

EPPING FOREST DISTRICT COUNCIL COMMITTEE MINUTES

Committee: Housing Appeals Panel **Date:** Monday, 3 October 2005
 (adjourned from 22
 September 2005)
Place: Civic Offices, High Street, Epping **Time:** 4.00 - 5.10 pm
Members Present: Mrs J Davis (Chairman), K Angold-Stephens, Mrs P K Rush, Ms S Stavrou and Mrs R Gadsby
Other Councillors: (none)
Apologies: D Stallan
Officers Present: A Hall (Head of Housing Services), G Lunnun (Democratic Services Manager)

25. SUBSTITUTE MEMBERS

It was noted that Councillor Mrs R Gadsby was substituting for Councillor D Stallan.

26. DECLARATIONS OF INTEREST

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

27. 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 item of business set out below as it would involve the likely disclosure of exempt information as defined in the paragraph of Part 1 of Schedule 12A of the Act indicated:

Agenda Item No	Subject	Exempt Information Paragraph Number
7	Appeal No: 15/2005	3

28. APPEAL NO. 15/2005

Members were reminded that consideration of this appeal had been deferred at the meeting held on 22 September 2005 as written submissions on behalf of the appellant had only been made available at that meeting and the Panel had determined that it needed time to read the papers. Accordingly, the meeting on 22 September 2005 had been adjourned until 3 October 2005.

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 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 childrens' 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
