

EPPING FOREST DISTRICT COUNCIL COMMITTEE MINUTES

Committee: Housing Appeals and Review Panel **Date:** Wednesday, 25 April 2007
Place: Civic Offices, High Street, Epping **Time:** 10.00 - 11.30 am
Members Present: Mrs R Gadsby (Vice-Chairman), Mrs P Richardson, Mrs P Smith and J Wyatt
Other Councillors:
Apologies: Mrs P K Rush and K Wright (substitute for Councillor Mrs P K Rush)
Officers Present: A Hall (Head of Housing Services) and G Lunnun (Democratic Services Manager)

37. MINUTES

RESOLVED:

That the minutes of the meetings of the Panel held on 25 January 2007, 15 February 2007 and 27 February 2007 be taken as read and signed by the Chairman as a correct record.

38. SUBSTITUTE MEMBERS

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

39. DECLARATIONS OF INTEREST

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

40. 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 and the exemption is considered to outweigh the potential public interest in disclosing the information:

Agenda Item Number	Subject	Exempt Information Paragraph Number
6	Appeal No. 3/2007	1 & 2

7	Application No. 2/2007	1 & 2
8	Previous Appeals and Applications – Current Position	1 & 2

41. APPEAL NO 3/2007

The Panel considered an appeal against a decision of the Assistant Head of Housing Services (Operations) acting under delegated authority to place the appellant's housing application in Band 4 (new Band 3) of the Council's Allocations Scheme. The appellant attended the meeting accompanied by a relative. Mr R Wilson (Assistant Head of Housing Services (Operations)) attended the meeting to present his 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) the case of the Assistant Head of Housing Services (Operations);
- (c) copies of documents submitted by the Assistant Head of Housing Services (Operations), namely:
 - (i) letter dated 26 February 2007 from the appellant to the Assistant Head of Housing;
 - (ii) letter dated 31 January 2007 from the appellant to the Assistant Head of Housing;
 - (iii) letter dated 27 February 2007 from the Assistant Head of Housing Services (Operations) to the appellant;
 - (iv) letter dated 1 February 2007 from a Health Visitor at the West Essex Primary Care Trust to the Council's Housing Department;
- (d) a copy of the application to the Housing Appeals and Review Panel by the appellant dated 10 March 2007;
- (e) copies of documents submitted by the appellant, namely:
 - (i) letter dated 27 February 2007 from the Assistant Head of Housing Services (Operations) to the appellant;
 - (ii) letter dated 26 February 2007 from the appellant to the Assistant Head of Housing;
 - (iii) letter dated 31 January 2007 from the appellant to the Assistant Head of Housing;

- (iv) grounds of appeal; and
- (v) photographs showing a dog of one of the appellant's neighbours.

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

- (a) the Council Officers had not fully understood the appellant's situation when making their decision;
- (b) the appellant's current property was significantly overcrowded; she had four sons aged between 1 and 10 years sharing one bedroom; it was unreasonable to expect that the living room could be used as a bedroom as this room was already in use for dining and as a playroom for the appellant's children;
- (c) the Council had a duty to ensure that all areas of its properties were safe; in order to access her flat the appellant had to enter downstairs communal areas including entrance way, corridors, stairwell and rear garden gate; she also had to cross the communal garden to access her pram shed and refuse area; in those areas the appellant and her children had encountered a neighbour's large dog on a number of occasions, even when being led it was difficult to pass the dog safely because of the narrow and confined space of the entrance way; the dog had lunged at the appellant's children and had frightened the refuse collectors; the dog often got loose, particularly when the neighbour had visitors, and had bitten the daughter of a previous tenant of a nearby property; the longer the appellant remained a tenant in her current property the greater the possibility that the dog would attack her or her children; the problem was disrupting the development of the appellant's children and making them depressed; the dog was allowed to urinate and defecate in the communal garden; it appeared that Council Officers would only address this problem if and when the appellant or one of her children had been attacked by the dog;
- (d) if the appellant was moved, a good quality two-bedroom property would be released for another tenant.

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

- (a) If you are successful with your appeal is Waltham Abbey your only area of choice for another property? – I might be prepared to widen my area of choice; I hope to start driving shortly and this would enable me to consider moving to another area;
- (b) If your appeal is successful what type of accommodation would you wish to move to? – Ideally, a house;
- (c) Would you consider moving into a three-bedroom flat? – I would be concerned that I would encounter some of the same problems that I am currently suffering;
- (d) According to the Council's records you complained about your neighbour's dog in August 2005 but you made no further complaints until January of this year; did you encounter any problems with the dog during that period? – Yes and I made telephone calls to someone in Housing Services but I did not keep a record of those calls as I did not appreciate the importance of the calls at that time;
- (e) Do any of your other neighbours encounter problems with the dog? – No, not to my knowledge;

- (f) How long have you lived in your current property? – Approximately eight years;
- (g) Your application form to the Panel states that you live at the property with your four children, does anyone else live at the property? – Some years ago my partner also resided at the property, he is no longer there and I cannot say if he is likely to return;
- (h) How large is the communal garden area? – Quite large (the appellant indicated the size by reference to an area of the room in which the meeting was taking place);
- (i) Are you and your children all in good health? – Yes;
- (j) What help or advice have you been given in response to your complaints about your neighbour's dog? – Council officers visited my neighbour in 2005 but the situation has not improved;
- (k) Have you spoken to your neighbour about her dog? – No, she is not a person to approach;
- (l) Is your main reason for seeking alternative accommodation, the conditions of your existing property or the problems with your neighbour's dog? – It is both matters; there is insufficient room in the flat and the dog prevents any beneficial use of the communal garden;
- (m) Have you involved the Police in relation to your problems with your neighbour's dog? – No, I am wary about starting a dispute with her;
- (n) You have said that your neighbour's dog often gets loose when she has visitors; she appears to have a lot of visitors; is she running a business from the property? – I cannot say but she receives a lot of male visitors;
- (o) Where is your former partner now living? – With his mother as far as I am aware;
- (p) Can you expand on the occasion when the dog put his head close to one of your children in his pram? – I was present and rushed forward and a male friend of a neighbour pushed the dog away but could not catch it;
- (q) Is the dog ferocious? – It did bite the child of a former tenant of a nearby property; I could possibly get a letter from that tenant explaining the incident;
- (r) Do your children spend any time with your ex-partner? – No;
- (s) Did the Police become involved when your neighbour's dog bit the child of a previous tenant? – I am not sure;
- (t) You have said that you have lived in your current property for eight years; when did the problems with the dog first arise? – Two or three years ago when my neighbour moved in with her dog.

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

(a) the appellant's secure tenancy of her current property had commenced on 8 February 1999; the property was a two-bedroom first floor flat; the flat was not particularly small when compared with other Council two-bedroom properties and the communal garden was considered to be of a reasonable size;

(b) on 17 January 2007, the appellant had joined the Council's Housing Register for a transfer to alternative accommodation; the application had stated that the family consisted of the appellant and her four sons aged 10, 4, 3 and 1 years; the application had been assessed and the appellant had been placed in Band 4 of the Council's Allocations Scheme, as she had a lack of one bedroom, no garden with a child under 15 years and lived on the first floor with a child under 5 years; the appellant's area of choice had been stated as Waltham Abbey only and for a three-bedroom house; following a recent review of the Allocations Scheme, the number of priority bands had been reduced from seven to six and as a result, the appellant was now placed in Band 3, although this had not had any substantial impact on her application;

(c) The appellant considered that she should be placed in Band 1 because she was living in overcrowded conditions with her four sons sharing one bedroom; one of the categories for inclusion in Band 1 was: "Applicants living in the Epping Forest District for more than a year immediately prior to application residing in insanitary, overcrowded or unsatisfactory conditions"; the permitted number of persons in the appellant's current accommodation was 5; under the Housing Act, in calculating the permitted number of persons no account was taken of a child under the age of 1, and a child aged 1 or over but under 10 was only reckoned as one half of a unit;

(d) taking into account the appellant's children and the appellant herself, the number of persons currently housed at the property as calculated in accordance with the provisions of the Housing Act 1985 was 3.5 which was well below the permitted number; the officer's decision letter had referred to 4.5 persons occupying the accommodation as at that time the calculation had been based on the assumption that the appellant's partner was living at the property but this was no longer the situation;

(e) the Housing Act 1985 also provided that a room was available as sleeping accommodation if it was of a type normally used in the locality either as a living room or as a bedroom;

(f) the appellant's complaints about a neighbour's dog had not been taken into account when the case had been reviewed by officers as it had not been considered relevant to the Allocations Scheme; Housing Management had visited the appellant's neighbour, who was a leaseholder, in November 2005 but no further complaints had been received about the dog until this year;

(g) the Council had received a letter from the appellant's health visitor which had been taken into account; the Medical or Social Welfare Panel had considered the case on 15 February 2007 but no preference had been given on welfare or medical grounds;

(h) applicants awaiting a three-bedroom property in Waltham Abbey within each band was as follows: Band 1 – 3; Band 2 – 7; Band 3 – 67; the appellant was currently placed 65 within Band 3; if the appellant's appeal was successful she would be placed fourth in Band 1, thereby being promoted above many who had been on the list longer and who were considered in greater housing need;

(i) within Waltham Abbey there were 367 Council three-bedroom houses, which were tenanted; since April 2006, 12 three-bedroom properties had become available for let in Waltham Abbey;

(j) under the Allocations Scheme, on very rare occasions tenants were granted priority transfers in circumstances where there was clear evidence that a tenant's safety was at risk; it was not considered that the appellant's circumstances met this requirement;

(k) the Panel was asked to dismiss the appeal and determine that the appellant remained in her current place within Band 3 of the Allocations Scheme.

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

(a) Taking account of my current position on the Housing Register, how long would it be before the appellant received an offer of transfer to alternative accommodation? – Some considerable time; I cannot be specific but it would be likely to be years rather than months; the appellant's application at present is restricted to properties in Waltham Abbey and for a three-bedroom house;

(b) If the appellant were to widen her area of choice would she receive greater priority? – This would not place the appellant in a higher band but if you were to widen the choice to include a three-bedroom flat or other areas of the District this might shorten the time but you would still have to wait some considerable time;

(c) The appellant's living room is also used as a dining room and a playroom as her children cannot play in the communal garden; surely, you cannot expect me to use it as a bedroom as well? – Officers applied the provisions of the Housing Act 1985; the officers are not completely unsympathetic to your situation but they are required to be consistent by applying the statutory provisions and the Council's policies;

(d) Do you accept that there would likely to be a dispute if the appellant's complaints about her neighbour's dog led to her having to dispose of the dog? – The Council has to consider many management issues which arise between occupiers, especially issues in blocks of flats; such issues normally arise as a result of a complaint and it would not be good management policy to move tenants rather than attempting to resolve the issue;

(e) What do you consider to be a life-threatening situation? – It is a difficult judgement to make; the Council receives a lot of requests for transfer and has to assess each one on its merit;

(f) The Council has a responsibility for the safety of its tenants, do you consider that you are meeting that responsibility? – The Council needs to act reasonably to ensure that its duty of care is covered;

(g) Do you accept that the dog frightened the Council's refuse collectors? – I would be frightened of an intimidating dog and if on investigation it is considered that it is inappropriate for the animal to remain at the appellant's neighbour's property, steps will be taken to secure its removal;

(h) On the facts currently available, do you consider that steps could be taken to secure the removal of the dog? – The appellant's neighbour was visited in 2005

about the issue but because there had been no complaints since that time it would be necessary to undertake a fresh investigation;

(i) Would it be possible to separate the communal garden with fencing? – It would be difficult; the problems with the appellant's neighbour's dog need to be addressed by Housing Management taking account of all of the facts;

(j) When was the appellant included within Band 3 of the Allocations Scheme rather than Band 4? – On 2 April this year following a review of the Scheme;

(k) What movement is there in Band 1 during the course of a year? – I cannot say, last year the Council allocated 311 new tenancies across all bandings plus 190 transfers;

(l) How many priority transfers are granted during the course of a year? – These are very rare with possibly only one or two per year;

(m) You have referred to 367 three-bedroom houses being available in Waltham Abbey, does this include flats? – No, only houses;

(n) How many three-bedroom flats does the Council hold in Waltham Abbey? – I regret that I do not have that information available;

(o) Is movement on the Housing Register delayed by voids? – Voids are turned round quickly, depending on the condition of the property;

(p) If the appellant is prepared to widen her area of choice, what should she do next? – She should contact Housing Needs and complete a form indicating her extended areas of choice;

(q) The appellant's neighbour with the dog is a leaseholder, is it more difficult for the Council to take action against a leaseholder than a tenant? – No, provisions are included within the lease requiring that no dog or other animal shall cause annoyance to other occupiers and that the Council can require the removal of an animal if felt necessary;

(r) Would the Council consider buying back a leasehold property? – Not normally and that is not seen to be a consideration in this case.

The Chairman asked the appellant if she wished to raise any further issues in support of her case.

The appellant submitted photographs of her neighbour's dog. She stated that her flat was in good condition but was overcrowded. She expressed concern about the Council exercising its Housing Management powers in relation to the dog as she felt there would be an adverse reaction from her neighbour.

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

The Chairman indicated that the Panel would consider the matter in the absence of both parties and that the appellant and the Assistant Head of Housing Services (Operations) would be advised in writing of the outcome. The appellant, her relative and the Assistant Head of Housing Services (Operations) then left the meeting.

The Panel sought clarification of the policy in relation to the keeping of dogs within Council flats. They were advised that tenants and leaseholders needed to obtain the Council's permission and that up to 2002 the approach had been to refuse applications in relation to properties not having direct access to a garden. However, in that year, the then Housing Appeals Panel had concluded that this approach was inappropriate and as a result the approach now was to give permission in appropriate cases subject to conditions. One of the conditions was not to allow a dog to access a communal garden at any time. Also, permission was only given in the absence of any complaints about nuisance arising from a dog. The Panel concluded that the issue with the appellant's neighbour's dog should be investigated by Housing Management staff but did not impact on the appellant's priority on the Housing Register.

The Panel considered all of the evidence which had been placed before it and concluded that the appellant did not meet the criteria for inclusion within Band 1. The Panel further concluded that the appellant was correctly placed within Band 3 of the Scheme.

RESOLVED:

(1) That, having regard to the provisions of the Housing Act 1985 and the Council's Allocations Scheme, and having taken into consideration the information presented by and on behalf of the appellant and by the Assistant Head of Housing Services (Operations) the decision not to promote the appellant to Band 1 of the Council's Allocations Scheme be upheld for the following reasons:

(a) it is considered that the appellant is correctly placed within Band 3 (formerly Band 4 at the time of the decision taken by Assistant Head of Housing Services (Operations)) and does not meet the criteria for being included in either Band 1 or Band 2;

(b) there is no clear evidence that the appellant's safety is at risk which might justify the granting of a priority transfer;

(c) account has been taken of the appellant's claim that she is living in overcrowded conditions but, by applying the provisions of the Act, (required by the Council's Allocations Scheme in respect of overcrowding for Band 1), the permitted number of persons in the appellant's current accommodation is 5 and the number of persons housed at the property is 3.5, below the permitted number;

(d) the appellant's complaints about her neighbour's dog are a matter which should be dealt with by the Council under its housing management powers and are not a matter which affect the appellant's level of housing need;

(2) That the Area Housing Manager be asked to investigate whether permission has been given to the appellant's neighbour to keep a dog within her flat and (a) if so, to consider whether that permission should be withdrawn; or (b) if not, to consider whether permission should be given; and (c) that the matter be pursued appropriately with the appellant's neighbour according to the outcome of the investigation.

The Panel was advised that the solicitors acting for the applicant had submitted updated evidence which had been considered by Housing Officers. In the light of this new evidence the officers had decided to approve the application and as a result it would no longer be necessary for the matter to be referred to this Panel.

43. PREVIOUS APPEALS AND APPLICATIONS - CURRENT POSITION

The Panel received schedules giving a progress report on recent cases where the matter was still active within Housing Services. The Head of Housing Services reported on issues which had arisen since the schedules had been prepared and he tabled a record of the outcome of all previous decisions heard since 1991/2.

The Panel agreed that cases 1/07, 6/06 and 2/06 be deleted from future schedules.

RESOLVED:

That the progress report on previously heard cases be noted.

CHAIRMAN