

**WARWICK DISTRICT COUNCIL**

TO: HOUSING COMMITTEE -25<sup>TH</sup> JANUARY, 2000

SUBJECT: BREACH OF COVENANT ON LEASEHOLD PROPERTY - ENFORCEMENT

FROM: HOUSING

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1. **Purpose of Report**

- 1.1 To seek a members decision on the course of action to take against a leaseholder for breach of covenant/trespass.

2. **Background**

- 2.1 The property, a first floor flat in Hampton Magna was sold in June 1989 on a leasehold basis (valuation £41,500). The sale expressly excluded the roof space above the flat. In 1994, it was resold to the current leaseholder for £42,000 the sale particulars making reference to the "partly boarded loft".
- 2.2 In November of 1998 it was discovered, by Officers of the Council, that the leasehold of the property had commenced conversion of the loft space above the flat into a bedroom. This work had started without the benefit of either Planning Permission or Landlord's Consent although Building Regulations permission had been given. More importantly however, the leaseholder did not own the roof space above the flat for this had been excluded from the sale as the District Council has responsibility for the structure of the roof space.
- 2.3 At that time extensive liaison took place between the various departments of the Council concerned with the issue i.e. Housing, Legal, Property and Planning for it was realised that this would be a complicated matter to resolve. As a result, an amicable solution was identified by officers and communicated to the leaseholder in a letter dated 4<sup>th</sup> August, 1999 (see appendix 1) which would allow the extension to remain and regularise the ownership of the roof space.
- 2.4 Part 2 of the letter dated 4<sup>th</sup> August, sent again on the 6<sup>th</sup> October with a reminder on 6<sup>th</sup> December, 1999, includes the various clauses that would be required by the Council if a new lease, to include the roof space, were to be granted. The letter also went on to identify
- the consideration of £3,000, established by the Council's Estates Surveyor and reflecting a difference in value of £32,000 for a one bedroom flat and £35,000 for a 2 bedroom flat - as of January, 1999 - and now possibly considered to be an under-estimate.
  - the additional Council costs borne by the Council that would need to be reimbursed. Again, these are considered to be fair, bearing in mind the seniority of the officers involved and the fact they do not include the time for the involvement of Technical Officers.

### 3. **Current Position**

- 3.1 The current position is that a report was taken to Plans Sub-Committee in November on this matter at which, in accordance with officers advice, members resolved not to take any enforcement action in recognition of the minor nature of the breach from a Planning perspective.
- 3.2 However, in respect to ownership of the roof space, the owner of the flat has only recently responded to letters from the Legal Business Unit concerning the Council's willingness to sell the roof space (although not the responsibility to maintain the structure) and is essentially objecting to paying the monies required (see Appendix 2).
- 3.3 Essentially, the leaseholder appreciates the Council's position but
- queries the costs required of him to pay the Council
  - blames the Council for the current situation in that once he obtained Building Regulations permission he thought this was all he required (see copy of permission letter attached - Appendix 3)
  - highlights the fact that none of his advisors (legal, finance or estate agent) advised him he did not own the roof space
  - points to the benefit that has been brought about because of the conversion obviating the need for his family of self, wife and 2 children to move elsewhere.
  - indicates he has a mortgage of £51,000 (including cost of conversion £8,500) and therefore cannot afford to pay any more.

### 4. **Remedies Available**

- 4.1 Should the owner of the property not co-operate with the Council or refuse to pay the sums required then the following remedies are available.
- i) Forfeiture: There may be an action for forfeiture of the lease for breach of covenant. Reservations have been expressed as to the success of such an action as the breach does not actually affect the current flat -only the space above the flat which is not subject to the lease. Furthermore, there may be an argument that the works enhance the value and are not detrimental to the appearance of the building.
  - ii) Restitution: I am advised that this seems the more practical approach as being an action against the leasee to restore the building to its former state and condition. This will obviously be very expensive and if the owner was made responsible for the works the quality could not be guaranteed.
  - iii) Defer  
Payments: If agreement is reached regarding the costs payable to the Council, there may be capacity to defer payments over a period of time, perhaps to be included within the service charge.

- iv) No Action: The Council could of course take no action and tolerate the trespass. It may be the case that this is the line of action that the owner is hoping to follow, bearing in mind the complicated nature of any potential enforcement. There would still be a need to clarify the legal position regarding the roof structure and future liability for damage to the leaseholders property.

## 5. **Allied Matters**

- 5.1 It is clearly evident from the various information to hand that the owner of this property may have been poorly advised by his representatives and possibly misled by the Estate Agent who acted on behalf of the previous owner when he bought the property in March 1994. Further, the owner has taken out an additional mortgage in order to undertake the conversion - which itself is surprising bearing in mind he had no legal right to occupy the roof space.

## 6. **Key Issues Strategies**

- 6.1 There is no direct relevance to the Key Issues Strategies except perhaps it has been put forward that by converting the roof space the actions of the owner contributes to the Council's Empty Property Strategy and makes better use of available space for occupation purposes!

## 7. **Summary and Recommendations**

- 7.1 It is the view of your officers that the leaseholder is in clear breach of the lease of the property but had, since he first purchased the property as a single man, been given poor or completely wrong advice from his representatives. He was also under a complete misunderstanding in terms of the Building Regulations consent, believing them to be all that was required from the Council.
- 7.2 However, ignorance may be considered as no defence and the situation needs to be resolved if only to regularise the legal position regarding the structure of the roof - the Council cannot pass on the responsibility to maintain the structure.
- 7.3 In view of the circumstances therefore, members are asked to give guidance to your officers as to which options in 4.1 should be adopted or indeed propose alternative courses of action.

Derrick S. Dyas  
Head of Housing.

## **Background Papers**

Nil.

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**Areas in District**

**Affected:** Budbrooke