

HOUSING CABINET MEMBER MEETING

Agenda Item 107

Brighton & Hove City Council

Subject:	Permission for Pedestrian Access across the plot of land behind 95 The Ridgway from Kipling Avenue, Brighton		
Date of Meeting:	16th February 2011		
Report of:	Head of Housing and Social Inclusion		
Contact Officer:	Name:	Rachel Chasseaud	Tel: 290753
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Key Decision:	No		
Wards Affected:	Woodingdean		

FOR GENERAL RELEASE

1. SUMMARY AND POLICY CONTEXT:

- 1.1 A request was made to Housing Management on 19th March 2009 by Darren Knight, the owner of 95 The Ridgway, Brighton to allow pedestrian access from the rear of his property across a grassed area in Kipling Avenue owned by Brighton and Hove City Council.
- 1.2 A consultation with residents and ward councillors was carried out by an officer in the council's Housing Management team. In light of that consultation, the housing officer reached a decision that access would not be granted.
- 1.3 Mr Knight has approached the Cabinet Member for Housing and requested a review of that decision. A further consultation has therefore been carried out.

2. RECOMMENDATIONS:

- (1) That the Cabinet Member revokes the housing officer's decision of May 2009 in respect of Mr Knight's request for pedestrian access from the new property to be built at the rear of 95 The Ridgway to Kipling Avenue
- (2) That, subject to recommendation 2(3) below, the Cabinet Member grants a Deed of Easement allowing pedestrian access from the new property to be built at the rear of 95 The Ridgway to Kipling Avenue only across the grassed area to the adopted highway as specified in Appendix 1.
- (3) That the Solicitor to the council grants a Deed of Easement on the condition that recycling boxes and bins are kept within the grounds of the new property at the rear of 95 The Ridgway and are not left on the grassed area appendix 1 or on the pavement on Kipling Avenue other than on collection days.
- (4) That the value of the Deed of Easement and the legal and administrative costs will be charged to the owner of 95 The Ridgway, Woodingdean, Mr Darren Knight.

3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:

- 3.1 Mr Knight of 95 The Ridgway, Brighton, was granted planning permission to build a 4 bedroom property at the rear of 95 The Ridgway in March 2009.
- 3.2 A condition of the planning consent is that access to the site for the new property for construction and building materials must be from The Ridgway and not via Kipling Avenue.
- 3.3 Planning consent makes it clear that if the applicant wishes to provide pedestrian access to the new property from Kipling Avenue, this must be granted by the landlord of the green area and pathway that runs from the rear of 95 The Ridgway to Kipling Avenue (as shown in Appendix 1).
- 3.4 The parcel of land to the rear of 95 The Ridgway is owned by the council under the Housing Revenue Account scheme. There is a path that runs along both sides of the green area and is joined across the back which is adopted highway and therefore provides a public right of way. A request for pedestrian access from the back gate of the property to the adopted highway (a distance of approximately 3 feet) was originally put to the council's Housing Office in April 2009 by Mr Knight. Following a consultation In May 2009 a decision was made to reject this request.
- 3.5 The request was rejected on the basis that granting access would be detrimental to the residents of Kipling Avenue because pedestrian traffic would increase due to the presence of the occupants and their visitors, and the transportation of bins and deliveries. Further, the housing officer considered that delivery vehicles might be tempted to park on the green and street parking in Kipling Avenue might be made more difficult.
- 3.6 The previous owner of 95 The Ridgway was granted a licence in 1987 for pedestrian access across the green area (see appx 1) to Kipling Avenue. This licence expired on the sale of the property to current owner.
- 3.7 There is already a gate from 95 The Ridgway onto the Kipling Avenue Green and a path that crosses the green. Mr Knight has requested to put 3 paving slabs from the gate to joint the path. It should be noted that a similar arrangement is already in place for a property which faces onto the Ridgway but backs onto another green on Kipling Avenue allowing the occupants pedestrian access.
- 3.8 In October 2010 Mr Knight contacted the Cabinet Member for Housing to request a review of the decision not to grant access to the proposed new build property across the housing land from Kipling Avenue. Mr Knight argues that the original decision was not reasonable and also that when he applied for planning it was suggested to him by the planning officer that access should be from Kipling Avenue.
- 3.9 There are 12 households in Kipling Avenue who access their properties along pathways across this green. These pathways form an adopted highway and so already provide a public right of way. Allowing access from the rear of 95 The Ridgway to the adopted highway would increase pedestrian traffic of one additional household.

3.10 A new consultation with residents of the 12 affected properties was therefore carried out which ended 17th December 2010.

4. CONSULTATION

4.1 A consultation was carried out by the Housing Office with ward councillors and 12 households whose properties adjoin the green area running from Kipling Avenue to the rear of 95 The Ridgway.

4.2 8 responses were received. Of these 7 respondents registered an objection.

4.3 Of the objections, 4 were concerned with construction traffic and vehicle access across the site. These are not relevant as pedestrian access only is proposed and all construction materials must be delivered via 95 The Ridgway.

4.4 2 respondents expressed concern about the property being built at all and in particular that there would be children who might play on the green. However planning permission has already been granted for the construction of a 4 bedroom property and the Cabinet Member for Housing can only consider the access issues across housing owned land.

4.5 1 respondent was concerned about the bins and recycling and where they are left on collection day.

4.6 7 respondents expressed concern about the additional people who would walk past their properties.

4.7 2 respondents suggested that the sole access to the property should be from The Ridgway.

4.8 1 respondent did not object.

4.9 A full statutory consultation about the building of the property at the rear of 95 The Ridgway was carried out as part of the planning decision.

4.10 It should be noted that there are five green areas of a similar layout to this in Kipling Avenue. The occupiers of these properties have not been consulted.

5. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

5.1 "There are no financial implications arising from this report"

Finance Officer Consulted: Monica Brooks

Date: 18/01/11

Legal Implications:

- 5.2 “Under her housing landlord functions, the Cabinet Member for Housing is entitled to review and, if she considers it appropriate after taking into account the matters raised in this report, revoke the decision taken by the housing officer concerning the issue of pedestrian access to the property concerned

The Cabinet Member’s reason for doing so, and her grounds for making a fresh decision must be reasonable proportionate and transparent. Given that 12 properties already have this right the presumption should be that the right is extended in a similar manner. The objections raised are for the most part irrelevant – for instance concerns about vehicular access are not correct. Likewise the planning issues. The question of footfall traffic increasing should be in the context of how many people would additionally use the area - it is unlikely to be a significant increase. The bins/ recycling position have been dealt with. The consultation itself is part of the process and we are entitled to draw objective conclusions as to the results. As above there appears to be no concrete reasons that are self evidently against the change.”

“The council has the power to grant a licence, a lease or an easement to facilitate pedestrian access to the property in question. The grant of an easement for pedestrian access is likely to be what the owner would prefer since it will give certainty of a permanent right of way on foot from Kipling Avenue although it would appear that both vehicular and pedestrian access could be created by Mr Knight along the side of 95 The Ridgway thus obviating the need for anything more than a licence from Kipling Avenue”

Lawyer Consulted: Oliver Dixon

Date: 21/01/11

Lawyer Consulted: Anna MacKenzie

Date: 14/01/11

Equalities Implications:

- 5.3 There are no equalities implications in relation to this recommendation.

Sustainability Implications:

- 5.4 There are no sustainability implications in relation to this recommendation. Sustainability implications that relate to the planning permission are dealt with in the conditions of the planning consent.

Crime & Disorder Implications:

- 5.5 There are no crime and disorder implications in relation to this recommendation.

Risk and Opportunity Management Implications:

- 5.6.1 A Deed of Easement will give a right of way from the rear of 95 The Ridgway in perpetuity. This means that the Local Authority will be unable to use this piece of land for other purposes in the future.

- 5.6.2 While this report recommends that the reasonable decision is to grant a Deed of Easement it should be noted that there is strength of feeling amongst residents of Kipling Avenue that it should not be granted. It will be important to make residents aware of how they can make complaints if the terms of the deed are not adhered to e.g. if vehicles are parked on the green or bins left outside of the property boundary.

Corporate / Citywide Implications:

- 5.7 There are no corporate or city wide implications in relation to this recommendation

6. EVALUATION OF ANY ALTERNATIVE OPTION(S):

- 6.1 That sole access is granted from The Ridgway. This would involve construction of a passage alongside 95 The Ridgway. Mr Knight does not wish to pursue this option. This is however a viable alternative.
- 6.2 That a licence is granted allowing access. This would be personalised to the owner and would mean that on transfer of ownership a new licence would need to be applied for by the new owner. This would leave the property potentially landlocked at a future date.
- 6.3 That a lease with a break clause is granted allowing access. This would be for a limited period of time. A break clause would enable the council to end the lease in specific circumstances. For example, if there were persistent breaches of the terms of the lease or if the council wished to develop the land in the future. However, granting a lease has the potential to render the property landlocked in the future.
- 6.4 For the reasons given, none of the options set out in 6.1 - 6.3 is considered practicable. Instead, the recommendations set out at 2(2) and 2(3) above are considered the most appropriate solution

7. REASONS FOR REPORT RECOMMENDATIONS

- 7.1 The recommendation to grant pedestrian access only is made on the basis that there will be no vehicle access granted and that the planning condition that all construction access is via the Ridgeway is maintained.
- 7.2 The reason for recommending that the original decision is overturned is that it is flawed because:
- It did not adequately consider that a precedent had already been set by access to Kipling Avenue having been granted to the previous occupants and at another property in the Ridgway.
 - That the issue of vehicles being tempted to drive onto the green is an issue for enforcement by the landlord and one that already exists for current properties which have pedestrian access from Kipling Avenue. This is therefore not an adequate basis on which to refuse access to one more household.

- That the objections made on the basis of additional pedestrian traffic and children playing on the green are unreasonable on the basis that access would be afforded for one additional household only.
- 7.3 Having considered Mr Knights representation and the results of the consultation have been raised in the new consultation it is suggested that it would be unreasonable to refuse access to the rear of 95 The Ridgway from Kipling Avenue.

SUPPORTING DOCUMENTATION

Appendices:

1. Plan of 95 The Ridgway, Kipling Avenue and proposed access route

Documents In Members' Rooms

1. None

Background Documents

1. Planning consent and conditions for construction at the rear of 95 The Ridgway – March 2009.
2. Expired Licence for access from the rear of 95 The Ridgway to Kipling Avenue - 1987
3. Original Decision Letter – May 2009
4. Consultation Letter – November 2010
5. Photograph of the rear of 95 The Ridgway, Woodingdean