



Epping Forest District Council

HOUSING APPEALS PANEL **Thursday, 19th January, 2006**

Place:	Civic Offices, High Street, Epping
Room:	Committee Room 1
Time:	4.00 pm
Democratic Services Officer	Graham Lunnun (Research and Democratic Services) Email: glunnun@eppingforestdc.gov.uk Tel: 01992 564244

Members:

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

1. APOLOGIES FOR ABSENCE

2. MINUTES (Pages 5 - 36)

To agree the minutes of the meetings of the Panel held on 24 November, 28 November and 13 December 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. HOUSING APPEALS PANEL - TITLE AND PROCEDURE

Recommendation:

That the Panel be renamed “Housing Appeals and Review Panel”.

(Head of Research and Democratic Services) Counsel’s advice in relation to an appeal against a decision of the Panel concerning a homelessness case has highlighted the need to distinguish between the different roles of the Panel.

When considering homelessness cases, the Panel is conducting a review of an officer’s decision under section 202 of the Housing Act 1996, as amended. Counsel has advised that the use of the word “appeal” in such cases, which has been the practice at this Council, is unfortunate. He has emphasised that the section 202 review is part of an administrative process and a case must be considered afresh with an open mind and on the basis of all the evidence. He has further advised that it is not the Panel’s function to reach a narrow decision as to whether or not the officer’s original decision was correct as a matter of law. Rather, the Panel must decide the broad question of whether or not the decision was correct starting from scratch.

Officers are confident that the Panel has been considering these cases correctly but the frequent use of the words “appeal” and “appellant” in the agenda/reports, minutes and procedure could lead to confusion if, and when, a matter is heard in the County Court. Accordingly, it is proposed that the title of the Panel be altered and that references in the agenda/reports, minutes and procedure to “appeal” and “appellant” in homelessness cases should be replaced with “application” and “applicant”.

In relation to other matters coming before the Panel, eg. vehicular crossovers across Council-owned land, the Panel will continue to be considering an appeal.

6. DETERMINATION OF MATTERS BEFORE THE PANEL

Recommendation:

To consider proposed changes to be reported orally on the manner in which matters can be presented to the Panel.

(Head of Housing Services) At present, a person wishing to have a matter considered by the Panel can elect to put their case in person or ask the Panel to make a decision using only the written submissions of the person and the appropriate Housing officer.

It is considered that the current arrangements for written submission cases are in need of review and proposed changes will be reported at the meeting.

7. 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.

<u>Agenda Item No.</u>	<u>Subject</u>	<u>Exempt information Paragraph Number</u>
8	Appeal No. 1/2006	9

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.

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

8. APPEAL 01/2006 (Pages 37 - 62)

To consider a restricted report.

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EPPING FOREST DISTRICT COUNCIL COMMITTEE MINUTES

Committee: Housing Appeals Panel **Date:** Thursday, 24 November 2005

Place: Civic Offices, High Street, Epping **Time:** 4.00 - 7.01 pm

Members Present: Mrs J Davis (Chairman), D Stallan (Vice-Chairman), K Angold-Stephens (for items 40 and 41 only) and Mrs P K Rush

Other Councillors: (none)

Apologies: Ms S Stavrou and Mrs R Gadsby (substitute for Ms S Stavrou)

Officers Present: Graham Lunnun (Democratic Services Manager) and Alan Hall (Head of Housing Services)

35. MINUTES

RESOLVED:

That the minutes of the meetings of the Panel held on 31 August and 22 September/3 October 2005 be taken as read and signed by the Chairman as a correct record.

36. SUBSTITUTE MEMBERS

It was noted that there were no substitute members present at this meeting.

37. DECLARATIONS OF INTEREST

Councillor D Stallan declared a personal interest in agenda item 8 (Appeal No 20/2005) by virtue of being a member of the Council's Conservative Group whose Leader was the Chairman of the Primary Care Trust. He also advised that one of the appellant's advisers was the mother of another Conservative Councillor on the Council. He had determined that his interests were not prejudicial and that he would remain in the meeting for the duration of the consideration of the appeal.

38. 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 will involve the likely disclosure of exempt information as defined in the paragraphs of Part 1 of Schedule 12A of the Act indicated:

Agenda Item No.	Subject	Exempt Information Paragraph Number
6	Appeal No 18/2005	9

7	Appeal No 19/2005	3
8	Appeal No 20/2005	3

39. APPEAL NO.18/2005

The Panel gave consideration to an appeal against a decision of the Area Housing Manager acting under delegated authority concerning a request to purchase an area of Council-owned land. The appellant attended the meeting to present his case. Mr N Taylor, Area Housing Manager, 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 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 a plan showing the land in question and the immediate locality;
- (c) a copy of a photograph showing the land in question; and
- (d) a copy of the application to the Housing Appeals Panel by the appellant dated 13 August 2005.

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

- (a) the land was overgrown with bushes and trees and had not been maintained for several years;
- (b) it was a wind-trap for rubbish;
- (c) if the land was purchased, the bushes and trees would be cut back, grass would be sown and a small wall would be erected around the area;
- (d) the Council had advised that there was a 14-month wait for cutting back the trees;
- (e) the land was currently a blot on the landscape and the proposals of the appellant would make the area more attractive;
- (f) reference by the Council to its new cleaning schedule for the estate was not understood, as litter picking had not taken place in relation to the land.

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

- (a) what will be the height of the wall which you propose to construct? – waist height;

(b) is it not your wish to purchase the land in order to build a double extension to the side of your property? – I understand the previous owner of the property received planning permission for an extension and I have made enquiries of Planning Services about building an extension;

(c) was the previous planning application made on the basis of the Council retaining the land, which you are now seeking to acquire? – yes;

(d) where is your current boundary fence in relation to the land? – the appellant indicated the position of his fence on the circulated plan;

(e) do you still hope to build an extension at some time in the future? – yes at some time;

(f) reference is made in the facts of the case to the previous occupier of the property seeking to construct a dropped kerb to a parking area nearby which would allow them to drive a car across the public footpath and on to the land that you seek to purchase where they wished to construct a hardstanding – are you aware of this application and is it something that you might wish to pursue? – that application was not made by the previous occupier, it was made by my wife and myself in my wife's maiden name; a crossover is no longer required as I now have access to a garage;

(g) where is your garage? – the appellant indicated the position of his garage on the circulated plan.

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

(a) the appellant made an application to the Council's House Sales and Leasehold Section to purchase a piece of land adjacent to his home on 6 May 2005;

(b) an application had been made in April 2001, to construct a dropped kerb to a parking area nearby which would allow the occupants to drive a car across the public footpath and on to the land in question, where the occupants wished to construct a hardstanding; that application was refused at that time because of the loss of parking space in the road, the distance involved in travelling across Council-owned land and the fact that the piece of land in question was still in the Council's ownership;

(c) the appellant had indicated that he had recently spoken to Planning Services with a view to building a double extension to the side of his property; in order to do so he needed to purchase the area of land to the side of his property; the piece of land in question was marked on the plan circulated and was approximately 23 square metres in size;

(d) the land formed an integral part of the landscaping feature within this area; there was a presumption by officers not to sell land unless it was in the interests of the Council to do so; in this case there was no such interest;

(e) the land presently has shrubs on it as well as two trees; in the past there had been an issue with litter picking and shrub bed maintenance in this area; the area was now included on the new cleaning schedule introduced by the Council for this residential estate; this included an eight-weekly cleaning of shrub beds.

The appellant and the Panel advised that they had no questions to ask the Area Housing Manager. The Chairman with the approval of both parties agreed to allow a

member of the Panel the opportunity to ask a further question of the appellant. The appellant was asked why he needed to acquire the land in question in order to build the proposed extension to his property. The appellant stated that if the land was acquired his current boundary fence would be taken down and there would be no privacy in his kitchen due to the position of the kitchen window. The Chairman further agreed with the consent of both parties to the Head of Housing Services asking a question seeking clarification of the circulated plan. As a result, the parties agreed that the plan had been incorrectly drawn and the land, which the appellant was seeking to purchase, was, therefore, correctly identified at the meeting.

The Chairman asked the appellant if he wished to raise any further issues in support of his case. The appellant advised that in his opinion the area would be enhanced if he purchased the land and was responsible for its maintenance.

The Chairman asked the Area Housing Manager if he wished to raise any further issues in support of his case. The Area Housing Manager advised that he did not consider the appellant's proposals would enhance the estate and that if the appellant was allowed to purchase this land it would set a precedent for others on the estate.

The Chairman indicated that the Panel would consider the appeal in the absence of both parties and that the applicant and the Area Housing Manager would be advised, in writing, of the outcome. The appellant and the Area Housing Manager then left the meeting.

The Panel discussed the reasons given by the appellant for wanting to purchase the land. The Panel noted that if the appellant wished to proceed with the erection of an extension to this property it was not necessary to acquire the land. Members were unable to identify any benefit to the Council of selling the land, other than a small capital receipt. Some concern was expressed about the Council's cleaning arrangements for the estate.

RESOLVED:

(1) That, having taken into consideration the information presented by the appellant and the Area Housing Manager, orally and in writing, the appeal be dismissed and the decision of the Area Housing Manager not to sell the land be upheld for the following reasons:

(a) on the evidence submitted it is considered that the land is not being maintained to an unreasonable standard;

(b) the land forms an important open landscaping feature and visual amenity within the locality; enclosing the land, even with a low-level wall, would detract from that amenity;

(c) the benefit to the Council of selling the land is minimal; and

(2) That the Area Housing Manager requests the Council's Environmental Services to ensure that the land is maintained in accordance with the approved Maintenance Schedule.

40. APPEAL NO.19/2005

Councillor K Angold-Stephens, who had not been present at the commencement of the meeting, joined the Panel to consider this appeal.

The Panel gave consideration to an appeal against a decision of the Assistant Housing Needs Manager (Homelessness) acting under delegated authority regarding the appellant's homelessness application. 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 8 August 2005 from the Assistant Housing Needs Manager (Homelessness) to the appellant's former employers;
- (c) a copy of a letter dated 10 August 2005 from the appellant's former employers to the Assistant Housing Needs Manager (Homelessness);
- (d) a copy of a report of an interview of the appellant by a Housing Officer;
- (e) a copy of a letter dated 25 August 2005 from the Assistant Housing Needs Manager (Homelessness) to the appellant's former employers;
- (f) a copy of a letter dated 31 August 2005 from the appellant's employers to the Assistant Housing Needs Manager (Homelessness);
- (g) a copy of a letter dated 16 September 2005 from the Assistant Housing Needs Manager (Homelessness) to the appellant;
- (h) a copy of the application to the Housing Appeals Panel by the appellant dated 2 September 2005.

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

- (a) officers had relied on the information provided by the appellant's former employers; they had been very selective in the information that they had provided;
- (b) the property provided by the appellant's former employers would not have continued to be made available, even if the appellant had not been dismissed; following the appellant's dismissal the property had been handed back to the landlord and other employees of the company had been moved closer to the company's centre of operations; such a move would have been impossible for the appellant because of his son's schooling and his former employers were aware of that fact; the appellant's former employers had no work in North London and the house had originally been rented for staff working on a North London contract – the appellant's dismissal had been for financial reasons; as there was no longer any work in North London, the appellant had become a liability to his former employers; the rent on the property had been in the region of £1,200 plus per month and the appellant would have had a fuel bill of approximately £160 per week for commuting to Maidstone, the

location of the new contract; if the former employers had been prepared to allow the appellant to commute from Kent to London – housed in alternative two-bed accommodation as per his contract with them – the bill to the former employers would have been in excess of £1,000 per month; it was possible that the former employers had been misleading the local Council in relation to Council Tax;

(c) the appellant had received an e-mail from his former employers' pay office, asking for his time sheets for the weeks ending 8 July and 15 July 2005; however, one of the main reasons for his dismissal had been that incorrect hours had been recorded by him for the week ending 8 July; time sheets were usually submitted the following week for the previous week; the former employers had been in such a hurry to get rid of the appellant that the appellant had not had an opportunity to submit a time sheet for that week and he could not, therefore, have been dismissed for booking hours that he was not given an opportunity to book in the first place;

(d) the letter from the former employers referred to misdemeanours concerning other members of staff, but the way in which the letter was written it implied that the appellant had been involved in those issues;

(e) the former employers' reasons for dismissing the appellant had been very non-specific and general; the exception had been an incident involving a piece of company equipment; a misdemeanour that at the very most would have warranted a written warning; the piece of equipment had not been lost and it had been recovered after a few hours intact; the equipment had been a piece of underground survey apparatus that was actually designed to be left in place, sometimes for long periods and it had been left in the road with full signing and guarding in accordance with the Highways Act;

(f) the number of applicants on the Council's housing waiting list were noted but this was not an issue for the appellant;

(g) the accommodation provided by the appellant's former employers was part of a package and was certainly not cost free, since his salary took account of this provision;

(h) a formal appeal had been made against the appellant's dismissal, but his former employers had not replied to it;

(i) great emphasis had been placed on one letter from the appellant's former employers and unsigned minutes of a general discussion which had taken place on 4 July 2005; if the appellant's former employers had a grievance with his work ethic then it should have been put to him personally at a confidential disciplinary meeting with a witness of his choosing present; contrary to the former employers' record of the meeting on 4 July 2005, many points had been raised, for instance the appellant had asked about the possibility of more work in London being secured by the company; these points had been met with vague reassurances and the focus of the discussion had moved on to the company's forthcoming golf day out; the record of that meeting was a complete sham;

(j) the word of the appellant's former employers could not be relied upon; this had not been a matter of conduct but one of finance and cost and the appellant and his son had been victims of contractual cost cutting;

(k) had the appellant been a female single parent in very similar circumstances, his case would have been looked at in a very different manner; his son's education

was at a critical stage and if he was forced to leave the Epping Forest District the consequences on his progress would be devastating.

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 3 August 2005; as part of the application he had included his dependant son, aged 15;

(b) at the time of the application being made, the full provisions of the Housing Act 1996, Part VII, as amended had been applied to the case and the appellant had been given interim accommodation at the Council's homeless hostel from 8 August 2005;

(c) during the course of an initial interview, the appellant had stated that he had to leave tied accommodation in London as he had been dismissed from his employment; he had shared this accommodation with other staff members;

(d) as a result of the application, enquiries had been immediately pursued to decide on homelessness, eligibility, priority need, intentionality and local connection;

(e) to assist in deciding homelessness, a letter had been sent to the appellant's former employers; a comprehensive response had been received from the appellant's former employers on 10 August 2005; the Council had been concerned about the response from the appellant's former employers and had decided to conduct a further interview with the appellant; this further interview had taken place on 18 August 2005; a decision had then been taken to contact the appellant's former employers again in order to confirm how the loss of the accommodation had been linked to his employment; a further letter had been sent to the appellant's former employers on 25 August 2005 and a copy of their response had been received dated 31 August 2005;

(f) the appellant was eligible for assistance as he was a British citizen; a priority need for accommodation existed as he had a dependant child who normally resided with him;

(g) after full consideration of all the facts of the case a decision of intentionality had been made;

(h) Section 202 of the Housing Act 1996, Part VII as amended by the Homelessness Act 2002 gave a homeless applicant the right to request a review of decisions made under the provisions of the Act; in this case it was the decision that the appellant was intentionally homeless that had prompted the request for the review;

(i) when making homeless decisions, the Council had regard to the Code of Guidance which was used by local authorities to assist with the interpretation of the Act;

(j) the Code of Guidance stated that Section 191 provided that a person became homeless or threatened with homelessness intentionally, if they had ceased to occupy accommodation (or there was a likelihood of that person being forced to leave accommodation) as a consequence of a deliberate action by that person;

(k) examples of acts which might be regarded as deliberate included where someone left a job with tied accommodation and the circumstances indicated that it would have been reasonable for that person to have continued to occupy the accommodation;

(l) officers were satisfied that there was a definite link between the appellant's actions and the loss of the accommodation;

(m) on account of the acts of misconduct by the appellant, he had been dismissed from his employment, which in turn had led to the loss of the accommodation;

(n) the appellant had suggested that the loss of his employment was for financial reasons; however, the appellant's former employers had been quite explicit in confirming that the dismissal had been on account of misconduct;

(o) the appellant had also suggested that other information had been given by his former employers, but this had not been the case;

(p) in the event of the appeal being dismissed, it was suggested that the appellant be referred to the Child and Family Support Team for them to seek to provide assistance under the terms of the Children Act 1989;

(q) in the event of the appeal being allowed, the issue of local connection would have to be decided by the Housing Needs Section.

The Panel concluded that they needed to have sight of the appellant's full letter of dismissal, since only an extract had been provided by his former employers. and the notes of the meeting held on 4 July 2005 before coming to their decision. The Panel also considered that the appellant should be asked whether he had made an appeal to an Employment Tribunal or if he had not pursued such an appeal, why not.

RESOLVED:

(1) That consideration of the appeal be deferred and the appellant requested to provide a copy of his full letter of dismissal and a copy of the notes of the meeting held on 4 July 2005 together with details of his appeal to an employment tribunal or his reasons for not pursuing such an appeal;

(2) That in the event of this additional information being obtained prior to the next meeting of the Panel on 28 November 2005, further consideration be given to this appeal at that meeting; and

(3) That in the event of the additional information not being received by 28 November 2005, the appellant be asked to agree for an extension of time for the Council to determine the appeal in accordance with Homelessness Regulations and that the matter be considered further at a meeting to be arranged for 13 December 2005 at 6.00 p.m.

41. APPEAL NO. 20/2005

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 Ms R Poulter of the Epping Citizens' Advice Bureau and Mrs N D'Souza of the Child Protection Team – Essex Social Care. 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 advisers 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) extracts from the Homeless Prevention Officer's records;
- (c) a copy of a letter dated 11 July 2005 from the Assistant Housing Needs Manager (Homelessness) to the appellant's former landlord;
- (d) a copy of a note of a telephone conversation between a Housing Officer and the appellant's former landlord;
- (e) a copy of a letter dated 18 July 2005 from the Assistant Housing Needs Manager (Homelessness) to the appellant;
- (f) a copy of a file note made following the failure of the appellant to attend for an interview on 21 July 2005;
- (g) a copy of a letter dated 8 August 2005 from the Assistant Housing Needs Manager (Homelessness) to the appellant;
- (h) a copy of a letter dated 5 September 2005 from the Assistant Housing Needs Manager (Homelessness) to the appellant;
- (i) a copy of a letter dated 17 October 2005 from the Council's Hostel Management Team to the appellant;
- (j) a copy of the application to the Housing Appeals Panel by the appellant dated 5 October 2005;
- (k) a copy of a letter dated 7 November 2005 from the Epping Citizens' Advice Bureau together with submissions made on behalf of the appellant.

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

- (a) the appellant had become homeless after a fire at her privately rented accommodation on 27 June 2005; she had made a homeless application to the Council and had been placed with her two year old son in temporary accommodation at the Council's homeless hostel;
- (b) on 5 September 2005 the Council had found the appellant homeless intentionally; on 23 September 2005 the appellant requested a review of the Council's decision and it had subsequently been agreed that the appellant and her son could remain at the homeless hostel during the review period;

(c) on 31 October 2005, the appellant had been evicted from the homeless hostel and the Council had been unwilling to offer her any further temporary accommodation;

(d) at present, the appellant's son was living with the appellant's mother; Social Services would be seeking an interim care order for the appellant's son;

(e) the Council's Section 184 Notice dated 5 September 2005 stated that the appellant was homeless intentionally because she "deliberately acted in an anti-social manner whilst residing at (her privately rented accommodation); 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 went on to say that the appellant's landlord had confirmed that the appellant's behaviour was totally appalling and that she had received many complaints from neighbours;

(f) in response to the Section 184 Notice, the appellant stated that her landlord did not make her aware of any complaints whilst she was resident there; the appellant said the fire occurred by accident when she was out and her sister and her sister's boyfriend were baby sitting the appellant's son; her sister had been cooking when the appellant's son had distracted her and she had forgot about the cooker being on and the fire had resulted; the fire had been an accident and the appellant had not been present at the property at the time; the appellant admitted that some of her behaviour had been unreasonable but her former landlord had never made her aware of any complaints about her behaviour;

(g) in the Section 184 Notice, the Council did not give any evidence (details of incidents, dates and times) of the anti-social behaviour of which the appellant was accused, nor were the landlord's complaints described;

(h) following the appellant's eviction from the homeless hostel, the Citizens' Advice Bureau sought details of why she had been evicted; it appeared that the final incident which led to the eviction resulted from complaints of noise and loud music over the weekend of 22/23 October 2005; the appellant stated that she was not at the homeless hostel that weekend as she was staying at her brother's home;

(i) the appellant was a vulnerable young woman aged 20 experiencing severe problems at present; her son had been placed on the child protection register on 15 September 2005 as a result of a case conference following the appellant's admission to hospital having taken an overdose in August 2005; since then the appellant had been receiving support from the Child Protection Team; she was also receiving assistance from Waltham Abbey Community Mental Health Team, the Health Visiting Service and Social Services; the appellant was also known to CDAT in Harlow due to an alcohol problem and was due to undertake a rehabilitation programme through them;

(j) despite various personal problems, the appellant was now trying to co-operate with the various services helping her and was trying to get her life back on track; in order for her to achieve this she needed to be in a stable environment and secure accommodation;

(k) an interim care order had been made in respect of the appellant's son on 10 November 2005 and although he was currently with the maternal grandmother it was possible that he would be adopted.

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

(a) you have been accused of anti-social behaviour whilst at your privately rented property, why did you continue with anti-social behaviour at the Council's homeless hostel? – my behaviour is affected by alcohol;

(b) when you were at your privately rented property did you receive any complaints from the landlord or neighbours? – no, and I got on well with all of my neighbours;

(c) were you present at the Council's homeless hostel on the weekend of 22/23 October 2005? – no, I was at my brother's accommodation;

(d) is it possible that anyone else could have gained access to your room over that weekend? – no, the room was locked and I had the keys with me;

(e) is the appellant's son currently with the appellant's mother? – yes, a fostering assessment is being undertaken as the appellant's mother is the only other person that the appellant's son has known; she is willing to look after him at present but there are a lot of issues to be considered;

(f) you say you were not present at the homeless hostel over the weekend of 22/23 October 2005, but does not the letter dated 17 October 2005 submitted as part of your representations indicate that you were present? – no, that relates to an incident on 15 October 2005;

(g) were you aware of complaints from other residents at the homeless hostel? – yes, I received complaints about loud music and I turned the music down when I received these complaints;

(h) was there any problem as a result of the other residents of the homeless hostel speaking to you about their complaints? – no.

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

(a) following a referral from the Council's Homeless Prevention Service, the appellant had made a homeless application to the Council on 1 July 2005; at the time of the application being made, the full provisions of the Housing Act 1996, Part VII, as amended, were applied to the case; as part of the application, the appellant wished to include her dependant child aged under two years;

(b) during the initial interview, the appellant confirmed that she had been living in privately rented property occupied under an Assured Shorthold tenancy; the appellant had advised that she had been out in the evening of 26 June 2005, leaving her sister, who had just turned 16 years of age, and her sister's boyfriend to look after the appellant's son; as the appellant's son would not settle, the appellant's sister and boyfriend had taken him out in his pushchair, forgetting that she had left the frying pan on the gas; there had been a major fire and the Fire Brigade had been called by a neighbour; the appellant and her sister had met and were walking back to the flat when they had seen the fire; the flat had been rendered uninhabitable;

(c) following the application, enquiries were pursued to decide on homelessness, eligibility, intentionality, priority need and local connection and the appellant was

admitted to the Council's homeless hostel on 4 July 2005 pending the outcome of the enquiries;

(d) to assist in deciding homelessness, contact was made with the appellant's former landlord; on account of the issues raised by the landlord a decision was made to re-interview the appellant; on the day of the interview, the Deputy Manager at the homeless hostel reminded the appellant of the time of her appointment but the appellant failed to attend the interview; a further letter was sent to the appellant giving her another appointment and again the appellant failed to attend the interview as requested; a decision was therefore made on the facts available;

(e) the appellant was eligible for assistance as she was a British citizen; a priority need for accommodation existed as the appellant had a dependant child who normally resided with her;

(f) a decision of intentionality was made on 8 September 2005;

(g) 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 that Act; the decision that had been made finding the appellant intentionally homeless had prompted this request for a review;

(h) when making decisions, the Council must have regard to the Code of Guidance which was issued to local authorities to assist with the interpretation of the Act; the Code of Guidance provides that a person becomes intentionally homeless if she ceases to occupy accommodation as a consequence of deliberate action by her; the Code includes in the examples of acts which might be regarded as deliberate when someone was evicted because of anti-social behaviour such as nuisance to neighbours, harassment, etc;

(i) it was quite apparent from the evidence, particularly the contents of a telephone conversation with the appellant's former landlord on 14 July 2005, that whilst in occupancy at the privately rented property, the appellant had behaved in a totally unacceptable manner; this irresponsible attitude had resulted in the fire occurring and as a result of the fire the accommodation was no longer available to the appellant;

(j) a further disturbing issue was that whilst the appellant had been accommodated pending the outcome of this appeal at the Council's homeless hostel she continued to behave in a similarly irresponsible manner; an initial warning had been issued because of accommodation charge arrears and she had allowed guests to remain at the homeless hostel who had been behaving in a totally unacceptable manner; a final warning had been issued on 17 October 2005 against the appellant and following a further occurrence she had been evicted from the hostel; in the event of the appeal being dismissed, the Panel was invited to seek the appellant's agreement to the case being referred to Social Care to ascertain what assistance could be given under the terms of the Children Act 1989;

(k) in weighing up the evidence, the Panel were invited to accept the evidence of the appellant's former landlord as there was no reason to doubt that it was reliable;

(l) unlike some other authorities, this Council continued to provide accommodation pending determination of a review as this was considered to be reasonable; in response, applicants normally were receptive; however, in this case the appellant seemed determined to cause mayhem and it was necessary to issue several warnings before the stage was reached where it was considered there was

no option but to evict her from the homeless hostel; as a housing authority the Council was responsible for providing accommodation but if that accommodation was abused it was reasonable to withdraw it.

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

(a) was the decision of intentionality based on anti-social behaviour or the fire? – the anti-social behaviour had been linked to the fire – the way in which the appellant had conducted the tenancy had contributed to the fire;

(b) do you have evidence that the fire was not accidental? – it occurred as a result of anti-social behaviour and reflected the way in which the tenancy had been conducted; if there had been different circumstances the situation would have been viewed differently but in this case the fire would not have occurred if the appellant had been more responsible;

(c) did the appellant's former landlord provide you with details of complaints of anti-social behaviour? – we did not ask her for such information;

(d) the appellant has admitted to behaving unacceptably at the Council's homeless hostel but were you aware that her behaviour was as a result of an alcohol problem? – we were aware of problems in her life; we have experience in dealing with very vulnerable people but if someone continues to breach the terms of occupation they make it very difficult for us;

(e) in relation to the incident over the weekend of 22/23 October 2005, do you have evidence that the appellant was present? – I am satisfied that she was present; staff do not write letters if they are not sure of the facts;

(f) do you have CCTV evidence of the appellant being present at the homeless hostel that weekend? – I am not aware of any CCTV evidence; the appellant had breached her licence on a number of occasions;

(g) which final incident led to the appellant's eviction from the homeless hostel? – an incident on 20 October 2005, although reference was also made in the eviction letter to complaints of noise and loud music coming from the appellant's room over the weekend of 22/23 October 2005;

(h) are you suggesting the fire was a deliberate act and, if not, can you clarify why you believe acts of anti-social behaviour led to the fire occurring? – in view of the background it was not reasonable for the appellant to leave her sister baby-sitting;

(i) in your letter to the appellant's former landlord you asked whether the appellant had kept a clear rent account up to the time of the fire – did you receive a response to this question? this has not been answered but it was understood that there had been an issue with the payment of rent;

(j) did the appellant change rooms whilst accommodated at the homeless hostel? – yes, she was moved to a higher floor in order to discourage visitors from jumping out of the window of her room;

(k) there appear to be different versions of the fire, can you clarify? – it is clear that a chip pan caused the fire but what was being cooked is not known.

With the agreement of both parties, the Chairman allowed a member of the Panel to ask additional questions of the appellant and her representatives.

In response, the appellant stated that she did not attend the interviews which were arranged for her because of depression and on one occasion she had been in hospital following an overdose. The hostel staff had been aware that she was in hospital at the time. The Assistant Housing Needs Manager (Homelessness) advised the Panel that the appellant had not notified staff of her reasons for not attending. The appellant said that she felt her sister was very grown up for her age and was a responsible person to baby sit. The Panel was advised that the decision to remove the appellant's son from her had been as a result of negligence of the son. The appellant had not been meeting his basic needs and irrespective of the availability of accommodation, the son would have been removed.

The Chairman asked the appellant and her representatives if they wished to raise any further issues in support of the appellant's case. The Panel was advised that the appellant accepted that her behaviour had been unacceptable and she apologised for her behaviour. The appellant was a very vulnerable person and the various services were making serious attempts to improve her situation. If the Council as a minimum could provide temporary accommodation until the appellant went into rehabilitation this would be of assistance.

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 there were genuine issues of concern in relation to this case. The appellant had behaved irresponsibly both at the private rented property and at the Council's homeless hostel. He advised that this was the first occasion he could recall since working for the Council when the Council had ceased to provide accommodation pending a review decision. The Council was used to working with vulnerable people but the appellant had acted in a completely unreasonable manner and there would be concern if the Panel agreed to provide further accommodation pending any appeal.

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 of the outcome. The appellant, her advisers and the Assistant Housing Needs Manager (Homelessness) then left the meeting.

The Panel discussed whether the appellant would have been able to continue to occupy the private rented property had it not been for the fire. Members concluded that she would have been able to continue to occupy the property because, although the landlord had referred to concerns, she had not commenced any possession proceedings at the time. Members considered whether the decision of the appellant to allow her sister to baby sit had been a deliberate act as a result of which she had ceased to occupy the accommodation. The Panel concluded that it had been reasonable for the appellant to ask her sister to baby sit. Members expressed the view that the legal minimum limit for baby sitting was 14 years of age (below the age of the appellant's sister) and that there was no evidence to suggest that the appellant's sister was not competent.

The Panel took account of the appellant's problems but concluded that she had not helped herself. They noted, however, that there had been no evidence submitted regarding arrears in relation to the private rented property.

The Panel then considered whether the Council had discharged its duty following the eviction of the appellant from the Council's homeless hostel. Members took account

of the warnings which had been given to the appellant whilst she had been accommodated there and were advised of the provisions of Section 193(6)(b) of the Housing Act 1996, as amended. The Panel concluded that the appellant had lost that accommodation as a result of her actions, and became homeless intentionally. Therefore, no further accommodation should be provided as the Council had discharged its duty.

RESOLVED:

(1) That, having regard to the provisions of the Housing Act 1996, as amended, and having taken into consideration the Homelessness Code of Guidance and the information presented by and on behalf of the appellant by the Assistant Housing Needs Manager (Homelessness) orally and in writing;

(a) the decision of the Assistant Housing Needs Manager (Homelessness) to find the appellant intentionally homeless from her former privately rented property be not upheld for the following reasons:

(i) the appellant was accepted as homeless, eligible for assistance and in priority need;

(ii) the loss of the privately rented property was not as a result of any deliberate action or inaction by the appellant as a consequence of which she ceased to occupy the property; the evidence before the Panel suggests that the fire at the property which resulted in the appellant losing the property was an accident and it is accepted that the appellant was not present at the property at the time of the fire; it is further accepted that, on the evening of the fire, the appellant left her 16 year old sister and boyfriend at the property baby sitting the appellant's son; it is considered reasonable for the appellant to have arranged for her sister to baby sit her son as no evidence was submitted to question the competency of the appellant's sister;

(iii) references to apparent previous acts of anti-social behaviour by the appellant and her visitors at the privately rented property did not result in the landlord drawing the attention of the appellant to these matters or commencing possession proceedings and these are not considered, therefore, to have been a reason for the appellant losing the property;

(2) That, it is considered that the appellant lost the interim accommodation made available for her occupation pending the outcome of this appeal, due to persistent breaches of her licence to occupy a room at the homeless hostel, including anti-social behaviour resulting in police presence, unreasonable noise and accommodation arrears; account has been taken of the fact that the appellant accepts that she acted unreasonably whilst at the interim accommodation; accordingly, the Council's duty to secure accommodation in accordance with the Housing Act 1996 is discharged by virtue of Section 193(6)(b) of the Act;

(3) That account has been taken of the appellant's personal problems, but it is not considered that these were such to have affected her ability to manage her affairs or her actions; and

(4) That no deficiency or irregularity has been identified in the decisions made by the Assistant Housing Needs Manager (Homelessness) or in the manner in which they were made.

CHAIRMAN

EPHING FOREST DISTRICT COUNCIL COMMITTEE MINUTES

Committee: Housing Appeals Panel **Date:** Monday, 28 November 2005
Place: Civic Offices, High Street, Epping **Time:** 4.00 - 5.40 pm
Members Present: Mrs J Davis (Chairman), K Angold-Stephens, Mrs P K Rush and Ms S Stavrou
Other Councillors: (none)
Apologies: D Stallan and Mrs R Gadsby (substitute for D Stallan)
Officers Present: A Hall (Head of Housing Services) and G Lunnun (Democratic Services Manager)

42. SUBSTITUTE MEMBERS

It was noted that there were no substitute members present at the meeting.

43. DECLARATIONS OF INTEREST

No declarations of interest were made pursuant to Part 2 of the Council's Code of Member Conduct.

44. 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 22/2005	3
6	Appeal No 21/2005	3
7	Appeal No 19/2005	3
8	Appeal No 20/2005	3

45. APPEAL NO. 22/2005

The Panel was advised that the appellant had indicated that she wished to attend the meeting in order to present her case but that she was not present.

The Panel agreed to adjourn the meeting to enable the officers to attempt to contact the appellant.

After the adjournment, the Panel was advised that the appellant had been contacted on her mobile phone and had advised that she was in hospital having given birth. She had confirmed that she still wished to appear before the Panel and had asked for consideration of her appeal to be deferred.

RESOLVED:

(1) That consideration of Appeal No 22/2005 be deferred until 4 pm on 13 December 2005; and

(2) That the handwritten details of the appeal included on the appellant's application to the Panel be typed and circulated to members prior to the meeting on 13 December 2005.

46. APPEAL NO. 21/2005

The Panel gave consideration to an appeal against a decision of the Assistant Housing Needs Manager (Homelessness) acting under delegated authority regarding a homeless application. 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 the appellant's licence to occupy a room at the Council's homeless hostel;
- (c) a copy of a letter dated 14 July 2005 from the Hostel Management Team to the appellant;
- (d) a copy of a letter dated 29 September 2005 from the Assistant Housing Needs Manager (Homelessness) to the appellant;
- (e) a report of the Hostel Management Team dated 3 November 2005;
- (f) a copy of a report of an interview between a Housing Officer and the appellant dated 6 October 2005;
- (g) a copy of a letter dated 10 October 2005 from the Assistant Housing Needs Manager (Homelessness) to the appellant;
- (h) a copy of the application to the Housing Appeals Panel by the appellant dated 24 October 2005;

- (i) a copy of a letter dated 24 November 2005 from the Epping Citizens Advice Bureau to the Council's Democratic Services Manager together with submissions made on behalf of the appellant;
- (j) a copy of a letter dated 23 November 2005 from the North Essex Mental Health Partnership to the Council's Housing Department; and
- (k) a copy of an undated letter from the North Essex Mental Health Partnership to the Epping Citizens Advice Bureau.

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

- (a) the appellant was seeking a review of the Council's decision of 10 October 2005 that he was homeless intentionally;
- (b) the appellant had applied to the Council as homeless in January 2005 after being asked to leave a residential drug rehabilitation project; the Council had provided him with interim accommodation;
- (c) the appellant had been accepted as a vulnerable person and the Council had accepted a full duty to house him on 21 March 2005; the appellant had been provided with temporary accommodation at the Council's homeless hostel;
- (d) on 14 July 2005, following an incident on 11 July 2005, the appellant had been given a final written warning concerning his licence at the homeless hostel; on 29 September 2005 there had been a further incident involving the appellant during which the police had been called which had led to the Council's decision to terminate his licence and end its duty to house him;
- (e) on 24 October 2005, the appellant requested a review of the decision and he was currently being accommodated at a bed and breakfast establishment pending the outcome of the review;
- (f) the appellant accepted that his behaviour at the homeless hostel had not been acceptable; however, he felt that he had been treated unfairly over the final incident leading to the termination of his licence; the appellant stated that he had eight or nine guests at his room and they had arrived at about 6 pm and all but one had left by 10.30 pm; some alcohol had been consumed but not to any great extent; there had been no excessive noise up to this point; the last guest had refused to leave and according to the appellant this was the cause of the ensuing incident; the appellant said that the remaining guest had hit him and he had had to defend himself; she had then kicked his door and it was the appellant himself who had called the police, resulting in both parties being given warnings but no charges being made; the appellant considered that he had acted responsibly in calling the police and that he had not caused the incident;
- (g) the appellant was a 25 year old man with a history of depression, psychotic episodes and solvent abuse; in the past he had taken overdoses; he was currently under the Mental Health Team and was also under the care of CDAT, the Drug and Alcohol Team for West Essex; during his homeless assessment the Council's Medical Officer had noted "There is evidence of a longstanding depression and personality disorder with substance abuse and unreliability. I do think that this would impair his ability to manage his affairs and to seek/keep accommodation";

(h) in May 2005, the appellant had been referred to the Cygnet Supporting Housing Scheme by the Council; it was unclear from the housing file what the outcome of this referral had been, but the Citizens Advice Bureau (who had assisted the appellant with his appeal) had been led to believe that the appellant had been refused due to an arson incident at a previous accommodation; the appellant stated that this had been a minor incident in 1995 when he accidentally set fire to a wastepaper bin at his flat due to not extinguishing his cigarette fully; he said that the Fire Brigade were not needed and there was no other damage to the property;

(i) the appellant had two children, a five year old who had been adopted and a four year old in the care of his parents who lived locally; if the appellant could not obtain secure accommodation locally it would impair his chances of maintaining a relationship with this child;

(j) the appellant was an extremely vulnerable young man who was easily influenced by those around him; the Panel was asked to find the appellant homeless unintentionally, accept a full duty towards him and give him a further opportunity to acquire accommodation with a supported housing scheme.

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

(a) the appellant first made a homeless application to the Council on 17 November 2004; the application had been made in his sole name; at that time it had been decided that he was not homeless and he had been given accommodation at a residential drug rehabilitation centre;

(b) in January 2005, the appellant had been asked to leave the centre, due to disagreements with his support worker, and once again had sought homelessness assistance from the Council and had been accommodated on an interim basis;

(c) the appellant had a history of depression and after considering the medical facts of his case the Council had accepted that he was a vulnerable person; after the completion of homeless enquiries, the Council had been satisfied that a full duty was owed and issued notification to the appellant; the duty at that stage was to continue to ensure that temporary accommodation was made available to the appellant; in the terms of its ongoing duty under Section 193 of the Housing Act 1996 Part VII, the Council arranged to transfer the appellant from the accommodation he was occupying to the Council's homeless hostel;

(d) the appellant had been provided with a licence to occupy a room at the homeless hostel and this clearly set out the licensee's obligations and the Council's obligations;

(e) after moving in, the hostel management team became concerned that the appellant was abusing solvents again; when this became apparent the appellant had been issued with a final warning as this was a clear breach of his licence to occupy;

(f) the appellant has failed to continue to comply with the terms of his licence to occupy the room at the homeless hostel and on 29 September 2005 he had become involved in a fight with another resident which required intervention from the police; the staff at the homeless hostel had been left with no option but to terminate the appellant's licence to occupy; the Hostel Management Team's report detailed how the appellant had conducted his stay at the homeless hostel; on account of his eviction, the appellant was re-interviewed on 6 October 2005; after full consideration of all the facts of the case a decision was made to discharge the Council's duty to

accommodate; the appellant was currently being accommodated at a bed and breakfast establishment pending the outcome of this review;

(g) 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; in this case it was the decision that the appellant was intentionally homeless from temporary accommodation provided for his continued occupation that had resulted in the request for the review;

(h) the Council was expected to comply with the Code of Guidance which assisted with the interpretation of the Housing Act 1996 Part VII as amended; the Code of Guidance states that the housing authority would cease to be subject to the duty under Section 193 where the applicant became homeless intentionally from accommodation made available to him;

(i) in making the decision, full regard had been paid to the appellant's conduct; despite the fact that he had received a written warning on 14 July 2005 about his behaviour he had failed to pay regard to the seriousness of the situation; he had engaged in a physical fight with another resident at the homeless hostel and this fully justified his eviction;

(j) the Authority was well aware of the appellant's medical condition, however, the appellant had been fully aware of his obligations under the terms of his licence to occupy and he had confirmed this fact in the homeless interview on 6 October 2005;

(k) the Panel was invited to dismiss the appeal and to give the appellant reasonable notice in order to attempt to find alternative accommodation.

At the request of the Panel, the Head of Housing Services provided information from the housing file about the appellant's occupation of Cygnet properties. The Panel noted that the appellant had admitted to indulging in drug abuse whilst at the Council's homeless hostel. He had received a written warning advising him that any further breach of his licence could result in it being terminated and he had stated that he fully understood the terms and conditions of his licence agreement and was aware of the implication of the warning given. Despite this he had invited guests to his room and had been involved in a fight which had required intervention by the police, albeit called by the appellant. At that event he had admitted to drinks and cannabis being available. The Panel took account of the appellant's version of the event but noted that under the terms of his licence he was responsible for the behaviour of his visitors. The Panel took account of the representations made in relation to the appellant's history of depression.

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 a vulnerable person and owed a full duty;

(b) the appellant lost the temporary accommodation made available for his occupation as a result of incidents at the property; on 11 July 2005, staff found a carrier bag containing 12 cans of butane gas in the appellant's room and, as a result, the appellant admitted to indulging in drug misuse; the appellant received a final written warning for being in breach of his licence agreement; on 29 September 2005, the appellant had invited some friends to his room and had been involved in a fight with a female resident which had required intervention from the police; the appellant admitted that drinks and cannabis had been taken at the event;

(c) it is accepted that in relation to the incident on 29 September 2005, the female resident may have been more at fault than the appellant and the appellant himself called the police, but in accordance with the terms of his licence agreement, the appellant was responsible for the behaviour of his visitors;

(d) the appellant has acknowledged that his behaviour at the temporary accommodation was not acceptable;

(e) account has been taken of the representations in relation to the appellant's history of depression and psychotic episodes and the fact that he is a vulnerable person easily influenced by others; however, it is clear that the appellant was fully aware of his obligations under the terms of his licence to occupy and, despite receiving a final written warning, he failed to accept the seriousness of the situation; account has also been taken of the fact that the appellant had been responsible for anti social behaviour in the past;

(2) That the Council continues to provide interim accommodation until 27 January 2006 in order to allow the appellant reasonable opportunity to secure alternative accommodation; and

(3) That no deficiency or irregularity has been identified in the original decision made by the Assistant Housing Needs Manager (Homelessness), or in the manner in which it was made.

47. APPEAL NO 19/2005

The Panel was advised that consideration of this appeal had been deferred at the meeting held on 24 November 2005 pending the receipt of additional information.

The Panel received and took into consideration:

(a) a letter dated November 2005 from the appellant explaining why he had not appealed to the Employment Tribunal Service against his dismissal;

(b) a copy of the full letter dated 14 July 2005 from the appellant's former employer; and

(c) a copy of a record of a meeting held on 4 July 2005 between the management and employees, including the appellant, of the appellant's former employers.

The Panel noted that the letter confirming the appellant's dismissal for gross misconduct referred to a complaint from a member of the public about the driving of one of the appellant's former employer's vehicles on the Dartford Bridge. The letter did not state that this had been the appellant. Similarly, the reference to a complaint

about an employee leaving a job early did not state that the complaint related to the appellant. In relation to the appellant's time-keeping for the week ending 8 July 2005, different versions had been provided by the appellant's former employer and the appellant. The appellant's former employer had referred to a disciplinary hearing on 12 July 2005, but it appeared that the Pay Section of the appellant's former employer had not received on 20 July 2005, details of the hours that the appellant had worked during the week ending 8 July 2005. In relation to the alleged loss of an item of equipment, the Panel noted the appellant's explanations.

The Panel concluded that based on the evidence before it, the actions of the appellant should not have justified his dismissal and as a result he should not have lost his tied accommodation.

The Panel noted that the appellant had not taken tribunal action against his former employers as the Department of Trade and Industry had advised him this was not possible as he had not been employed by the company for more than 12 months.

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 the appellant and the Assistant Housing Needs Manager (Homelessness) in writing, the appeal be allowed and the decision of the Assistant Housing Needs Manager (Homelessness) be not upheld for the following reasons:

(a) based on the information presented to the Panel, it is considered that the actions of the appellant should not have led to dismissal from his employment, and that it was reasonable for the appellant to believe that his actions would not have resulted in dismissal;

(b) in relation to the appellant's time-keeping, it is noted that the investigation into the complaint from a member of the public about the driving of a company vehicle on the Dartford Bridge does not identify the appellant as the driver of that vehicle; similarly, the reference to an employee leaving a job early does not relate specifically to the appellant; in relation to the appellant's time-keeping for the week ending 8 July 2005, the employer refers to incorrect hours being recorded, but the appellant states that time-sheets were normally submitted a week after the week in question and that as he was dismissed on 12 July 2005, he did not have an opportunity to submit a time-sheet for the week ending 8 July 2005; on balance, therefore, the evidence does not show that the appellant's time-keeping should have led to his dismissal;

(c) in relation to the lack of care over company equipment, it is noted that the employer refers to a valuable piece of company equipment being left on the highway and not reported as lost; the appellant states that the equipment was left on the highway with full signing and guarding, was recovered intact after a few hours, and was designed to be left on the highway for long periods; on balance, therefore, the Panel felt that the appellant's actions should not have led to his dismissal;

(d) as the actions of the appellant, as presented to the Panel, are not considered to have been sufficient to justify dismissal from his employment, the loss of his rented accommodation was not as a result of any intentional act or omission of the appellant.

48. APPEAL NO 20/2005

The Panel was reminded of the decision which it had taken in relation to this appeal at its meeting on 24 November 2005.

The Panel was informed that, following the meeting on 24 November 2005, officers had raised concern about some of the advice given to members at the meeting and as a result, Counsel's views had been sought. Counsel had drawn attention to the fact that the appellant had been in interim accommodation, not temporary accommodation, and it had been wrong in law, therefore, to say that the Council had discharged its duty. In the light of this advice, the Panel was invited to review its previous decision.

RESOLVED:

- (1) That Resolution (2) of the decision reached on 24 November 2005 be revoked;
- (2) That the appellant be offered temporary accommodation by the Council in accordance with the provisions of the Housing Act 1996, for occupation pending the offer of permanent accommodation; and
- (3) That, having regard to the appellant's history of anti social behaviour, she be advised that any such behaviour in the temporary accommodation provided would be likely to result in eviction from that accommodation.

CHAIRMAN

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 Chairman advised that the Panel had no previous involvement with this case.

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 16 June 2005 from the Assistant Housing Needs Manager (Homelessness) to a friend of the appellant who had allowed the appellant to stay with her for a short period at a property in this District;
- (c) a copy of a letter received on 28 June 2005 from the friend of the appellant in response to the Council's letter dated 16 June 2005;
- (d) a copy of a letter dated 16 June 2005 from the Assistant Housing Needs Manager (Homelessness) to Ealing London Borough Council;
- (e) a copy of a letter dated 1 July 2005 from Ealing London Borough Council to the Assistant Housing Needs Manager (Homelessness);
- (f) a copy of a letter dated July 2005 from the Assistant Housing Needs Manager (Homelessness) to the appellant;
- (g) a copy of a report of an interview between a Housing Officer and the appellant dated 19 July 2005;
- (h) a copy of a letter dated 24 August 2005 from the Assistant Housing Needs Manager (Homelessness) to the Ealing London Borough Council;
- (i) a copy of a letter dated 5 September 2005 from the Ealing London Borough Council to the Assistant Housing Needs Manager (Homelessness);
- (j) a copy of a report of an interview between a Housing Officer and the appellant dated 5 September 2005;
- (k) an affordability assessment partially completed but not signed by the appellant;
- (l) a copy of a letter dated 15 September 2005 from the Assistant Housing Needs Manager (Homelessness) to the Ealing London Borough Council;
- (m) a copy of a letter dated 21 September 2005 from the Ealing London Borough Council to the Assistant Housing Needs Manager (Homelessness);
- (n) a copy of a letter dated 26 October 2005 from the Assistant Housing Needs Manager (Homelessness) to the appellant; and
- (o) a copy of the application to the Housing Appeals Panel by the appellant dated 2 November 2005.

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

(a) it had not been possible for the appellant to stay in the accommodation provided by the Ealing London Borough Council due to its close proximity to the accommodation occupied by her father with whom she had a bad relationship;

(b) Ealing London Borough Council had been made aware of the need for the appellant to be rehoused away from her father but they had refused to assist and, as a result, the appellant had been forced to leave the accommodation;

(c) the appellant had been unable to pay the rent charges for the property provided by the Ealing London Borough Council as she had not been receiving any benefits until after she had left that property; the little money that she had was provided by her mother and that was only enough to cover the cost of buying food; and

(d) the appellant had not been prepared to suffer abuse from her father for the sake of a property.

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

(a) Can you explain why the Ealing London Borough Council have no record of any problems with your father whilst you were occupying the property provided by that Authority? - Ealing London Borough Council knew from day one about the problems with my father; he obtained a flat from them because he said I was living with him but I was not; I did not know his address but I saw him and thought that he was stalking me; I subsequently found out that he lived nearby but he refused to give me his address; I asked Ealing London Borough Council to move me when I found out that he was living nearby but they took no notice;

(b) Can you provide details of your father's address? - No, I do not know it, he lives in Southall;

(c) Have you vacated the bed and breakfast accommodation provided by the Council? - Yes, I was in hospital following my pregnancy and when I was released I went to stay with my mother where I have been for the last three weeks;

(d) You have stated that your father worked near the offices of the Ealing London Borough Council and that he saw you going into their offices; Do you not know where he was living? - No, I did not know his exact address; my father telephoned my mother for her to tell me to stop going to the Council because he was concerned that he might lose his flat; he telephoned me once to say that I would be in trouble if he lost his accommodation;

(e) Is it not possible for you to move in permanently with your mother? - No, we do not get on; she has allowed me to live with her for the period immediately following the birth of my child but not in the long term; we argue and it would be a bad environment for my daughter;

(f) Can you explain your financial situation when you were in the property provided by the Ealing London Borough Council? - The rent was £111 per week and I received housing benefit of £102 per week; there were also service charges and I was approximately £16 short; I was advised that when my income support came through, Ealing London Borough Council would deduct the amount owed;

(g) Was your mother giving you money? - She was providing £60 per month for food but she was not paying the rent;

- (h) Where does your mother live? - Clacton-on-Sea;
- (i) Why did you come to stay at a property in this District when you left the property provided by the Ealing London Borough Council? - I went to live with my mother's best friend; I was living with her for six or seven months;
- (j) Are you planning to go back to the bed and breakfast accommodation provided by this Council? - Yes, but I have been told that I might be moved elsewhere as I now have a baby, possibly to the Council's homeless hostel; my mother said that I could stay with her for four weeks and I have one week left;
- (k) When you told the Ealing London Borough Council about the difficulties with your father, why did you not get the names of the officers to whom you spoke? - I was dealing with just one person, my Housing Officer, she told me that there was a shortage of housing and that I would either have to stay in the property provided by them or go to another Council;
- (l) Was your Housing Officer the one who wrote letters to this Council? - Yes;
- (m) Why is there no mention of the difficulties with your father in the numerous letters that she wrote to this Council? - I do not know but that is what she said; I got no replies to my letters;
- (n) When you moved in with your mother's best friend in this District, did you have any other connections with this area? - No, it was just that it was my mother's best friend;
- (o) Are you an only child? - My father had six children and my mother had two children; my mother has passed away;
- (p) Are you currently staying with your step-mother? - Yes.

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

- (a) following a referral from the Homeless Prevention Team, the appellant had made a homeless application to the Council on 14 June 2005; the appellant had confirmed that she was making the application in her sole name; however, she had informed the interviewing officer that she was expecting a baby in December of this year;
- (b) the appellant had told the Homeless Prevention Officer that she had been staying with her father but his family did not like her because of her mixed race; Ealing London Borough Council had provided her with temporary accommodation but she had left it and went to stay with a friend when her father had found out where she was living; her father had a bad temper and wanted her to come home as he wanted a Council flat and he could not get one without her living with him; when asked why she had not asked Ealing London Borough Council for a move, she had said that her father worked right near the Council offices and that he could see when she went there and had followed her in;
- (c) at the initial homeless interview on 14 June 2005, the appellant had confirmed that she had been living for a short period with a friend in this District; prior to that, she had Council accommodation in South Greenford, which she had left for the

reasons given to the Homelessness Prevention Officer; she had added that her father lived near to the temporary accommodation;

(d) following the application being made, a course of enquiry was pursued to assist in deciding homelessness, eligibility, priority need, intentionality and local connection; firstly, this Council had to be satisfied what had caused the appellant's homeless situation; the Council also had to be satisfied on the reasons she had become homeless from the last address reasonably occupied;

(e) the accommodation provided by a friend for the appellant in this District had been on a temporary basis and therefore precarious; prior to this, the appellant had occupied accommodation with Ealing London Borough Council in South Greenford; initial correspondence with that authority had raised concerns, in particular, the issue that the appellant had voluntarily left this accommodation; prior to making a decision, a further letter had been sent to Ealing London Borough Council to clarify matters and the appellant had been interviewed again;

(f) the appellant had been admitted to bed and breakfast accommodation on 7 September 2005 and after full consideration of all the facts of the case, a decision of intentionality had been made;

(g) Section 202 of the Housing Act 1996, Part VII, as amended by the Homelessness Act 2002, gave a homeless applicant the right to request a review of decisions made under the provisions of the Act; in this case, it was the decision that the appellant was intentionally homeless that had resulted in the request for this review;

(h) to confirm a decision of intentionality, regard must be had to the Code of Guidance which assisted local authorities with the interpretation of the Housing Act 1996, Part VII, as amended; the Code of Guidance in dealing with intentionality stated that the authority had to be satisfied that an applicant ceased to occupy accommodation that was reasonable and the cessation was a consequence of a deliberate action by them;

(i) the accommodation made available to the appellant by the Ealing London Borough Council had been reasonable for her to continue to occupy; the London Borough Council had confirmed that the appellant had decided to leave the accommodation voluntarily; there had been rent arrears of £99.60 at the time of her departure but the London Borough Council had confirmed that the appellant had left the accommodation of her own accord and that she had not been evicted;

(k) the appellant had talked at some length about the difficulties which she had experienced with her father; however, the Ealing London Borough Council had no knowledge of this and even allowing for these difficulties, setting them against this Council's chronic housing shortage, it would have been reasonable for the appellant to have remained in the property provided by the Ealing London Borough Council;

(l) the Panel was invited to dismiss the appeal; also, as the appellant had failed to notify the Council that she was no longer residing at the bed and breakfast accommodation made available for her, it was suggested that accommodation be not provided pending any appeal to the County Court but that, with the appellant's consent, the case be referred to Social Care for their assistance under the Children Act 1989.

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

(a) can you clarify the date that the appellant left the property provided by the Ealing London Borough Council?; in the interview report, dated 5 September 2005, reference is made to January 2005 but in the letter dated 26 October 2005, reference is made to March of this year. - March of this year is the correct month;

(b) why did you not follow up with the Ealing London Borough Council your questions which they did not answer about whether there were any problems with the tenancy and whether the property had been kept in a good condition? - the questions asked were standard questions and those matters were not a cause for concern so they were not followed up;

(c) you have drawn attention to the failure of the appellant to advise the Council that she was no longer occupying the bed and breakfast accommodation provided by the Council; do you normally expect people to advise the Council in such circumstances? - we would expect a courtesy call as the Council expends a considerable amount of money to support people in bed and breakfast accommodation; in 95% of such cases, if a person foresees difficulties in continuing to reside at a property, they notify the Council;

(d) the accommodation provided by Ealing London Borough Council is referred to as being only temporary accommodation - can you clarify? - This is a legal term; there is a duty on a council to provide property for an indefinite period and in the case of a London Borough, such accommodation can normally be occupied for several years; and

(e) is the appellant still paying for her bed and breakfast accommodation? - yes.

With the consent of both parties, the Chairman asked further questions of the appellant. The appellant advised that she had been in hospital one week after the birth of her daughter but that she had been in hospital for a total of three weeks; she had been with her mother for two weeks (not as previously advised) and her baby was now three weeks old; she had gone to hospital for an ante-natal check and had not expected to have been kept in and induced; she had had the baby in Clacton and had been unable to discharge herself in order to return to the bed and breakfast accommodation; also, her baby had suffered from a serious infection.

The Chairman asked the appellant if she wished to raise any further issues in support of her case. The appellant stated that she had nothing further to add.

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 the information provided by the Ealing London Borough Council was consistent, reliable and had answered every relevant question. He submitted there was no reason to doubt the evidence of the London Borough Council and that local authorities expected mutual co-operation in relation to such matters. If there had been problems experienced by the appellant which had been made known to the London Borough Council, these would have been drawn to the attention of this Council when it made enquiries of the London Borough Council. In the event of the appeal being dismissed, he invited the Panel to address the question of continuing to provide accommodation for the appellant bearing in mind that she was not currently staying at the bed and breakfast accommodation made available for her.

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, of the outcome. The appellant, her

friend and the Assistant Housing Needs Manager (Homelessness) then left the meeting.

The Panel weighed the evidence of the appellant and the Ealing London Borough Council. Members noted that the appellant had been unable to support her submissions with any documents whereas the letters provided by the London Borough Council were consistent. On balance, therefore, the Panel placed greater weight on the evidence provided by the London Borough Council. The Panel agreed that the accommodation provided by the London Borough Council had been the last address reasonably occupied by the appellant. The Panel also concluded that, had the appellant obtained income support to which she was entitled, she would have been able to afford the rent and other essential expenditure whilst residing in the property provided by the London Borough Council.

In relation to the failure of the appellant to notify the Council that she was no longer residing at the bed and breakfast accommodation, it was pointed out that she had provided her mother's address as being the one where the agenda for this meeting should be sent and, therefore, it could be argued technically that she had notified the Council that she was no longer residing at the bed and breakfast accommodation.

RESOLVED:

(1) That, having regard to the provisions of the Housing Act 1996, as amended, and the Code of Guidance on homelessness, and having taken into consideration the information presented by the appellant and the Assistant Housing Needs Manager (Homelessness), in writing and orally, the appeal be dismissed and the decision of the Assistant Housing Needs Manager (Homelessness) that the appellant had become intentionally homeless be upheld for the following reasons:

(a) the property occupied by the appellant in the London Borough of Ealing was the last address reasonably occupied by her;

(b) the appellant voluntarily left the accommodation secured by the London Borough of Ealing, a fact confirmed by the London Borough Council;

(c) account has been taken of the appellant's submissions that it was not possible for her to continue to stay at the accommodation in Ealing as it was close to where her father lived and, due to her relationship with him, she feared for her safety and advised the London Borough of Ealing of the situation; however, the appellant was unable to provide any documentary evidence in support of these submissions, whereas the London Borough of Ealing had stated, in writing, that the appellant had not expressed any difficulties or problems with living at the property and had not applied for a transfer or tried to effect a mutual exchange; accordingly, on balance, based on the evidence before it, the Panel took the view that the appellant's reasons for leaving the accommodation in Ealing were not justified;

(d) at the time of the appellant leaving the property in Ealing, she had rent arrears of £99.60 but the London Borough of Ealing had confirmed that, despite the arrears, the accommodation would still have been available for the appellant had she not left it;

(e) the weekly rent at the property in Ealing was £111 of which £102.70 was covered by housing benefit; had the appellant been in receipt of income

support, for which she would have been eligible, it is considered that it would have been reasonable for her to have met the weekly charge due;

(f) had it not been for the appellant's deliberate act of leaving, the property in Ealing would have continued to have been available and reasonable for her to have continued to occupy;

(2) That the Council is willing to provide the appellant with temporary accommodation until 31 January 2006 if it is required; the Council is aware that the appellant is currently resident at her mother's address and has, therefore, cancelled the accommodation which has been made available; on receipt of the decision of the Panel, the appellant should make arrangements to collect any items that she may still have at the accommodation which had been made available;

(3) That no deficiency or irregularity has been identified in the decisions made by the Assistant Housing Needs Manager (Homelessness) or in the manner in which they were made; and

(4) 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

By virtue of paragraph(s) 6 of Part 1 of Schedule 12A of the Local Government Act 1972.

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