



# Epping Forest District Council

## **HOUSING APPEALS PANEL**

**Thursday, 14th July, 2005**

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

**Room:** Council Chamber

**Time:** 4.00 pm

**Democratic Services Officer** Graham Lunnun

Members:

Councillors Mrs J Davis (Chairman), D Stallan (Vice-Chairman), K Angold-Stephens, Mrs P K Rush and Ms S Stavrou

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**1. APOLOGIES FOR ABSENCE**

**2. MINUTES (Pages 3 - 14)**

To agree the minutes of the meetings of the Panel held on 27 and 28 April 2005 (previously circulated) and 25 May 2005 (attached).

**3. SUBSTITUTE MEMBERS**

(Head of Research and Democratic Services) To report the attendance of any substitute members for the meeting.

**4. DECLARATIONS OF INTEREST**

To declare interests in any item on the agenda.

**5. EXCLUSION OF PUBLIC AND PRESS**

To consider whether, under Section 100(A)(4) of the Local Government Act 1972, the public and press should be excluded from the meeting for the items of business set out below on grounds that they will involve the likely disclosure of exempt information as defined in the paragraph(s) of Part 1 of Schedule 12A of the Act indicated.

<b><u>Agenda Item No.</u></b>	<b><u>Subject</u></b>	<b><u>Exempt information Paragraph Number</u></b>
6	Appeal No. 12/2005	3

To resolve that the press and public be excluded from the meeting during the consideration of the following items which are confidential under Section 100(A)(2) of the Local Government Act 1972.

<b><u>Item No.</u></b>	<b><u>Subject</u></b>
Nil	Nil

**6. APPEAL NO. 12/2005 (Pages 15 - 18)**

To consider a restricted report.

## EPHING FOREST DISTRICT COUNCIL COMMITTEE MINUTES

**Committee:** Housing Appeals Panel **Date:** 25 May 2005

**Place:** Committee Room 1, Civic Offices, High Street, Epping **Time:** 4.00 pm - 6.15 pm

**Members Present:** Councillors Mrs J Davis (Chairman), D Stallan (Vice-Chairman), Mrs C Pond (for Items 1-5 only), Ms S-A Stavrou, K Wright

**Other Councillors:** -

**Apologies:** Councillor K Angold-Stephens

**Officers Present:** A Hall (Head of Housing Services), G Lunnun (Research and Democratic Services)

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### 1. MINUTES

#### RESOLVED:

That the minutes of the meetings of the Panel held on 9 March, 4 April and 13 April 2005 be taken as read and signed by the Chairman as a correct record.

### 2. SUBSTITUTES

It was noted that Councillor Mrs C Pond was substituting for Councillor K Angold-Stephens.

### 3. DECLARATIONS OF INTEREST

Councillor Mrs J Davis declared a personal interest in agenda Item 5 (Appeal No: 12/2005) by virtue of being a Council-appointed representative on the SAFE Project - Support and Advisory Group. She had determined that her interest was not prejudicial and that she would remain in the meeting for the duration of the consideration of the appeal.

### 4. 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 12(A) of the Act indicated:

<u>Agenda Item No.</u>	<u>Subject</u>	<u>Exempt information Paragraph Number</u>
5	Appeal No: 12/2005	3
6	Appeal No: 11/2005	3

**5. APPEAL NO: 12/2005**

The Panel gave consideration to an appeal against a decision of the Assistant Housing Needs Manager (Homelessness) acting under delegated authority that the appellant had become homeless intentionally. The appellant attended the meeting to present her case accompanied by her sister. Mr R Wallace, Assistant Housing Needs Manager (Homelessness), attended the meeting to present the Council's case. Mr A Hall, Head of Housing Services, attended the meeting to advise the Panel as required on legal issues and 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 sister and outlined the procedures to be followed in order to ensure that proper consideration was given to the appeal. The Chairman asked the appellant if she wished to proceed with the appeal at this meeting bearing in mind that she had originally indicated that she would be assisted by her father who could not be present. The appellant stated that she was happy to proceed with the support of her sister. The Chairman asked the appellant if she had received copies of the agenda and the report for the meeting. The appellant stated that these had been received but that they were currently with her father. The Chairman requested that further copies of these documents be handed to appellant and that the appeal be adjourned for 10 minutes to enable the appellant and her sister to read the papers. The parties left the meeting at 4.25 p.m. and returned at 4.35 p.m.

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

- (a) a summary of the appeal together with the facts of the case forming part of the agenda for the meeting;
- (b) a copy of a notice dated 22 November 2004 requiring possession of the accommodation which had been occupied by the appellant since 26 July 2004;
- (c) a copy of a letter dated 14 January 2005 from the Principal Housing Officer (Needs) to NACRO Housing;
- (d) copies of responses dated 14 and 15 February 2005 from NACRO;
- (e) a typed copy of a report dated 8 March 2005 prepared by one of the Council's Housing Officers following an interview with the appellant;
- (f) a copy of a letter dated 14 March 2005 from the NACRO House Manager to the Council's Housing Needs;

- (g) a copy of a letter dated 24 March 2004 from the Principal Housing Officer (Needs) to the appellant;
- (h) a copy of the application to the Housing Appeals Panel by the appellant dated 6 April 2005;
- (i) a copy of a section of an agreement signed by the appellant on 26 September 2004 in relation to the property which had been made available to her by NACRO.

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

- (a) the appellant had not made herself intentionally homeless; whilst residing at the property provided by NACRO she had tried hard to settle but had not got on with the other residents; she had felt threatened when she had been there on her own with the other residents in the evenings; they had made unreasonable requests of her including asking her to do shopping for them in the early hours of the morning; despite several attempts to speak to the NACRO House Manager no action had been taken and the appellant had found it easier to stay away from the accommodation; she had realised that by doing so she had been breaking her agreement but felt that she had no alternative; eventually the appellant had been advised by the NACRO House Manager that arrangements would be made to transfer her to another property after a period of six weeks but at the end of that period the House Manager had advised that this was no longer possible;
- (b) the appellant had attempted to better herself by getting a job and had received income of £85.00 per week; the NACRO House Manager had been very unhelpful in advising the appellant about her rent and the appellant had been required to pay £80.00 per week rent which she had been unable to afford; until the appellant had obtained a job she had kept her rent account up-to-date;
- (c) the appellant had attended key worker meetings at the commencement of her tenancy but on many occasions the times of these meetings had been changed with little notice; on other occasions the appellant would attend for a meeting only to find that the Manager had been called elsewhere; often the arrangements for the meetings had been changed at such short notice that it had not been physically possible for the appellant to attend within the timescale set; the appellant apologised for not complying with this part of her agreement but felt that the NACRO House Manager was equally to blame;
- (d) since commencing occupation of the NACRO property, the appellant had never stayed at her mother's house as she had not been allowed to do so by her mother's new partner;
- (e) the appellant had settled into the bed and breakfast accommodation made available by the Council and for the first time in a long time had felt that she was starting to improve her life; she was due to start a new job shortly from which she expected to receive £300.00 every two weeks; in considering the matter the Panel were asked to have regard to the fact that the appellant had received virtually no support from her immediate family for many years.

The appellant answered the following questions of the Assistant Housing Needs Manager (Homelessness) and the Panel:

- (a) the agreement you signed with NACRO to occupy their property stated that you were expected to participate in a planned programme of re-settlement with the assistance of their Project Worker - why did you not work with them? - I did work with them until I got a job, following which I received little support from the House Manager;
- (b) how did your rent arrears arise? - I paid the rent until I got a job, following which I was expected to pay £80.00 per week in rent from my £85.00 per week income; I was penalised for getting a job and received no support from the NACRO House Manager regarding the payment of rent;
- (c) why did you not pay any rent at all during December 2004 and January 2005? - following the receipt of the Notice Requiring Possession from 23 January 2005, I saw little reason to make any further payments in view of the lack of support that I was getting and having regard to the way in which the other residents were treating me;
- (d) what was your relationship with the NACRO House Manager? - she had something against me and was always quite aggressive; she was also aggressive to members of my family who made complaints about her;
- (e) what is the new job that you are about to start? - serving food in McDonalds;
- (f) have you now managed to sort out the benefits to which you are entitled? - yes;
- (g) are you currently paying the bills at the bed and breakfast accommodation provided by the Council? - yes;
- (h) when you start your new job do you expect to have sufficient income to live on after paying your accommodation charges? - yes;
- (i) do you expect to have sufficient money to start paying off the arrears at that time? - yes;
- (j) do you have a Social Worker working with you? - yes;
- (k) your allegations about the NACRO House Manager are surprising in view of our past experience with representatives of that organisation - can you clarify, was it the House Manager who was causing you problems or the other residents? - it was the House Manager as well as the other residents; I was always blamed for things and the other residents threatened to punch me; it was my house as well and I should have been allowed to do my own things.

The Panel considered the following submissions in support of the case of the Assistant Housing Needs Manager (Homelessness):

- (a) the appellant had made a homeless application to the Council on 11 January 2005; at the time the appellant had been the sole applicant;
- (b) during the initial interview, the appellant had stated that she had been served with notice to leave accommodation on account of rent arrears; the appellant had been

occupying accommodation made available by NACRO since 26 July 2004;

(c) a course of enquiry had been undertaken to decide on homelessness, eligibility, priority need and local connection; to assist in deciding homelessness, contact had been made with NACRO Housing Services; responses had been received from two different officers of that organisation but the responses had been consistent about the way in which the appellant had conducted her tenancy; they had stated that the appellant had not engaged in the support offered and had stayed away from the accommodation on frequent occasions; they had confirmed that rent had been paid until approximately 28 November 2004, but since that date, rent had not been paid on a regular basis and that from 13 December 2004, the appellant had failed to claim benefits and had then been responsible for the whole amount of her rent; they had stated that the appellant had left NACRO with a debt of £397.59;

(d) in the light of the responses from NACRO the appellant had been asked to attend a further interview; that had taken place on 8 March 2005; at that interview the appellant had agreed that she had not made use of the accommodation and had failed to maintain her rent payments; she had made no reference to her problems with the House Manager or other residents;

(e) NACRO had been contacted again earlier in the day and had confirmed that the amount of £397.59 was still outstanding; the appellant's father had indicated that he would contribute towards paying off the debt but no money had been received;

(f) the appellant had been eligible for assistance as she was a British Citizen; a priority need for accommodation had existed as she was aged 17; however, after careful consideration of all the facts a decision of intentionality had been made;

(g) when making homeless decisions, the Council had to have regard to the Code of Guidance which was issued to local authorities to assist with interpretation of the Housing Act 1996, as amended; the Code stated that examples of acts or omissions which might be regarded as deliberate included where someone had lost accommodation because of wilful refusal to pay rent payments; in this case the appellant had accepted that she had failed to make rent payments and occupy the accommodation provided for her;

(h) the Council worked closely with NACRO Housing to ensure that its statutory duty was fulfilled by providing accommodation to single homeless people; the accommodation offered support to tenants and NACRO staff were experienced in dealing with young people, helping them with life skills and responsibilities; the demand for places at this scheme were high; all applicants were required to undergo an interview with NACRO before a decision was made on acceptance; at such an interview it was made clear that residents were expected to make full use of the support provided and to engage with and co-operate with staff, being open about any problems in respect of which they required assistance;

(i) the appellant had breached the terms of her Agreement to Occupy and had been evicted; the agreement which had been signed by the appellant when she had commenced occupation had clearly set out the expectations of tenants;

(j) in the event of the appeal being dismissed the officers would be willing to refer the appellant to Social Services with a request for a Child in Need Assessment under

the terms of the Children Act 1989.

The Assistant Housing Needs Manager (Homelessness) answered the following questions of the appellant and the Panel:

(a) what evidence do you have of the problems between the appellant and the NACRO House Manager? - none; the letter from NACRO dated 15 February 2005 from NACRO was from the officer responsible for the House Manager; no mention had been made of any difficulties between the appellant and the House Manager; if there had been difficulties, I would have expected there to have been some reference to the problems in the letter;

(b) is it normal for NACRO to expect an occupier to use most of their income to pay rent? - normally NACRO would come to an agreement with a tenant and they would not expect a person to be deprived of sufficient income to afford essentials; the difficulty in this case was that the appellant did not engage with the support which was on offer; if she had done so she may have been eligible for some housing benefit;

(c) are all young single homeless people referred to NACRO? - the Council's staff are trained in assessing people and if they are interviewing a person like the appellant who has a troubled background with minimal support from her family, they would be likely to refer the person to NACRO as that organisation offered a lot of support;

(d) do NACRO get background information about the people referred to them? - referrals are made by a number of different agencies; there is a lengthy referral form and a Panel meets to consider applications and determine offers of accommodation;

(e) you have mentioned the possibility of housing benefit being paid when the appellant had a part-time job; is it within the NACRO House Manager's remit to assist with such matters? - yes, but as the appellant did not engage with NACRO staff they were unable to assist; I understand that there was one occasion when the House Manager was running late for a meeting but in the main it was the appellant who did not engage with staff.

With the approval of both parties, the Chairman asked the following additional questions of the appellant:

(a) were you promised a transfer from the NACRO property? - yes, the House Manager promised that I would be given a transfer but then did nothing about it;

(b) why did you have problems in attending the key worker meetings? - when I was not living at the accommodation it was necessary to travel from Epping to Loughton to attend the meetings; on occasions the House Manager was not present when I got there and this was a waste of my money.

The Chairman asked the appellant if she wished to raise any further issues in support of her case. The appellant advised that she had a twin sister who was receiving good support from NACRO, quite unlike her own experiences. The appellant stated that she had received no support from the NACRO House Manager and despite complaints to her superior no action had been taken. The applicant said she was now settled and would start to pay off her arrears; people at the bed and breakfast accommodation which she now occupied treated her well - quite unlike the reception she had received



from residents at the NACRO accommodation.

The Chairman asked the Assistant Housing Needs Manager (Homelessness) if he wished to raise any further issues in support of his case. He advised that he had nothing further to add.

The Chairman indicated that the Panel would consider the appeal in the absence of both parties and that the appellant and the Assistant Housing Needs Manager (Homelessness) would be advised, in writing, the outcome. The appellant, her sister and the Assistant Housing Needs Manager (Homelessness) then left the meeting.

The Panel expressed concern about the allegations made by the appellant regarding the NACRO House Manager. They decided that they needed to offer the House Manager an opportunity to answer the matters which had been raised by the appellant. Members formulated questions for NACRO which they felt needed to be answered before they could determine the appeal.

The Panel agreed that it would not be necessary to re-hear all the circumstances of the case, but to just ask questions of the House Manager. The appellant also to be given an opportunity to ask the House Manager questions.

**RESOLVED:**

- (1) That determination of this appeal be deferred and further consideration be given to the appeal at the meeting of the Panel scheduled to be held on 14 July 2005;
- (2) That the NACRO House Manager of the accommodation occupied by the appellant, or another representative, be invited to that meeting to answer the questions of the Panel;
- (3) That, in the event of NACRO declining to send a representative to the meeting, they be encouraged to respond in writing to the questions formulated by the Panel;
- (4) That the appellant and the Assistant Housing Needs Manager (Homelessness) be invited to attend the meeting on 14 July 2005 and given the opportunity to ask questions of the NACRO representative, if in attendance, but advised that the Panel will not be re-hearing the evidence placed before it at this meeting; and
- (5) That the Council continues to provide interim accommodation pending determination of the appeal, subject to the appellant continuing to comply with the terms of occupation.

**Councillor Mrs Pond left the meeting and did not participate in consideration of the following appeal.**

**6. APPEAL NO: 11/2005**

The Panel gave consideration to an appeal against a decision of the Assistant Head of Housing Services (Operations) acting under delegated authority regarding the

termination of the appellant's tenancy. The appellant was not in attendance at the meeting and had elected for the appeal to be determined on the basis of written representations.

The Head of Housing Services confirmed to the Panel that he had not previously been involved in this case and would be able to advise members on housing policy and legislation relevant to the appeal. He confirmed that, in addition to the submitted written statements, the relevant housing file was available if required by the Panel. He emphasised that the decision of the Panel had to be based on the representations before it.

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

- (a) a summary of the appeal together with the facts of the case forming part of the agenda for the meeting;
- (b) a copy of a letter dated 27 December 2004 from the appellant and her partner to Mrs R Smith;
- (c) a copy of a letter dated 20 January 2005 from one of the Council's Housing Assistants (Needs) to the appellant and her partner;
- (d) a copy of a letter dated 17 February 2005 from the appellant and her partner to the Assistant Head of Housing Services (Operations);
- (e) a copy of a letter dated 25 February 2005 from the Assistant Head of Housing Services (Operations) to the appellant and her partner;
- (f) a copy of the application to the Housing Appeals Panel by the appellant dated 11 March 2005.

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

- (a) the appellant had applied for a mortgage on her current property at the end of 2004 and had contacted one of the Council's Housing Officers to request details of how to end the tenancy of the Council accommodation she had occupied at that time; she had been told that she needed to give four weeks' written notice in accordance with the Tenancy Agreement;
- (b) the appellant had been given a date for completion of her mortgage of 14 January 2005 and wrote a letter dated 27 December 2004 which had been posted on 29 December 2004 giving four weeks' notice to vacate the Council property on 24 January 2005 and to hand the keys back to the Council's Housing Needs Section on that day;
- (c) on 22 January 2005, the appellant had received a letter from the Housing Needs Section dated 20 January 2005 acknowledging her letter dated 27 December 2004 which they had received on 17 January 2005; the Council's letter had stated that the tenancy would end on 13 February 2005 and that the keys needed to be handed back by no later than 14 February 2005;

(d) unsure of the reasons why the dates of 13 and 14 February 2005 had been given, the appellant had sought clarification and had been advised that it was the tenant's responsibility to ensure that termination of tenancy letters were received, giving adequate time for the required four week notice period; the Council had further advised that as the appellant's letter had not been received until 17 January 2005, the termination date of 13 February 2005 would stand;

(e) the appellant had appealed against this decision to the Assistant Head of Housing Services (Operations); as part of the appeal the appellant had stated that she could not be held responsible for any delay on the part of Royal Mail and that had she been aware of the effects of such a delay she would have delivered the termination letter personally to the Civic Offices;

(f) the appellant had passed her former Council accommodation the week before 14 February 2005 (the Council's stated tenancy end date) and it had been apparent that the keys had already been given to someone else as there had been a new family in the property; the keys should not have been given to anyone else if the tenancy had not ended as the Council would have been collecting two amounts of rent; the Assistant Head of Housing Services (Operations) had dismissed the appeal; the appellant had incurred additional £123.66 rent; had the appellant's request been processed in the correct timescale, the appellant would only have been required to pay a sum of £38.45.

The Panel considered the following submissions in support of the case of the Assistant Head of Housing Services (Operations):

(a) the appellant had been the former tenant of Council accommodation in Waltham Abbey; in November 2004 she had contacted the Council explaining that she was purchasing a property and wanted to know how much notice was required when moving out; she had been advised that in accordance with her Tenancy Agreement the notice period would be four weeks;

(b) on 17 January 2005, the Council had received a letter from the appellant stating that she wanted to give four weeks' written notice to vacate the property and would hand the keys back at the Civic Offices on Monday 24 January 2005; although that letter had been dated 27 December 2004 it had not been received until 17 January 2005 and had been date stamped accordingly; as a result, the Council had written to the appellant on 20 January 2005 stating that the tenancy would end on 13 February 2005 being four weeks from the date the letter had been received;

(c) the keys to the appellant's Council property had been returned to the Council on 24 January 2005;

(d) it was the Council's current policy that four weeks' notice started with the date that notice was received and not from the date of correspondence; Section 4 of the Council's Standard Tenancy Agreement stated:

"the tenancy may be terminated by either party (the tenant or the Council) by expressed surrender by the tenant, giving in writing, four weeks' notice (not counting the day on which the notice is served) to expire on a Monday. Any notice given by the tenant must be signed by the tenant and sent to the Council";

(e) on 18 February 2005 the Assistant Head of Housing Services (Operations) had received a letter from the appellant appealing against the decision; the Assistant Head of Housing Services (Operations) had responded stating that it was the tenant's responsibility to give four weeks' notice in order to terminate a tenancy and that as the tenancy had ended on 13 February 2005 the appellant needed to pay an additional £123.66, making a total of £162.11 in order to clear the former tenant rent account;

(f) in support of her appeal, the appellant had submitted a statement which explained that the Assistant Head of Housing Services (Operations) had not answered two questions raised in her appeal to him; it was accepted that one of these questions had not been addressed;

(g) the first question raised by the appellant (which had been answered) sought clarification on whether the four weeks' notice began from when the Council had received the letter; the decision of the Assistant Head of Housing Services (Operations) had been that the tenancy termination date was four weeks after the date of receipt of the appellant's letter being 13 February 2005;

(h) the second question, in summary, (which had not been answered) had sought the reason why the Council would place a new tenant in the property prior to the appellant's tenancy termination date of 13 February 2005; the tenancy of the property had terminated on 13 February 2005 and the new tenant had not taken up their tenancy until 14 February 2005;

(i) in accordance with current policy, four weeks' notice of termination of a tenancy commenced on the date the Council received notification from a tenant in writing and not the date on a letter giving such notice.

The Panel noted that there was no evidence to indicate why the letter had not been received by the Council earlier. The Panel concluded that the Council could not be held responsible for any delay between the time of posting and the time of receipt. Members took the view that it was incumbent on a tenant to ensure that a letter was received by the Council and expressed surprise that the appellant had not followed up the matter when she had not heard from the Council in early January 2005. Accordingly, the Panel concluded that the appeal would be dismissed.

**RESOLVED:**

That, having taken into consideration the information presented by the appellant and by the Assistant Head of Housing Services (Operations) in writing, the appeal be dismissed and the decision of the Assistant Head of Housing Services (Operations) that the four week notice period of termination of tenancy commenced on 17 January 2005 be upheld for the following reasons:

(a) the Council's standard Tenancy Agreement states that a tenancy may be terminated by a tenant giving, in writing four weeks' notice, not counting the day on which the notice is served, to expire on the Monday;

(b) the appellant's letter dated 27 December 2004 and claimed by the appellant to have been posted on 29 December 2004 purported to give the four weeks' written notice to expire on 24 January 2005; the evidence shows that the letter was not received by the Council until 17 January 2005 when it was date

stamped on receipt;

(c) there is no evidence before the Panel to indicate why the letter was not received by the Council earlier; proof of posting is not proof of receipt and the Council cannot be held responsible for any delay between the time of posting and the time of receipt;

(d) the four weeks' notice period commences from the date a tenant's written notice is received by the Council not the date of the notice and as the appellant's Notice of Termination was received on 17 January 2005, the tenancy ended on 13 February 2005; accordingly the appellant is required to pay £162.11 in order to clear the former tenant rent account.

**CHAIRMAN**

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