



Epping Forest District Council

HOUSING APPEALS AND REVIEW PANEL Thursday, 20th September, 2007

Place: Committee Room 2, Civic Offices, High Street, Epping

Room: Committee Room 2

Time: 4.00 pm

Democratic Services Officer Graham Lunnun, Research and Democratic Services
Tel: 01992 564244 Email: glunnun@eppingforestdc.gov.uk

Members:

Councillors Mrs P K Rush (Chairman), Mrs R Gadsby (Vice-Chairman), R D'Souza, Mrs P Richardson and J Wyatt

1. APOLOGIES FOR ABSENCE

2. MINUTES (Pages 5 - 20)

To agree the minutes of the meetings of the Panel held on 9 August and 23 August 2007 (attached).

3. SUBSTITUTE MEMBERS

(Head of Research and Democratic Services) To report the attendance of any substitute members for the meeting.

4. DECLARATIONS OF INTEREST

To declare interests in any item on the agenda.

5. EXCLUSION OF PUBLIC AND PRESS

Exclusion: To consider whether, under Section 100(A)(4) of the Local Government Act 1972, the public and press should be excluded from the meeting for the items of business set out below on grounds that they will involve the likely disclosure of exempt information as defined in the following paragraph(s) of Part 1 of Schedule 12A of the Act (as amended) or are confidential under Section 100(A)(2):

Agenda Item No	Subject	Exempt Information Paragraph Number
6	Appeal No. 10/07	1 and 2
7	Appeal No. 09/07	1 and 2

The Local Government (Access to Information) (Variation) Order 2006, which came into effect on 1 March 2006, requires the Council to consider whether maintaining the exemption listed above outweighs the potential public interest in disclosing the information. Any member who considers that this test should be applied to any currently exempted matter on this agenda should contact the proper officer at least 24 hours prior to the meeting.

Confidential Items Commencement: Paragraph 9 of the Council Procedure Rules contained in the Constitution require:

- (1) All business of the Council requiring to be transacted in the presence of the press and public to be completed by 10.00 p.m. at the latest.
- (2) At the time appointed under (1) above, the Chairman shall permit the completion of debate on any item still under consideration, and at his or her discretion, any other remaining business whereupon the Council shall proceed to exclude the public and press.
- (3) Any public business remaining to be dealt with shall be deferred until after the completion of the private part of the meeting, including items submitted for report rather than decision.

Background Papers: Paragraph 8 of the Access to Information Procedure Rules of the Constitution define background papers as being documents relating to the subject matter of the report which in the Proper Officer's opinion:

- (a) disclose any facts or matters on which the report or an important part of the report is based; and
- (b) have been relied on to a material extent in preparing the report and does not include published works or those which disclose exempt or confidential information (as defined in Rule 10) and in respect of executive reports, the advice of any political advisor.

Inspection of background papers may be arranged by contacting the officer responsible for the item.

6. APPEAL NO. 10/07 (Pages 21 - 46)

To consider a restricted report.

7. APPEAL NO. 09/07 (Pages 47 - 50)

To consider a restricted report.

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EPPING FOREST DISTRICT COUNCIL COMMITTEE MINUTES

Committee: Housing Appeals and Review Panel **Date:** Thursday, 9 August 2007

Place: Committee Room 1, Civic Offices, High Street, Epping **Time:** 4.00 - 4.50 pm

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

Other Councillors:

Apologies: R D'Souza

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

59. SUBSTITUTE MEMBERS

It was noted that Councillor Mrs Lea was substituting for Councillor D'Souza at this meeting.

60. DECLARATIONS OF INTEREST

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

61. 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.

Agenda Item No	Subject	Exempt Information Paragraph Numbers
5	Appeal No: 6/2007	1 and 2

62. APPEAL NO: 6/2007

The Panel were reminded that consideration of this appeal had been deferred at the meeting held on 26 June 2007 as the appellant although expected to attend had not been present. At that meeting the Panel had decided that arrangements should be made for another meeting to hear the appeal and that the appeal would be determined at that meeting whether or not the appellant was in attendance.

The Democratic Services Manager reported that he had sent two letters and made several telephone calls to the appellant in an attempt to establish whether she would be attending this meeting. On 3 August 2007, she had returned one of the telephone calls and advised that she would be attending this meeting. However, earlier in the day she had telephoned the Council's Housing Services to advise that she would not be present.

In accordance with their previous decision, the Panel proceeded to consider the appeal against the decision made by the Housing Repairs Manager acting under delegated authority to recharge the appellant for damage caused to the front entrance door of her property. Mr P Pledger (Assistant Head of Housing Services (Property and Resources)) attended the meeting to present the Housing Repairs Manager's case. Mr R Wilson (Assistant Head of Housing Services (Operations)) attended the meeting to advise the Panel as required on details of the national and local housing policies relative 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 Housing Repairs Manager;
- (c) copies of documents submitted by the Housing Repairs Manager namely:
 - (i) out-of-hours emergency incident report dated 25 May 2003;
 - (ii) Works Order No: 1234997;
 - (iii) Works Order No: 1240784;
 - (iv) Works Order No: 1242826;
- (v) letter dated 14 August 2003 from the Assistant Repairs Manager to the appellant;
- (vi) letter dated 18 August 2003 from the appellant to the Assistant Repairs Manager;
- (vii) letter dated 2 September 2003 from the Assistant Repairs Manager to the appellant;
- (viii) invoice to the appellant in the sum of £481.41;
- (ix) letter dated 17 November 2003 from the appellant in response to a letter received from the Council's Finance Service;
- (x) letter dated 8 December 2003 from the Council's Solicitor to the appellant;
- (xi) letter dated 3 February 2004 from the Assistant Repairs Manager to Essex Police;
- (xii) letter dated 15 February 2004 from the appellant to the Council's Finance Service;

- (xiii) letter dated 28 June 2004 from Essex Police to the Council's Housing Services;
- (xiv) letter dated 24 November 2005 from the Council's Solicitor to the appellant;
- (xv) letter dated 2 December 2005 from the Council's Solicitor to the appellant;
- (xvi) letter dated 3 November 2006 from the Council's Litigation Lawyer to the appellant;
- (xvii) letter dated 6 November 2006 from the appellant to the Council's Litigation Lawyer;
- (xviii) letter dated 14 November 2006 from the Council's Litigation Lawyer to the appellant;
- (xix) letter dated 27 November 2006 from the Council's Solicitor to the appellant;
- (xx) letter dated 11 December 2006 from the Council's Solicitor to the appellant;
- (xxi) letter dated 14 December 2006 from the appellant to the Council's Solicitor;
- (xxii) letter dated 20 December 2006 from the Council's Solicitor to the appellant;
- (xxiii) letter dated 12 January 2007 from the appellant to the Council's Litigation Lawyer;
- (xxiv) letter dated 23 January 2007 from the Assistant Repairs Manager to the appellant;
- (xxv) letter dated 31 January 2007 from the appellant to the Council's Assistant Head of Housing Services (Property and Resources);
- (xxvi) letter dated 23 February 2007 from the Assistant Head of Housing Services (Property and Resources) to the appellant;
- (d) the appellant's application to the Housing Appeals and Review Panel dated 1 May 2007.

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

- (a) the Council was taking advantage due to the appellant's past dependency on alcohol; she was no longer an alcoholic;
- (b) there had been no damage to her front entrance door before the Police had arrived on 24 May 2003; the appellant had left her door with the latch down whilst going to a supermarket as she could not find her keys and the Police had shut the door without her consent; the Police were responsible for the damage to the door;
- (c) there had been no dispute at the appellant's property on 24/25 May 2003; the Council had made assumptions about what had happened;
- (d) the Fire and Rescue Service had caused the damage to the door whilst forcing entry as the appellant's keys had been mislaid and she had been shut out;

(e) the appellant had not lost her keys; the door had been shut without her permission;

(f) the amount being claimed by the Council was excessive; the repair work undertaken did not cost anything like the amount of the invoice;

(g) the appellant did not work and could not afford to pay the full outstanding amount; the appellant had offered to pay £84.35 at a rate of £2.50 per fortnight but was not prepared to pay any more; payments would have commenced in January 2007 had the Council provided a paying-in book as requested; the appellant did not have access to transport and could not therefore get to the Civic Offices to make payments and did not have a bank account;

(h) the Council should claim the difference between £84.35 and £481.41 from the Police or the Fire and Rescue Service.

The Panel considered the following submissions made by the Assistant Head of Housing Services (Property and Resources) on behalf of the Housing Repairs Manager:

(a) the appellant had taken up the tenancy of her current property, a first floor two-bedroom flat, on 31 January 1994; the appellant had remained in occupation since that time although had changed her surname on two occasions;

(b) the appellant had telephoned the Council's out-of-hours emergency service on 25 May 2007 reporting that she had been unable to use her front entrance door after a visit from the Police; the call-out officer had recorded that the tenant had not been able to find keys when the tradesman had arrived; the appellant had stated that she did not want another £400.00 bill from the Council and had asked the tradesman not to carry out any work; as a result he had left the site;

(c) a works order had been raised for the call-out to record the call-out and to recharge the tenant;

(d) on 3 June 2003, the appellant had reported that her front door lock was defective; a works order had been raised to renew the front entrance door lock; on attending, the carpenter had reported that the door and frame were badly split and needed repairing, but he did replace the lock at the request of the appellant;

(e) a further works order had been raised to repair the front entrance door if necessary; when the carpenter had commenced the repairs it had become apparent that whilst the frame was repairable the door was too badly damaged and beyond repair and needed to be renewed; the works order had been varied accordingly;

(f) on 14 August 2003, the Assistant Housing Repairs Manager had written to the appellant informing her that the Council was aware that the Police had been called to her property on 24 May 2003 due to a disturbance, and that following the disturbance the front entrance door had been badly damaged;

(g) contact had been made with the Police and it had been established that they had not caused the damage to the door; the Police had informed the Council that the Fire and Rescue Service had been called to gain access to the property;

(h) the appellant had been advised that in accordance with the terms of her Tenancy Agreement she was responsible for door locks and keys and was also responsible for any damage caused to the property; as a result she would be

recharged for the damage caused by the incident on 24 May 2003; she had been advised that the total cost of the works was £481.41;

(i) on 18 August 2003 the appellant had advised the Council that the Police had closed her front door as she had left the lock on the latch because she had mislaid her keys; she had also claimed that the Police had come to see if she was alright and not as a result of a disturbance;

(j) in further correspondence the appellant had stated that she was in dispute of the Police and the Fire and Rescue Service about the damage which had been caused to her front door;

(k) on 5 July 2004, the Council had received a response from Essex Police listing all incidents at the appellant's property between 1 May 2003 and 1 February 2004; the entry listed for 24 May 2003 had refuted the appellant's claim that the Police had only attended the property to check on her; the Police had stated that they had attended a disturbance and that it had been the appellant who had reported the disturbance;

(l) the appellant had not responded to the Council's request for copies of her correspondence with the Police;

(m) between 24 November 2005 and 20 December 2006, the Council's Legal Services had been in correspondence with the appellant regarding the unpaid amount;

(n) a contract existed between the Council and the appellant in the form of a Tenancy Agreement; the Agreement clearly set out the responsibilities of the tenant; the tenant was responsible for keys to the locks and to repair any damage caused to the fixtures or fittings or to reimburse the Council if work was carried out on a tenant's behalf;

(o) it was clear from the correspondence that on the night of 24 May 2003 there had been a disturbance at the appellant's property and the Police had attended; the Police report had stated that it had been the appellant who had reported the disturbance but had failed to give any details or a location; when the Police had ascertained the location the appellant had already been locked out of her property;

(p) the appellant had requested the assistance of the Council and called the out-of-hours Emergency Officer; the officer had been able to assist as the appellant had not had any keys to her front door;

(q) the appellant was well aware that the Council operated a recharge policy for forcing entry on a tenant's behalf, as she had already incurred a recharge in excess of £400.00 for a previous similar occurrence, and she had informed the Emergency Officer that she did not want to incur another similar bill;

(r) the appellant had subsequently reported that the door locks were defective but this had not been evident at the time the Emergency Officer had called;

(s) the appellant had on previous occasions called out the Fire and Rescue Service to gain entry and had done so again on this occasion and as a result her front entrance door had been damaged;

(t) it was clear that the Council had not been responsible for any of the damage caused to the appellant's property;

(u) between 1996 and 2003 there had been twelve occurrences of damage to the appellant's front entrance door recorded on the Council's file;

(v) the appellant had offered to make payments at a rate of £2.50 per fortnight but no payment had been made at all and if the Panel decided to dismiss the appeal they should not feel bound by this previous offer of payment.

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

(a) The paperwork indicates that the officer responding to the out-of-hours emergency call by the appellant on 25 May 2003 had been a plumber; can you explain why a plumber attended?. The majority of out-of-hours emergency calls received relate to repairs which would normally be undertaken by a plumber; however, these tradesmen tend to be multi-skilled and are quite capable of undertaking emergency repairs of a different nature.

(b) Was the appellant abusive to the officer who had attended her property on 25 May 2003? - Yes.

(c) In view of the appellant's history why is she still a tenant of the Council? - A tenant cannot be evicted for non-payment of a debt; Management Officers have dealt with all of the incidents which have been reported and since 2003 there have been no further reports of damage to the appellant's property.

(d) Is the appellant's rent account up-to-date? I would need to consult the Housing file, I believe the appellant is on Housing Benefit.

(e) You have made reference to a letter from the appellant dated 23 August 2003 in which she stated that her daughter and son-in-law were responsible for the damage to her door; is that letter available? It is on the Housing file.

(f) Why was the appellant not provided with a paying-in book when she offered to start making payments? The Council does not provide a paying-in book for payments of this nature.

(g) Why has the appellant not paid anything towards the outstanding amount although it dates back to 2003? She has prevaricated and is probably of the opinion that the Council will eventually decide not to pursue the matter any further.

The Chairman indicated that the Panel would consider the matter in the absence of the Assistant Head of Housing Services (Property and Resources) and that the appellant and the Assistant Head of Housing Services (Property and Resources) would be advised in writing of the outcome. The Assistant Head of Housing Services (Property and Resources) then left the meeting.

The Panel considered all of the evidence which had been submitted and focused on the evidence about the incident on 24/25 May 2003, the terms of the appellant's Tenancy Agreement and the exchange of correspondence between the appellant and the Council.

RESOLVED:

(1) That, having taken into consideration the information presented by the appellant in writing and by the Assistant Head of Housing Services (Property

and Resources) in writing and orally, the decision of the Housing Repairs Manager that the appellant be recharged for damage caused to the front entrance door of her property be upheld for the following reasons:

(a) the front door of the appellant's property was damaged following an incident at the property on 24/25 May 2003; at the request of the appellant, the Council replaced locks and determined that it was necessary to renew the front door as it had been damaged beyond repair; an invoice for the cost of these works and associated charges amounting to £481.41 was sent to and received by the appellant;

(b) having considered the conflicting evidence submitted, particularly that of the appellant, it is concluded on balance that the Police received a telephone call on 24 May 2003 at 11.30 p.m. about a disturbance; as a result the Police attended the appellant's property and established that she could not get into her property; the appellant's front door was forced open as she had no keys to the property on her and could not otherwise gain access to her property; it would not have been necessary for the door to have been forced open had the appellant not been outside of her property without any keys to gain access;

(c) the appellant has accepted responsibility for two elements totalling £84.35 of the outstanding amount and has suggested that the Council seek the balance from the Police or the Fire Rescue Service;

(d) under the terms of the appellant's Tenancy Agreement, she is responsible for the keys to the property; if these are lost or mislaid, she is responsible for the cost of replacing the keys, locks and any damage caused as a result of gaining access to the property on a tenant's behalf; as a result the appellant is responsible for the whole of the outstanding amount of £481.41;

(e) the amount of the invoice is considered reasonable having regard to the work undertaken by the Council; there is no evidence to support the appellant's claim that the locks of the property were defective prior to the incident on 24/25 May 2003;

(f) the appellant was aware of the Council's policy for recharging tenants for damage caused as a result of forced entry on a tenant's behalf as she had incurred such a recharge in respect of a previous similar occurrence;

(2) That the outstanding amount of £481.41 be repaid over a period of 24 months at a rate of £20.06 per month for the first 23 months and at a rate of £20.03 on the 24th month on a date in each month to be agreed by the appellant and Housing Officers, or if agreement cannot be reached on a date to be determined by Housing Officers; and

(3) That in the event of any monthly payment not being made on the due date, the officers be authorised to take all necessary steps, including legal proceedings, to recover the full remaining outstanding amount.

CHAIRMAN

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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)

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 over-crowded 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

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