

EPPING FOREST DISTRICT COUNCIL COMMITTEE MINUTES

Committee: Housing Appeals and Review Panel **Date:** Thursday, 18 December 2008

Place: Committee Room 1, Civic Offices, High Street, Epping **Time:** 2.30 - 4.25 pm

Members Present: Councillors Mrs C Pond (Chairman), B Rolfe, Mrs J Sutcliffe and J Wyatt

Other Councillors:

Apologies: Councillors Mrs R Gadsby and Mrs J H Whitehouse

Officers Present: G Lunnun (Assistant Director Democratic Services) and R Wilson (Assistant Director Operations (Housing))

24. MINUTES

RESOLVED:

That the minutes of the meetings of the Panel held on 23 October and 5 November 2008 be taken as read and signed by the Chairman as a correct record.

25. SUBSTITUTE MEMBERS

It was noted that Councillor Mrs J Sutcliffe was substituting for Councillor Mrs J H Whitehouse.

26. DECLARATIONS OF INTEREST

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

27. 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 Number
6	Application No. 13/2008	1 and 2

28. APPLICATION NO. 13/2008

The Panel considered a request for a review of a decision made by officers under delegated authority regarding the applicant's homelessness application. The applicant attended the meeting to present her case accompanied by her son. Mr J Hunt (Assistant Housing Options Manager – Homelessness) attended the meeting to present his case. Mr R Wilson (Assistant Director Operations – 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 applicant and outlined the procedure to be followed in order to ensure that proper consideration was given to the application.

Officers questioned whether it was appropriate for the appellant's son to remain in the meeting in the light of the issues to be discussed. After discussion with the applicant it was agreed that the applicant's son would leave the meeting and wait in the reception area.

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

- (a) copies of documents submitted by the applicant namely, the application to the Housing Appeals and Review Panel dated 21 November 2008;
- (b) a summary of the case including the facts of the case and an outline of the homelessness legislation;
- (c) the case of the Assistant Housing Options Manager – Homelessness;
- (d) copies of documents submitted by the Assistant Housing Options Manager – Homelessness namely:
 - (i) letter dated 4 February 2008 from the applicant's former landlord to the applicant;
 - (ii) letter dated 27 June 2008 from the applicant's former landlord to the Council together with a statement of the applicant's rent payments and arrears;
 - (iii) interview report dated 25 July 2008 by a Housing Officer on an interview with the applicant;
 - (iv) interview report dated 16 September 2008 by a Housing Officer on an interview with the applicant;
 - (v) letter dated 13 October 2008 from the applicant's former landlord to the Council;
 - (vi) interview report dated 24 October 2008 by a Housing Officer on an interview with the applicant;

(vii) letter dated 12 November 2008 from the Assistant Housing Options Manager (Homelessness) to the applicant.

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

- (a) the monthly rental of the property in an adjoining borough occupied by the applicant had been £950 and not £900 as stated by Council officers (the applicant submitted a copy of the Tenancy Agreement for inspection);
- (b) the Council officers had stated that the applicant's only reason for leaving the property in the adjoining borough had been to get a property closer to her children's school; in addition she had suffered difficulties with the landlord when he came to the property each month to collect £50 of the rent not paid by Housing Benefit; the landlord had questioned the cleanliness of the property;
- (c) the tenancy of the property in the adjoining borough had been for only one year from 9 June 2006 until 8 June 2007;
- (d) the landlord of the property in the adjoining borough had wanted to end the tenancy because he was moving to South Africa;
- (e) the applicant and one of her daughter's suffered from asthma;
- (f) the landlord of the property in the Epping Forest District subsequently occupied by the applicant had stated that he only required a monthly rental of £900 although the signed Tenancy Agreement was for a rent of £1,200 per month; he had since said something different to Council officers; the current occupier of that property had also been told that they only needed to pay £900 per month despite signing a Tenancy Agreement stating that the rent would be £1,200 per month;
- (g) the applicant had suffered domestic violence from the day she had met her husband; she had been married for 16 years and had first approached the Council in 2002 when she had left her husband; the applicant had a solicitor's letter and a crime reference number to support this submission (not submitted);
- (h) the applicant had been told by Council officers to sign interview reports containing untrue details;
- (i) the applicant had letters from a hospital and her children's school explaining some of her problems (not submitted).

The applicant answered the following questions of the Assistant Housing Options Manager (Homelessness) and the Panel:-

- (a) You have stated for the first time today that you had problems with the landlord of the property you occupied in an adjoining borough; why did you not advise Council officers of these difficulties when you were interviewed and given the opportunity to read the interview reports; why did you sign them and not make any reference to difficulties with the landlord – Every time I was interviewed I was in a very bad state and I don't remember reading the interview reports or signing them; I showed the officers a copy of the Tenancy Agreement which stated that the rental was £950 per month;
- (b) You told officers that you had problems getting your children to school on time and that was one of the reasons for moving to a property in this District; why did you not change your transport arrangements rather than your property? – I would have

liked to have stayed at the property in the adjoining borough but the landlord had said that he was moving to South Africa and did not want to renew my tenancy; I was under a lot of pressure at the time;

(c) Where was your children's school? – In Loughton; I registered my children for school when I had lived previously in Buckhurst Hill; I had subsequently moved to a property in an adjoining borough but my children remained at the school in Loughton; the school were happy to keep them and I did not want the stress associated with changing schools;

(d) Where are your children now at school? – Two are now at secondary school and one is in a junior school; (the applicant named the schools);

(e) When you were living in a property in an adjoining borough how did you take your children to school? – Normally on buses although I had the use of my sister's car for a few weeks;

(f) Do you currently have a car? – I am able to use my sister's car;

(g) The rental statement supplied by the landlord of the property you occupied in this District states that the monthly rental was £1,200 from the outset, is this true? – Yes, but he said that he only required £900 per month; the current occupiers of that property have also been told that they only need to pay £900 per month although the rental agreement states £1,200 per month;

(h) When interviewed by Council officers you stated that the reason for leaving the property in an adjoining borough was to obtain accommodation closer to your children's school; why is it only today that you have mentioned problems with the landlord at that property? – What I have said today is the truth;

(i) Are you suggesting that the interview reports are a fabrication on the part of Council officers? – Each time I attended for an interview I was very upset and I just signed the statements; what I am telling you now is the truth. I will swear on the Holy Koran that what I am saying now is the truth;

(j) Do you have a copy of the Tenancy Agreement for the property you occupied in this District? – Yes;

(k) Did the Tenancy Agreement state that the full monthly rental was £1,200? – Yes;

(l) Do you have anything in writing from the landlord to state that he only required you to pay £900 per month? – No;

(m) The rental of the property you occupied in the adjoining borough was £950 per month and you received Housing Benefit of £900 per month; did you pay the balance yourself? – Yes, each month;

(n) Have you discussed your problems with anyone who might be able to help you, for example the Citizens Advice Bureau? – I have been to see them a few times but it is hard to explain my circumstances;

(o) Did you not appreciate that you needed advice before committing yourself to signing a legal document? – Yes, but the Tenancy Agreement I signed for the property in this District was similar to the one I had previously signed for the property in an adjoining borough;

(p) You have said that you were upset when you were interviewed by Council officers and that you simply signed what was put in front of you – you have had time to reflect since then – why is it only today that you have stated the interview reports are not accurate? – I put my faith in the officer and signed what was put before me; I don't know where she got the information that she recorded;

(q) Are you saying that the interview notes are a fabrication on the part of the officer? – I am not saying that but I am saying that each time I was interviewed I was very upset.

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

(a) the applicant was seeking a review against the decision that she made herself homeless intentionally when she chose not to renew her tenancy of a property in an adjoining borough in April 2007; at that time the applicant had moved to a property in this District which was considered to have been unaffordable from the commencement of her tenancy; the issue before the Panel was therefore the circumstances of vacating the property in an adjoining borough;

(b) the applicant held a British Passport and had included her three children on her Housing and Homelessness application;

(c) the applicant had moved to a property in this District in April 2007; the rent for that property had been £1,200 per month; the applicant had applied for Housing Benefit to help her pay the rent as she had been in receipt of Income Support; the applicant had received Housing Benefit of £900 per month; this had left her with a £300 shortfall between the contractual rent and the Housing Benefit she received; the applicant had accrued rent arrears and when she had vacated the property in May 2008 she had owed her landlord £4,309.29; the applicant had received a notice advising her that the Landlord was preparing to sell the property; but in response to a standard enquiry letter from the Council, the applicant's landlord had stated that he had given her notice because she had been unable to pay the rent; she had fallen into arrears and because the property was unaffordable for her;

(d) prior to moving to the property in this District, the applicant had occupied a property in an adjoining borough from June 2005 until April 2007; officers had understood that the rent of that property had been £900 per month which had been met in full by Housing Benefit; however, the applicant at this meeting had now stated that rental was £950 per month of which £900 was met by Housing Benefit; the applicant had chosen not to renew the tenancy and stay at that property but had decided instead to move to a property in this District; the applicant had stated that she had given up the accommodation in the adjoining borough because her children had been late attending school, she had received warning letters about their punctuality and had decided to move nearer to the school; the applicant had advised her Homelessness Case Officer that her children were attending school in Loughton;

(e) following the applicant's Homelessness application, an interim duty to accommodate her had been accepted by the Authority pending further enquiries as it had been accepted that she had been eligible for assistance because she had held a British Passport, she had been homeless because she had no accommodation available to her and had been in priority need because she had dependant children;

(f) the homelessness legislation had then required officers to be satisfied that the applicant had not made herself homeless intentionally;

(g) the applicant had claimed that when she moved to a property in this District her landlord had agreed that she would not have to pay the full rental of £1,200 per month and that he would be satisfied if he was paid the £900 a month from Housing Benefit;

(h) the applicant's Homelessness Case Officer had held two telephone conversations with the landlord to discuss the reasons why he had asked her to leave and whether he had advised her that she did not have to pay the full rent; the landlord had stated that he had advised the applicant that he would give her some leeway and that she could start paying the full amount when she had the money; he had stated that he had never said that she did not have to pay the shortfall; he had stated that had the applicant paid the full rental he would have been able to pay the mortgage on the property, he had considered selling the property but after the applicant had left the property the situation had changed and he had decided to re-let the property with a new tenant;

(i) a further interview had been held with the applicant to discuss why she had moved to a property in this District when it had been clear that the rent had been unaffordable; the applicant had reiterated her claim that the landlord had advised her that she did not have to pay the shortfall between the rent and her Housing Benefit and that she needed to move closer to her children's school;

(j) officers had decided that the applicant had made herself intentionally homeless; in making homelessness decisions, regard had to be had to the Code of Guidance used by local authorities to assist with the interpretation of homelessness legislation; the Code of Guidance stated that a person became homeless intentionally if she deliberately did or fail to do anything in consequence of which she ceased to occupy accommodation which was available for her occupation and which would have been reasonable for her to continue to occupy the accommodation;

(k) the applicant had deliberately chosen not to renew her tenancy of a property in an adjoining borough; this had led to her ceasing to occupy that property which would have continued to be available for her occupation had she not informed the landlord that she did not wish to renew the tenancy; it was considered that property would have been reasonable for the applicant to occupy had she not given up her tenancy as it had been a three bedroom property suitable for her family needs and the rent had been affordable because £900 of the £950 per month had been met by Housing Benefit and the applicant had been able to meet the difference without falling into arrears;

(l) the applicant had stated that she gave up the accommodation in the adjoining borough because it was too far from her children's school; the applicant could have altered her transport arrangements in order to overcome this problem rather than giving up the tenancy; it was clear that the accommodation in this District had been unaffordable from the commencement of the tenancy.

The Assistant Housing Options Manager (Homelessness) answered the following questions of the applicant and the Panel:-

(a) When a person applies for Housing Benefit are they required to provide a statement from their landlord stating the full amount of the rent? – My understanding is that normally a tenant obtains a pre-tenancy determination form which states what the rent will be and the maximum amount of Housing Benefit; the position has now changed but that would have been the position when the applicant moved to the property in this District; whilst the applicant did not have a pre-tenancy determination

form it is clear that she was aware the contractual rent was £1,200 per month and that the maximum Housing Benefit she would receive would be £900 per month;

(b) Did the landlord of the property in this District at any stage approach the Council regarding the applicant's rental arrears? – Not until after enquiries were made by officers following the applicant attending the Council as being homeless;

(c) The applicant has said that the landlord of the property in the adjoining borough was moving to South Africa, is this correct? - The landlord has indicated that he was considering a move but chose not to do so; the situation is somewhat confused;

(d) Have you seen a copy of the applicant's Tenancy Agreement for the property she occupied in this District? – Yes, there is a copy on the Housing file which has been signed by the applicant.

The Chairman asked the applicant if she wished to raise any further issues in support of her case. The applicant stated that enquiries should be made as to what rental the current occupiers of the property she had occupied in this District were paying. She also stated that she had only occupied the property in an adjoining borough for one year and that the landlord of that property had stated that he was moving to South Africa.

The Chairman asked the Assistant Housing Options Manager (Homelessness) if he wished to raise any further issues in support of his case. The Assistant Housing Options Manager (Homelessness) stated that he had nothing further to add.

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

The Panel considered all of the evidence and the submissions which had been made by the applicant and the Assistant Housing Options Manager (Homelessness). The Panel focused on the legislation and the Code of Guidance on Homelessness, the circumstances leading to and resulting in the applicant making a homeless application and the determination of that application.

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 and by the Assistant Housing Options Manager (Homelessness) in writing and orally, the decision of the officers that the applicant had become intentionally homeless be upheld for the following reasons:

(a) it is considered that the applicant's last settled accommodation was the property she occupied in an adjoining borough until April 2007 because it is clear that her following tenancy of a property in this District was unaffordable from the commencement of that tenancy taking account of the amount of Housing Benefit she would receive; the applicant signed a statement stating that she was aware from the outset she could not afford the rent taking account of the amount of Housing Benefit she would receive;

(b) the applicant decided to give up the tenancy of the property in an adjoining borough in April 2007 in advance of the end of the tenancy period

(8 June 2007); the applicant signed statements giving the reason for vacating the property as being the need to live closer to her children's school; she also advised that the landlord of that property was moving to South Africa; at the meeting of the Panel the applicant for the first time referred to problems she had experienced with the Landlord of that property including his questioning of the cleanliness of the property;

(c) it is considered there were no overriding circumstances which would have prevented the applicant from continuing to occupy the property in the adjoining borough; the property which she moved to in this District was close to the property in the adjoining borough which the applicant vacated and was still several miles from the applicant's children's school; the problems with the landlord described by the applicant at the meeting were not of such magnitude as to justify the applicant giving up the tenancy; the contractual rent of the property in this District was £300 per month more than the rent of the property in the adjoining borough and the applicant, although not completing a pre-tenancy determination form, has stated that she was aware there would be a £300 per month shortfall after the receipt of Housing Benefit; the applicant could not meet this shortfall from the outset and this led to arrears of £4,309.29; account has been taken of the conflicting evidence of the applicant and the landlord of the property in this District about whether she needed to pay the full rent or only the amount met by Housing Benefit but based on the submitted documents and on balance it is considered that the landlord of the property expected payment of the full contractual rent;

(2) That had it not been for this deliberate act (the applicant decided to vacate the property in the adjoining borough) the accommodation would have been continued to be available and reasonable for the applicant and her family to occupy; the accommodation comprised of a three bedroom property which was suitable for the applicant and her family; £900 of the £950 per month rent had been met by Housing Benefit and the applicant had met the additional £50 per month and had not been in arrears;

(3) That based on the evidence submitted, no deficiency or irregularity has been identified in the original homelessness decision made by the officers and the manner in which it was made; account has been taken of the applicant's submissions that she was very distressed when being interviewed by Housing Officers and that she did not know what she was signing; however, it is considered on balance that the notes of the interviews which were signed by the applicant represent an accurate record of the interviews;

(4) That the Council continues to provide interim accommodation for the applicant for a period up to 2 February 2009 in order to allow the applicant reasonable opportunity to secure alternative accommodation; and

(5) That the officers refer the applicant to Social Care to seek their assistance in helping her to find alternative accommodation.

CHAIRMAN