

## **EPPING FOREST DISTRICT COUNCIL COMMITTEE MINUTES**

**Committee:** Housing Appeals and Review Panel      **Date:** Tuesday, 27 February 2007

**Place:** Committee Room 1, Civic Offices, High Street, Epping      **Time:** 4.00 pm - 5.40 pm

**Members Present:** Mrs P K Rush (Chairman), Mrs R Gadsby (Vice-Chairman),  
Mrs P Richardson, Mrs P Smith and J Wyatt

**Other Councillors:**

**Apologies:**

**Officers Present:** A Hall (Head of Housing Services) and G Lunnun (Democratic Services Manager)

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### **32. SUBSTITUTE MEMBERS**

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

### **33. DECLARATIONS OF INTEREST**

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

### **34. 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:

<b>Agenda Item Number</b>	<b>Subject</b>	<b>Exempt Information Paragraph Numbers</b>
5	Application No 2/2007	1 & 2
6	Appeal No 1/2007	1 & 2

### **35. APPLICATION NO 2/2007**

The Panel was advised that this was a case referred back to the Council for a further review by a court. In order to comply with the statutory deadline for completion of the fresh review, the matter should have been considered at this meeting. However, the solicitors acting for the applicant had been unable to submit updated evidence in time

for this meeting and in the circumstances they had agreed to an extension of the deadline for completion of the review until the end of March 2007.

Members were further advised that on receipt of the new evidence, initially the Council's Housing Officers would consider the matter further and if they decided to approve the application in the light of the new evidence it would not be necessary for the matter to be referred to the Panel. The Panel considered a date for their next meeting in the event that it would be necessary to undertake this review.

**RESOLVED:**

That the next meeting of this Panel be held on 22 March 2007 as previously scheduled but commencing at 10 am.

**36. APPEAL NO 1/2007**

The Panel considered an appeal against a decision of the Area Housing Manager (North) acting under delegated authority that the appellant be required to transfer to alternative accommodation due to under-occupation following his succession to a tenancy. The appellant attended the meeting to present his case accompanied by Mrs A Anson (Epping Citizens Advice Bureau) and Ms J Goddall (Safe – St Margaret's Hospital). Mr N Taylor (Area Housing Manager) 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 his representatives 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 Area Housing Manager;
- (c) copies of documents submitted by the Area Housing Manager, namely:
  - (i) letter dated 11 September 2006 from the Assistant Area Housing Manager (North) to the appellant;
  - (ii) letter dated 26 September 2006 from a community psychiatric nurse to the Assistant Head of Housing Services;
  - (iii) letter dated 11 October 2006 from the Ongar Health Centre to the Assistant Head of Housing Services;
  - (iv) letter dated 30 October 2006 from Voluntary Action Epping Forest to the Assistant Head of Housing Services;
  - (v) letter dated 3 November 2006 from the North Essex Mental Health Partnership to the Assistant Head of Housing Services;
  - (vi) letter dated 20 November 2006 from the Council's medical adviser to the Assistant Head of Housing Services;

- (vii) file note dated 28 November 2006 made by the Council's Housing Welfare Officer;
- (viii) letter dated 6 December 2006 from the Assistant Head of Housing Services to the North Essex Mental Health Partnership;
- (ix) letter dated 9 December 2006 from the Assistant Head of Housing Services to the appellant;
- (d) a copy of the application to the Panel by the appellant dated 22 January 2007;
- (e) copies of documents submitted by the appellant namely:
  - (i) letter dated 30 October 2006 from Voluntary Action Epping Forest to the Assistant Head of Housing Services;
  - (ii) letter dated 3 November 2006 from the North Essex Mental Health Partnership together with explanations of forms of severe anxiety;
  - (iii) letter dated 11 October 2006 from the Ongar Health Centre to the Assistant Head of Housing Services;
  - (iv) letter dated 26 September 2006 from a community psychiatric nurse to the Assistant Head of Housing Services;
- (f) representations made on behalf of the appellant by the Epping Citizens Advice Bureau including a letter dated 22 February 2007 from a community psychiatric nurse to the Bureau and a letter from Broomfield Hospital to the appellant in respect of an appointment on 7 March 2007.

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

- (a) the appellant was aged 62 years; he had lived in his current property for 38 years; the whole of his life had been centred around this locality;
- (b) the appellant suffered from a severe anxiety disorder and did not find it easy to make friends or to fit into a community; he could not face the thought of moving; it made him feel very frightened;
- (c) the appellant had for many years cared for his father on a 24 hour basis in very difficult circumstances in order to ensure that his father did not go into care;
- (d) the appellant suffered from his own mental health issues and after the death of his father had felt unable to go on with life; the appellant was very depressed and professional health workers were working with the appellant to ensure a continuity of care for him; his mental health was considered by those professionals to be very precarious;
- (e) the appellant and his father had worked the land in the locality most of their working lives and the appellant had been born in the street where he currently lived; the appellant's family had been re-housed to the appellant's current property from another property in the road which they had been required to vacate in approximately 1970;

- (f) any move in the appellant's place of residence would be likely to have a further detrimental effect on both his physical and mental health;
- (g) a statement attributed to a community psychiatric nurse in the Council's case was not recognised by that nurse whose correct views had been expressed in the letter dated 22 February 2007 to Epping Citizens Advice Bureau;
- (h) the appellant had only completed a Housing Register application form for an alternative property because he felt he had no option; this act should not be seen as indicating acceptance of a move; the appellant's desire was to remain in his current home;
- (i) the evidence presented by the Council's medical adviser was inaccurate both at the time it had been written and currently, due to new circumstances; the appellant had been receiving specialist treatment for colitis for many years and was taking medication for this condition; reference in the medical adviser's letter that the appellant had not been hospitalised for his anxiety problems was now out of date as the appellant had been admitted to Chelmer Ward at St Margaret's Hospital under Section 2 of the Mental Health Act 1983 at his psychiatrist's instigation; the appellant had been admitted on 12 December 2006 and had been discharged on 16 January 2007; the Council must have been aware of his admission as they had taken papers relating to this review to the hospital and handed them to the appellant on the ward;
- (j) the Council had failed to consider the appellant's circumstances fully when coming to the decision that he should transfer to alternative accommodation; great weight had been placed on the Council's medical adviser's report which was now shown to be inaccurate in its assessment of the appellant's health and now out of date with regards to the appellant's anxiety issues;
- (k) the Council should have given more weight to the combined effects of the appellant's age, the length of time he had lived at his home, the financial contribution he had made to the home, and other support given to his father; these matters would be taken into consideration by a judge should the matter go to County Court;
- (l) the Panel should take a broader view of the appellant's circumstances than had been taken to date and consider more closely the appellant's particular vulnerabilities should he be required to transfer to alternative accommodation.

The Area Housing Manager advised that he did not wish to ask the appellant or his advisers any questions. The appellant and his advisers answered the following questions of the Panel:-

- (a) You have indicated that you do not move far from your home but on your application form to the Panel you have listed several dates on which you would have been unable to attend a meeting; can you advise where you were going on those dates? – The appellant's adviser from the Citizens Advice Bureau informed the Panel that the dates quoted were ones which were not convenient to her rather than the appellant;
- (b) How often do you get out of your house? – Not a lot; I visit a few local people and look after graves in the churchyard; I am too nervous to go further;
- (c) Do you drive? – A little but only locally;
- (d) The appellant's adviser from Safe, St Margaret's Hospital was asked about her role and what support she had provided to the appellant when he had been

discharged from hospital – She advised that she was a formal advocate; after the appellant's discharge she had made telephone calls to him; she was commissioned to work with in-patients only and she did not make home visits; she advised that the appellant had another support worker who was unable to be here today who did provide support in the community and visited the appellant at home; the appellant also received home visits from a community psychiatric nurse approximately every two weeks; in addition the appellant visited his General Practitioner at the surgery in Ongar;

(e) What level of medication are you taking at present? - I take medication for diabetes and colitis but I do not take any medication for anxiety; the medical professionals have tried to persuade me to take medication for anxiety but I have refused to do so; I already take approximately 20 tablets a day and I do not want to take any more;

(f) I understand you have lived in your current home and one other property in the same road all of your life, is this correct? – I was born in a house in the road and I have lived in this road all of my life except for a period of approximately six months when the family lived in an adjoining village;

(g) Can you tell us about your father's and your own employment? – Both myself and my father worked on the fields in the locality.

The Panel considered the following submissions of the Area Housing Manager:

(a) the Council's policy for dealing with succession of tenancy has its base in the Housing Act 1985 which determines who can succeed to a tenancy and in what circumstances remaining occupants can stay in the home or be asked to move to smaller accommodation; this legislation seeks to provide a balance between those who are left in a Council home when a tenant dies and those on the Council's waiting list requiring accommodation; landlords are given some discretion in this matter;

(b) the Council has adopted a policy for dealing with successions of tenancies and members reviewed this policy in 1992 and 2000; the policy provides officers with guidance on how to deal with successor tenants who under-occupy accommodation; a person, other than the husband or wife of a deceased tenant, who is aged over 60 and has been in occupation for more than 10 years is allowed to remain in their home if they under-occupy the home by one bedroom; in other cases the person will be asked to move to smaller accommodation unless there are exceptional reasons;

(c) the appellant's father became the tenant of the appellant's current property, a three-bedroom semi-detached house, in January 1969; the appellant has lived in the property since that time; the appellant's father passed away in August 2006 aged 93, leaving the appellant who is 62 years of age in sole occupation; the appellant legally succeeds to the tenancy of the property but has been asked to move to smaller accommodation, in line with the legislation and the Council's policy;

(d) in making their decision on this matter, officers had taken account of letters of support of the appellant from medical professionals and advice from the Council's medical adviser; in view of the very delicate nature of this case, a meeting had taken place between the Council's Housing Welfare Officer and the appellant's support workers before a decision had been taken by officers; it was unfortunate that no formal notes had been produced of that meeting by the organisers, especially since it was now apparent that there was some disagreement as to what had been said at that meeting; in making his decision the Area Housing Manager had regard to the file note taken by the Council's Housing Welfare Officer; it is unfortunate that it is only at

this Panel meeting, that a different interpretation has been given of what had been said;

(e) the appellant had reluctantly completed a housing application form and in the event of his appeal being dismissed an offer of more suitable accommodation would be made as soon as possible;

(f) very careful consideration had been given to this case and the officers' decision had been made having regard to the relevant legislation, the Council's policy and the medical evidence available at the time the decisions were made.

The Area Housing Manager answered the following questions of the appellant's advisers and the Panel:-

(a) Can you confirm that Council officers were aware of the appellant's admission to hospital as they attended the ward to deliver the letter advising of their review and the steps to be taken to appeal to this Panel? – Yes, it was agreed at the meeting on 28 November 2006 that the letter should be delivered to the appellant;

(b) As the officers knew that the appellant was in hospital and that their decision had taken account of advice from the Council's medical adviser based on the appellant not having psychiatric hospital admission, did you not consider reviewing the matter again and seeking further advice from the Council's medical adviser? – I had already made my decision by that time; circumstances change from week to week and the situation has moved on since I made my decision;

(c) You have said that an offer of more suitable accommodation will be made to the appellant as soon as possible; how readily available is more suitable accommodation? – Properties become available as and when, but in view of the circumstances of this case and in order to avoid possible legal action an offer will be made without undue delay;

(d) I get the impression that you may have come to a different decision if the evidence available before us today had been before you when you made your decision, is that correct? – I had to base my decision on the evidence available to me at the time; if I had been in receipt of all of the medical evidence now available, I would have asked the Council's medical adviser for their views and, in particular, whether he stood by his initial advice;

(e) You have said that it was agreed at the meeting on 28 November 2006 that a letter could be delivered to the appellant in hospital; however, he was not in hospital on 28 November 2006; - The file note taken by the Council's Housing Welfare Officer states that it was agreed that she or another Council officer would deliver the decision letter by hand to the appellant while on an accompanied visit, not necessarily to a hospital ward;

(f) At some stage officers did become aware that the appellant was in hospital because the letter was delivered to the hospital ward, is that correct? – Yes; some time between 28 November 2006 and 12 December 2006, Council officers became aware of the appellant's admission to hospital but I do not have any information as to when or how this information was received (Ms J Goddall advised that there had been a telephone call from the Community Mental Health Team in Waltham Abbey to the Council which had advised officers of the situation);

(g) Are the Council's medical advisers a voluntary body? – The Head of Housing Services advised that they were from a profit-making company who provided advice

to local authorities for a fee; the Council sought advice from them on the medical condition of applicants in relation to the provision of Council housing;

(h) The law has moved on since 1985 in relation to succession of tenancies; a widow would be allowed to stay in a property, would the remaining partner of a same sex couple be allowed to stay in a property? – The Head of Housing Services advised that yes if there had been a civil partnership; if not, but the couple had been in a co-habiting situation which could be demonstrated, the remaining partner would be treated in the same way as a son or daughter of the tenant.

By leave of the Chairman, the Head of Housing Services asked the appellant if he could elaborate on the financial and other support he had provided when his father had been alive – The appellant advised that he had cared for his father 24 hours a day; although the property had been in his father's name, he had paid Council Tax and rent and had contributed a substantial amount to general expenses incurred in running the home; his father had only been in receipt of the old age pension and a small pension from a local farm;

The Chairman asked the appellant and his advisers if they wished to raise any further issues in support of the appellant's case.

The appellant's adviser from the Citizens Advice Bureau emphasised that the appellant had resided in his current property for 38 years and had lived in the area for all of his life. Moving home was stressful at any time but it would be more stressful than usual for the appellant in view of his circumstances.

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 his decision had been based on the evidence available at the time, taking account of the relevant legislation and the Council's policy for dealing with successions of tenancies.

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

The Panel considered all of the evidence which had been placed before it. The attention of the Panel was drawn to the relevant provisions of the Housing Act 1985. Members noted that if a person had a right of succession but was under-occupying property as defined in the Council's policy, it was possible to seek possession provided that the successor tenant was offered suitable alternative accommodation. In recognition that the successor tenant had security of tenure if a tenant did not transfer voluntarily, it would be necessary for the Council to go to court to obtain a possession order. Members were advised that in the event of the matter going to court certain issues would be taken into account, as set out in the Housing Act 1985 (Grounds for Possession). These would include the age of the tenant, the period that the tenant had occupied the property as his only or principal home and the financial and other support which the tenant had given to the previous tenant.

The Panel discussed the three issues which would be considered by a court, taking account of the Council's policy in relation to the first two issues. Members noted that the third issue was not covered by the Council's policy.

The Panel was advised that, although the Council's policy had last been reviewed in 2000, there had been no significant changes to the policy since 1992. The Head of Housing Services advised on the application of the policy.

The Panel concluded that there were exceptional circumstances in this case having regard to the combination of the age of the tenant, his significant period of occupation and the financial and other support which he had provided to his father, the previous tenant. Members also concluded that the tenant was vulnerable in that his feelings of anxiety and depression were likely to intensify if he was required to move to alternative accommodation. Members expressed disappointment that incomplete information appeared to have been submitted to the Panel in the written case of the Area Housing Manager.

**RESOLVED:**

(1) That, having regard to the provisions of the Housing Act 1985 and having taken into consideration the information presented by and on behalf of the appellant and by the Area Housing Manager, in writing and orally, the appeal against the decision of the Area Housing Manager that the appellant be required to transfer to alternative accommodation due to under-occupation be allowed for the following reasons:

(a) it is considered there are exceptional circumstances in this case; the appellant is 62 years of age and has occupied his property as his only home for 38 years; during the majority of that period the appellant acted as a carer for his father, the then tenant of the property, and made a substantial financial contribution towards the running of the home;

(b) having taken account of all of the medical evidence submitted, the appellant is considered to be vulnerable and his feelings of anxiety and desperation are considered likely to intensify if he is required to move to alternative accommodation; and

(2) That the Area Housing Manager be advised that the Panel is disappointed that incomplete information appeared to be submitted in his written case forming part of the agenda for the meeting, in that no mention was made of the appellant's admission to hospital under Section 2 of the Mental Health Act 1983, although this was known when the report was prepared and that the Council's medical adviser's advice on which he had relied had been based on the appellant not having psychiatric hospital admission, which had subsequently changed.

**CHAIRMAN**