rose (Senior Lawyer), P Sutton (Asst Head of Planning Services (Forward Planning & Environment)) and A Hendry (Democratic Services Officer)

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### 1. Minutes

#### RESOLVED:

That the minutes of the meeting of the Panel held on 7 August 2006 be taken as read and signed by the Chairman as a correct record subject to the removal of the word 'was' from resolved item 1 of Complaint No. 2/2006, so that it would read: "...Certificate of Lawful Development procedure led to the complainant..."

### 2. Declarations of Interest

No declarations of interest were made by members of the Panel pursuant to the Council's Code of Members Conduct.

### 3. Complaint No.2/2007

The Chairman advised that because part of the complaint refers to Planning Sub-Committee 'A', two of the original Complaint Panel members (Councillors Mrs Richardson and Mrs Wagland) could not sit on this Panel as they were originally members of the that Planning Sub-Committee. Because of this, it was noted that a slightly different line up of Councillors were attending this Panel meeting as those listed on the agenda.

The Panel considered a complaint by Mr M Wilson and Miss K Smith regarding the erection of a two storey dwelling attached to the flank wall of 14 Kingsley Road, Loughton, in particular:

- (a) they were not advised of the date of the Planning Sub-Committee meeting at which the planning application was determined and did not therefore have an opportunity to present their views orally at the meeting;
- (b) in summarising their written objections at the meeting, the Planning Officer did not do so in sufficient detail and incorrectly advised members that there

- was a garage in the garden of 14 Kingsley Road when in fact there was only a shed;
- (c) planning permission should not have been granted as the development causes an unreasonable loss of light and is too close to their property;
  - (d) they were not advised of the start date of the works and no party wall notice had been served;
  - (e) the Council had failed to take action over an alleged encroachment by the foundations of the new dwelling on to their property;
  - (f) a window had been installed in the flank wall although this was not shown on the approved plans.

The complainants attended the meeting and were represented by Ms Jenny Gray. Ms J Filby, Complaints Officer, presented the Council's case, assisted by Mr S Solon, Principal Planning Officer. Mr P Sutton, Assistant Head of Planning Services and Ms R Rose, Senior Lawyer were also present to advise members of the Panel on any technical and legal issues as required.

The Chairman asked that the members of the Panel and officers present introduce themselves to the complainants. She then outlined the procedures to be followed in order to ensure that proper consideration was given to the complaint.

The Panel had before them the statement submitted by the complainants (with photographs) and the Council's statement.

The Panel considered the following submissions in support of the complainant's case.

Miss Gray, on behalf of Mr Wilson and Miss Smith said that they were aggrieved about the way they had been treated. Their substantive complaint was about the building next door, its effect on their quality of life and the loss of light to their property. They thought that their voices had not been heard and that there was an unauthorised construction of a window that was not in the original plan submitted to the Council.

It was admitted that the Council did not let them know when the Planning Sub-Committee was to be held. The council's policy says that objectors can speak at the meetings, it was regrettable that this did not happen. It was admitted that they were not advised officially of the Planning Committee. At the meeting Mr Wilson and Miss Smith noted that the Planning Committee only took about 4 minutes to decide on the application. Although the officer's recommendation was to grant the application, if they had been allowed to speak there may have been a different outcome. They felt powerless because they could not take part in committee.

The Planning officer, Mr Richardson, also got it wrong when he said there was a garage in the garden of number 14, that was not the case, it was never a garage but a shed with a wall to the front. When asked about it, the Planning Officer had said he could not remember what he said so long ago.

The photograph of the flank window shows it at eye level, also there is no guarantee that the obscure glass is going to stay. The complainants had been told that the owner could submit a retrospective application for this, but it was not permitted development at the time as it was not on the original plans. If it were, the application might not have been granted. As for the issue of a Party Wall Notice, the complainants had been informed that it was not a planning issue.

The complainants felt they should not have to bear the legal costs of taking action over the developer's failure to issue a Party Wall Notice, or over any encroachment over the boundary. However they were not looking for large amounts in compensation, but were looking to see that this did not happen again to someone else. They have, however paid out a lot to get to this stage.

Mr Wilson added they were home when pile-driving began next door. They went 40 feet down. The vibration caused bits of plaster to fall off their ceiling. He felt they should have received notification from their neighbours. If they could have spoken at the Planning meeting, there could have been a different outcome.

The complainants answered the following questions from the Council's representatives and the Panel:

(a) As you clearly felt strongly about the way the decision went at the Planning Sub-Committee, can you tell me why you waited 8 months before you wrote to the Council to complain? - We thought there was no right of appeal unless you were an applicant.

(b) I understand that you had no time to submit a written objection as you were on holiday at the time. Is it not right that the Head of Planning Services gave you an extra week to submit an objection? - Yes he did, but it did not go on the agenda as it was too late.

(c) Would you agree that the only way the window on the flank wall can be opened is by a fan light on the top, and it is obscured glazed? - Yes.

(d) Now that obscured glazing has been fitted do you agree that that you cannot see out? - I'm not sure as I have not been asked to look out from it.

(e) Would I be right to say that your main objection is that you believe that if something is installed that is not shown on the original plans, then the developer should be forced to remove it on principle? - Yes.

(f) You did not complain about noise from the building works until 3 months after these started – why did you wait so long? - I phoned on the day they started pile driving and assumed that it would be passed on.

(g) Did you think that the officer to the Planning Committee would act as an advocate to yourself or be impartial to the committee? - Thought he would be impartial but put our views across.

(h) Was a party wall notice served? - No, it was not served, when we spoke to the builders they said the developers did not do so deliberately.

(i) You were away when the letter advising of the Council's receipt of the application was sent out? - We did not receive a letter inviting us to attend the Planning Committee.

(j) I find it hard to believe that you did not receive two letters - the Planning Committee letter was not sent – this was admitted by the Council.

(It was noted that the second letter was not sent because the complainants letter of objection was received only after the agenda was compiled and sent out and their names were not put on the mailing list, it should have been, and the Council admitted this.)

- (k) At the Planning Committee, were there any representatives from Loughton Town Council? - No
- (l) Did anyone else speak as an objector at that meeting? - No.
- (m) Had you seen the plans for number 14? - Our neighbour showed us the plans and told us that there would not be any flank windows because of privacy.
- (n) Do you accept that EFDC did not approve the flank window? - Yes, I accept that.
- (o) The report recognises that you were offered £100 as compensation? - We are not in this for the money. It seems that no one checks up that what is built is what is applied for. Two independent surveyors have said how did they get planning permission for that, it was not just us who thought that.
- (p) What is the current state of the development? - Completed.
- (q) Is it empty? - Yes, we believe it is up for sale.
- (r) How close is it to your property? - About 18 inches, which means a loss of light in the evening.
- (s) Do you have any proof that the Party Wall Notice was withheld deliberately? - No, no proof.
- (t) Why did you not take legal advice about the Party Wall Notice at the start of the work? - We did not know our rights at the time.

The Panel considered the following submission in support of the case of the Council's Complaints Officer and Planning Services.

A complaint was received on 24 February 2007 to advise the Council that a window was being installed in the flank wall of the new house at 14 Kingsley Road. This window was not shown on the approved plans. Further complaints were received about the nearness of the building, failure to provide a 'Party Wall Notice' and encroachment on their boundary. It should be noted that Party Wall Notices, boundary disputes and building work are not planning issues so cannot be taken into account when determining an application. This was pointed out in the original report, under 'other matters', that went to the Planning Sub-Committee that considered the application.

It was also noted that the objection from 18 Kingsley Road, which ran to some length, was summarised by bullet points in that report. The Planning officer is not required to report objections in detail.

Because the complainants were not able to personally present their objections to the Committee, it was recognised, there will always be a question in their minds that if they had been able to do so, the outcome might have been different.

They were therefore offered £100 by way of compensation due to the fact that the Council did not inform them of the date of the Planning Sub-Committee.

There is no evidence that a crucial factor was not brought to the attention of the Planning Sub-Committee that might have resulted in a different decision had it been done so.

When the plans were submitted to the Council they did not include a window in the flank wall. The plans submitted to Building Control after planning consent had been granted did however show a window in the flank wall. However, as planning consent had not been given for this window, this was a breach of planning controls. The window was considered by Planning Enforcement who concluded that the pursuit of enforcement action to secure its removal was not expedient as the window was small, only served a stair landing, could only be opened by means of a top vent, and was fitted with obscure glass.

There was no evidence provided that would have made any difference to the decision arrived at by the Planning sub-committee. But the Council does accept fault in not telling Mr Wilson and Miss Smith about the date of the meeting and recognizes that the offer of £100 it made still stands.

The Complaints Officer and the Principal Planning Officer answered the following questions of the complainants and the Panel.

(a) What would happen if the house was sold and someone changed the glass? - I suppose the glass could be changed, it is impossible to say. We can't act on things that may happen in the future. But a new window opening could be made in the flank wall as it would be permitted development and there would be no need for consent. This window only came under Council scrutiny because it was put in during the building. The Council therefore asked for obscure glass, which they agreed to do. As no harm was caused, because of the installation of obscure glass, no action was taken.

(b) We are incredulous that a window could be put in without being shown on the plans - although it was a breach, enforcement would only be pursued if it was expedient. Once the house is built, express planning permission from the Council would not be needed to install the window. That is the law.

(c) So if I wanted to put in a window then I could? - Yes, it is permitted in law.

(d) What would be the advice regarding natural light in the circumstances? - There is policy in our Local Plan that says that neighbours must not have an excessive loss of amenity. In this case it was felt to be an acceptable loss.

(e) Would Number 16 have trouble in the future with an extension on their plot? There is no particular issue with a side extension. No concern to the loss of light to the stair window, or overlooking as it is obscured glazed.

(f) Miss Smith commented that there was a major loss of light to our kitchen. This is important as we did not have the opportunity to put our point of view to the Sub-committee.

(g) What does your file tell you about the issue of 'yellow (site) notices'? - We would not usually post a site notice for this scale of development but one was posted on this occasion, on 19 May 2006.

(h) Is the depth into the garden more or less than 3 metres? - It is 2 metres.

(i) Is it right that up to 3 metres is not considered to cause overshadowing? - Yes, but it is a matter of on-site judgement if it is acceptable or not.

The Chairman invited both parties to sum up their cases. Ms J Filby advised that she had nothing to add at this stage. The Complainants advised that they too, had nothing to add.

The Chairman indicated that the Panel would consider the complaint in the absence of the parties. When asked if they would like to remain at the Civic Offices and return to hear the outcome of the Panel's deliberations, the complainants said that they would go home and await the decision letter.

In private session the Panel considered the issues of the complaint. The Panel reviewed all of the evidence that had been presented. They discussed the legality of the window put in the flank wall, and that if it had been shown in their original plans it would have been granted with the condition that it had obscure glass. They also considered that, if the planning application was not granted, and that decision was appealed, the decision would not be upheld.

They agreed that they should reinstate the offer of £100 made by the Council and offer a written apology for not alerting the complainants of the Planning Subcommittee. They also agreed that the procedures of the Planning Committees should be looked to see if this could be avoided in the future and establish some sort of late objection procedure. The Panel were not convinced that a third party representation at that meeting would have made any difference to the outcome. The issues of the Party Wall Notice and the boundary disputes did not come within the purview of planning matters and therefore could not be considered by the panel. Accordingly the Panel concluded that the complaint be not upheld.

It was noted that all the relevant parties would be advised of this decision in writing within seven working days and that the minutes of the Panel would be circulated at the latest, 14 working days after the Panel meeting.

#### **RESOLVED:**

That having considered the information presented by and on behalf of the complainant and Council officers in writing and orally, the complaint be not upheld for the following reasons:

1. The Panel was not convinced that a third party representation at the Planning Committee would have altered the outcome of the application.
2. That in the matter of the window installed in the flank wall, the complaint was investigated without delay, and having inspected it and requesting that the owner install obscure glazing the Planning Enforcement Officer was satisfied that it would not allow any overlooking, and that it would not be expedient to take enforcement action. Further, that in law, the applicant could install windows into their flank wall once built without applying for planning permission following completion of the building.
3. That the offer of £100 and the Council's written apology be offered to the complainants as way of compensation due to the occupants of 16 Kingsley Road not being formally notified of the date of the Planning Committee despite knowing of their objection.
4. That the matter of the failure to issue the Party Wall Notice and the laying of the footings close to the boundary were outside the scope of the Panel's remit and the Council's control being a civil matter between the complainants and their neighbour.



5. In addition, the Panel recommended that Planning Officers re-examine their internal procedures for dealing with late letters of objection to planning applications.

**CHAIRMAN**

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- 4. COMPLAINT NO. 1/2010 – MR K JALALIAN, 202B HIGH ROAD, NORTH WEALD**
- 4.1 To consider a complaint by Mr K Jalalian that the Council failed to respond appropriately to his request for the Pest Control service to deal with rats at his property and the refusal to pay him the amount of compensation he is demanding (£1,500).
- 4.2 Mr Jalalian will be attending the meeting to present his complaint supported by his wife. Ms J Filby, Complaints Officer, will present the Council's case assisted by Mr J Gilbert, Director of Environment and Street Scene. Mr J Nolan, Assistant Director, Environment and Street Scene and Ms A Mitchell, Assistant Director (Legal) will also be present to advise members of the Panel on any technical and legal issues as required.
- 4.3 The following order of proceedings has been agreed by the Council for consideration of complaints by this Panel:
- (a) Chairman's introductory remarks on the details of the complaint and how it will be heard;
  - (b) presentation of the case by the complainant (or representative) including any witnesses;
  - (c) questions by the Council representatives;
  - (d) questions by members of the Panel;
  - (e) presentation of the case for the Council, by the Council representatives including any witnesses;
  - (f) questions by the complainant or representative;
  - (g) questions by members of the Panel;
  - (h) summing up by Council representatives of the Council's case;
  - (i) summing up by the complainants (or representative) of the case for the complaint;
  - (j) consideration by the Panel of its findings in the absence of the complainant, their representative, and the Council's representatives; and
  - (k) recall of the complainant, (and/or representative) and Council representative to be informed of the Panel's decision (although the parties may indicate that they would prefer to leave and await the written notification).

- 4.4 The Panel may, with the agreement of the Council representatives and the complainant, reverse the order in which the cases for the Council and the complainants are presented.
- 4.5 The Panel shall consider its decision on the complaint in private. The Secretary to the Panel shall remain in the meeting whilst the Panel deliberates on its decision.
- 4.6 If, after excluding the complainant, their representative and the Council representatives, the Panel requires further information before making a decision, the Chairman shall call back the complainant, their representative and the Council representatives and ask further questions. No questions shall be asked or information sought by the Panel unless both sides are present.
- 4.7 The decisions of the Panel shall be confirmed in writing to the complainant and Council representatives within seven working days of the Panel hearing.
- 4.8 The minutes of the Panel hearing shall be circulated at the latest 14 working days after the Panel meeting.

**Council's Case**

- 4.9 The Council's statement is has been sent separately as Annex 1.

**Complainants' Case**

- 4.10 The statement submitted by the complainant has been sent separately as Annex 2.