

EPHING FOREST DISTRICT COUNCIL COMMITTEE MINUTES

Committee: Housing Appeals Panel **Date:** Tuesday, 13 December 2005

Place: Civic Offices, High Street, Epping **Time:** 4.00 - 5.30 pm

Members Present: Mrs J Davis (Chairman), D Stellan (Vice-Chairman), K Angold-Stephens and Ms S Stavrou

Other Councillors: (none)

Apologies: Mrs P K Rush

Officers Present: G Lunnun (Democratic Services Manager) and R Wilson (Assistant Head of Housing Services (Operations))

49. SUBSTITUTE MEMBERS

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

50. DECLARATIONS OF INTEREST

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

51. 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:

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5	Appeal No. 22/2005	3

52. APPEAL NO. 22/2005

The Panel was advised that consideration of this appeal had been deferred at the last meeting as the appellant had been in hospital giving birth. The Panel was reminded that this appeal was against a decision of the Assistant Housing Needs Manager (Homelessness) acting under delegated authority in relation to the appellant's homeless application. The appellant attended the meeting accompanied by a friend. Mr R Wallace, Assistant Housing Needs Manager (Homelessness) attended the meeting to present the Council's case. Mr R Wilson, Assistant Head of Housing Services, attended the meeting to advise the Panel as required on legal issues and details of the national and local housing policies relative to the appeal.

The Chairman introduced the members of the Panel and officers present to the appellant and outlined the procedures to be followed in order to ensure that proper consideration was given to the appeal. The 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
