

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

**Committee:** Housing Appeals and Review Panel      **Date:** Thursday, 23 August 2007

**Place:** Committee Room 1, Civic Offices, High Street, Epping      **Time:** 4.00 - 5.50 pm

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

**Other Councillors:**

**Apologies:** R D'Souza, Mrs J Lea (substitute) and B Rolfe (substitute)

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

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### **63. MINUTES**

#### **RESOLVED:**

That the minutes of the meetings of the Panel held on 21 June 2007 and 26 June 2007 be taken as read and signed by the Chairman as a correct record.

### **64. SUBSTITUTE MEMBERS**

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

### **65. DECLARATIONS OF INTEREST**

(a) Pursuant to the Council's Code of Member Conduct, Councillors Mrs R Gadsby and J Wyatt declared personal interests in agenda item 7 (Appeal No. 8/2007) by virtue of being members of the same political group as the appellant's representative. The Councillors determined that their interests were not prejudicial and that they would remain in the meeting for the duration of consideration and determination of the appeal.

(b) Pursuant to the Council's Code of Member Conduct, Councillor Mrs P K Rush declared a personal interest in agenda item 6 (Appeal No. 7/2007) by virtue of having met the previous owner of the appellants' property on one occasion. The Councillor determined that her interest was not prejudicial and that she would remain in the meeting for the consideration and determination of the appeal.

### **66. 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 paragraphs of Part 1 of Schedule 12A of the Act indicated and the exemption is considered to outweigh the potential public interest in disclosing the information:

<u>Agenda Item No.</u>	<u>Subject</u>	<u>Exempt Information Paragraph Numbers</u>
6	Appeal No. 7/2007	1 & 2
7	Appeal No. 8/2007	1 & 2

#### **67. APPEAL NO. 7/2007**

Members were advised that the appellants had stated on their application form to the Panel that they intended to attend the meeting in order to present their case. The Panel noted that the appellants had been advised to attend at 4.00 p.m. but were currently not present at the Civic Offices.

The Panel adjourned the meeting to enable the Democratic Services Manager to attempt to contact the appellants by telephone.

The meeting was reconvened and the Democratic Services Manager advised that he had contacted one of the appellants by telephone who had stated that she had not received any of the Council's letters regarding this meeting.

#### **RESOLVED:**

- (1) That consideration of appeal 7/2007 be deferred to a future meeting of the Panel;
- (2) That when a date has been agreed for consideration of the appeal, the appellants be advised of the date and time by recorded delivery letter which shall include a requirement that they respond to the letter, in writing, stating whether they intend to attend to present their case;
- (3) That the appellants be advised that their appeal will be determined on the next occasion it is before the Panel whether or not they are in attendance; and
- (4) That in all future cases, applicants and appellants be required to acknowledge receipt in writing of the Council's letter advising of the date and time when their application/appeal will be determined and to state whether or not they will be attending the meeting to present their case.

#### **68. APPEAL NO. 8/2007**

The Panel considered an appeal against a decision made by officers not to offer the appellant the tenancy of her late father's property following his death. The appellant attended the meeting to present her case accompanied by Councillor B Rolfe. 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 procedure 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) the case of the Assistant Head of Housing Services (Operations);
- (b) copies of documents submitted by the Assistant Head of Housing Services (Operations), namely:
  - (i) letter dated 3 June 2007 from the appellant to the Council's Housing Services;
  - (ii) letter dated 11 July 2007 from the Assistant Head of Housing Services (Operations) to the appellant;
  - (iii) letter dated 27 June 2007 from the Assistant Housing Needs Manager (Allocations) to the appellant;
- (c) copies of documents submitted by the appellant, namely:
  - (i) a copy of the application to the Housing Appeals and Review Panel dated 30 July 2007;
  - (ii) three photographs showing a room in the appellant's existing property.

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

- (a) it was accepted that the officer's case was within Council policy but there were exceptional reasons for allowing the appeal;
- (b) it would have been possible for the appellant to have exchanged properties with her parents when they had been alive; however, this had not been a priority whilst the appellant's mother had been alive as she had suffered from multiple sclerosis; the appellant's mother's illness had placed a terrible strain on the whole family;
- (c) the appellant's mother had been taken into hospital in February 2007 suffering from anaemia and had died on 24 February 2007 after contracting an infection;
- (d) the appellant had continued to care for her father and help him to cope with the aftermath of his wife's death; it had become apparent that he was not managing the situation and had mentioned the possibility of exchanging properties with the appellant; as the appellant had a growing family, this was considered to be a good solution and the appellant and her father had intended to proceed with an exchange of properties; however, before formalising any arrangement, the appellant's father had been taken ill suddenly and had died within two days;
- (e) the intentions of the appellant and her father were clear and the appellant could not have anticipated that in less than three months from her mother's funeral her father would die;
- (f) the appellant now appreciated that the proposed exchange should have been formalised as a matter of urgency but the time (only 82 days) after her mother's funeral had been devoted to coping with her mother's bereavement;

(g) the appellant had emotional ties to her late parents' property having lived there for many years;

(h) the appellant's existing two bedroom flat was not large enough for her family's needs; the appellant's elder daughter would shortly begin studying for her GCSEs and there was insufficient space in the property for her to study without being distracted by her younger sister;

(i) the circumstances of this case were exceptional and warranted a departure from normal policy.

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

(a) How long did you reside at your late parents' property? - I lived there from birth until I was eighteen; I trained as a nurse at Epping and Bishop's Stortford hospitals; I spent a year at Nottingham; I returned to Epping hospital in accident and emergency; I spent two years at Worthing; I spent four to five years overseas working for Help the Aged; I returned to this country and spent some time in Brighton; I returned to Epping and lived in my late parents' home for another three years caring for my mother; when I lived in Brighton, I made weekly visits to Epping to look after my mother;

(b) How long did you live in Brighton? - Eighteen months;

(c) Can you clarify how many years you spent residing in your late parents' property? - I lived there from birth until I was eighteen and whilst I was training as a nurse; I left home when I was twenty-one after completing training; I spent one year in Nottingham; I returned to Epping for a period; I spent two years in Worthing; I spent four/five years overseas; I spent one and a half years in Brighton; I returned to live in my late parents' property for three years; I have resided in my current property for six years;

(d) What accommodation do you have in your current property? - It is a two bedroom flat which accommodates myself, my husband and my two daughters; there is only one living room; the smaller bedroom is approximately two and a half meters by two meters; the kitchen is not large enough for meals which are taken in the living room.

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

(a) the appellant had been the secure tenant of a two bedroom ground floor flat since 24 September 2001; she lived at the property with her husband and two daughters, aged thirteen and five years;

(b) prior to living in her current property, the appellant and her family had lived with the appellant's parents in a three bedroom house; the appellant's parents had been secure Council tenants at the time; the appellant and her family had moved from their previous accommodation in Brighton so that the appellant could become her mother's carer; it was unclear from the Council's records how long the appellant had, during her lifetime, resided at her parents' property;

(c) on 3 June 2007, the appellant had approached the Council explaining that her father had died soon after her mother had passed away; the appellant had stated

that, although there was no proof, prior to the death of her father, they were intending to mutually exchange, with the appellant and her family moving into the three bedroom house and her father moving into the appellant's two bedroom flat;

(d) an exchange would only have been effected if there had been a formal assignment signed by both parties which was not the case; such an exchange would have been possible under the Council's policy, as tenants were allowed to exchange to accommodation and under-occupied by one bedroom; this policy reflected the legislation, which stated that exchanges should not be allowed if the accommodation was substantially more extensive;

(e) the appellant's request to allow her and her family to move into her late parents' property had been refused;

(f) the appellant's current accommodation was considered adequate for the appellant's family's needs; there was no justification for the appellant to be given priority over the large number of applicants (eligible for a three bedroom house) who had been on the Council's housing register for many years;

(g) the appellant had not registered on the Council's Housing Register, and did not have a three bedroom need;

(h) the Council had approximately 3,600 applicants on the Housing Register; the appellant would not have been able to join the Housing Register for a three bedroom house as she did not have a three bedroom need; if the appellant had joined the Register for a two bedroom house, she would have been in Band 4 of the Council's Allocation Scheme with a very low prospect of being offered this type of property; a three bedroom need would only arise if the appellant's circumstances changed dramatically due to either an increase in her household or on strong medical grounds;

(i) whilst it was accepted that the appellant had some emotional ties to her late parents' property, she had not lived there for the past six years and had lived in other accommodation in the past;

(j) It was accepted that the appellant's existing property did not provide the space which she desired; however, the provisions of the Housing Act 1985 which the Council was required to take into account when allocating accommodation, recognised the appellant's existing property as being suitable for five persons; whilst the space currently available to the appellant might not be ideal, it was commonplace.

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

(a) Why did officers initially state that there was no right of appeal against their decision? - There had been no mention of a right of appeal in the letter dated 27 June 2007 from the Assistant Housing Needs Manager (Allocations) or in the letter dated 11 July 2007 from the Assistant Head of Housing Services (Operations); the Assistant Housing Needs Manager (Allocations) had formed the view that as the appellant was not on the Council's Housing Register and had no housing need, she was not entitled to appeal against the decision; initially, the Assistant Head of Housing Services (Operations) had formed the same view; however, following an approach from Councillor Rolfe, the matter had been discussed with the Democratic Services Manager and it had been agreed that the appellant should be given the opportunity to appeal;

(b) Does the tenant need to be on the Housing Register in order to mutually exchange a property? - No;

(c) Is an applicant only placed on the Register when they have housing need? - Either because they wish to become a tenant or if they are already a tenant and want to transfer to another property; the right to a mutual exchange is a right under the legislation and is not dependent on being on the Housing Register;

(d) When is it possible to effect a mutual exchange? - When both secure tenants are alive; the right ceases on the death of a tenant;

(e) Is it not possible for the appellant's late parents' property to be passed on to the appellant through succession? - No, the person needs to be occupying a property as their only or principal home for at least twelve months prior to the death of a tenant in order to succeed;

(f) If the appellant's family had moved into her late parents' home immediately after her mother's death what would have been the situation? - There would have been no succession rights because the appellant would not have lived in the property as her only or principal home for at least twelve months even if she had given up the tenancy of her existing property; as the appellant was the tenant of another property, the question of succession does not arise.

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

Councillor Rolfe, on behalf of the appellant, drew attention to comments made by the Assistant Head of Housing Services (Operations) about the need to allocate the appellant's former parents' property without further delay. He pointed out that Housing Services had taken no action from 4 June 2007 when the appellant had approached the Council until 27 June 2007 when a response had been sent to the appellant. He submitted that, in view of this delay, it was unfair to place the onus on the appellant to resolve this matter quickly.

In response, the Assistant Head of Housing Services (Operations) acknowledged that there had been a delay on the Council's part of approximately four weeks.

The Chairman asked the Assistant Head of Housing Services (Operations) if he wished to raise any further issues in support of his case. The Assistant Head of Housing Services (Operations) 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, Councillor Rolfe and the Assistant Head of Housing Services (Operations) then left the meeting.

The Panel took account of the time the appellant had spent in her late parents' property, the discussions she had with her late father regarding a possible mutual exchange, her current housing need, and the large number of people who had been on the Housing Register for many years with greater priority than the appellant. The Panel fully sympathised with the appellant's situation but reluctantly decided to dismiss the appeal.

**RESOLVED:**

That, having taken into consideration, the information presented by, and on behalf of, the appellant and by the Assistant Head of Housing Services (Operations) in writing and orally, the appeal be dismissed and the decision of the Assistant Head of Housing Services (Operations) not to offer the tenancy of the appellant's late father's former home be upheld for the following reasons:

- (a) the appellant had not previously registered on the Housing Register for a transfer;
- (b) the appellant's current Council accommodation is not considered overcrowded as determined by the Allocations Scheme;
- (c) account has been taken of the appellant's late father's consideration to mutually exchange properties with the appellant; however, such an exchange can only be effected if both tenants are alive and there is a formal assignment signed by both parties, which is not the case;
- (d) whilst it is recognised that the appellant has emotional attachments to her late parents' property having lived there for many years, she has not lived at the property for six years and it is considered that any emotional attachment has been significantly reduced;
- (e) the appellant's circumstances are not considered sufficient to justify her being given priority over the large number of applicants (eligible for a three bedroom house) who have been on the Council's Housing Register for many years, bearing in mind that the appellant does not have a three bedroom housing need.

**CHAIRMAN**