

EPPING FOREST DISTRICT COUNCIL COMMITTEE MINUTES

Committee: Housing Appeals and Review Panel **Date:** Thursday, 18 October 2007

Place: Committee Room 1, Civic Offices, High Street, Epping **Time:** 3.30 - 5.45 pm

Members Present: Mrs P K Rush (Chairman), Mrs J Lea, Mrs P Richardson, B Rolfe and J Wyatt.

Other Councillors:

Apologies: Mrs R Gadsby and R D'Souza

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

79. MINUTES

RESOLVED:

That the minutes of the meeting of the Panel held on 20 September 2007 be taken as read and signed by the Chairman as a correct record.

80. SUBSTITUTE MEMBERS

It was noted that Councillor Mrs J Lea was substituting for Councillor Mrs R Gadsby and that Councillor B Rolfe was substituting for Councillor R D'Souza.

81. 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 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 Paragraphs Numbers
6	Appeal No 7/2007	1 & 2
7	Application No 11/2007	1 & 2

82. APPEAL NO. 7/2007

The Panel considered an appeal against a decision made by officers under delegated authority to refuse permission for a vehicular crossover to enable the appellants to park a vehicle in the front garden of their property.

Members were advised that consideration of this appeal had been deferred by the Panel at its meeting on 23 August 2007 as the appellants had not been in attendance to present their case. At that meeting the Panel had agreed that the appeal would be determined on the next occasion it was before them whether or not the appellants were in attendance.

Members noted that the appellants had advised on their application form to the Panel that they would be in attendance accompanied by the former owner of their property. Since lodging the application the appellants had been sent several letters including a recorded delivery and two delivered by hand all of which had asked them to advise if it was their intention to appear before the Panel. The Panel was advised that no reply had been received to any of the Council's letters. The Panel also noted that the appellants were currently not present at the Civic Offices.

The Panel confirmed their previous decision that this matter be determined in the absence of the appellants.

Mr D Barrett (Area Housing Manager (South)) attended the meeting to present the case of Mr N Taylor (Area Housing Manager (North)). Mr A Hall (Director of Housing) attended the meeting to advise the Panel as required on details of the national and local housing policies relative to the appeal. In the absence of the appellants, the Chairman advised that the Area Housing Manager (South) would present the case of the Area Housing Manager (North), the Panel would ask him questions, the Area Housing Manager (South) would leave the meeting and the Panel would make its decision in private.

The Panel had before them the following documents which were taken into consideration:

- (a) the case of the Area Housing Manager (North);
- (b) copies of documents submitted by the Area Housing Manager (North), namely:
 - (i) the Council's Guide for Residents Contemplating Applying for a Crossover;
 - (ii) letter dated 8 January 2007 from the Council's Housing Services to the appellants;
 - (iii) letter dated 15 January 2007 from the appellants to the Council's Housing Services;
 - (iv) letter dated 12 February 2007 from the Assistant Head of Housing Services (Operations) to the appellants;
 - (v) copies of two photographs of the location;
- (c) copies of documents submitted by the appellants; namely:

- (i) a copy of the application to the Housing Appeals and Review Panel dated 7 March 2007.

The Panel took account of the following submissions in support of the appellants' case:

- (a) the appellants were the only drivers using the layby to park their vehicle and therefore there would be no inconvenience caused to other nearby residents as a result of the parking spaces in the layby being lost;
- (b) the former occupiers of the appellants' property had been given permission by the Council to create a dropped kerb in the same place as that currently requested but had decided not to proceed with the matter on financial grounds;
- (c) the layby at present was dangerous as traffic could not be seen approaching from Theydon Park Road.

The Panel considered the following submissions of the Area Housing Manager (South) on behalf of the Area Housing Manager (North):

- (a) the Council's policy and procedures for dealing with off-street parking requests had been reviewed by officers and members on a number of occasions during the last 17 years; they had recently been revised again having taken into account the difficult parking situation that existed in many estates across the district;
- (b) a guide was available for residents contemplating applying for a crossover; there were a number of conditions, which had to be met before officers could agree a crossover application; one condition stated that proposed crossovers must not lead to the loss of car parking spaces provided in laybys;
- (c) the appellants' application for a crossover had been received on 21 December 2006; the application had been refused because the proposal would have involved creating a dropped kerb in a layby which could lead to the loss of a car parking space in the layby;
- (d) officers had visited the location on several occasions and it was clear from those visits that the layby was being used by other residents and their visitors;
- (e) the files in Housing Services had been searched and no record had been found of permission having been given in the past for a crossover to a previous occupier of the appellants' property;
- (f) there was a high demand for off-street/garden parking including the creation of laybys across the district; the loss of a car parking space in the layby in front of the appellants' property would exacerbate the problem of parking in this street.

The Area Housing Manager (South) answered the following questions of the Panel:-

- (a) Can you clarify the status of the chain-linked fence in front of the appellants' property? The greensward on which the fence is situated is owned by the Council and the Council is responsible for the fence; part of which would need to be removed if the appellants' appeal were allowed; there is no record on the Council's files as to when or why the fence was erected but in similar cases elsewhere, fences had been erected to prevent children from running into the road.

(b) Have you witnessed the appellants' car parked in the layby? Personally no, but it has been seen by other officers; officers have also witnessed other vehicles parked in the layby and on one occasion a driver returned to his vehicle after visiting another property in the road.

The Chairman indicated that the Panel would consider the matter in the absence of the Area Housing Manager (South) and that the Area Housing Manager (South) and the appellant would be advised in writing of the outcome. The Area Housing Manager (South) then left the meeting.

The Panel considered the evidence submitted and focussed on the Council's policy in relation to the provision of off-street/garden parking.

RESOLVED:

That, having taken into consideration the information presented by the appellants in writing and by the Area Housing Manager in writing and orally, the appeal be dismissed and the decision of the Area Housing Manager, that permission not be granted for the provision of a vehicular crossover to the appellants' property be upheld for the following reasons:

(a) no evidence was submitted by the appellants to support their claim that the Council had granted permission for a vehicular crossover in the currently requested location to a previous occupier of the property who had not pursued the matter; there is no evidence on the Council's Housing file of any such permission having been granted;

(b) the creation of a dropped kerb and hard-standing would result in the loss of car parking spaces currently provided in the layby in front of the appellants' property that is available for someone else; this would be contrary to a condition which has to be satisfied before permission for a vehicular crossover can be granted in accordance with Council policy;

(c) it is clear from the evidence submitted that this layby is used by persons other than the appellants or their visitors;

(d) the appellants received a Council leaflet when they first enquired about constructing a crossover and the Council's Policies are clearly set out in the leaflet, including the requirement that crossovers must not lead to the loss of car parking spaces provided in laybys; and

(e) no evidence has been submitted which justifies an exception being made to the Council's policy.

83. APPLICATION NO 11/2007

(a) Representation

The Panel was advised that consideration of this application had been deferred at the meeting held on 16 October 2007 as the applicant had not been present to present his case. On his application form to the Panel he had stated that he intended to appear before the Panel in order to present his case. Since the meeting on 16 October 2007 a letter had been delivered to the applicant by hand and several telephone calls had been made in an attempt to seek confirmation from the applicant that he would be present at this meeting. Members noted that no reply had been

received to the letter and the appellant had not responded to messages left on his mobile phone. The Panel noted that the applicant was currently not present at the Civic Offices. The Panel considered whether to determine the application in the absence of the applicant.

RESOLVED:

That the application be determined in the absence of the applicant.

(b) Determination

The Panel considered a request for a review of a decision made by officers under delegated authority regarding the applicant's homelessness application. Mr J Hunt (Assistant Housing Needs Manager (Homelessness)) attended the meeting to present his case. Mr A Hall (Director of Housing) 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) the case of the Assistant Housing Needs Manager (Homelessness);
- (b) copies of documents submitted by the Assistant Housing Needs Manager (Homelessness), namely:
 - (i) letter signed by the applicant on 12 May 2006 accepting responsibility to pay a proportion of the charge for bed and breakfast accommodation provided by the Council;
 - (ii) note of an interview of the applicant by a Council officer on 14 September 2006;
 - (iii) letter received on 19 October 2006 from the applicant to the Council's Housing Needs;
 - (iv) letter dated 7 November 2006 from the Assistant Housing Needs Manager (Homelessness) to the applicant;
 - (v) letter dated 1 December 2006 from the Assistant Housing Needs Manager (Homelessness) to the applicant;
 - (vi) letter dated 8 January 2007 from the Assistant Housing Needs Manager (Homelessness) to the applicant;
 - (vii) letter dated 12 March 2007 from the Assistant Housing Needs Manager (Homelessness) to the applicant;
 - (viii) letter received on 10 April 2007 from the applicant to the Council's Housing Needs;
 - (ix) notes of a meeting held on 27 April 2007 between Housing Needs, the applicant and a representative of the Epping Citizens' Advice Bureau;
 - (x) letter dated 18 July 2007 from the Assistant Housing Needs Manager (Homelessness) to the applicant;

- (xi) letter dated 3 August 2007 from the Assistant Housing Needs Manager (Homelessness) to the applicant;
- (xii) letter dated 15 August 2007 from the Assistant Housing Needs Manager (Homelessness) to the applicant;
- (c) copies of documents submitted by the applicant, namely:
 - (i) a copy of the application to the Housing Appeals and Review Panel dated 4 September 2007.

The Panel took into account the following written submissions in support of the applicant's case:

- (a) the applicant had received insufficient support from Council officers;
- (b) the applicant had agreed to pay £13.80 per week to cover ineligible charges but had been billed for £22.00 per week; no explanation had been given as to why it was necessary to pay this higher amount;
- (c) lump sum payments which had been made by the applicant had been in response to suggestions that the accommodation would be lost unless these payments were made; the appellant had been bullied therefore into making these payments;
- (d) the Council was fully aware of the applicant's medical conditions, i.e. clinical (probable bipolar) depression, anxiety and panic attacks and periods of extreme low self-esteem and confidence especially following a negative or highly pressured reply or telephone call;
- (e) attempts by the applicant to resolve the arrears in charges had not been considered in a professional manner by Council Officers;
- (f) the applicant was prepared to pay charges including those outstanding if he could have confidence in the Council officer dealing with his case;
- (g) if the applicant was placed in permanent accommodation it would be less expensive for both the Council and the applicant;
- (h) the applicant had been advised initially that he would only be placed in bed and breakfast accommodation for a couple of weeks which had been misleading;
- (i) the applicant wished to continue living in the district and was asking to be given a genuine chance.

The Panel considered the following submissions of the Assistant Housing Needs Manager (Homelessness):

- (a) the applicant had made a homelessness application to the Council on 12 April 2006; the applicant was a single man aged 34; he had been living in private rented accommodation but had been given notice to leave after his landlord had decided to sell the property; the applicant had been considered by the Council to be vulnerable and a duty had been accepted to accommodate him in accordance with Section 193 of the Housing Act 1996, as amended;

(b) the duty on the Council had been to ensure that temporary accommodation was made available to him; the Council had fulfilled its duty in this respect by providing bed and breakfast accommodation;

(c) when homeless people were placed in bed and breakfast accommodation, the full charge for the room is met by the Council; the Council then invoices the homeless person for a proportion of the cost of the room which is either not eligible for Housing Benefit (such as heating or breakfast charges) or because the person is not entitled to Housing Benefit due to their income;

(d) homeless persons were asked to sign a letter accepting responsibility to pay a proportion of the charge; the applicant had signed such a letter on 12 May 2006; homeless people placed in bed and breakfast accommodation were invoiced periodically for payment of the charge to the Council; the first invoice was sent once the Housing Benefit Claim had been processed and it was known how much the shortfall was between the charge for the room and the Housing Benefit received;

(e) the applicant had attended an interview with Council officers on 14 September 2006 and had agreed to pay outstanding invoices; in a letter received in October 2006 the applicant had apologised for the arrears and had stated that he intended to pay the outstanding amount; failure to pay the accommodation charges resulted in the Council writing to him on 7 November 2006 asking for a regular payment of £20 per week in order to meet his ongoing charges and to reduce the arrears; this arrangement had not been adhered to and further letters had been sent to the applicant on 1 December 2006 and 8 January 2007 following which sporadic payments had been received;

(f) on 12 March 2007 the applicant's arrears had risen to £497.62 and he had been asked to make a lump sum payment and to keep to a weekly payment plan in order to meet his ongoing charges and to reduce the arrears; the Council had not received regular payments from the applicant and on 24 April 2007 a further letter had been sent to him regarding the arrears;

(g) during the period that the applicant had been in bed and breakfast accommodation and had not paid his charges, he had written a number of letters explaining his difficulties and on 10 April 2007 he had promised to pay £30.00 per week; a payment plan of £60.00 per fortnight to coincide with the receipt of his benefit had been arranged with him and a representative from the Epping Citizens' Advice Bureau; lump sum payments had been received from the applicant and a drug charity; the applicant had experienced a problem with his benefit for a period affecting his ability to keep to the £60.00 per fortnight payment plan, but taking this into account the applicant had failed to make any further payments when his benefit had been reinstated; an opportunity had been given to the applicant on 18 July 2007 to catch-up with his payment plan and he had been asked to attend the Civic Offices to discuss his arrears, but he had failed to make the appointment; on 3 August 2007 the applicant's arrears had amounted to £684.95 and he had been given seven days notice to leave the bed and breakfast accommodation provided by the Council; on 15 August 2007 the Council had advised the applicant that it had discharged its duty to accommodate him because he was considered to have made himself homeless intentionally; the applicant had asked for a review of that decision and the Council had exercised its discretion to accommodate the applicant in bed and breakfast accommodation pending the outcome of the review;

(h) in making homelessness decisions, the Council had to take account of the Code of Guidance which was issued to local authorities to assist with the interpretation of the homelessness legislation; the Code of Guidance advised on the

circumstances in which a person became homeless, or threatened with homelessness intentionally; in making their decision officers had taken account of the Code of Guidance;

(i) the applicant's refusal to pay his accommodation charges was considered to be a deliberate act on his part; the accommodation would have continued to be available to the applicant had he complied with the requirements to pay his charges;

(j) the accommodation had been considered to be reasonable for the applicant to occupy as it was a single room and was affordable as he was eligible for full Housing Benefit except for ineligible charges and small shortfall caused by his Incapacity Benefit;

(k) as at 15 October 2007, the applicant's arrears had amounted to £885.19:

(l) the Panel was invited to uphold the officers' decision; in the event of doing so it was recommended that the applicant be given reasonable notice to vacate his current bed and breakfast accommodation.

The Assistant Housing Needs Manager (Homelessness) answered the following questions of the Panel:-

(a) What is the applicant's current level of benefit? It is understood that he receives £98.45 per week Long-Term Incapacity Benefit.

(b) Is it true that the applicant has to pay approximately £21.00 charges for bed and breakfast accommodation, thereby having approximately £75.00 per week available for other meals and other expenses? The amount of charges varies and at present the applicant is responsible for charges amounting to £25.03 per week.

(c) Can you explain the role of the applicant's Support Worker? Until April this year the Council employed a Housing Welfare Officer who visited people housed by the Council in bed and breakfast accommodation in order to assist them with their problems; the objective is to sustain them in temporary accommodation until they are housed by the Council in permanent accommodation; from April the function was transferred to a Housing Associations and the Housing Welfare Officer is now employed by that Housing Association; however, it is the same person with the same remit.

(d) How often does the Support Worker visit people in bed and breakfast accommodation? The aim is to visit once a week; the difficulty in this case is failure of the applicant to engage with the Support Worker; the applicant has missed a number of appointments made by the Support Worker.

(e) Has the applicant ever attended any appointment made for him? - He attended an appointment with a representative from the Epping Citizens' Advice Bureau which is referred to in Appendix 9; the last occasion I saw the applicant was when he completed his application form to the Panel when he attended with his Support Worker.

(f) Do you have any record of cash purchases made by the applicant at the bed and breakfast establishments in which he has been placed? No.

(g) Why are the accommodation charges not stopped from benefits? I do not believe that it is possible to take accommodation charges directly from benefit payments;

(h) Is there any medical evidence about the applicant on the Housing file? - There is a letter dated 5 May 2006 from his doctor which states that he is a patient, vulnerable with long-term medical problems and a severe risk; the applicant also completed a self-assessment medical form in which he referred to depression, anxiety attacks and substance abuse.

(i) What does the Support Worker do when someone misses an appointment? The Support Worker sends letters to the person she wishes to meet; normally there is more than one in a particular establishment and she will attempt to meet them all on the same day; in relation to the applicant I understand that the Support Worker has sent him several letters and that he has missed appointments regularly.

(j) Does that applicant pay for his substance abuse treatment? I believe it is prescribed free of charge.

(k) Why was the applicant moved from one bed and breakfast establishment to another? The establishment in which he was initially housed decided that they no longer wished to provide accommodation for homeless persons; the second establishment in which the applicant was housed was closer to the Civic Offices which should have made it easier for him to make payments at the cash desk; he had been asked to leave that establishment because of his arrears and he was currently being housed in another bed and breakfast establishment pending the outcome of this review.

(l) What do you say in response to the applicant's comments that he did not receive help from Council officers? - Officers tried to deal with his queries and there was always someone available to speak to him when he telephoned; we sent him several letters; he had the benefit of a Support Worker; one of his grievances was that when he signed the letter agreeing to pay accommodation charges reference was made to a payment of £13.50 per week; that amount reflected the charge prior to the applicant's Housing Benefit being processed; as a result of his benefit being processed he was required to pay approximately another £9.00 per week making a total of approximately £22.50 per week; the applicant also considered that he had been misled about the time he would spend in bed and breakfast accommodation.

(m) The applicant has made reference to his non-payment of charges affecting his ability to get permanent accommodation; is this correct and is he on the Housing Register? He is on the Housing Register; when considering an offer of permanent accommodation, arrears would be taken into account; however the applicant had been advised that if he committed to make regular payments it would be possible to pursue permanent accommodation.

(n) What is the total of the applicant's arrears whilst housed in the first bed and breakfast establishment provided by the Council? Approximately £498.00; the lump sum payments made on behalf of the applicant were from his parents and from a drugs charity but despite these the arrears still escalated.

(o) Did the applicant receive formal notification of the change in the amount of charge for which he is responsible? Yes, correspondence was sent to him following the processing of his Housing Benefit claim.

The Chairman indicated that the Panel would consider the matter in the absence of the Assistant Housing Needs Manager (Homelessness) and that the applicant and the Assistant Housing Manager (Homelessness) would be advised in writing of the outcome. The Assistant Housing Needs Manager (Homelessness) then left the

meeting. The Panel discussed the evidence which had been submitted and focussed on the applicant's non payment of accommodation charges in relation to the temporary accommodation made available to him, the applicant's submissions regarding the conduct of Council officers, and the applicant's submissions regarding his medical condition.

RESOLVED:

(1) That, having regard to the provisions of the Housing Act 1996, as amended, and the Code of Guidance on Homelessness and having taken into consideration the information presented by the applicant in writing and by the Assistant Housing Needs Manager (Homelessness) in writing and orally, the decision of the Assistant Housing Needs Manager (Homelessness) that the applicant made himself homeless intentionally from temporary accommodation provided by the Council and as a result the Council has discharged its duty to the applicant, under Section 193 of the Act, be upheld for the following reasons:

(a) the applicant signed a letter which stated that he understood that he was responsible for a proportion of the charges for bed and breakfast accommodation provided for him by the Council; the amount being the shortfall between the total cost of the charge and Housing Benefit that might be awarded; the letter further stated that if the applicant did not meet these costs, this could result in his eviction from the accommodation;

(b) the applicant failed to pay the required accommodation charges and failed to comply with repeated arrangements agreed with officers to clear his arrears; on 3 August 2007 when given notice to leave the bed and breakfast accommodation the applicant's arrears amounted to £684.95;

(c) account has been taken of the submissions about the applicant's drug misuse and mental health problems but on balance the evidence submitted in respect thereof is not considered sufficient to show that the applicant was unable to manage his affairs;

(d) had it not been for this deliberate act (failure to pay the required accommodation charges) bed and breakfast accommodation would have been available and reasonable for the applicant to continue to occupy; the accommodation was suitable for a single person and affordable as the applicant was eligible for full Housing Benefit except for ineligible charges and a small shortfall caused by the applicant's Incapacity Benefit;

(2) That no deficiency or irregularity has been identified in the original decision made by the officers or in the manner in which it was made;

(3) That the Council continues to provide interim accommodation for a period of 14 days from 22 October 2007, i.e. until 4 November 2007 in order to allow the applicant reasonable opportunity to secure alternative accommodation; and

(4) That the applicant be advised strongly to inform the Community Drugs and Alcohol Team and other support organisations of the Panel's decision and seek their continued support.

CHAIRMAN