

## **EPPING FOREST DISTRICT COUNCIL COUNCIL MINUTES**

**Committee:** Housing Appeals and Review **Date:** 20 September 2007  
Panel

**Place:** Committee Room 1, Civic Offices, **Time:** 4.00 - 7.20 pm  
High Street, Epping

**Members Present:** Councillors Mrs P K Rush (Chairman), Mrs P Richardson, B Rolfe and J Wyatt

**Apologies:** Councillors Mrs R Gadsby (Vice-Chairman), R D'Souza, Mrs J Lea (substitute) and B Sandler (substitute)

**Officers Present:** G Lunnun (Democratic Services Manager), P Pledger (Assistant Head of Housing Services (Property and Resources))(for agenda item 7 only) and R Wilson (Assistant Head of Housing Services (Operations))(for agenda items 1 – 6 only)

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### **69. MINUTES**

#### **RESOLVED:**

That the minutes of the meetings of the Panel held on 9 August and 23 August 2007 be taken as read and signed by the Chairman as a correct record.

### **70. SUBSTITUTE MEMBERS**

It was noted that Councillor B Rolfe was substituting for Councillor Mrs R Gadsby at this meeting.

### **71. DECLARATIONS OF INTEREST**

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

### **72. 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:

<u>Agenda Item No.</u>	<u>Subject</u>	<u>Exempt Information Paragraph Numbers</u>
6	Appeal No. 10/2007	1 & 2
7	Appeal No. 9/2007	1 & 2

**73. APPEAL NO. 10/2007**

The Panel considered an appeal against a decision made by officers under delegated authority to refuse to fund the provision of a vehicular crossover and hardstanding to enable the appellant to park a vehicle in the front garden of her property. The appellant attended the meeting to present her case accompanied by her brother. Mr H Thorpe (Housing Assets Manager) 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 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 that proper consideration was given to the appeal.

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

- (a) the case of the Housing Assets Manager;
- (b) copies of documents submitted by the Housing Assets Manager, namely:
  - (i) letter dated 19 December 2006 from the Council's Tenant Liaison Officer to the appellant;
  - (ii) letter dated 15 January 2007 from the appellant to the Council's Assistant Head of Housing Services (Property and Resources);
  - (iii) letter dated 1 February 2007 from the Assistant Head of Housing Services (Property and Resources) to the appellant;
  - (iv) letter dated 16 February 2007 from Loughton Health Centre to the Assistant Head of Housing Services (Property and Resources);
  - (v) letter typed 13 March 2007 from the appellant's consultant physician to 'Whom it may concern';
  - (vi) medical form dated 25 March 2007 completed by the appellant;
  - (vii) letter dated 9 May 2007 from the Council's Medical Adviser to the Assistant Head of Housing Services (Property and Resources);
  - (viii) letter dated 18 May 2007 from the Assistant Head of Housing Services (Property and Resources) to the appellant;
  - (ix) Essex County Council's essential criteria in relation to on-street parking bays;
  - (x) plan showing the appellant's property and the immediate locality.

- (c) copies of documents submitted by the appellant, namely:
- (i) a copy of the application to the Housing Appeals and Review Panel dated 1 July 2007;
  - (ii) letter dated 27 June 2007 from a specialist registrar in respiratory medicine to the Council.

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

- (a) the appellant was an outpatient at the Royal Brompton Hospital with very severe chronic obstructive pulmonary disease;
- (b) the appellant was severely disabled by her condition which meant that she had to stop walking every ten metres on the flat and every five steps on stairs because of breathlessness;
- (c) the appellant's blood oxygen levels were low (9.5kPa) but not at the level that required long-term oxygen therapy; not all patients with very severe chronic obstructive pulmonary disease required long-term oxygen therapy which was why low oxygen levels were not used as a mark of severity in this disease;
- (d) the appellant's lung capacity was too poor now for her to be eligible for any lung volume reduction surgery or lung volume reduction trials and her only option now was a lung transplantation;
- (e) steps had been commenced to assess the appellant for lung transplantation and if she was a suitable candidate she would be placed on the transplant waiting list;
- (f) it would be most helpful to the appellant if she were able to park her car near the front entrance door of her property as any activity left her breathless and very weak and she would be housebound without her car; when leaving her property, it would be much easier if her vehicle were parked on a hardstanding in the front garden of her property rather than on the road;
- (g) an Essex County Council occupational therapist had recommended the District Council to provide a hardstanding and vehicle crossover to the appellant's property;
- (h) the appellant met all the necessary criteria for the provision of a hardstanding and vehicle crossover and they were only being denied these facilities due to an inadequate budget;
- (i) the offer of an on-street parking bay was acknowledged and this may have been adequate at the time of the officers' decision but the appellant's condition had deteriorated rapidly since that time and she now found it very difficult to walk any distance.

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

- (a) Why did you agree to a mutual exchange in order to move into your current property in 2006? - I wished to be nearer to my family and at that time my medical condition was not so bad; since July 2007 there has been a rapid deterioration in my medical condition;
- (b) Do you do your own shopping? - No, my shopping and my housework are done for me;
- (c) Do you experience problems with the stairs in your property? - Yes, but the property I moved from also had stairs and when I moved my condition was not as bad as it is now; I suffer when walking, climbing stairs or undertaking any everyday chores;
- (d) How many times a day do you use the stairs in your property? - As many times as I need to use the toilet; I have used a commode downstairs but there is nowhere to put it except in the living room and this is not hygienic for visitors and that room is also next to the kitchen; I tend to spend a lot of time upstairs; I am looking at the possibility of installing a door entry system and a stair lift;
- (e) Do you find it difficult to drive? - No, when sitting down I can concentrate and driving is not a problem; my problems arise when I do anything physical; I am trying not to become housebound;
- (f) What equipment do you need to carry with you? - A nebuliser (the appellant indicated the size of the nebuliser);
- (g) If your appeal is dismissed, would you be prepared to pay yourself for the provision of a hardstanding and vehicular crossover? - It would depend on the cost and whether we could afford it;
- (h) How often do you use your car? - At least once every day;
- (i) The medical report suggests that it is more of an effort for you to climb stairs than walk; the provision of a hardstanding would only save you a few metres walking distance; would this make any real difference? - Any improvement would be of help;
- (j) I understand that but you use the stairs more than once a day and only go out in your car on average once a day; surely the stairs are more of a problem for you? - The provision of a hardstanding and vehicular access would make life that much more easy for me; at present, I have to walk from my house to the road where I have parked my car; I have to take my nebuliser with me as well as a bag when I go to visit my daughter; I cannot always park immediately outside my property;
- (k) How do you cope when you get to your daughter's property? - My daughter has a parking bay in the front of her house;
- (l) In summary, therefore, is the main problem getting to your car with your nebuliser, bag etc? - Yes, on-street parking is very difficult in the vicinity of my property; I understand that if a disabled on-street parking bay is provided, it will not be for my personal use and could be used by anyone displaying a disabled badge;

(m) What is the current position in relation to a lung transplantation? - I have a hospital appointment on 10 October 2007 but I do not know what will happen after that appointment; they will be assessing me to establish whether I am suitable for a transplant;

(n) Are there any other property adaptations which you would like in order to enhance your lifestyle? - Possibly a stair lift for the stairs and a downstairs toilet.

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

(a) the appellant moved into her current property, a two bedroom house, on 29 June 2006 following a mutual exchange;

(b) on 2 January 2007, six months after the mutual exchange, the Council received a request from Social Services recommending the installation of an over-bath shower; the installation had been carried out and completed;

(c) on 12 December 2006, the Council received a request from Social Services recommending the construction of a vehicle crossover and hardstanding; in response, the appellant had been advised that in view of the Council's limited budget, a disabled on-street parking bay would be more appropriate; following an appeal against that initial decision, the Assistant Head of Housing Services (Property and Resources) had upheld the original decision on 1 February 2007;

(d) the appellant had produced medical confirmation of her disability in a letter dated 16 February 2007 from her GP and from the Royal Brompton and Harefield Hospital; the appellant had completed a medical form which had been received by the Council on 27 March 2007; these representations had been forwarded to the Council's medical adviser for consideration;

(e) on 9 May 2007, the Council's medical adviser had advised that it would be more appropriate for the Council to provide a disabled on-street parking bay in the first instance and that, in the longer term, an occupational therapist assessment regarding the suitability of the appellant's house would be appropriate with regards to possible adaptations versus moving; the medical adviser had also stated that in view of the appellant's medical condition, she would expect the stairs in the property to be as much of a problem as the parking of her car; the medical adviser had expressed surprise that the appellant had opted to move into a house rather than ground floor accommodation;

(f) on 18 May 2007, the Assistant Head of Housing Services (Property and Resources) had written to the appellant informing her that, based on the advice of the Council's medical adviser, the decision to offer a disabled on-street parking bay rather than a vehicle crossover and hardstanding, would be upheld;

(g) over the years, there had been an increase in the number of requests from occupational therapists for the construction of hardstandings and vehicle crossovers; the cost of installing a vehicle crossover was approximately £900 and the construction of a hardstanding was in excess of £3,000, which in 2006/2007 had resulted in additional expenditure being necessary of approximately £25,200;

- (h) as a result of the increase in occupational therapist recommendations, the Council had contacted all of the County Council's occupational therapists and advised that where hardstandings and vehicle crossovers were requested, joint site visits would be carried out, attended by the occupational therapist and the District Council's Housing Assets, in order to assess all the possibilities and explore any alternative cost-effective solutions;
- (i) at one such joint assessment, the Housing Assets Tenant Liaison Officer had enquired why occupational therapists were not recommending disabled on-street parking bays instead of hardstandings and vehicle crossovers; he had been advised that the essential criteria set by Essex County Council for the provision of a disabled parking bay included the lack of off-street parking, such as a garage or the opportunity to convert part of a garden or frontage to provide a hardstanding with drop-kerb access;
- (j) as a result of the County Council's essential criteria, occupational therapists were effectively left with no choice but to recommend hardstandings and vehicle crossovers even when far more cost-effective measures were available;
- (k) every recommendation for a hardstanding and vehicle crossover was treated individually and based on set criteria; the appellant's property had been assessed and was considered suitable for the provision of a disabled on-street parking bay;
- (l) a cost benefit exercise had been carried out which compared the travel distance of the two disabled parking methods; this showed a reduction of approximately three metres in travel distance from the car door to the front entrance door of the property; when the benefit of a three metre saving in travel distance to the front entrance door was compared with the cost saving of approximately £3,800 between the two schemes, a disabled on-street parking bay was considered to be a far more cost-effective solution to the problem;
- (m) the Panel needed to consider the parking and travel distances the appellant was likely to encounter when reaching her destinations; it was reasonable to assume the only parking assistance would be a marked out disabled on-street parking bay, on the public highway or in a shopper's car park and travel distances could be well in excess of ten metres ;
- (n) in previous years, the impact of hardstandings and vehicle crossovers on the Council's Disabled Adaptations budget had been negligible and it had not been until the increase in recommendations from occupational therapists during 2006/2007 that it had been necessary to put on hold bathroom and over-bath shower adaptations; the disabled adaptations budget for 2007/2008 was fully allocated to disabled tenants who had, in some instances, been on the waiting list for a bathroom or over-bath shower adaptation in excess of twelve months;
- (o) the Panel was asked to dismiss the appeal and confirm that officers should continue to assess every occupational therapists recommendation for a hardstanding and vehicle crossover on an individual basis; this would allow Housing Assets to provide cost-effective solutions to the needs of individual tenants and at the same time release funding to carry out other adaptations

recommended by occupational therapists from the Disabled Adaptations waiting list.

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

(a) Can you confirm that the appellant does not meet the County Council's essential criteria for the provision of an on-street parking bay? - Yes, and that is why they recommended off-street parking; however, the District Council has to consider the recommendations from the occupational therapists and decide, in view of its limited budget, whether there is a more cost-effective way of assisting an applicant;

(b) How do you prioritise your funds? - Every disabled adaptation is based on an occupational therapist's recommendation; there is a waiting list for adaptations; last year, 24/25 bathroom/shower adaptations were not carried out due to a lack of funds; those applicants remain on the waiting list;

(c) Is it possible for the appellant to go on the waiting list? - If the appeal is allowed, the appellant will be placed on the waiting list;

(d) Do you accept that if an on-street parking bay is provided, it cannot be for the sole use of the appellant? - Yes, but it is also possible for someone to park on a dropped kerb if a vehicle is not present at the property served by the dropped kerb;

(e) When we applied for a vehicle crossover we were asked to provide medical evidence which was supplied; at that time, we asked the Council's Tenant Liaison Officer to assist us in measuring the site; he said that he had no knowledge of the application; why was a letter personally addressed to the Assistant Head of Housing Services (Property and Resources) containing details of the appellant's medical condition dealt with by somebody else in Housing Services? (By leave of the Panel, the Assistant Head of Housing Services (Operations) answered this question) - There is a standard procedure for dealing with applications of this nature whatever the circumstances; applications are received by Housing Services and are passed to Essex County Council Highways to assess from a safety point of view; it would appear that the appellant's application was submitted to the Council's Management Office in Loughton; the Assistant Head of Housing Services (Property and Resources) would have been responsible for considering the funding of a hardstanding and crossover in the event of permission being granted; it is possible that some of the documents which should have been referred to the Assistant Head of Housing Services (Property and Resources) were passed in error to a housing management officer at the Broadway;

(f) Are the County Council's recommendations guidance or an instruction? - The County Council has adopted essential criteria to be met in order for an occupational therapist to recommend an on-street parking bay; they do not recommend off-street parking if the essential criteria is met; it is guidance from the County Council to their occupational therapists; it is a matter for the District Council to decide whether it adopts the recommendation or not.

The Chairman asked the appellant if she wished to raise any further issues in support of her case.

The appellant's brother advised that there was no treatment for the appellant's disease and that if she did not get a transplant her life would end sooner rather than later. However, she was only 52 years old and was trying to live as normal a life as possible.

The Chairman asked the Housing Assets Manager if he wished to raise any further issues in support of his case. The Housing Assets Manager advised that he had nothing further to add.

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

The Panel considered all of the evidence and focussed on the background to the appellant's request, the medical evidence and the Council's Disabled Adaptations budget. The Panel expressed sympathy towards the appellant's circumstances but after taking account of the limited budget available for disabled adaptations and the calls upon that budget, they decided reluctantly to dismiss the appeal.

**RESOLVED:**

(1) That, having taken into consideration the information presented by, and on behalf of, the appellant and by the Housing Assets Manager in writing and orally, the appeal be dismissed and the decision of the Housing Assets Manager to refuse to fund a vehicular crossover and hardstanding to the appellant's property be upheld for the following reasons:

(a) the District Council's Disabled Adaptations budget is very limited, and in order to make the best use of the budget, disabled parking bays are normally offered instead of vehicular crossovers and hardstandings in view of the substantial cost difference;

(b) it is not considered that the appellant's circumstances justify an exception being made for the following reasons:

(i) the medical evidence submitted on behalf of the appellant has been considered by the Council's Medical Adviser who has advised that the provision of a disabled on-street parking bay would be more appropriate in the first instance; she has further advised that, in the longer term, an occupational therapist's assessment regarding the suitability of the appellant's current property would be appropriate with regards to possible adaptations versus moving;

(ii) the location of the appellant's property is considered suitable for the provision of a disabled on-street parking bay;

(iii) a cost benefit exercise in comparing the travel distance of the two parking methods, shows a reduction of approximately three metres from the appellant's car door to the front entrance door of the appellant's property; a cost saving of approximately £3,800 by providing a disabled on-street parking bay is considered a more cost-effective solution bearing in mind that the Council's Disabled Adaptations budget for 2007/08 is fully allocated to



disabled tenants who have, in some instances, been on the waiting list for a bathroom or over-bath shower adaptation in excess of twelve months.

#### 74. APPEAL NO. 09/2007

The Panel considered an appeal against a decision made by officers under delegated authority not to grant permission within the terms of a lease to allow the retention of a brick extension and conservatory. The appellant attended the meeting to present her case accompanied by her eldest daughter, C Mardner (Essex Race Equality Council), D Kaur (Senior Occupational Therapist), J Hammond (Support Worker from the Essex Race Equality Council). 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 her advisers 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) the case of the Area Housing Manager;
- (b) copies of documents submitted by the Area Housing Manager, namely:
  - (i) letter dated 10 August 2006 from the appellant to the Council's Housing Management Office including drawings of the proposed extension to the property;
  - (ii) letter dated 21 August 2006 from one of the Council's Housing Assistants to the appellant;
  - (iii) copies of photographs of the extension and conservatory;
  - (iv) letter dated 21 June 2007 from solicitors advising and assisting the appellant including copies of ten photographs referred to in that letter;
- (c) copies of documents submitted by the appellant, namely:
  - (i) a copy of the application to the Housing Appeals and Review Panel dated 25 July 2007;
  - (ii) letter dated 21 June 2007 from solicitors advising and assisting the appellant to the Council's Housing Services;
  - (iii) letter dated 5 July 2007 from the Council's Assistant Head of Housing Services (Operations) to the appellant's solicitors;
  - (iv) letter dated 15 April 2007 from the North Essex Mental Health Partnership to the Council's Legal, Administration and Estates Service;
  - (v) letter dated 10 May 2007 from a neighbour of the appellant to the Planning Inspectorate;

(vi) letter dated 27 October 2006 from the Limes Medical Centre to the Council's Planning Services;

(vii) letter dated 14 August 2006 from the Council's Planning Services to the appellant.

The appellant advised that Mr Mardner would present her case assisted, as necessary, by others who were present. The Panel considered the following submissions in support of the appellant's case:

(a) the appellant had become the secure tenant of the Council in 2001; she had exercised the Right to Buy her ground floor flat in early 2006;

(b) in July 2006, the appellant had been granted planning permission (EPF/1238/06) for a single storey extension with conservatory;

(c) in August 2006, the appellant had approached the Council to request covenant consent for her extension; she had heard nothing further about this request until a Section 146 Notice, dated 28 March 2007, demanding the removal of the conservatory;

(d) in October 2006, the appellant had applied for amended planning permission in relation to the increased size of the extension (EPF/2033/06); this application had been refused in December 2006; in March 2007, a planning enforcement notice had been served on the appellant and appeals were currently with the Planning Inspectorate in relation to both the refusal of planning permission and the issue of an enforcement notice;

(e) the appellant was gravely ill; she suffered from a severe form of rheumatoid arthritis; her knees, ankles, back and neck were particularly badly affected and her mobility was severely restricted; her illness was progressive; previously, she had been able to move about to a limited extent with the aid of crutches but now used a wheelchair; she was currently awaiting an assessment for an electric wheelchair; her consultant had stated that she did not have long to live; eventually she would be bed-bound and not able to swallow etc; she was in constant pain and often suffered from sickness and diarrhoea as a result of this pain and the drugs taken to attempt to alleviate it; as a result of her condition, the appellant suffered from depression;

(f) the appellant has three children; her ex-husband had recently travelled to England to look after the children following a deterioration in the appellant's condition; the only other alternative would have been Social Services involvement in relation to the children;

(g) the appellant received Community Care support from Social Services, and a carer visited the appellant's home every day for one-and-a-half hours to clean, do the shopping, cook and take the appellant to hospital appointments;

(h) the conservatory/extension as built was longer than originally specified but was correspondingly narrower; the extension was built from materials which generally blended with the existing building; neighbours on either side had no objection to the extension as built; the upstairs neighbour had objected stating that her part of the garden would be overlooked; no-one in the glassed area of the conservatory would have a better view than a person sitting on the raised patio area of the appellant's garden as it existed before the conservatory had been built; effectively, the conservatory allowed the

appellant, as a disabled person, to gain some enjoyment from her garden and some sense of being 'outdoors'; the sense of daylight also helped the appellant in her fight against depression;

(i) the Council, in relation to the planning issue, had expressed concern about maintenance to the first floor flat; the flat roof to the extension as built provided access for maintenance and repair;

(j) the sink and WC facilities in the extension had made a real difference to the appellant; she was often sick or suffered from diarrhoea as a result of her condition and having her own facilities separate from those used by her children made a large difference to her quality of life; the extension provided the appellant with a sense of privacy and removed the embarrassment she had felt when previously using the original bathroom;

(k) the flat remained crowded even with the extension; previously, it had been necessary for the appellant to share a room with her son; the health and general wellbeing of the family would suffer if the extension had to be removed; the alteration to the dimensions of the extension made during this construction were to facilitate easier wheelchair access;

(l) a conservatory on another property in the locality did not blend in as well as the appellant's extension; planning permission had been granted for that conservatory; it was not known whether that property was subject to an absolute covenant against alterations in the same form as that applying to the appellant;

(m) although the covenant in the lease was in absolute form, any reasonable local authority landlord would read the lease as if it contained a qualified covenant permitting an application for permission to carry out alterations; in view of the way in which the request for consent had been dealt with it would now be inequitable for the Council to attempt to rely on the absolute nature of the covenant;

(n) Section 19(2) of the Landlord and Tenant Act 1927 implied a term into every qualified covenant against improvement without licence or consent, the requirement of such a consent should not be withheld unreasonably; there was a powerful argument that any reasonable landlord in the Council's position would be bound to apply that Section to the current case;

(o) the Council, as both the landlord and a public authority, had various duties under the Disability Discrimination Act; the appellant was a disabled person within the meaning of the Act; discrimination within the meaning of the Act occurred when there was either less favourable treatment without a disability related reason without justification or there was a failure to make reasonable adjustments in certain circumstances; the Act stated that it was unlawful for a person managing any premises to discriminate against a disabled person occupying those premises by evicting them or subjecting them to any detriment; the legislation stated that where a tenant was entitled to make improvements with the landlord's consent, the landlord could not unreasonably withhold consent to a request for improvement which would facilitate a tenant's enjoyment of the premises; the Act stated that public authorities had a general duty to have regard to the need to take steps to take account of disabled persons' disabilities even where that involved treating disabled persons more favourably than other persons; if the Panel upheld the

appeal they would be complying with the requirements of the Disability Discrimination Act - if they dismissed the appeal, they would not;

(p) it was open to the Council to grant conditional covenant consent to the appellant which will allow the Council to balance the competing interest of the appellant and others whilst acknowledging the level of positive action required by the Disability Discrimination Act;

(q) there were Disability Discrimination Act issues about services, racism and the appellant's children all of which stemmed from the appellant's housing situation;

(r) whilst the background to the construction of the extension was an issue, the Panel should determine the appeal on what was the current situation;

(s) the issue was about what was equitable; there was no dispute about the appellant's medical condition; the Panel had a legal duty and responsibility and a moral duty to allow the appeal; this was not a normal case and by allowing the appeal, the Panel would enable the appellant to live in a reasonable manner and look after her children.

The Area Housing Manager advised that he did not wish to ask the appellant or her advisers any questions. The appellant and her advisers answered the following questions of the Panel:-

(a) Do you understand that the question of planning permission is not a matter for us? - Yes, planning permission has been given for the brick extension but not for the conservatory; part of your decision is in respect of the conservatory which the appellant needs in order to have a reasonable life;

(b) When the appellant purchased the property, was she aware that she could not alter the property within the terms of the lease? - We must consider the situation as of today; there is planning permission for the brick extension; the covenant in the lease in an absolute form is unreasonable; the appellant's situation warrants action being taken; I invite you to make a decision on the facts that are now before you;

(c) Was the appellant aware of the clause in the lease? - People do not always read all of the detail in legal documents; if there is something in terms and conditions which is really important it should be shown in bold or coloured type and should be emphasised; the Council should have been more open in drawing attention to this clause;

(d) Did the appellant use Solicitors when purchasing the property? - Yes;

(e) Did not the Solicitor draw attention to the clause in the lease? - The Panel should consider the circumstances before it today; the background needs to be taken into account but focus should be on the circumstances as they exist now;

(f) Was the building of the extension self-funded? - Yes;

(g) By leave of the Council, in view of what had been said, the Area Housing Manager asked if any advice had been obtained from an occupational therapist prior to the drawing up of plans for the extension; the

appellant advised that they had supported the provision of a conservatory and that those drawing up the plans had contacted them;

(h) Did the appellant receive advice from an occupational therapist about what should be provided in the extension as there do not appear to be special taps etc? - The appellant can use normal taps; occupational therapists recommend building around the needs of the person at that time and if there was no requirement for special taps, they would not be recommended; the appellant's needs at the time revolved around mobility issues;

(i) How will the extension improve the appellant's lifestyle? - When the property was acquired, the appellant's children were much younger; the children now need more space and the conservatory provides the appellant with her own space; the brick extension adjoins the appellant's bedroom and makes it easier for her to gain access to a toilet.

The Panel considered the following submissions in support of the case of the Area Housing Manager:

(a) the lease to a tenant buying their flat from the Council precluded any extension; the terms of the lease should not be confused with covenants imposed on the sale of a house which required an owner to seek the Council's permission when they wished to carry out major works to their property;

(b) in 2005, the Housing Appeals Panel had heard a case of a leaseholder who wished to build a conservatory on the back of their flat; members had upheld the original decision not to allow the construction of a conservatory but had been prepared to allow the appellant to build a brick built extension; a planning application made by the leaseholder had subsequently been amended and work had proceeded; since that time, other leaseholders had been given permission for extensions, not involving a conservatory;

(c) the appellant had moved into her current property, a two bedroom ground floor flat, in 2003 with her three children; she had completed the purchase of the flat on 31 May 2006;

(d) planning permission had been obtained for a brick built extension to the property on 31 July 2006; in its formal response, the Council had explained that owners of property which had formerly been owned by the Council might need to seek other consents within the terms of the sale;

(e) the appellant had approached the Council's Housing Services on 10 August 2006 requesting permission to construct an extension; this had involved the building of a brick built extension and a conservatory; at that time the appellant had stated that she needed the work to be carried out because space in the flat was quite insufficient for her children which was no good for their growth; the appellant had also stated that she was planning for the work to start the following week as the builders would not be available after that time; at that time the appellant had made no mention of any issues in respect of her health;

(f) on 1 November 2006, the appellant had submitted a revised planning application because of the addition of a conservatory; this application had been refused due to the combined size of the brick built extension and the

conservatory; enforcement action had been commenced requiring the removal of the conservatory from the land; both of these actions were now subject to an appeal, which were currently being considered by the Planning Inspectorate;

(g) in response to the action taken by the Council, representations had been made on behalf of the appellant from those involved in her care; there was no dispute about the appellant's medical condition;

(h) the combined extension and conservatory were longer than that allowed by the local planning authority; the construction appears to have been designed and built without any reference to an occupational therapist; the photographs provided by the appellant showed a large drop between the level of the flat and the garden and a high threshold leading into the conservatory; the entrance door to the toilet was narrow and there was a washbasin and sink with ordinary taps; the photographs supported the view that the construction had been carried out without regard to the medical needs of the appellant;

(i) the appellant's request had been considered very carefully; whilst the lease precluded any work being undertaken, there was a duty to consider a request to alter a property, having regard to individual circumstances; officers had taken account of all of the relevant issues in coming to their decision; advice had been obtained from the Council's Legal Services who had suggested that, if consent were to be given, it could be personal to the appellant and subject to the condition that if the appellant ever ceased to reside in the property on a permanent basis the conservatory should be removed on or before her residency ended; any permission under the terms of the lease to carry out the work would need to be subject to a condition that planning permission was granted for the work;

(j) the original application to the Council had made no reference to the appellant's disabilities and had indicated that the work was going to be started without delay; it was clear that the work had been undertaken having no regard to the medical condition of the appellant and did not assist her in such matters; the application had been refused 11 days after it had been received but the construction had commenced despite this refusal;

(k) the construction was large and although residents either side had not expressed objection the resident above was concerned about the construction;

(l) as the construction had been built on leasehold land, ownership would be an issue in the future.

The appellant and her advisers stated that they did not wish to ask the Area Housing Manager any questions. The Area Housing Manager answered the following question of the Panel:

(a) Can you confirm permission was not sought until the construction was underway? Permission was refused within 11 days of receipt of the application by which time the work had been completed.

The Chairman asked the appellant and her advisers if they wished to raise any further issues in support of the appellant's case.

The appellant's advisers stressed that there was no argument about the background to the current situation and that the issue for the Panel was to make a decision on the current situation. It was often assumed that when people made applications they understood all of the issues but this was clearly not the case. If the Panel were minded to allow the appeal a condition as suggested by the Council's Legal Services would be acceptable. The representations which had been made about the lack of input by an occupational therapist were understood. It was not possible at this time to state what had happened exactly but there had been discussions and the construction had been built having regard to the appellant's requirements at that time. The Panel should pay particular attention to the Disability Discrimination Act requirements and the appellant's medical needs.

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 he had nothing further to add.

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, her advisers and the Area Housing Manager then left the meeting.

The Panel discussed all of the evidence which had been submitted in writing and orally.

**RESOLVED:**

- (1) That determination of the appeal be deferred pending decisions by the Planning Inspectorate in respect of the appeals against the refusal of planning permission and the issue of an enforcement notice;
- (2) That, subject to the outcome of (1) above, the Solicitor to the Council be asked to advise on the means of enforcing a clause/condition specifying that consent from the Council as Housing Authority for the retention of the conservatory is personal to the appellant and that if she ever ceases to reside in the property on a permanent basis, the conservatory shall be removed on or before her residency ends;
- (3) That further consideration be given to the appeal by the Panel, without the parties being present, on receipt of the Planning Inspectorate decisions and advice from the Solicitor to the Council; and

(4) That the Solicitor to the Council or a representative appointed by her be requested to be present to give further legal advice to the Panel, if required, when it meets to make its final decision on the appeal.

**CHAIRMAN**