



# Epping Forest District Council

## **HOUSING APPEALS PANEL** **Thursday, 24th November, 2005**

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

**Room:** Committee Room 1

**Time:** 4.00 pm

**Democratic Services Officer** Graham Lunnun, Research and Democratic Services  
Tel: 01992 564244 Email: glunnun@eppingforestdc.gov.uk

### **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 - 28)**

To agree the minutes of the meetings of the Panel held on 31 August and 22 September/3October 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. 18/2005	9
7	Appeal No. 19/2005	3
8	Appeal No. 20/2005	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.18/2005 (Pages 29 - 38)**

To consider a restricted report.

**7. APPEAL NO.19/2005 (Pages 39 - 58)**

To consider a restricted report.

**8. APPEAL NO. 20/2005 (Pages 59 - 102)**

To consider a restricted report.



8

Previous appeals –  
current position

3 and 4

**16. APPEAL NO. 14/2005**

The Panel was advised that the appellant had telephoned the Civic Offices earlier in the day and had advised that his wife had left him and taken the children and that he no longer saw any reason to pursue his appeal to the Panel. He had also advised that he was no longer residing at the Council's homeless hostel. He had been reluctant to withdraw the appeal in writing. It had been suggested that a letter would be sent to him confirming his withdrawal of the appeal and he had said that he could not provide an address for such a letter as he was moving between friends as and when they could accommodate him. He had advised, however, that he was due to return to the Council's homeless hostel in the near future in order to collect his possessions. It had been agreed, therefore, to address a letter to him at the hostel confirming the withdrawal of his appeal and that this letter would be handed to him when he attended the hostel to collect his possessions.

**RESOLVED:**

That the withdrawal of appeal number 14/2005 be noted.

**17. APPEAL NO.13/2005**

The Panel was advised that this appeal was against a decision of the Housing Resources Manager acting under delegated authority not to pursue the appellant's Right to Buy application be withdrawn.

The Panel was advised that earlier in the day, the appellant had telephoned the Civic Offices to advise that the District Councillor who was due to represent him at this meeting was no longer prepared to do so. The appellant had stated that he did not feel able to attend the hearing alone and had asked for the hearing to be deferred for two weeks. The appellant had been advised that it would be a matter for the Panel to decide whether to defer consideration of the appeal and it had been suggested that the request would carry greater weight if the appellant attended the hearing to explain to the Panel his reasons for requiring a deferment.

Mrs S Lindsay, Housing Resources Manager, and the appellant attended the meeting. Mr A Hall, Head of Housing Services, was in attendance to advise the Panel as required on legal issues and details of the national and local housing policies relative to the appeal.

The Chairman asked the appellant to explain his reasons for seeking a deferment of the hearing. The appellant advised that he needed assistance in presenting his case and that until the day before this hearing he had been under the impression that a district councillor, whom he had approached, would represent him. However, that councillor had advised him on the day before the meeting that he would not be attending the meeting. The appellant also advised that he was unwell and that he had been attempting to obtain a doctor's letter to put before the Panel in support of his case. He said that he had seen his doctor two weeks ago and had requested a letter but it had not yet been received. The appellant stated that the doctor had been aware of the need for the letter to be available for today's meeting and offered to provide details of the doctor's secretary so that confirmation could be obtained of the position, if required.

The appellant answered questions from members of the Panel. He said that he may have mentioned once in a telephone conversation with a Council officer that his

illness might cause a delay in the sale proceedings but he could not be sure. He confirmed that on the application form to the Panel he had indicated that his father would be attending the hearing. However, his grandmother had died recently and his father was attending the funeral abroad. In any event the presence of his father would be for moral support only and not to present the case. The appellant agreed that a letter dated 12 April 2005, sent to the Council, looked unprofessional but it had been written by his doctor. Mrs Lindsay confirmed that Council officers had questioned the validity of the letter sent by facsimile but that the original letter had since been received and the officers were now satisfied that the letter had been written by the appellant's doctor. To clarify matters she said that the letter the appellant was still awaiting in relation to his health was a letter from a consultant.

In response to a question from the Chairman, Mrs Lindsay said that she did not consider that there was any need to defer consideration of the appeal.

The Panel considered the representations made by the appellant for a deferment. They concluded that it ought to take account of the views of the appellant's consultant. It also agreed that the appellant should be given sufficient time to obtain another representative to present his case.

**RESOLVED:**

- (1) That consideration of appeal no. 13/2005 be deferred;
- (2) That the appellant be provided with details of District Councillors, Town Councillors, and the Citizens' Advice Bureau to assist him in finding another representative to present his case; and
- (3) That the appeal be considered at the next meeting of the Panel to be held on 22 September 2005, and that the appellant be advised that if he wishes to submit further documents in support of his appeal, these must be received by 9 September 2005.

**18. PREVIOUS APPEALS - CURRENT POSITION**

The Panel received a report detailing progress on recent appeals where the cases were still active within Housing Services.

The Head of Housing Services reported that since the schedule had been prepared the appeal about the suitability of accommodation offered to the appellant in appeal number 9/05 had been dismissed. Accordingly, that case could be deleted from the schedule. In relation to appeal number 2/2005, compensation had not been sought by the appellant and that case could also be deleted from the schedule, although use of the hard standing would continue to be monitored by officers. Following consideration of appeal number 5/2005, the Housing Portfolio Holder had met with representatives of the North Essex Mental Health Partnership NHS Trust and a letter summarising the outcome of that meeting had been sent to all members and substitutes of the Panel.

**RESOLVED:**

That the progress report on previously heard cases be noted.

**CHAIRMAN**

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**23. APPEAL NO. 13/2005**

The Panel was advised that consideration of this appeal had been deferred at the last meeting in order to give the appellant more time to find a representative to present his case and to obtain evidence from his medical advisor, which he wished to present to the Panel. The Panel were reminded that this appeal was against the decision of the Housing Resources Manager acting under delegated authority not to pursue the appellant's Right to Buy application. The appellant attended the meeting to present his case, accompanied by Councillor K Faulkner. Mr P Pledger, Assistant Head of Housing Services (Property and Resources), attended the meeting to present the Council's case which had been compiled by the Housing Resources Manager but who was unable to be present at this meeting. 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 outlined the procedures 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) a summary of the appeal together with the facts of the case, forming part of the agenda for the meeting;
- (b) a copy of the formal offer letter dated 11 December 2002 from the Housing Client Manager to the appellant;
- (c) a copy of a notice dated 30 January 2003 from the appellant to the Council requiring determination of the value of the property by the District Valuer;
- (d) a copy of a letter dated 12 June 2003 from the District Valuer to the appellant;
- (e) a copy of a letter dated 24 October 2003 from the Housing Officer (Sales and Leasehold Services) to the appellant;
- (f) a copy of a notice of intention to proceed at the full sale price dated 13 November 2003 from the appellant to the Council;
- (g) a copy of a letter dated 14 November 2003 from the Senior Housing Officer (Sales) to the appellant;
- (h) a copy of a letter dated 9 July 2004 from the Solicitor to the Council to the appellant;
- (i) a copy of a letter dated 4 August 2004 from the Solicitor to the Council to the appellant;
- (j) a copy of a letter dated 3 September 2004 from the Solicitor to the Council to the appellant;
- (k) a copy of a letter dated 3 September 2004 from the Solicitor to the Council to the appellant's solicitor;
- (l) a copy of a letter dated 27 October 2004 from the Solicitor to the Council to the appellant;



- (m) a copy of a letter dated 29 November 2004 from the Solicitor to the Council to the appellant;
- (n) a copy of a letter dated 25 January 2005 from the Solicitor to the Council to the appellant;
- (o) a copy of a memorandum dated 7 February 2005 from the Council's Managing Legal Executive to the Head of Housing Services together with a copy of a Suspended Possession Order dated 25 January 2005 in respect of non payment of arrears;
- (p) a copy of a letter dated 3 March 2005 from the Housing Officer (Management) to the appellant;
- (q) a copy of a letter dated 1 April 2005 from the Solicitor to the Council to the appellant;
- (r) a copy of a letter dated 28 April 2005 from the Assistant Head of Housing Services (Assets and Resources) to the appellant;
- (s) a copy of a letter dated 3 May 2005 from the Assistant Head of Housing Services (Property and Resources) to the appellant;
- (t) a copy of the application to the Housing Appeals Panel by the appellant dated 24 June 2005;
- (u) a copy of a letter dated 12 April 2005 from the appellant's general practitioner to "Whom it may concern";
- (v) a copy of a letter dated 2 September 2005 from the North Essex Mental Health Partnership to "Whom it may concern".

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

- (a) the appellant accepted that he had missed deadlines but there were good reasons which should be taken into account by the Panel;
- (b) initially the appellant's parents had intended to provide the money for the purchase of the property and they had applied for a mortgage; however, it had become apparent that this was not possible and that the mortgage application had to be made in the appellant's name; this had led to a delay in the proceedings;
- (c) the appellant had suffered a mental breakdown and had been unable to make decisions and had put off dealing with matters; he was now recovering and had been in a steady job for three months;
- (d) attention was drawn to the appellant's general practitioner's letter which confirmed that in recent months the appellant had suffered with problems from depression and had been taking medication daily;
- (e) attention was also drawn to the letter from the North Essex Mental Health Partnership which stated that the appellant had been receiving outpatient treatment from a psychiatrist for a period of approximately seven years, as well as support from community workers and on-going psychotherapy via the local Adult Psychotherapy Services; during this period, the appellant had found it difficult to attend adequately to

his affairs and this would have had a bearing on his application to purchase the property; the letter continued that the appellant had been experiencing a lot of negative life events in Loughton and was hopeful that by buying his property he would be able eventually to move from the Loughton area, where there were certain individuals who had caused him a great deal of difficulty and harassment; the letter continued that the appellant had been caused a great deal of anxiety by the possibility of meeting his ex partner and his young daughter who lived in the locality as he had been prevented from having contact with his daughter and this had been very distressing; at times this distress had caused him to act irrationally and aggressively towards certain people when under provocation; the appellant felt that this had unjustly given him a bad reputation with the local Police and the purchase of his property would help him to make a fresh start;

(f) the appellant was now in receipt of a mortgage offer and would be able to proceed with the purchase of the property immediately if his appeal was allowed;

(g) if the appeal was not allowed and the appellant wished to proceed with the purchase of the property then the appellant would be unlikely to be able to afford to proceed; this would have detrimental effect on his health;

(h) the appellant had been misled by Council officers about the deadlines; he had contacted the Council's Legal Services just before the final 56 day period, and had been advised that he would be allowed an additional two weeks but no allowance had been given;

(i) the appellant had spent approximately £1,500 on legal fees to get to the current stage.

The appellant answered the following questions of the Assistant Head of Housing Services (Property and Resources) and the Panel:

(a) What is the deadline in respect of your current mortgage offer? - The end of September 2005;

(b) The letter from the North Essex Mental Health Partnership mentions your wish to move from Loughton; are you aware that you do not have to buy your property in order to move, as there are transfer schemes available? - I do not wish to move from Loughton; I may have mentioned in general conversation with my psychiatrist the possibility of doing so but it is not my intention; my former partner and my daughter have now moved to Spain;

(c) You have stated that you contacted the Council just before the last 56 day period and were advised that an additional two weeks would be allowed; are you sure it was the last 56 day period? - I cannot remember which 56 day period I was referring to;

(d) Did any specific event in your life lead to your depression? - It was pressure which made me ill;

(e) Where are you currently employed? - In London;

(f) Do you commute each day? - Yes;

(g) Can you give a breakdown of the £1,500 spent on fees? - Mortgage broker, surveyor, solicitor and search fee.

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

(a) the appellant had been a tenant of his bed-sit bungalow since 1998; on 4 November 2002, the Council had received an application from the appellant to purchase his property under the Right to Buy Scheme;

(b) a formal letter had been sent on 11 December 2002 in which the Council had set out the full valuation of the property, the discount entitlement and the actual sale price of £64,680; the offer letter had clearly stated that the tenant should respond within three months from the date of the offer, i.e., no later than 11 March 2003; the letter had also advised the appellant of his right to have the value re-determined by the District Valuer within the same timescale;

(c) the appellant had requested a re-determination from the District Valuer on 3 February 2003; plans were drawn up and the Council submitted information to the District Valuer on 26 February 2003; a report had been received from the District Valuer on 24 October 2003 advising that there was no change in the valuation of the property; the delay was due to the fact that the District Valuer had to make three different appointments with the appellant before he could gain access to the property; the appellant had been advised of the District Valuer's valuation on 24 October 2003;

(d) the appellant had been informed that he should formally accept the offer by no later than 7 November 2003; the appellant had telephoned Housing Services on 7 November 2003 and had asked for an extension to this deadline due to a postal dispute; a revised deadline of 14 November 2003 had been agreed;

(e) the appellant had returned his acceptance letter on 13 November 2003; on 14 November 2003 the appellant had been informed that his sale would now be progressed by the Council's Legal Services and that all further communications should be dealt with through his chosen solicitor and the Council's Legal Services;

(f) the appellant had been served with the first 56 day notice under Section 140 of the Housing Act 1985 to complete the purchase by 9 July 2004; the appellant had telephoned the Council's Legal Services on 3 August 2004 and had been advised in a letter dated 4 August 2004 confirming that conversation, that a second 56 day notice would be served at the expiry of the first 56 day notice which should hopefully provide him with sufficient time to complete the purchase;

(g) the second 56 day notice had been served on 3 September 2004 under Section 141 of the Housing Act 1985; the appellant had been advised that failure to complete within this timescale would result in the notice claiming the right to buy being deemed withdrawn; the appellant's solicitor had been similarly advised on the same day;

(h) the appellant had telephoned the Council's Legal Services asking for an extension of two weeks on the final time limit and initially, he had been allowed another four weeks; however, as the appellant had applied for a revaluation of the property, it had been considered that he should have been allowed more time to comply with the regulations and, in recognition of that fact, he was served with a further 56 day notice under Section 140 of the Housing Act; another 56 day notice under Section 141 of the Housing Act 1985 had been served on the appellant on 25 January 2005;

(i) the appellant had been issued with a Suspended Possession Order on 25 January 2005 for non payment of arrears; on 17 March 2005, the Council's Legal

Services had advised Housing Services that they were seeking a Warrant for Possession as the Suspended Possession Order had been breached; the implications for breach of a Suspended Possession Order were that a tenant lost the right to buy their property as they are no longer a secure tenant and they become a "tolerated trespasser"; even if a tenant paid off the arrears they did not automatically have the same rights, as the Council could continue to treat the tenant as a tolerated trespasser and the tenant would have to apply to the court to be reinstated as a secure tenant; however, this authority did not take this approach with the appellant once he had cleared his account, and he had been allowed to enjoy the same rights and continue with the purchase of his property;

(j) the appellant had been advised by letter on 3 March 2005 that he had breached the terms of the Suspended Order by not paying the outstanding arrears of £358.56 at a rate of £2.85 per week; the appellant had been in receipt of full Housing Benefit and the arrears had accrued from past debts; the appellant had paid his arrears on 29 March 2005; however, once the fourth 56 day period had been allowed to run its course and expired, the appellant had been informed on 1 April 2005 that his notice period had ceased and he could no longer proceed with his application to purchase;

(k) the appellant had subsequently telephoned the Civic Offices a number of times after this notification, although he had failed to contact the Council officers hardly at all over the length of time he had to complete the sale since the application;

(l) the appellant had been informed on several occasions that he was entitled to reapply to purchase his property, but he had insisted that he wanted to pursue with this present application as the price of the property would increase and he had incurred legal fees of £1,500;

(m) normally purchases were completed in approximately one year and the appellant had been allowed over two years;

(n) on 31 August 2005, the Council's Valuation Officer had valued the property at between £135,000 and £140,000 which, after making allowance for the discount, represented a difference in purchase price of around £42,000 compared to the offer made in December 2002;

(o) the appellant had said that he had been unwell in a telephone conversation on 14 April 2005, that he could not get a mortgage and this had caused complications; this had been the first notification of any such problem; account should be taken of the fact that the appellant had engaged a solicitor to act for him in relation to the purchase of the property and that copies of all of the Council's correspondence had been copied to the appellant's solicitor;

(p) on 28 April 2005, the appellant had asked the Housing Resources Manager if she could "do a deal" to overcome the problems, and she had explained that this was not possible; on 19 May 2005 the appellant had spoken to the Assistant Head of Housing Services (Property and Resources) and again asked about "doing a deal", and had again been informed that this was not possible;

(q) the appellant had stated that he had been advised by the Council's Legal Services that going over time was not a problem; Legal Services would have been aware of the breach of tenancy and they had served four 56 day notices and would therefore have been fully aware of the length of time the appellant had already been allowed;

(r) based on the facts, the appellant had been given sufficient time to complete his sale and the Council should not lose the benefit of increased property prices since the initial application in 2002; the appellant was entitled to re-apply to purchase his property at any time based on a current valuation.

The Assistant Head of Housing Services (Property and Resources), answered the following questions of the appellant, his representative and the Panel:

(a) you have referred to the property being valued in 2002; would it not be fairer to acknowledge that the appropriate date should be October 2003 when the District Valuer had valued the property? - Both applications were based on the day of the application to purchase the property; the District Valuer had looked at the original valuation and had agreed that it had been correct at the time the application had been made;

(b) why did you not include the appellant's doctor's letter and mortgage offer letters in the papers submitted to the Panel? - These are not part of my case;

(c) will you look at the housing file to try and find these documents? - I have searched the file and can find no reference to these documents;

(d) are there any notes of telephone conversations with the appellant on the file? - The letters written to the appellant immediately after telephone conversations refer to those conversations, so a separate note was not considered necessary;

(e) are there any file notes about the appellant's telephone conversations after November 2003? - After acceptance of the offer on 13 November 2003, the matter was passed to the Solicitor to the Council and it was made clear to the appellant on 14 November 2003 that from that date all communications should be dealt with through his chosen solicitor and the Council's Legal Services;

(f) is the appellant currently up-to-date with his rent? - Yes;

(g) the copy of the letter included as Appendix 17 is not dated, what was the date of that letter? - 28 April 2005;

(h) please clarify whether Housing Services make file notes of telephone conversations? - File notes are kept and there are file notes on the appellant's file; copies have not been provided to the Panel as the letters sent following the telephone conversations summarise what was discussed and these letters are before the Panel;

(i) did you respond to the appellant's doctor's letter dated 12 April 2005 which was faxed to the Council on 20 April 2005? - I can find no reference to a response;

(j) do you not think that a response should have been sent in view of the last sentence of the doctor's letter? - I cannot comment on that;

(k) you have stated that the first notification received by the Council of the appellant's illness was on 14 April 2005; however, in the Council's letter dated 28 April 2005, reference is made under point (n) to the appellant being unwell on 27 October 2004; can you explain this apparent discrepancy? - I am not clear whether that was a reference to the same illness;

(l) how long are tenants normally regarded as tolerated trespassers? - Technically it is necessary for a tenant to go to Court to get a tenancy reverted,

however, this Council's approach is that when the arrears have been paid off the tenancy automatically reverts.

The Chairman obtained the agreement of the appellant to a member of the Panel asking him a further question. The appellant was asked why it had been necessary for the District Valuer to make three attempts to gain access to the property to value it. The appellant stated that, at that time, his illness had started and he had stayed with his mother for periods; he had good and bad days at that time. In response to a supplementary question, the appellant said that he could not recall whether he had advised the District Valuer of his problems.

The Chairman asked the appellant if he wished to raise any further issues in support of his case. Councillor Faulkner stated that the appellant had been a tenant since 1998 and that he had decided to purchase his property in 2002. The evidence showed the appellant had become unwell and this had contributed to his rent arrears. He had been under treatment for his depression and had been hospitalised for a period. The appellant was now getting better and was in full time employment. If he was able to complete the purchase of the property, he would be able to continue to improve his life. The appellant stated that when he had become ill, he had been suicidal and had been unable to manage any problem. As a result he had missed the deadlines which had been set.

The Chairman asked the Assistant Head of Housing Services (Property and Resources), if he wished to raise any further issues in support of the case of the Housing Resources Manager. He reiterated that many deadlines had been missed. He also emphasised that if the appeal was allowed, the Council would effectively be foregoing a capital receipt of around £42,000. Two and a half to three years was more than enough to complete the purchase of a property as the normal timescale was approximately one year. The valuation advice received on 31 August 2005 had been given by the same Valuer who had provided the original valuation in 2002.

The Chairman indicated that the Panel would consider the appeal in the absence of both parties and that the appellant and the Assistant Head of Housing Services (Property and Resources), would be advised, in writing, of the outcome. The appellant, Councillor Faulkner and the Assistant Head of Housing Services (Property and Resources), then left the meeting.

The Panel considered whether the reasons for failing to meet the numerous deadlines were sufficient to allow the appeal. Members concluded that the appellant's solicitor must have been aware of the appellant's illness and had been in receipt of copies of all of the relevant correspondence. However, the solicitor appeared to have failed to alert the Council to the difficulties or to provide the appellant with advice about the deadlines. The Panel noted that the appellant had been in rent arrears for approximately four months during the period of approximately two and a half years that the application had been progressed. This suggested that, during the rest of that period, the appellant had been able to manage some of his affairs adequately. The Panel concluded that Council officers had acted fairly throughout the process and had extended many of the deadlines which had been set. The Panel noted some inconsistencies in relation to the medical advice submitted on behalf of the appellant. Reference had been made at the hearing to the appellant being hospitalised, but the letter from the North Essex Mental Health Partnership had stated that the appellant had received outpatient treatment only. The appellant's general practitioner's letter had referred to the appellant suffering from problems with depression in recent months and not throughout the whole period of the processing of the application. The Panel also noted that during the period that the appellant had been suffering from depression, he had been able to telephone Council officers on

several occasions. On balance, the Panel concluded that the appeal should be dismissed.

**RESOLVED:**

(1) That, having taken into consideration the information presented by and on behalf of the appellant, and by the Housing Resources Manager and the Assistant Head of Housing Services (Property and Resources), in writing and orally, the appeal be dismissed and the decision of the Housing Resources Manager, not to pursue the application received from the appellant on 4 November 2002 to purchase his property under the Right to Buy Scheme, be upheld for the following reasons:

(a) that a period of over two years and three months elapsed between the date of the Council's formal offer letter (which included the valuation) to the time of the decision not to pursue the application; despite being given numerous extensions of time to complete various stages of the process, the appellant had failed to meet the majority of the deadlines set; the extensions of time included four, rather than the normal two 56 day notices, under Section 140 of the Housing Act 1985; during this period the appellant had also failed to meet the terms of a Suspended Possession Order;

(b) the Office of the Deputy Prime Minister Booklet, "Your Right to Buy Your Home" states that the earliest a landlord can require completion is at least twelve months after the offer letter; in practice, the vast majority of Right to Buy applications are completed within a period of approximately 12 months;

(c) the appellant had a solicitor to advise him about the terms and timescales of the proposed sale, who could and should have liaised with the Council on the appellant's behalf;

(d) there is no evidence to suggest that the actions or inactions of Council officers were in any way responsible for the failure of the appellant to meet the deadlines set;

(e) the delays in completing this matter have resulted in a difference in valuation of the appellant's property of approximately £42,000, according to the same Valuer who provided the formal valuation for the right to buy offer; it is unreasonable to expect the Council to lose a capital receipt of that amount, having regard to the fact that the appellant had been solely responsible for the delays;

(f) the medical evidence submitted by the appellant regarding his ongoing depression and anxiety have been taken into account, however, on balance, it is considered that this is insufficient to allow the appeal, having regard to the numerous extensions of time that were given to the appellant, the fact that he was in receipt of legal advice from his solicitor and to certain inconsistencies contained within the medical evidence;

(2) That the appellant be advised that he is entitled to reapply to purchase his property at any time whilst he continues to be a secure

tenant, for which, an up-to-date valuation of the property will be provided.

**24. APPEAL NO. 15/2005**

The Panel was advised that this was an appeal against the decision of the Assistant Housing Needs Manager (Homelessness) acting under delegated authority that the appellant had become homeless intentionally from accommodation made available to her under Section 193 of the Housing Act 1996, as amended. The Panel was advised that a letter of representations from the appellant's solicitors and copies of numerous supporting documents had been received by the Council on 21 September 2005. Copies of the letter and supporting documents were handed to members of the Panel. The Panel noted that letters had been sent to the appellant's solicitors on 12 August 2005 and 1 September 2005 seeking clarification of their client's appeal and the submission of any further supporting documents. In particular, the Panel noted that the solicitors had been asked to provide any further supporting documents by not later than 9 September 2005.

In the light of the deadlines set, the Panel discussed:

- (a) whether to ignore the letter dated 15 September 2005 and the enclosures in view of the lateness of the submissions;
- (b) to read the papers before them and then consider the appeal in the light of those papers; or
- (c) to adjourn the meeting in order to provide time to read the papers in order to give the matter proper consideration.

The Panel decided to pursue option (c) above and requested that a copy of the appellant's Assured Shorthold Tenancy Agreement, in relation to the flat which she had occupied at the women's refuge be made available before the matter was considered further.

**RESOLVED:**

- (1) That the appellant's solicitors be advised of the Panel's disappointment at their failure to meet the stated deadline for the submission of written material and the inconvenience which this has caused;
- (2) That the meeting be adjourned until Monday 3 October 2005 at which time the appeal will be considered; and
- (3) That a copy of the appellant's Assured Shorthold Tenancy Agreement in relation to the flat which she occupied at the women's refuge be sent to members of the Panel prior to 3 October 2005.

**CHAIRMAN**





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 relative 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 7 June 2005 from the Principal Housing Officer (Needs) to the appellant;
- (c) a copy of a letter dated 27 June 2005 from the Assistant Housing Needs Manager (Homelessness) to the appellant;
- (d) a copy of a statement dated 14 July 2005 made by the Scheme Manager at the women's refuge where the appellant had resided;
- (e) a copy of the notes of an interview of the appellant by a Housing Officer dated 15 July 2005;
- (f) a copy of a letter dated 15 July 2005 from the Assistant Housing Needs Manager (Homelessness) to the appellant;
- (g) a copy of a notice seeking possession dated 17 August 2005;
- (h) a copy of the appellant's bail conditions;
- (i) a copy of the application to the Housing Appeals Panel by the appellant dated 29 July 2005;
- (j) a copy of a letter dated 12 August 2005 from the Democratic Services Manager to the appellant's solicitors;
- (k) a copy of a letter dated 22 July 2005 from the appellant's solicitors to the Council's Housing Services;
- (l) copies of two undated statements prepared by the appellant;
- (m) a copy of a letter dated 17 August 2005 from the appellant's solicitors to the Council's Housing Services;
- (n) a copy of a letter dated 1 September 2005 from the Democratic Services Manager to the appellant's solicitors;

- (o) a copy of a letter dated 5 September 2005 from the appellant's solicitors to the Council's Democratic Services;
- (p) a copy of a letter dated 15 September 2005 from the appellant's solicitors to the Council's Democratic Services together with copies of the enclosures referred to therein, i.e. draft Judicial Review claim form; note from Housing file 4.4.05; file note 13.4.05; file note 18.4.05; letter dated 4.5.05 from the Harlow Primary Care Trust to the Housing Department; interview report 6.5.05; medical reference form 29.3.05; homeless report for medical assessment 10.5.05; interview report 15.7.05; and letter dated 4 April 2005 from the Homeless Prevention Officer to the appellant;
- (q) letter dated 29 September 2005 from the Democratic Services Manager to members of the Panel;
- (r) copy of the appellant's Assured Shorthold Tenancy Agreement in relation to the flat which she had occupied at the women's refuge;
- (s) a copy of a letter faxed on 29 September 2005 to the Council's Housing Services from the managing agents of the women's refuge.

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

- (a) the appellant denied that she had made herself intentionally homeless from the accommodation provided to her under Section 193 of the Housing Act 1996;
- (b) the appellant had lived in London but her former partner and the father of her children had been physically violent towards her and she had left him; she had resided in a women's refuge in an adjoining District Council's area before applying to this Council for housing assistance;
- (c) as a result of disclosures made by the appellant's former partner, she had been shunned by her family and the wider community;
- (d) when the appellant had applied to this Council she had been under a lot of stress and she had needed to leave her overcrowded accommodation at the refuge in the adjoining district as a matter of urgency; the appellant had found it difficult to control her children at that accommodation;
- (e) this Council had accepted a full housing duty towards the appellant and had accommodated her in a women's refuge, similar in nature to the accommodation she had occupied in the adjoining district; as a result the appellant's stress levels had continued to rise; in addition one officer at the women's refuge had constantly undermined, belittled and humiliated the appellant; also staff had regularly entered the appellant's room at the hostel without giving prior notice as required by the Tenancy Agreement;
- (f) the appellant accepted that she had been involved in an incident at the women's refuge on 14 July 2005 but denied the version of events as set out by the Council; the appellant had returned to the refuge after spending a few

days with a friend and had asked a member of staff for the telephone number of her health visitor; the member of staff had refused to provide this information as she had been on her lunch break and had told the appellant to return at 2.00 p.m.; the appellant had explained that she could not wait that long as her bus was due to leave before that time; the appellant had become distraught and had lost her temper and self control; the member of staff had called the Police; the appellant had pushed a computer off a desk; the appellant had apologised for damaging the computer and had offered to pay for the cost of the damage; the appellant strongly denied assaulting the member of staff; in coming to a decision on the incident the Council should have viewed the CCTV footage or asked the Police what it showed; there was no evidence of the member of staff going to hospital or any objective medical or other evidence of an assault; the Council's enquiries into the incident had been inadequate and unfair;

(g) the Council had failed to assess the appellant's housing needs or provide her with advice and assistance relating to her housing needs and had not considered the exercise of its discretion to accommodate the appellant pending a review.

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 29 March 2005; as part of the application she had included her four children, two daughters aged four and two and two sons aged three;

(b) the reasons for the application were that the appellant was fleeing domestic violence from her previous partner;

(c) enquiries had been pursued under the terms of the Housing Act 1996, Part VII as amended; after these had been completed a decision had been made to accept the application;

(d) as a result of this acceptance the Council was under a duty to ensure that temporary accommodation continued to be made available to the appellant and her dependant children; on 23 June 2005, the Council had received a telephone call from the manager of the women's refuge in which the appellant and her family had been placed, stating that the appellant had made her ex-partner aware about where she was living; the appellant had also allowed drugs onto the premises; these issues had been of some concern as the refuge had been set up as a resource to be a place of safety for women fleeing domestic violence; by letting her ex-partner know where she was living the appellant had put herself and other residents at risk;

(e) on 27 June 2005 the appellant had been advised in writing that her behaviour had been unacceptable and that in the event of further unacceptable behaviour, consideration would be given to the discharge of the Council's temporary duty to accommodate her;

(f) the Council had been notified on 14 July 2005, that the appellant had physically assaulted the scheme manager of the hostel; notification had also

been received that the appellant had committed acts of criminal damage in the office of the refuge;

(g) the appellant had been interviewed on 15 July 2005 about the incident and after careful consideration of all the facts the decision had been made to discharge the Council's duty to accommodate the appellant; the decision had been made as the appellant had become intentionally homeless from the temporary accommodation made available for her occupation;

(h) Section 202 of the Housing Act 1996 Part VII, as amended by the Homelessness Act 2002, gives a homeless applicant the right to request a review of decisions made under the provisions of the Act; the appellant had sought a review of the decision that she had become intentionally homeless from the temporary accommodation; in making decisions of this nature, the Council must have regard to the Code of Guidance which is used by local authorities to assist with the interpretation of the Act; the Code of Guidance states that under Section 193(6), the housing authority will cease to be subject to the duty in circumstances, which include where the appellant becomes homeless intentionally from accommodation made available to them under Section 193 of the Act;

(i) in making a decision in this case, specific attention had been paid to the appellant's conduct at the hostel; the attack on the scheme manager and the acts of criminal damage that had been unprovoked; these matters had been subject to criminal proceedings; the appellant had been found guilty of criminal damage and possession of cannabis and had been given a one year conditional discharge; the charge of common assault had not yet been resolved by the Court but a condition of the appellant's bail was not to return to the women's refuge;

(j) the managing agents of the women's refuge had undertaken their own investigation of the incident on 14 July 2005 and had spoken to all of the staff at the refuge and to three of the residents; they had also visited the refuge where the appellant had previously resided and spoken to one of the managers of that accommodation; in relation to accessing tenants' rooms, the managing agents had established that all staff had clear processes and practices in place which included providing the tenants with a list of dates when health and safety checks would be taking place for a 12 month period, sending tenants a letter a week before such visits, reminding the tenants the day before such visits and bringing up health and safety visits in key work sessions; in relation to the use of the playroom, the agents had stated that the facilities were available but that mothers had to take responsibility for the supervision of their own children as the refuge did not have a child support worker - staff had offered the appellant access to the playroom but she had not been prepared to supervise her children - staff at the refuge where the appellant had previously been occupied had referred to similar problems; the agents had stated that all tenants had support plans and regular key work sessions - arrangements had been made to take the appellant to a specialist market in order to obtain food due to her religious requirements but the tenant had failed to attend at the appointed time; in relation to referral to nursery placements, the appellant had been pleased with the arrangements which had been made but had been dissatisfied that the service was not available

outside of school term time - arrangements had been made for the appellant to discuss with Social Services the possibility of obtaining assistance outside of the term time; in relation to the member of staff who had been involved in the incident on 14 July 2005, the agents had stated that: she had been employed by them for over 7 years; she was a qualified social worker and had been a placement assessor to other trainee social workers; she sat on a committee for action against domestic violence; she assisted in running domestic violence training sessions; there had not been any other complaints made against her by residents or staff; the managing agents had also drawn attention to an incident at the refuge where the appellant had previously been accommodated, when she had acted in an unacceptable manner;

(k) having regard to all the facts of the case, the decision to discharge the Council's duty to provide accommodation was considered the correct course of action;

(l) in the event of the appeal being dismissed, it was suggested that reasonable notice be given to the appellant in relation to her current temporary accommodation whilst a referral was made under the terms of the Children Act 1989.

The Panel noted, that as the Council had continued to provide the appellant with temporary accommodation pending this review, consideration of the representations made in relation to this aspect were not required as this was no longer an issue. After leaving the women's refuge following the incident on 14 July 2005, the appellant had initially been found accommodation by Social Care. However, the Council had reconsidered the matter and had agreed to continue to provide temporary accommodation pending this review. The appellant had been placed in bed and breakfast accommodation by the Council but she had found this unacceptable and had subsequently been placed in different bed and breakfast accommodation.

The Panel considered the different versions of the incident on 14 July 2005 which had led to the appellant leaving the women's refuge.

The Panel noted that the appellant had stated that she had been provoked by the member of staff involved since the day she had arrived at the hostel, and that staff generally had entered her room regularly without giving any notice. The appellant had stated that she had left the hostel on 9 July 2005 to stay with the friend. On 14 July 2005 she had left her children with the friend and returned to the hostel, to take some familiar items of furniture in order to ease the children's return to the hostel. The appellant had stated that whilst at the hostel, she had entered the office and asked a member of staff for the telephone number of her health visitor. The member of staff had responded by saying that she was at lunch and that the appellant should return at 2.00 p.m. The appellant had stated that she was due to catch a bus and could not wait that long and had again asked for the number which had been in a file next to the member of staff. The appellant had alleged that the member of staff had stated "for your best interest get out of my face and learn the terms please and thank you". The appellant had stated that she had returned to her flat very distressed and that some five minutes later the member of staff had been ringing the bell of the appellant's flat very aggressively and that when

the flat door had been opened the member of staff had shouted and said that she would be demanding the immediate eviction of the appellant. The appellant had said that the member of staff had then started walking back towards her office and that the appellant had followed her in order to seek clarification of what had been said. Following an exchange of views, the member of staff had telephoned the Police and the appellant had lost her temper and self control. As a result, the appellant had thrown a computer off its stand and had repeatedly stamped on it. However, the appellant had strongly denied assaulting the member of staff. The appellant had subsequently apologised for damaging the computer and said that she would pay for the cost of the damage. She had also acknowledged the need to consult her doctor for postnatal depression and for anger management counselling.

The member of staff involved in the incident had stated that the appellant had returned to the hostel on 14 July 2005 at 12 noon following a few days absence. The member of staff had stated that the appellant had asked for information regarding her health visitor and social worker and that as she had got up to obtain the information, the appellant had become very abusive and aggressive without any reason. The member of staff had stated that she had asked the appellant to leave the office but the appellant had refused to do so. As a result the member of staff had decided to call the Police and whilst on the telephone, the appellant had hit her first in the face and then on her right arm. The member of staff had stated that the Police had heard the incident over the telephone and as a result said that they would be attending the hostel. The member of staff had stated that the appellant had then left the office and another resident had attempted to take her out of the building. The member of staff had stated that she had gone to the main door to ask the other resident not to get involved. She had further stated that as she was talking to the other resident, the appellant had returned to the office and had started to cause damage to the computer. At this stage the Police had arrived and had taken the appellant to the local Police Station. The member of staff had stated that she had been very scared and in fear that the appellant would assault her again or cause further damage.

The Panel noted that following the incident on 14 July 2005, the appellant had been charged with criminal damage and possession of cannabis. She had pleaded guilty in relation to these charges and had been given a one year conditional discharge. The Panel further noted that a condition of the appellant's bail was that she was not allowed to attend the women's refuge. However, on 15 August 2005, the appellant had attended the refuge on her own and had caused nuisance and annoyance to members of staff. The Panel noted that in relation to the charge of common assault, the matter was due to be considered further by the Court later in this month. The Panel weighed the two different versions of the event on 14 July 2005. On balance, the Panel concluded that the appellant's behaviour that day had been unacceptable. In reaching that conclusion, the Panel did not reach a view on the charge of common assault as this issue had not been finally resolved by the Court and evidence which would be available to the Court had not been made available to them.

The Panel then considered the appellant's allegations that she had been treated unfairly and had been provoked by the member of staff concerned. Consideration was given to the statements made by the appellant and to the views expressed by the managing agents of the refuge. The Panel noted that the member of staff concerned was experienced and had not been the subject of any other complaint during the seven years that she had been employed by the Housing Association. The Panel took account of the offers of support which had been given to the appellant and which had not been acceptable to her. The Panel also took account of the reference to an incident involving the appellant at the refuge in the adjoining district when she had been said to have shouted at staff in an unacceptable manner. The Panel noted that the managing agents had referred to other tenants at the women's hostel being very fond of the staff.

The Panel weighed the evidence of the appellant and that of the managing agents. The Panel noted that in relation to these allegations no evidence had been submitted directly by a third party. Accordingly, the Panel found it difficult to come to a conclusion. However, on balance, and having regard to the lack of any other complaint about the member of staff involved, and the difficulty which the appellant had caused at another hostel, they concluded that the allegations of the appellant had not been proven.

In coming to their conclusions, the Panel took account of the representations made in relation to the appellant's stress and depression. The Panel noted that the appellant had referred to the effects on her health of being housed in limited accommodation whilst in the women's refuge in an adjoining district. The Panel noted that, whilst at that accommodation the appellant had been given the opportunity to move to larger temporary accommodation, but had refused the offer. The Panel agreed that there had been a need to house the appellant in a women's refuge as she was fleeing domestic violence. However, the appellant by making her ex-partner aware of where she was living had acted in a way which would have been likely to increase her stress and depression and put herself and other residents of the refuge at risk. The Panel noted that the Council's Medical Adviser had stated that shared accommodation was suitable for the appellant and that she should be given a moderate degree of priority on the Housing Register for medical reasons. The Panel concluded that when the appellant approached this Council there was a need for her to be accommodated in a safe environment and that the women's refuge was suitable and would have been reasonable for her to continue to occupy if she had not acted in the way she had; furthermore that her stress and depression would only be markedly eased at such time as she was able to be housed in permanent accommodation.

Finally the Panel noted that the appellant had been persistently late in paying rent in respect of the women's refuge and that as at 15 August 2005 she had been £370.65 in arrears.

The Panel were unable to identify any deficiency or irregularity in the original decision made by the Assistant Housing Needs Manager (Homelessness) or the manner in which it had been made.



Taking all of these matters into account, the Panel concluded that the deliberate acts of the appellant had resulted in her becoming homeless intentionally from the temporary accommodation provided and that it had been reasonable for the Council to cease its homelessness duty.

Having decided to dismiss the appeal, the Panel considered the period which the appellant should be allowed to continue to occupy the temporary accommodation currently provided by the Council. The Panel concluded that a period of 28 days from the date of the letter notifying its decision would allow the appellant reasonable opportunity to secure alternative accommodation. The Panel also agreed that, subject to the agreement of the appellant, the officers should refer the appellant to Social Care to seek their assistance under the Children Act 1989.

**RESOLVED:**

(1) That, having regard to the provisions of the Housing Act 1996, as amended, and the Homelessness Code of Guidance, and having taken into consideration the information presented by and on behalf of the appellant and by the Assistant Housing Needs Manager (Homelessness) in writing, the appeal be dismissed and the decision of the Assistant Housing Needs Manager (Homelessness) that the Council has discharged its duty under the Act be upheld for the following reasons:

(a) the appellant was accepted as homeless, eligible for assistance, in priority need and not intentionally homeless and was provided with temporary accommodation in accordance with the provisions of the Housing Act 1996;

(b) the appellant lost the temporary accommodation made available for her occupation as a result of an incident at the property on 14 July 2005; on that day the appellant entered the staff office and as a result of an exchange with a member of staff, charges of criminal damage, possession of cannabis and common assault were made against the appellant - the condition of the appellant's bail was to reside elsewhere; at the time of the incident the appellant admitted to damaging a computer and was subsequently found guilty of criminal damage and the possession of cannabis for which she was given a one year conditional discharge; consideration has been given to the two different versions of the incident on 14 July 2005 and, on balance, it is concluded that the appellant's behaviour that day was unacceptable; however, in coming to this conclusion no view has been reached by the Panel on the charge of common assault which has yet to be determined by the Court and in respect of which the Panel did not have access to all the evidence to be placed before the Court including CCTV footage;

(c) if it had not been for the appellant's deliberate acts and what was found on 14 July 2005, and the fact that she had been persistently late in paying her rent in respect of the temporary accommodation and as 15 August 2005 was £370.65 in arrears, the temporary

accommodation provided for her would have been available and reasonable for her to continue to occupy; her deliberate acts resulted in her becoming homeless intentionally from the temporary accommodation provided;

(d) accordingly, the Council's duty to secure accommodation in accordance with the Housing Act 1996 should be discharged, by virtue of Section 191(6)(b) of the Act;

(e) account has been taken of the appellant's allegations that she was treated unfairly, was provoked and did not receive sufficient support from the member of staff involved in the incident on 14 July 2005; these allegations have been countered by the Housing Association responsible for the temporary accommodation who have drawn attention to the work and experience of the member of staff concerned; examples of support which are offered to the appellant but were not acceptable to her; reference has also been made by the Housing Association to an incident when the appellant had been accommodated previously at another refuge and had shouted at staff in an unacceptable manner; on balance the Panel concluded that the appellant's allegations had not been proven;

(f) account has been taken of the representations made in relation to the appellant's stress and depression as a result of being housed in limited accommodation in a women's refuge; it is noted, however, that the appellant was given the opportunity when housed in a refuge in Harlow to move to larger temporary accommodation but refused this offer; it is also noted that there was a need to house the appellant in a women's refuge as she was fleeing domestic violence, but that she made her ex-partner aware about where she was living which had the potential of increasing her stress and depression and putting herself and other residents at the refuge at risk; the letter dated 4 May 2005 from the Harlow PCT in support of the appellant states that the refuge was a safe place for the appellant and her family despite being a stressful environment but that there was a need for stability and a permanent address where the appellant could begin to have some normality; the Council's Medical Adviser advised that shared accommodation was suitable for the appellant and that she should be given a moderate degree of priority on the Housing Register for medical reasons; in all the circumstances, and in particular, the need for the appellant to be accommodated in a safe environment it is considered that the accommodation would have been reasonable for her to continue to occupy and that her stress and depression would only be assisted at such time as she was able to be housed in permanent accommodation; it was concluded, therefore, that it had been reasonable for the Council to cease its homelessness duty;

(g) the Panel did not identify any deficiency or irregularity in the original decision made by the Assistant Housing Needs Manager (Homelessness), or in the manner in which it was made;

(2) That the Council continues to provide interim accommodation for a period of 28 days from the date of the letter notifying the appellant's solicitors of this decision in order to allow the appellant reasonable opportunity to secure alternative accommodation; and

(3) That, subject to the agreement of the appellant, the officers refer the appellant to Social Care to seek their assistance under the Children Act 1989.

**CHAIRMAN**

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**EPPING CITIZENS ADVICE BUREAU****SUBMISSION TO HOUSING APPEALS PANEL 24<sup>TH</sup> NOVEMBER 2005****ON BEHALF OF HAYLEY ANDERSON**

1. Ms Anderson became homeless after a fire at her privately rented accommodation at 1 Osprey Court, Waltham Abbey on 27<sup>th</sup> June 2005. She made a homeless application to Epping Forest District Council and was placed with her 2 year old son, Mitchell, in temporary accommodation at Norway House.
2. On 5<sup>th</sup> September 2005 the Council found Ms Anderson homeless intentionally (see appendix A).
3. On 23<sup>rd</sup> September 2005 Ms Anderson requested a review of the Council's decision by letter from Epping Citizens Advice Bureau. It was subsequently agreed that Ms Anderson and her son could remain at Norway House during the review period (appendix B).
4. On 31<sup>st</sup> October 2005 Ms Anderson was evicted from Norway House and the Council were unwilling to offer her any further temporary accommodation. For the time being Mitchell is living with Ms Anderson's mother. Social Services will be seeking an interim care order for Mitchell.
5. The Council's Section 184 Notice of 5<sup>th</sup> September 2005 states that Ms Anderson is homeless intentionally because she: "deliberately acted in an anti social manner whilst residing at 1 Osprey Court, Waltham Abbey. During these acts of anti social behaviour a fire occurred at this property. As a consequence of these acts (she) had to leave this accommodation as it was no longer habitable. Had it not been for these deliberate acts the accommodation would have been available and reasonable for (her) to continue to occupy." The Notice goes on to say that Ms Anderson's landlady had confirmed that Ms Anderson's behaviour was "totally appalling" and that she had received "many complaints from neighbours."
6. In response to the Section 184 Notice Ms Anderson states that her landlady at Osprey Court did not make her aware of any complaints while she was resident there. Ms Anderson says the fire occurred by accident when she was out and her sister was babysitting Mitchell. Her sister had been cooking when Mitchell distracted her. She forgot about the cooker being on and a fire resulted.
7. In the Section 184 Notice the Council does not give any evidence (details of incidents, dates and times) of the anti social behaviour of which Ms Anderson is accused, nor are the landlady's complaints described.

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