



Epping Forest District Council

HOUSING APPEALS AND REVIEW PANEL Thursday, 23rd October, 2008

Place: Civic Offices, High Street, Epping

Room: Committee Room 1

Time: 2.30 pm

Democratic Services Officer Graham Lunnun - The Office of the Chief Executive
Tel: 01992 564244 Email: glunnun@eppingforestdc.gov.uk

Members:

Councillors Mrs C Pond (Chairman), Mrs R Gadsby (Vice-Chairman), B Rolfe, Mrs J H Whitehouse and J Wyatt

1. APOLOGIES FOR ABSENCE

2. MINUTES (Pages 5 - 14)

To agree the minutes of the meeting of the Panel held on 14 August 2008 (attached).

3. SUBSTITUTE MEMBERS

(Assistant to the Chief Executive) 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. 10/2008	1 and 2
7	Application No. 8/2008	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. 10/2008 (Pages 15 - 34)

To consider a restricted report.

7. APPLICATION NO. 8/2008 (Pages 35 - 58)

To consider a restricted report.

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EPPING FOREST DISTRICT COUNCIL COMMITTEE MINUTES

Committee: Housing Appeals and Review Panel **Date:** Thursday, 14 August 2008

Place: Committee Room 1, Civic Offices, High Street, Epping **Time:** 2.30 - 4.15 pm

Members Present: Mrs C Pond (Chairman), Mrs J Lea, B Rolfe and Mrs J H Whitehouse

Other Councillors: Mrs J Sulcliffe (observer)

Apologies: Mrs R Gadsby, J Wyatt and B Sandler (substitute)

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

6. MINUTES

RESOLVED:

That the minutes of the meeting of the Panel held on 24 July 2008 be taken as read and signed by the Chairman as a correct record.

7. SUBSTITUTE MEMBERS

It was noted that Councillor Mrs J Lea was substituting for Councillor Mrs R Gadsby.

8. DECLARATIONS OF INTEREST

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

9. 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 Paragraph Numbers
6	Application Number 8/2008	1 and 2

7	Appeal Number 9/2008	1 and 2
8	Parking of Motor Vehicles in Front Gardens – Policy	1 and 2

10. APPLICATION NO. 8/2008

The Panel was informed that the solicitors acting for the applicant in this case had requested more information from Housing Officers at a late stage in order to present a case on behalf of their client.

RESOLVED:

That consideration of application number 8/2008 be deferred to a future meeting.

11. APPEAL NO. 9/2008

The Panel considered an appeal against a decision made by officers under delegated authority to seek possession of the property currently occupied by the appellant following her succession to the tenancy of that property after the death of her father. The appellant attended the meeting to present her case accompanied by a friend and fellow parish councillor. Mr N Taylor (Area Housing Manager) 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 Chairman introduced the members of the Panel and officers present to the appellant and outlined the procedure to be followed in order to ensure proper consideration was given to the appeal.

The Chairman sought the approval of both the appellant and the Area Housing Manager to Councillor Mrs J Sutcliffe remaining in the meeting as an observer. The Chairman emphasised that Councillor Mrs Sutcliffe would not be taking part in the decision-making process and was attending in order to gain experience of the proceedings. Both the appellant and the Area Housing Manager signified their approval to Councillor Mrs Sutcliffe remaining in the meeting.

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

- (a) copies of documents submitted by the appellant namely:-
- (i) the application to the Housing Appeals and Review Panel dated 7 July 2008;
 - (ii) letter dated 11 June 2008 from the appellant to the Director of Housing;
 - (iii) nine photographs of the appellant, her family and the property;
 - (iv) a local newspaper article about a community project in relation to which the appellant had played a leading role;
 - (v) letter dated 28 July 2008 from the appellant's friend and fellow parish councillor to the Panel;

- (b) the case of the Area Housing Manager;
- (c) copies of documents submitted by the Area Housing Manager, namely:
 - (i) the Council's leaflet "Succession to a Tenancy";
 - (ii) letter dated 30 May 2008 from the appellant to the Housing Directorate;
 - (iii) letter dated 3 June 2008 from the Assistant Area Housing Manager (North) to the appellant;
 - (iv) letter dated 11 June 2008 from the appellant to the Director of Housing;
 - (v) letter dated 17 June 2008 from the Assistant Housing Director (Operations) to the appellant.

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

- (a) the appellant had lived in the village in which the property was situated all of her life; her parents had lived in the village all of their lives; her grandparents had also lived in the village as had aunts and uncles; her son had all of his friends in the village;
- (b) the appellant's parents had lived in the property for 66 years and the appellant had many happy memories of living in the property;
- (c) when the appellant's mother had died in December 2005, the appellant had lived a quarter of a mile away in a rented property with her partner and their son; the landlord of her rented property had served a Notice to Quit the rented property and also at that time the appellant's relationship with her partner had been breaking up; the appellant had therefore moved in with her father; shortly after that time the appellant's father had gradually lost mobility due to cancer and the appellant had become his carer; the appellant's father had died in May 2008;
- (d) the appellant's sister had helped the appellant care for her late father and since his death she had stayed at the property at weekends and had occupied the third bedroom;
- (e) the appellant had been advised in writing by a Council Officer that "Under the Council's Discretionary Succession policy in terms of under-occupation, the Council would allow a successor tenant who is a family member to under-occupy accommodation by one bedroom provided they had lived in the property for 10 years continuously up until the time of the tenant's death (or is more than 60 years old);" in preparing for this appeal the appellant's friend had requested a copy of the Council's Discretionary Succession policy and had been provided with a copy of the leaflet "Succession to a Tenancy"; the leaflet stated "A successor who is not the husband or wife of the deceased may be allowed to remain, under the Council's Discretionary policy, if, there is only one spare bedroom, and the successor has lived in the property for 10 or more years (or is more than 60 years old)"; the wording in the leaflet did not accord with the wording in the letter which the appellant had received from a Council officer;

(f) the appellant's property had three bedrooms and her household comprised herself and her 11 year old son; there was therefore only one spare bedroom; the appellant had lived in the property for more than 10 years; it followed therefore that the appellant met the criteria for remaining in the property;

(g) the Council's Succession policy was discretionary; discretion was defined in the dictionary as "the freedom to decide what should be done in a particular circumstance"; discretionary actions should take account of circumstances but no discretion had been exercised in this case as the letter from a Council officer advising the appellant that she would need to move had been sent only one working day after the Council had received notification of the death of the appellant's father; this was too short a period for any meaningful exercise of discretion to have been undertaken;

(h) the Government document "Council Tenants Charter" set out the rights and responsibilities of Council tenants and stated "when you die, your husband or wife, or one other person in your family who has been living with you for at least the last year, will usually be able to take over the tenancy agreement from you. This is called the Right of Succession"; the appellant had resided at the property since April 2006; the appellant therefore had the right to succession under the terms of this document;

(i) the appellant fully supported village events and was a dedicated parish councillor; the Parish was large geographically with residents spread out in pockets of housing; the appellant had represented the area in which she currently lived for the last two years since she had moved back into the family home; the appellant had been instrumental in the refurbishment of a facility for young children; the facility had since been vandalised by persons who did not respect the village amenities in the same way as those residents who had been born and raised in the village; it was vital for a remote village to maintain a delicate balance of original village families with new residents in order to preserve the spirit and traditions of the village; if the appellant was forced to move from the village it would be an enormous loss to the parish council and to other residents;

(j) the Parish Council had been seeking a joint affordable housing project for four years and it was difficult to reconcile the District Council's Planning Directorate's indifference to this scheme with the diligence of the Housing Directorate in trying to re-house the appellant.

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

(a) When did you leave the family home? – 1993;

(b) Your written submissions state that you left the property when you were 30 years old, which is correct? – I left in 1993;

(c) If your relationship with your partner had not broken down would you have moved back to the family home? – As my late father lived close to me he would probably have moved in with me; however, I did not have to make that decision as the eviction process commenced in relation to the rented property in which I was living and my late father was devastated when my late mother died and he was unable to look after himself; circumstances dictated therefore that I went to live in the family home;

(d) When does your sister stay with you? – Every weekend;

- (e) Where does your sister live? – She lives in Wanstead but because she loves the village so much she returns every weekend; she helped support my father when he was alive and is support for me;
- (f) Where is your property in relation to the village? – The location was described;
- (g) Did you care for your mother when she became ill? – No, she died instantly;
- (h) Did you help you parents financially in any way? – No;
- (i) What other Council housing accommodation is provided in the village? – There are some properties which were formerly old people's bungalows but are now family homes; there are also some non-Council owned properties for rent but children and pets are not allowed in those properties.

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

- (a) succession to a secure tenancy or introductory tenancy could take place when a tenant died; this usually involved the husband, wife or a close relative of the deceased;
- (b) the policies and procedures used by the Council when dealing with cases of succession were largely determined by legislation, but discretion was given to landlords; the law was complicated and the Council had produced a leaflet which explained the basic principles – “Succession to a Tenancy”;
- (c) the appellant's father became the tenant of the property in 1948; he and his wife had four daughters; his wife died at the property in 2005;
- (d) the appellant had stated that she had moved back to the property with her 11 years old son in April 2006 following the breakdown of her relationship with her son's father and the issuing of a Notice to Quit by their then landlord; this had enabled her to provide care to her father who had subsequently passed away on 18 May 2008;
- (e) the appellant had informed the Housing Directorate of her father's death in a letter dated 30 May 2008; a reply had been sent on 3 June 2008 advising the appellant that whilst she succeeded to the tenancy she would be required to move to smaller accommodation; the appellant had appealed that decision and the Assistant Housing Director (Operations) had determined that appeal on 17 June 2008; that letter explained the Council's Discretionary Succession policy in terms of under-occupation; the policy allowed a successor tenant who was a family member to under-occupy accommodation by one bedroom provided that they had lived in the property for 10 years continuously up until the time of the tenant's death (or was more than 60 years old);
- (f) the appellant had stated that she wished to remain in the family home; she had stated that she had lived in a nearby property for sometime, prior to moving in with her father in April 2006; whilst the Council had used the discretion given to it to extend the criteria used to determine how succession cases were dealt with, the appellant's case fell outside this criteria; the appellant had been asked to complete a Housing Application form with a view to be offered a more suitably sized home as near to her present home as possible;

- (g) the 10 or more years period referred to in the Council's policy related to the years immediately prior to the death of the tenant and not to any earlier occupation which had subsequently ceased;
- (h) no weight could be given to the appellant's position as a parish councillor in this case;
- (i) it was necessary for the Council to act quickly in cases such as this as there was a statutory limitation on the timing of the service of a Notice of Possession;
- (j) the Council had 533 families waiting for three bedroom accommodation; each such accommodation which became available attracted approximately 200 bids; two families from the same village as the appellant were waiting for three bedroom accommodation;
- (k) whilst it was recognised that the appellant had emotional attachments to the property having lived there for many years, the appellant did not satisfy the criteria included in the Council's policy on successor tenants who under-occupied accommodation.

The Area Housing Manager answered the following questions of the appellant, her friend and the Panel:-

- (a) You have said that the Council has used its discretion to extend the criteria used to determine how succession cases are dealt with – can you explain this statement? – The Housing Act 1985 provides where there is no surviving spouse for another member of the tenant's family to qualify to succeed the tenancy when they have resided with the tenant continuously for 12 months immediately prior to the tenant's death; the Council has used its discretion to extend the criteria used to determine how such cases are dealt with;
- (b) What circumstances are taken into account in exercising this discretion? – The Council's Discretionary policy provides for a successor who is not the husband or wife of the deceased to be allowed to remain in the property if there is only one spare bedroom and the successor has lived in the property for 10 or more years immediately prior to the death of the tenant (or is more than 60 years old); account is also taken of whether the successor gave any financial or other support to the previous tenant; no account can be taken of the standing in the community of the successor;
- (c) Does not the appellant comply with the Council's policy as she has lived in the property for 10 or more years? – Where a person has lived in a property from birth, subsequently left that property and then returned, no account can be taken of the initial period of occupation;
- (d) Who produced the leaflet "Succession to a Tenancy"? – The Council;
- (e) Do you not agree that a literal reading of the leaflet results in the appellant fulfilling the Council's criteria? – No, in my eight years experience this is the first case that I can recall the criteria being interpreted in the way that you have done so;
- (f) Do you not agree the wording of the leaflet is ambiguous? – No;
- (g) You are well acquainted with the law relating to housing but tenants are not so well informed; do you not agree the leaflet should be clearer? – No;

(h) How many two bedroom Council properties are there in the village? – Approximately five houses plus seven bungalows which I believe have two bedrooms;

(i) Are any of these properties vacant at present? – I do not believe so;

(j) Would you be able to offer the appellant another property within the village? – We would use our best endeavours to make an offer for a property in the area;

(k) In the appellant's submissions reference is made to the right of a tenant to take in a lodger – is this possible? – Yes; the Council's permission is not required and I fail to see the relevance of this submission;

(l) If the appellant took in a lodger would the property still be under-used? – No, but there is no lodger at present so this is hypothetical; the Council's Discretionary policy applies if there is only one spare bedroom and the successor has lived in the property for 10 or more years immediately prior to the death of the tenant; both elements have to be met;

(m) Under the legislation, if the accommodation is more extensive than is reasonably required by the tenant the Council can serve a Notice of Possession more than six months but less than 12 months after the tenant's death; what would be the position if a tenant was not offered an alternative property within the 12 month period? – There would need to be have been a best offer made within that period because the Court would need to be convinced of this before making a Possession Order;

(n) When was the 10 year policy agreed? – The Director of Housing responded to this question and advised that the policy had been agreed by the former Housing Committee and that he would arrange for a copy of the decision to be made available to the Panel during its deliberations on the appeal;

(o) You have said that the taking in of a lodger is not an issue in this case; it would not have been possible for the appellant to have taken in a lodger prior to the death of her father because all of the three bedrooms in the property had been in use at that time; now that one bedroom is unused it would be possible to take in a lodger; what would be the position if she now took in a lodger? – I do not understand the context of this question in relation to this case;

(p) Do you agree that if all three bedrooms are occupied there is no under-occupation? – This is hypothetical as all three bedrooms are not in use.

The Chairman asked the appellant if she wished to raise any further issues in support of her case. The appellant requested that in the event of her appeal being dismissed she should be allowed to remain in the property until a two bedroom property became available in the village. The appellant's friend sought clarification of succession rights in the event of the appellant being moved to another Council property. The Director of Housing advised that if the appellant was transferred to another property this would create a new tenancy and there would be further right of succession.

The Chairman asked the Area Housing Manager if he wished to raise any further issues in support of his case. The Area Housing Manager stated that he had every sympathy with the appellant but that she did not meet the criteria set out in the Council's policy.

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 and the Area Housing Manager then left the meeting.

The Panel considered all of the evidence and the views which had been expressed by the appellant, her friend and the Area Housing Manager. The Panel focussed on the period during which the appellant had occupied the property as her only or principal home; the time she had spent in the village in which the property was situated and the limited amount of Council housing accommodation within that village; and the Council's policy and leaflet in relation to the succession to a tenancy.

The Director of Housing advised the Panel that the policy on successor tenants who under-occupied accommodation had originally been adopted by the former Housing Committee on 22 January 1992. The Panel considered the wording set out in the minutes of that meeting. The Panel was advised that the Council's policy attempted to add detail to the legislation which comprised a broad statement.

The Panel was advised that the Council's policy had been revised in May 2007 and as a result it was necessary for officers to undertake an assessment to confirm whether significant financial or other support had been given by the successor tenant to the previous tenant prior to the previous tenant's death. The Panel took account of this revision to the policy.

RESOLVED:

(1) That, 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 be allowed and the decision of the Area Housing Manager to seek possession of the property currently occupied by the appellant following her succession to the tenancy after the death of her father be not upheld for the following reasons:

- (a) the appellant is aged 53; and she has occupied the property as her only or principal home for approximately 40 years including the last two years when she moved back into the property to act as a carer for her late father;
- (b) throughout her whole life, the appellant has lived in the village in which the property is situated;
- (c) there is limited Council housing accommodation in the village in which the property is situated and it is unlikely that the Council will be able to offer the appellant reasonable and suitable alternative accommodation in the village in the form of a two bedroom property by May 2009 (the end of the statutory period for serving a notice of possession following the death of the appellant's father in May 2008);
- (d) the wording in the Council's leaflet "Succession to a Tenancy", a copy of which was provided to the appellant by Council officers and was relied upon by the appellant, and the wording of the policy itself adopted by the Council in relation to the length of occupation in considering under-occupation is not clear and is subject to different interpretations;
- (e) the policy regarding under-occupation as amended by the Council in 2007 requires an assessment to be undertaken to confirm whether significant financial or other support was given by the successor tenant to the previous

tenant prior to the previous tenant's death; no evidence was submitted to the Panel to show that such an assessment had been undertaken by Council officers in this case; and

(2) That the Housing Portfolio Holder be recommended to review the Council's policy relating to Successor Tenants who under-occupy Council properties with a view to making the policy clearer and that following adoption of any revised policy the Council's leaflet "Succeeding to a Tenancy" be rewritten.

12. PARKING OF MOTOR VEHICLES IN FRONT GARDENS - POLICY

The Area Housing Manager returned to the meeting in order to explain the reasons for the Council's policy to not allow vehicular crossovers at right angles to a property.

The Area Housing Manager circulated copies of photographs of the property which had been the subject of consideration at the last meeting of the Panel and had led to the request for an explanation of the Council's policy. The Panel noted having regard to the layout of the property, that a vehicular crossover at right angles to the property would be likely to cause problems in getting access to the property in an emergency since the front door of the property would be obstructed. The Area Housing Manager advised that this issue had first arisen in an appeal case in 2001 when the policy had been revised to require that any parking within a front garden did not block the path to the front door of a property.

RESOLVED:

That the explanation of this aspect of the Council's policy be noted.

CHAIRMAN

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