

Report to District Development Control Committee

Date of meeting: 1 November 2005



**Epping Forest
District Council**

Subject: Planning Application EPF/1100/05 – Erection Of New Two Storey House With Parking At Land Adjacent To 91 Monkswood Avenue, Waltham Abbey

**Officer contact for further information: B land
Committee Secretary: S H 4249ill Ext**

Recommendations/Decisions Required:

That the Committee considers planning application EPF/1100/05 for the erection of a new two-storey house, referred by Area Plans Sub Committee D without a recommendation.

Report:

Background

(Head of Planning Services) This application has been referred to this Committee by the Area Plans Sub Committee D, so that the issues involving the Human Rights of the occupants of the property could be considered by the Legal Section and then further debated.

The application was reported to the Area Plans Sub Committee on 31 August 2005 with a recommendation that planning permission be granted and a copy of that report is attached as Annex 1 to this report

Planning Issues

The main issue in determining the application is whether this development causes harm to the occupiers Human Rights.

This property is owned by the applicant and occupied by tenants, who will see the loss of a single storey side extension and the change for their property from a semi detached house to a mid terrace house. These tenants are understandably concerned over these proposals. However the applicant has stated that if permission were received then internal works would be carried out in the existing house to replace facilities lost in the demolition. It is the case that it is a matter for the owner to liaise with the tenants, who will have recourse in other legislation should they be aggrieved by the applicants actions. In planning terms there is no basis for this issue to result in a refusal.

The Head of Planning Services has sympathy with the tenants at 91 Monkswood, but does not agree that their situation can be taken into consideration on the planning merits of this case.

On the request of Councillors a legal opinion has been obtained from Legal Services on the issue of the potential for the development to harm the human rights of the occupants. Legal Services have commented that:

(1) The tenants' objections to the work to be carried out as indicated in the report to Committee are really a matter between themselves and their landlord. What remedies the tenant may have is dependant on the terms of the tenancy/lease agreement.

(2) Generally speaking landlords as owners of property are entitled to carry out works on their properties and provided they act in accordance with the law and the tenancy/lease agreement (minimise disruption, give reasonable notice of commencement of works, provide alternative accommodation if necessary during the works etc) they are within their rights. If, on the other hand, they are in breach of the law or the agreement, the tenants' remedy is through private legal action.

(3) If, as in this case, the works require permission then the Local Planning Authority's obligation is to apply the usual material considerations in making its decision - the fact that the occupying tenants are objecting to the works can be taken into account as with all other objections but if the balance of considerations is in favour of granting the planning permission the LPA is entitled to make that decision.

(4) The Human Rights Act (HRA) does not regulate relations between private individuals including those between a private landlord and its tenant.

(5) The HRA is aimed at public authorities and the general legal presumption is that as long as the public authority is acting in accordance with national legislation (in this case the Town and Country Planning Act 1990 as amended) then it is acting in accordance with the HRA, and in exercising its planning functions the LPA can only apply the principles laid down in the planning legislation in making its decisions.

(6) The conclusion therefore is that Human Rights issues in this case do not impact on the Committee decision.

Conclusion

For the foregoing reasons this application has been put forward for consideration of the issues by the Development Committee. Nevertheless, the Head of Planning Services is of the opinion that the proposal is acceptable on design and amenity and Human Rights issues do not apply, and his recommendation that permission be granted still stands. It is his view that a refusal of permission could not be successfully defended at an appeal.