



# Epping Forest District Council

## ***HOUSING APPEALS AND REVIEW PANEL Thursday, 18th December, 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

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**1. APOLOGIES FOR ABSENCE**

**2. MINUTES (Pages 3 - 36)**

To agree the minutes of the meetings of the Panel held on 23 October and 5 November 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 Paragraph Number	Information
6	Application No. 13/2008	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. APPLICATION NO. 13/2008 (Pages 37 - 58)**

To consider a restricted report.

## EPPING FOREST DISTRICT COUNCIL COMMITTEE MINUTES

**Committee:** Housing Appeals and Review Panel    **Date:** Thursday, 23 October 2008

**Place:** Committee Room 1, Civic Offices, High Street, Epping    **Time:** 2.30 - 5.45 pm

**Members Present:** Councillors Mrs C Pond (Chairman), Mrs R Gadsby (Vice-Chairman), B Rolfe, Mrs J Sutcliffe and J Wyatt

**Other Councillors:**

**Apologies:** Councillor Mrs J H Whitehouse

**Officers Present:** G Lunnun (Assistant Director Democratic Services), D Barrett (Area Housing Manager (South))(for minutes 13 - 17 only) and G Oakley (Managing Legal Executive)(for minute 18 only).

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### 13. MINUTES

#### RESOLVED:

That the minutes of the meeting of the Panel held on 14 August 2008 be taken as read and signed by the Chairman as a correct record.

### 14. SUBSTITUTE MEMBERS

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

### 15. DECLARATIONS OF INTEREST

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

Councillor J Wyatt reported that the appellant in case Appeal No.10/2008 resided within the ward which he represented but he had no knowledge of the appellant.

### 16. 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:

<b>Agenda Item No</b>	<b>Subject</b>	<b>Exempt Information Paragraph Numbers</b>
6	Appeal No. 10/2008	1 and 2
7	Application No. 8/2008	1 and 2

## **17. APPEAL NO. 10/2008**

The Panel considered an appeal against a decision made by officers under delegated authority not to provide sound insulation to the property occupied by the appellant. The appellant attended the meeting to present his case. Mr N Taylor (Area Housing Manager) attended the meeting to present his case. Mr D Barrett (Area Housing Manager) 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 Panel had before them the following documents which were taken into consideration:

- (a) copies of documents submitted by the appellant, namely, the application to the Housing Appeals and Review Panel dated 20 August 2008;
- (b) the case of the Area Housing Manager;
- (c) copies of documents submitted by the Area Housing Manager, namely:-
  - (i) letter dated 25 October 2007 from the Area Housing Manager to the appellant;
  - (ii) letter dated 1 November 2007 from the Assistant Head of Housing Services (Operations) to the appellant;
  - (iii) letter dated 12 February 2008 from solicitors acting on behalf of the appellant to the Area Housing Manager;
  - (iv) form of authority dated 11 February 2008 from the appellant authorising the Council to transfer information to his solicitors;
  - (v) letter dated 19 February 2008 from the Area Housing Manager to the appellant's solicitors.

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

- (a) the appellant had signed a secure tenancy agreement for his current one bedroom second floor flat on 17 December 2001; the appellant resided in the property with his partner;
- (b) the appellant suffered from stress and as a result of his accommodation problems he suffered from regular panic attacks, stiffness in his neck, anxiety, insomnia, headaches and loss of appetite; he had been given medication to take and had been referred for counselling;

(c) the appellant's stress had become worse since 2005 when the problems with his existing accommodation had started;

(d) the appellant had been born with a cleft palate; he had continued to have operations throughout his life as he had grown older to continually correct this condition; the operations had not run smoothly necessitating his return for corrective surgery; the appellant had been subject to five operations in the past six months and was due to have another operation;

(e) after every operation, the appellant needed to return home to rest; there was a lot of pain associated with each operation and even after his return home, the appellant was required to take many painkillers to reduce the pain;

(f) the appellant had suffered a motorbike accident when he was twenty and as a result he had problems with his spine; there was no treatment for this condition apart from an operation but he had been advised that such an operation could leave him paralysed;

(g) the appellant's partner also suffered from stress and this had been made worse by the problems being experienced in the flat; as a result their relationship had suffered;

(h) when the appellant had first moved into the property he had not encountered any problems as there were no neighbours below his flat and the neighbours next door spent a lot of time away from the property; however, when another tenant moved into the flat below, the appellant started to hear a lot of noise;

(i) by May 2005, the level of noise from the neighbouring flats had become unbearable; the appellant could hear everyday noise not only from the flat below, but also from the flat next door and the flat underneath the flat next door;

(j) the nature of noises heard from the appellant on a regular basis included:-

light switches being turned on and off;  
plug sockets being switched on and off;  
curtains being drawn;  
doors being closed;  
neighbours running taps;  
neighbours urinating;  
walking and running of neighbours;  
neighbours washing up;  
microwave being turned on and off; and  
cooking and cleaning of utensils;

(k) the noises were those of an everyday nature and would continue until all the neighbours went to sleep at night; the appellant was conscious of his own actions, particularly when needing to go to the toilet or when he was in bed with his partner, as both the bathroom and bedroom were adjacent to the neighbouring flat and he did not want to disturb his neighbours;

(l) the noise problems were due to lack of insulation between the flats; there was nothing more than plasterboard covering the concrete;

(m) the appellant had reported the noise problems to the Council on a number of occasions and in June 2005 the appellant had been asked to complete diary sheets

which could be relied upon if further action became necessary; the appellant had been completing diary sheets since that time;

(n) in January 2006 the Council had carried out a noise test in relation to music being played by a neighbour and had concluded that there was insulation problem with the flats;

(o) the Council had discussed noise issues with a neighbour of the appellant in March 2006 and that appellant had also referred to noises from other flats;

(p) in October 2007, the appellant after returning from hospital had advised the Council that it was no longer practical for him to continue to complete diary sheets or to raise issues with his neighbours as the noises were not their fault; he had repeated his request for insulation to be provided to the flats;

(q) the appellant did not wish to create unnecessary problems with his neighbours by reporting their daily activities, especially since the large majority of the noises which could be heard were from quite reasonable everyday activities which the neighbours could not reasonably be expected to stop;

(r) disruption to tenants caused by renovation work to provide sound insulation would be considerably less than the disruption currently being caused to the residents and the costs involved were entirely justified;

(s) the costs involved in taking any civil action against individual tenants could not be justified given the fact that the noise disturbance was primarily due to the lack of insulation, as opposed to any unreasonable conduct by the individual tenants;

(t) the appellant had lived all of his life in flats and had therefore extensive experience of the conditions; those making decisions at the Council did not have first hand experience or knowledge of what it was like to live in a flat;

(u) some of the issues raised by the appellant about noise made by other tenants should have been dealt with as breaches of the Tenancy Agreement;

(v) the block of flats in which the appellant resided were designed for older people and were not suitable for accommodating young families;

(w) when moving into the flat, the appellant had to prove himself as a good tenant before being given a secure tenancy after one year; there appeared to be different rules for other tenants;

(x) the Council had responded to the appellant by quoting the law rather than giving his requests proper consideration; officers had reacted to a complaint about noise from a particular anti-social activity late at night and that situation had improved but they had not reacted to the complaints about general noise from other flats; video evidence had been offered but had not been accepted.

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

(a) What advice have you received from your solicitors about the situation? – That is a matter between myself and my solicitors;

(b) Are you at home during the day? – Yes, I have had many operations during the last few years and it is not nice to be at home trying to recover when there is so much noise from the other flats;

(c) There is a Tenant/Leaseholder meeting every quarter in your locality where problems can be discussed; have you attended any of those meetings? – No, I was not aware of those meetings;

(d) Do you have a television or a radio and could you not use these as background noise so that the noise from the other flats would not be so disturbing? – I have a television with digital channels. If I were to use it as you suggest I would get complaints from my neighbours about noise as I would need to set it at a very high volume;

(e) Is your stress made worse by the noises from other flats? – Yes and it is also affecting my partner who wants to move;

(f) Would carpeting in the flats improve the situation? – I have good quality carpets in my flat; the flat below mine has only been carpeted for one year; carpets help reduce hollow sounds but do not alleviate foot treads;

(g) Would you say your tolerance to noise is less than others? – Over the last couple of years I have been very aware of the noises being suffered in my flat, particularly during the evenings; one should not expect to have their activities dictated by noise from other flats; when I close doors I do so quietly and I have placed layers of polystyrene under paper in my bedroom in order to dampen noises; I am conscious of having to do everything very quietly in order not to annoy others; I believe I have the same tolerance to noise as others;

(h) I am surprised that you say you can hear light switches in other flats; did you say that? – If you come to my flat you will hear them I have asked the officers to come and assess the position but they have not done so as they already know what the problems are;

(i) The figure of £3.6m has been quoted as being required to provide sound insulation to all of the Council flats which are similar to yours; do you think this is a reasonable amount to spend? – No, but the problem is not so great in flats which are only occupied by single people;

(j) Do you go on holiday and stay in hotels and, if so, do you suffer noise from adjoining rooms? – I do not sit in a hotel room throughout the day and during evenings;

(k) If we are to resolve this issue do you not think we should be provided with the advice you have received from your solicitors? – My solicitors are building a case and I am willing to go to Court if this appeal fails;

(l) Have you discussed the problems with your neighbours? – Yes.

(m) What was their reaction? – They listened to me but the problems continued; my neighbours cannot stop their everyday noises; the flats were designed for older people and the fault is with the Council in accommodating families within the flats;

(n) Have you considered moving or seeking a transfer to another property? – No, I have made the flat my home; I have spent a lot of time on improving it and I have rebuilt my life in the property;

- (o) Does your partner live at home during the day? – Yes she is not working;
- (p) Where do your parents live? – In the London Borough of Waltham Forest;
- (q) Is it at nights when the problems are worse? – Noises during the day affect me as well.

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

- (a) the block of flats in which the appellant resided had been built by the Greater London Council in 1975; over 200 flats of a similar design had been constructed; the ground floor of the building consisted of a row of garages with two storeys of flats above;
- (b) the flats were originally designated for older persons but in more recent times had been re-designated, due to a lack of older applicants; as a result, many were now occupied by younger residents, in the main by single persons or couples without children;
- (c) the appellant had taken up occupation of his second floor flat on 17 December 2001; priority had been given to his application because of his health conditions;
- (d) in June 2003 the appellant had made his first complaint about noise nuisance some thirty months after moving in to the property; the complaints had related to groups of people visiting a neighbour;
- (e) in March 2005 another complaint had been made regarding neighbouring tenants in two flats; the complaint had included a complaint of noise from a crying baby;
- (f) in April 2005 the appellant had made a further complaint about children climbing up an external drainpipe and the misuse of a property by a relative of the tenant; at that time the appellant had been given nuisance record sheets for completion;
- (g) in June 2005 the appellant had been interviewed and given further advice; further noise nuisance record sheets had been provided for him to complete and return;
- (h) in October 2005 the appellant had returned some completed nuisance record sheets to the Council's Environmental Services; most of the complaints related to loud music;
- (i) by January 2006, one of the Council's officers in Environmental Services had visited one of the appellant's neighbours and had noted that a wooden floor had been laid in the flat; the tenant had been given advice about the use of a stereo and about the flooring;
- (j) in February 2006 the appellant had returned completed nuisance record sheets regarding music, banging and DIY associated noises; the tenant of the flat involved had been visited and it had been noted that the whole floor had been covered in wood but there were a number of rugs on the floor which helped reduce any noise; the tenant had advised that her family members had been laying the flooring and this



had involved quite a lot of noise; the flat had been sparsely furnished with a hollow feeling and the tenant had complained of noise she could hear from other flats;

(k) in March 2006 the appellant had been advised that the information supplied suggested that the issues arose from poor insulation; a letter sent to other residents in the block of flats asking if they experienced any noise disturbance had not resulted in any replies being received;

(l) in May 2006 the appellant had advised that things were much improved;

(m) in January 2007 the appellant again had complained about noise from another flat and advised that he would complete more nuisance record sheets;

(n) in September 2007 the appellant had visited the Civic Offices and had complained about noise nuisance from two flats; he had been advised that no steps could be taken without evidence and that he should continue to complete and return nuisance record sheets;

(o) no nuisance record sheets had been returned by the appellant since February 2006 and the tenant against whom he had complained about in March 2005 had left the property;

(p) in February 2008 the appellant's solicitors had sent a letter to the Council outlining their client's health problems and the noise nuisance he was experiencing; a letter had been sent in response;

(q) the two key issues in this case were the appellant's ill health and the fact that the noise nuisance was primarily caused by the everyday actions of his neighbours;

(r) similar complaints from other residents of other blocks of flats on the estate had not been received; although the appellant had been advised that the problems appeared to be the result of poor insulation no response had been received from other residents to a letter sent by the Council and it appeared that the appellant found everyday noises a nuisance as a result of his ill health;

(s) the advice given to the appellant in respect of his request to improve the sound insulation had been based on the Council's policy and case-law; in March 2003, the Housing Portfolio Holder had decided that improvements in sound insulation to existing purpose built flats could not be undertaken due to the cost to the Council and leaseholders and the significant disruption involved;

(t) in 2003 there had been 244 other blocks of flats in the District and it had been estimated that the cost to sound insulate all of these properties would have been £3.6m;

(u) in making its policy and in responding to the appellant regard had been had to cases which had been determined by the House of Lords;

(v) specific issues raised by the appellant had been investigated by Council officers and the situation had been improved but in the main the appellant's complaints related to everyday noises of his neighbours;

(w) it was acknowledged that the appellant had longstanding health problems and it appeared that this had a direct bearing on his tolerance level in respect of noise; there had been long periods when the appellant had not made any complaints and it had been some 3½ years since the appellant had complained about one of his neighbours; no other resident had made any similar complaints.

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

(a) You have said that there have been no complaints from other residents but this is not so – I refer to paragraph 6.16 of your report – have you not given contradictory evidence? – I said that there had been no response to the letter sent to other residents;

(b) The Council's Tenancy Agreement requires that floors are covered in order to reduce noise; why did you not treat the laying of wooden floors in the flats as a breach of the Tenancy Agreement? – Laminated flooring had been provided in one flat which when inspected was bereft of soft furnishing so that noise was amplified, a letter was sent to the tenant about the flooring; I visited a flat in February 2006 following the appellant's completion of noise nuisance forms; the tenant of that flat admitted her family had laid the flooring and this would have created a lot of noise at the time; there were a number of rugs on the floor and I considered this to be sufficient action to reduce noise; in May 2006 the appellant had telephoned to advise that the situation had been much improved; no written evidence about noise nuisance had been submitted to the Council by the appellant since February 2006;

(c) Officers were adamant that they would not be taking any action about the appellant's noise nuisance complaints and they kept referring to case-law; what difference would it have made if the appellant had submitted further noise nuisance forms? - Environmental Health responded to the completed forms returned by the appellant in October 2005; I visited a tenant following receipt of further forms from the appellant in February 2006; if further forms had been received about other non everyday noise issues they would have been investigated;

(d) Do you consider the Council has responded to the specific (non everyday) noises reported by the appellant? – Yes, and there have been no written complaints from the appellant since February 2006; the Council cannot respond to complaints about everyday noise issues;

(e) Is it possible to tighten up the Tenancy Agreement about noise late at night/laying of floors etc? – It would be difficult to enforce through the Tenancy Agreement; if wooden floors have been laid in first floor and above flats they are taken up when the flats become void;

(f) There are approximately 200 similar properties to the appellant's flat on this estate; do you receive complaints from tenants about noise outside of the flats, e.g. in the car parks? – No, my housing management experience is that double glazing masks noises from outside but enhances noises from inside properties;

(g) Why did the appellant initially not have a Secure Tenancy? – I do not know;

(h) In your experience are occupiers of flats likely to hear general everyday noises from their neighbours' properties? – I lived in a flat for six years and I could hear everyday noises from other flats;

(i) Do private landlords take a stricter approach to problems like those suffered by the appellant? – The Council has evicted tenants for noise nuisance but it is not possible to do so in respect of everyday living noises.

The Chairman asked the appellant if he wished to raise any further issues in support of his case. The appellant advised that he had numerous other completed noise

complaint forms but had seen little point in submitting them to the Council as officers had already made up their minds about the issues. He advised that he was building a Court case and the sheets would be part of the submission to the Court. He also advised that he had several video tape recordings which the Panel could view if they wished. The appellant submitted a newspaper cutting.

The Chairman advised that the Panel did not wish to view the video tape recordings.

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 nothing further to add.

The Chairman indicated that the Panel would consider the matter in the absence of both parties and 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 and the Area Housing Manager. The Panel focused on the Council's policy in relation to sound insulation in existing purpose built flats within the District, case-law in relation to the provision of soundproofing in Local Authority accommodation, the noises described by the appellant, and the appellant's health conditions.

**RESOLVED:**

That having taken into consideration the information presented by the appellant and by the Area Housing Manager, in writing and orally, the appeal be dismissed and the decision of the Area Housing Manager not to provide sound insulation to the appellant's property be upheld for the following reasons:

- (a) the appellant's request is contrary to the Council's policy which is that improvements in sound insulation to existing purpose built flats within the District not be undertaken, due to the cost of the Council and leaseholders, and the significant disruption involved;
- (b) the Council's policy has been made having regard to case-law which states that local authority tenants have no re-dress under the law that entitles them to require their landlords to install adequate soundproofing so as to block out the noise from neighbouring premises, such noise being the ordinary incident of everyday living;
- (c) the evidence submitted shows that the noises being described by the appellant are primarily caused by the everyday living activities of his neighbours; other complaints by the appellant about specific noise issues, e.g. the laying of a wooden floor by a neighbour, have been dealt with by the officers speaking to his neighbours and as a result the situation has improved;
- (d) no response has been received from letters sent to other residents in the block of flats in which the appellant resides asking if they suffer problems with noise;
- (e) account has been taken of the appellant's health conditions but it is not considered that these are sufficient to justify an exception being made to Council policy; and

- (f) it is not considered that there are any special circumstances in this case which justify an exception being made to Council policy.

## 18. APPLICATION NO. 8/2008

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 accompanied by his wife and a family friend/interpreter. Mr J Hunt (Assistant Housing Options Manager – Homelessness) attended the meeting to present his case assisted by Mr B Howland (Council's Homeless Hostel Manager). Mr G Oakley (Senior Legal Executive) attended the meeting to advise the Panel as required on details of the national and local housing policies relative to the appeal. Mr D Clifton (Principal Housing Officer – IT Systems) attended the meeting as a technician to show a CCTV recording. 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.

The Chairman noticed that the appellant did not appear to have an agenda for the meeting or the papers relating to his application. The appellant stated that he had received the Council's letter dated 10 October 2008 together with a copy of the agenda and the papers for his case but he had not shown these to his family friend/interpreter and he had not brought them to the meeting. He confirmed that he had read the papers. A copy of the agenda and the appellant's case was provided and the family friend/interpreter was given time to read the papers.

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

- (a) copies of documents submitted by the applicant namely:
- (i) the application to the Housing Appeals and Review Panel dated 2 July 2008 from the applicant's solicitors to the Housing Directorate;
  - (ii) letter dated 6 August 2008 from the applicant's solicitors to the Housing Directorate;
  - (iii) letter dated 30 September 2008 from the applicant's solicitors to the Housing Directorate;
- (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) Hostel Manager's file note regarding an incident on 28 May 2008;
  - (ii) letter dated 29 May 2008 from the Assistant Housing Options Manager - Homelessness to the applicant;
  - (iii) interview report dated 29 May 2008 by a Housing Officer on an interview with the applicant's wife;

- (iv) interview report dated 2 June 2008 by a Housing Officer on an interview with the applicant;
- (v) letter dated 24 June 2008 from the Assistant Housing Options Manager - Homelessness to the applicant.

The applicant commenced his case with his family friend/interpreter interpreting his submissions.

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

(a) on 28 May 2008, the applicant had been in the kitchen of the Homeless Hostel with his family; another resident had entered into the kitchen wishing to speak to the applicant and his wife as he was angry about something; the other resident had taken the applicant to the playroom and showed him some clementine peel on the floor; the other resident had told the applicant that the applicant's children, amongst others, had made the mess; the applicant had offered to clean it up and then went to the room of another family to ask why they had brought the clementines into the playroom and why they had not cleared up the peelings; at that point the resident who had first confronted the applicant had intervened and had sworn at the children using the "f" word; the applicant had told the other resident to stop swearing at the children and at this point the other resident had started to swear repeatedly at the applicant; the applicant had advised the other resident that he needed a drink of water and the other resident had accused the applicant of laughing at him; the applicant had gone to the kitchen but the swearing had continued; whilst in the kitchen the applicant had felt angry about the aggressive behaviour to which he had been subjected and he had come out of the kitchen holding a butter knife which he had picked up from the kitchen; the applicant's wife had restrained her husband and after a while the situation had been resolved;

(b) the applicant had felt intimidated and frightened by the aggressive manner and language of the other resident and had felt provoked because when he tried to walk away from the situation the other resident had re-engaged him by continuing to swear at him; the applicant had no intention of using the knife and had been hiding it from the other resident; the applicant had picked up the knife to scare off the other resident;

(c) the CCTV footage did not clearly show that the applicant had deliberately behaved in an anti-social manner towards another resident in the hostel; the overwhelming impression from the footage was that the other resident, a man significantly larger in build than the applicant and apparently without the applicant's level of disability, had been threatening the applicant by taking hold of his elbow with his left hand and waving his right hand at the applicant in an aggressive manner;

(d) the applicant had been arrested immediately after the incident and had been interviewed by Police Officers who had seen the CCTV footage; following that interview the applicant had been released without charge and the applicant understood that this decision had been taken because of the limited evidential value of the CCTV footage;

(e) given the provocation that the applicant had been subjected to and the nature of the CCTV footage there was an overwhelming case that the applicant's conduct did not constitute a deliberate act within the meaning of Section 191 of the Housing Act 1996 and interpreted by the Homelessness Code of Guidance; an act or omission should not generally be treated as deliberate even where deliberately

carried out if it was forced upon the applicant through no fault of their own; generally an act of omission should not be considered deliberate where that action was made when an applicant was under duress;

(f) the incident had occurred at 8.05 p.m. on 28 May 2008; the applicant had been arrested by the Police that evening and had been held at the Police Station until 9.00 p.m. the following day; at 12 noon on 29 May 2008 the applicant had been given a two hour notice to vacate the Homeless Hostel; the decision to issue the notice had been taken before the applicant's wife had been interviewed; the applicant himself had not been interviewed until 2 June 2008; had the Council delayed a decision about the appropriateness of issuing a notice until the Police had completed their enquiries and the applicant and his wife had been interviewed the Council might well have reached a different conclusion about the appropriateness of issuing an Eviction Notice; the Council had acted prematurely in issuing the notice;

(g) whilst it was acknowledged that the Council had been concerned to ensure the safety of all of its residents at the Homeless Hostel it also had a general duty in public law to act fairly and proportionately and the Council had failed to fulfil these obligations in deciding to evict the applicant and his family before a full investigation had been carried out; a different decision might well have been taken if the incident had been more fully investigated;

(h) in view of factual disputes over the event on 29 May 2008 the Council should consider contracting out an investigation of the incident to a third party to ensure independent and impartial consideration of the evidence; the Housing Appeals and Review Panel was not an Independent Panel and should not be reviewing this matter;

(i) the applicant was very sorry for his behaviour but had felt stressed at the time and had felt responsible for the children in attendance.

Mr G Oakley pointed out that the applicant had been interviewed in English by a Housing Officer and that he should attempt to answer questions himself rather than respond through his family friend/interpreter.

The applicant answered the following questions of the Assistant Housing Options Manager - Homelessness and the Panel (the applicant answered some of the questions himself in English but others were answered by the family friend/interpreter after she had interpreted what the applicant had stated):-

(a) You have said that you felt provoked by the other resident and you tried to walk away from the situation; the CCTV footage shows that you initially walked away but you then propped open the kitchen door, took a knife and went back out of the kitchen towards the other resident and it was necessary for your wife to restrain you; why did you prop open the door? – The CCTV footage only shows the final stages of the incident you need to take account of what had happened earlier; the other resident came with me in the first place and made me crazy; five times I asked him to back down;

(b) Some of the build up to the end of the incident will be seen on the CCTV footage; it does not show that you walked away from the incident; do you wish to comment further? – I knew that if I did not stand up to the other resident he would keep coming back at me and I got distressed;

(c) If you had no intention of using the knife why did you pick it up? – I was afraid; the other resident kept shouting at me. I am not stupid I have learned to read and write English but I am not good at speaking it.

At this stage the Chairman determined that it would be beneficial for the Panel to view the CCTV footage. The CCTV footage was shown. As it was not clear to the Panel who was being shown on the recording it was agreed that the Hostel Manager should point out the various parties. The footage was shown again and stopped several times in order for the Panel to be able to identify the various parties to the incident.

The applicant and his family friend/interpreter continued to answer the following questions:-

(d) On your Application Form to the Panel your wife's year of birth is given as 1994, do you mean 1974? – Yes;

(e) You said that you felt that children were under threat, why? – The other resident was swearing at them and I felt if I did not take a stand the other resident would continue to act in this manner;

(f) Are you used to be sworn at? – No I am a polite person myself;

(g) Did you find the actions of the other resident provocative? – Yes, he was bigger than me and I felt frightened;

(h) Do you feel that other residents of the Hostel sided with the other resident? – Yes, three or four others did so;

(i) Can you describe the butter knife? – It was a knife used to cut cheese; it was small but not sharp;

(j) Was it a butter knife or a cheese knife? – An English cheese knife is completely different from a cheese knife in my country which is like an English butter knife;

(k) I understand that you have spent some time in the army; did you not witness language like that of the other resident when you were in the army? – It was the fact that the language was directed at children which I found to be unacceptable;

(l) I note from the CCTV recording that you seemed to be quite agile but today you are on crutches and have difficulty in moving; why is there this difference? – From time to time I get sores from my false leg and it is necessary for me to use a crutch when I am in pain;

(m) Did you feel discriminated against? – Yes.

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

(a) the applicant was aged 34 and the other members of his household included his wife, their son and two daughters;

(b) the applicant had been living in accommodation provided by the Immigration and Nationality Directorate whilst his application for asylum had been assessed; the applicant and his family were Kurdish and had fled Turkey to claim asylum in the United Kingdom;

(c) when the applicant's asylum application had been determined and he was granted leave to remain, the support and accommodation he was provided with from the Immigration and Nationality Directorate was brought to an end; at that stage the applicant had approached the Council as homeless and he was accepted as statutorily homeless and owed a duty to be housed in accordance with Section 193 of the Housing Act 1996 as amended; the duty was ensure that temporary accommodation was made available; the Council fulfilled its duty in this respect by providing the applicant and his family with accommodation in the Council's Homeless Hostel; the applicant moved into the hostel on 27 November 2007;

(d) on 28 May 2008, a resident of the Homeless Hostel had alleged that the applicant had threatened him with a knife; the Police and the Hostel Manager had been called to attend and the applicant had been arrested by the Police; on 29 May 2008 the applicant had been served with a 2 hour notice for having committed a serious act of anti-social behaviour which terminated his Licence to Occupy the Homeless Hostel; the applicant's wife had been interviewed on 29 May and the applicant on 2 June 2008; those interviews by their Homelessness Case Officer had been held to consider whether the Council's duty to accommodate the applicant had been discharged; the applicant and his family had been provided with bed and breakfast accommodation; on 24 June 2008 the Council had advised the applicant that it had discharged his duty to accommodate him because he was considered to have made himself homeless intentionally; as a result the Council no longer had a duty to provide the applicant with temporary accommodation and he had been informed that he would need to vacate the bed and breakfast accommodation that had been provided for him; on 27 June 2008 the applicant had sought a review of the decision and the Council had exercised its discretion to accommodate the applicant pending the outcome of this review;

(e) account should be had to the Code of Guidance on Homelessness, in particular Paragraphs 11.7 and 14.17;

(f) the applicant had breached his Licence to Occupy accommodation at the Homeless Hostel by threatening another resident with a knife; this anti-social behaviour was considered to be a deliberate act by the applicant; the accommodation that the applicant had occupied at the Hostel would have continued to be available for him, had he complied with his Licence conditions and that accommodation was considered to be reasonable for him and his family to occupy;

(g) the applicant's mental health problems had been taken into account but there was no evidence to suggest that the incident was due to a temporary aberration caused by mental illness;

(h) the applicant was considered to have made himself homeless intentionally from the temporary accommodation and the Council had discharged its duty to provide him with housing;

(i) in the event of the officer's decision being upheld reasonable notice should be given to the applicant to vacate his bed and breakfast accommodation and a referral should be made to Social Care in order that the provisions of the Children Act 1989 could be applied.

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

(a) Why did you not show more of the CCTV footage? – The problem with CCTV at the Hostel is that not all areas are covered and it was not possible to pick up all of the



exchanges between the applicant and the other resident; it was accepted that the other resident had been arguing with the applicant; that the other resident was a larger man and had been acting in an assertive manner; however some of the build up to the picking up of the knife could be seen on the CCTV footage;

(b) The Police looked at more footage; why can we not see more footage? – As far as I am aware the footage shown to the Panel was the same footage seen by the Police;

(c) (Question to the Hostel Manager) Can you provide any background about the other resident and advise whether any action was taken against him? – There are up to 48 families accommodated at the Hostel and there are constant squabbles between residents; staff deal with them as they arise; I understand that the incident on 28 May 2008 started because tangerine peel had been left on the floor in a play area; I am not aware of any previous dispute between the applicant and the resident who confronted the applicant;

(d) (Further question to the Hostel Manager) Who were the other residents afraid of – the applicant or the resident who confronted the applicant? – All of the families in the Hostel sign a Licence Agreement and one of the conditions is that they should not act in an anti-social manner; the staff are responsible for ensuring that residents comply with the Licence conditions; if residents do not act in a reasonable manner the conditions have to be enforced;

(e) (Further question to the Hostel Manager) Was any action taken by the Council against the resident who confronted the applicant? – No and he has now been re-housed;

(f) Why did the Police not charge the applicant? – I understand that the applicant was arrested but was not charged due to the lack of evidence; the test for the Police was to determine the matter beyond reasonable doubt whereas the decision of officers and the Panel is to determine the matter on the balance of probabilities; the Police were looking at whether a crime had been committed whereas officers and the Panel are looking at the applicant's behaviour; the Police did speak to the other resident and took statements;

(g) (To the Hostel Manager) Are you aware of any other problems with the resident who confronted the applicant? – No;

(h) Have there been any incidents regarding the applicant whilst he has been accommodated in bed and breakfast accommodation? – No;

(i) It has been suggested that there was a racial element to the incident; is this correct? – Not as far as I am aware; No reports of racism have been brought to the Council's attention and there is no reason to believe that the other resident's actions were motivated by racism;

(j) You have said that residents felt threatened by this situation; do you mean the resident who confronted the applicant or other residents? – The resident who confronted the applicant felt threatened and following the incident other residents expressed concern about the applicant holding a knife in a threatening manner;

(k) Have you seen the knife in question? – No, the Police had the knife and I believe it was described as having a pointed edge rather than a round edge;

(l) Could you confirm, has anyone from the Council seen the knife in question? – No.

The Chairman asked the applicant if he wished to raise any further issues in support of his case. The applicant repeated that he was really sorry for the incident and felt that he had been punished enough. He felt it unfair that steps had been taken against him whilst no action had been taken against the other resident.

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 reiterated that it was not acceptable for a resident of the Homeless Hostel to pick up a knife in such a manner that other residents felt threatened. He advised that the applicant had initially walked away from the situation but had propped open the kitchen door picked up the knife and walked back to confront the other resident. Whatever the provocation it could not be acceptable for a resident to walk towards another resident with a knife in his hand. If the applicant had not been restrained by his wife the matter could have been much more serious.

The Chairman indicated that the Panel would consider the matter in the absence of both parties and that the applicant and the Assistant Housing Options Manager – Homelessness would be advised in writing of the outcome. The applicant, his wife, his family friend/interpreter and the Assistant Housing Options Manager – Homelessness then left the meeting.

The Panel considered all of the evidence and the views which had been expressed by the applicant, his family friend/interpreter and, the Assistant Housing Options Manager – Homelessness and the Council's Hostel Manager. The Panel focused on the incident which took place at the Council's Homeless Hostel on 28 May 2008.

**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 and on behalf of the applicant and the Assistant Housing Options Manager – Homelessness in writing and orally, the decision of the Assistant Housing Options 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 Licence to Occupy accommodation at the Council's Homeless Persons' Hostel; one of the conditions of the Licence was that no acts of anti-social behaviour would be tolerated in the Hostel;

(b) the applicant breached the conditions of the Licence by threatening another resident with a knife necessitating the applicant being restrained by his wife; the incident resulted in the Police being called and the applicant being arrested; account has been taken of the actions of the other resident towards the applicant but it is not considered that these actions can justify the applicant approaching the other resident with a knife in his hand; account has also been taken of the fact that the applicant initially walked away from the other resident after a verbal exchange but returned to confront the other resident with a knife in his hand;

(c) the act of picking up the knife and approaching the other resident is considered to have been a deliberate act; there is no evidence to support the submission of the applicant's solicitors that the applicant acted in response to threats or violence to force him to do something; the applicant has admitted that he felt it necessary to confront the other resident in order to prevent further possible incidents;

(d) had it not been for this deliberate act (threatening another resident of the Council's Hostel with a knife) the accommodation at the Hostel would have been available and reasonable for the applicant and his family to continue to occupy; the accommodation was suitable for the applicant and his family and was affordable as the applicant was eligible for Housing Benefit;

(e) the applicant's physical and health conditions have been taken into account but it is not considered that these justify the action which he took;

(2) That no deficiency or irregularity has been identified in the original decision made by the Council Officer or the manner in which it was made; it is considered that the decision to issue a notice on 29 May 2008 requiring the applicant to vacate the Homeless Hostel within two hours was appropriate in the circumstances;

(3) That the Council continues to provide interim accommodation for a period of 28 days from the date of the letter notifying the applicant of the Panel's decision in order to allow the applicant reasonable opportunity to secure alternative accommodation; and

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

**CHAIRMAN**

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

**Committee:** Housing Appeals and Review Panel      **Date:** Wednesday, 5 November 2008

**Place:** Committee Room 1, Civic Offices, High Street, Epping      **Time:** 2.30 - 5.15 pm

**Members Present:** Councillors Mrs C Pond (Chairman) , Mrs R Gadsby (Vice-Chairman), B Rolfe

**Other Councillors:**

**Apologies:** Councillors Mrs J H Whitehouse, J Wyatt, Mrs J Sutcliffe (substitute)

**Officers Present:** D Barrett (Area Housing Manager (South))(for minutes 19-22 only), R Wilson (Assistant Director Operations (Housing))(for minute 23 only) and G Lunnun (Assistant Director Democratic Services)

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### **19. SUBSTITUTE MEMBERS**

There were no substitute members present at the meeting.

### **20. DECLARATIONS OF INTEREST**

(a) Pursuant to the Council's Code of Member Conduct, Councillor Mrs R Gadsby declared a personal interest in agenda item 5 (Appeal No.11/2008) by virtue of having been handed the application to the Panel for passing onto Council officers. She advised that she had taken no action in relation to this matter other than to pass on the papers. Accordingly the councillor had determined that her interest was not prejudicial and that she would remain in the meeting for the consideration and determination of this appeal.

(b) Councillor Mrs C Pond reported that the applicant in agenda item 6 (Application No. 12/2008) had resided within the ward which she represented but she had no knowledge of the applicant.

### **21. 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:

<b>Agenda Item No.</b>	<b>Subject</b>	<b>Exempt Information Paragraph Numbers</b>
5	Appeal No. 11/2008	1 and 2
6	Application No. 12/2008	1 and 2

## **22. APPEAL NO. 11/2008**

The Panel considered an appeal against decisions made by officers under delegated authority concerning the succession to a tenancy and the determination of a housing register application. The appellant attended the meeting to present his case accompanied by his cousin. Mr R Wallace (Housing Options Manager) attended the meeting to present his case. Mr D Barrett (Area Housing Manager) 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 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 15 September 2008;
  - (ii) undated letter to the Panel;
  - (ii) exchange of e-mails between the appellant and the Council's Housing Directorate;
  - (iv) undated letter from the appellant to the Head of Housing Services following attendance at the Civic Offices on 26 August 2008;
  - (v) undated letter from the appellant to the Head of Housing Services attaching a letter dated 1 September 2008 from the local Member of Parliament;
  - (vi) letter dated 2 September 2008 from the Market Square Surgery to whom it may concern.;
  - (vii) letter dated 3 September 2008 from the Assistant Housing Director (Operations) to the appellant;
  - (viii) letter dated 10 September 2008 from the Assistant Housing Options Officer to the appellant;
  - (ix) 12 pages of a petition supporting the appellant's case;
  - (x) file note dated 19 September 2008 made by the Assistant Housing Options Manager – Homelessness;
  - (xi) letter dated 19 September 2008 to the Council from the appellant's solicitors;

- (xii) form of authority dated 9 September 2008 from the appellant authorising the Council to release information to his solicitors;
- (xiii) letter dated 24 September 2008 from the Housing Options Manager to the appellant;
- (b) the facts of the case;
- (c) the case of the Housing Options Manager;
- (d) copies of documents submitted by the Housing Options Manager, namely:
  - (i) letter dated 26 September 2007 from the Housing Assistant (Needs) to the appellant;
  - (ii) the Council's Banding Scheme;
  - (iii) undated letter from the appellant to the Head of Housing Services received on 1 September 2008;
  - (iv) letter dated 3 September 2008 from the Assistant Housing Director (Operations) to the appellant;
  - (v) a copy of a self assessment medical form completed by the appellant;
  - (vi) letter dated 2 September 2008 from the Waltham Abbey Health Centre to whom it may concern;
  - (vii) letter dated 10 September 2008 from the Assistant Housing Options Officer to the appellant;
  - (viii) certificate of service of Notice to Quit dated 24 September 2008.

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

- (a) the appellant had resided at the family home from his birth in 1983 to 2004 when he had to leave owing to violence from this brother; the Council had been informed about this abuse in 2003 but no longer held the appropriate records for that time;
- (b) the appellant had worked and rented a room abroad for a period; whilst abroad he had been advised that his father had become seriously ill;
- (c) the appellant had returned to the family home to care for his father because his father had been divorced from his wife and the appellant's brother could not provide the necessary care;
- (d) the appellant's father had been diagnosed with Motor Neurone Disease and it had been necessary for the appellant to care for his father 24 hours 7 days a week;
- (e) it had been expected that the appellant's father would live for approximately 18 months after being diagnosed with the disease but he had died on 21 August 2008;

(f) at the time of the appellant's father's death the appellant had been living at the family home just over three weeks short of the 12 months statutory period for succession to the tenancy of the property;

(g) if the appellant's request to succeed to the tenancy was allowed he did not intend to remain at the family home and would accept a secure tenancy of a one-bed flat in the locality;

(h) the appellant had become depressed owing to his father's death and his consequent housing problems.

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

(a) Do you understand that in accordance with the provisions of Section 87 of the Housing Act 1985 in order to succeed to the tenancy it would have been necessary for you to reside with your father throughout the period of 12 months ending with his death? – I understand the provisions and I would have achieved that period if it had not been necessary for me to leave the family home due to violence from my brother;

(b) When you were working in Spain did you own a property there? – No, I went to Spain with very little and rented a room;

(c) Did you go to Spain immediately after leaving the family home? – No, I stayed at friends' houses in different localities as I was afraid to go back to the family home;

(d) Did you get any other help when your father became ill? – No, I enquired about a carer for a few hours each week; a lady came but she did not understand my father's illness and I did not feel that it would be appropriate for her to care for him; my father did go into a care home for a couple of weeks in order to give me some rest but I noticed a lot of distress whilst he was there and I felt I needed to get him home as soon as possible;

(e) How old is your brother? – He is 26, one year older than me;

(f) The letter from your doctor states that you were showing signs of depression as a result of both the loss of your father and your housing problems; is this correct? – In the main it resulted from my housing situation;

(g) Is your brother still living at the family home? – No;

(h) Did you say that the Council had destroyed papers in which you referred to your brother's violence in 2003? – Yes;

(i) When your health improves is it your intention to work again? – Yes, when I am stronger I hope to get a job in the locality (the appellant's cousin advised that the appellant had not yet grieved for his father and that this would be a big shock to him in due course);

(j) I understand you are on the housing list; have you applied for properties? – Yes every other Friday I view the available properties and have bid for several in Waltham Abbey;

(k) Are you prepared to look elsewhere in the District for accommodation? – I would be prepared to consider other options but I have been advised that it would be



better for me to concentrate on properties in Waltham Abbey and I believe that is the best locality for me;

(l) When did you move back to the family home? – 15 September 2007;

(m) The letter from the Assistant Housing Director (Operations) dated 3 September 2008 states that during September 2007 you had lived at various family and friends addresses since returning from Spain; did you return to the family home on 15 September 2007? – When I returned from Spain I was aware that my brother was still at the family home and I did not want to stay there; I have lived permanently at the family home since 30 September 2007.

The Panel considered the following submissions in support of the case of the Housing Options Manager:

(a) the appellant had made a Housing Register Application to the Council on 24 September 2007; the application had been made in the sole name of the appellant; at the time of submitting this application, the appellant had been residing at his family home;

(b) the appellant had stated that he was homeless after returning from Spain; the Council's tenancy records showed at that time the appellant's father had been the sole tenant of the family home and had been so since 11 June 2007;

(c) the Register Application had been dealt with in strict accordance with the Housing Act 1996 Part VI, and in accordance with this Council's Housing Allocations Scheme;

(d) the appellant had been placed in Band 5 of the Council's Banding Scheme on account of the fact that he had not lived in the District for a year at the time of submitting the application; the applicant had stated that he had moved into the property on 15 September 2007 and prior to that he had resided in Spain;

(e) on 26 August 2008, the appellant had informed the Council of the passing away of his father; in response the appellant had been advised of the reasons why he could not succeed to the tenancy of the property;

(f) on 9 September 2008, the appellant had submitted a medical assessment; the Council had sought an independent medical assessment on the appellant's condition through its Medical Advisor and on account of the stress related to the appellant's domestic situation he had been promoted to Band 3 of the Council's Banding Scheme; this additional preference had taken effect on 24 September 2008;

(g) as the Council did not recognise the appellant's continued occupancy at the family home, a Notice to Quit had been served;

(h) for the appellant to qualify for succession he would have had to be resident at the address for a continuous 12 month period prior to the death of the tenant; it was not disputed that the appellant had failed to meet this requirement;

(i) the Council was prepared to consider granting offers of a non-statutory succession; however for this to be considered it would still be necessary for the appellant to have been resident for a continuous period of 12 months;

(j) the appellant had not advised Council officers of violence from his brother in any of their discussions;

(k) if the appellant's appeal was dismissed he would still be able to submit expressions of interest against advertised properties through the Council's Home Option Scheme; he would also be entitled to further housing advice through the Council's Homeless Prevention Scheme;

(l) since the agenda papers had been prepared the appellant had made a Homeless application on 6 October 2008 which was in the process of being investigated;

(m) there was a chronic housing shortage in the District; there were 4,282 applicants on the Council's Register and of those 2,647 were awaiting single one-bed accommodation; the Council needed to ensure that it acted fairly and firmly in relation to all applicants and in the appellant's circumstances preference could not be given to him.

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

(a) Can the appellant's earlier occupation of the family home be taken into account? – No, it is not disputed that he resided at the family home for a considerable time before going to Spain but this period cannot be taken into account in relation to succession;

(b) If you had been aware of the violence from the appellant's brother could this have been regarded in exceptional circumstances allowing succession? –Irrespective of the circumstances, the law states that another member of the tenant's family must have resided with the tenant throughout the period of 12 months ending with the tenant's death;

(c) Do you treat all applicants as individuals? – Yes, but we have to apply the law to each case; if the appeal is dismissed today we will continue to assist the appellant;

(d) Will the appellant be allowed to stay in the family home whilst his Homelessness Application is being considered? – At present it has been agreed that he can remain there with no rent payment; however the Council will wish to repossess the property as quickly as possible in view of the general housing situation in the District;

(e) Have you discussed with the appellant the possibility of him moving to temporary accommodation? – Yes but he has said he would prefer to remain at the family home as long as possible;

(f) If possession of the property is obtained but the Homelessness Application is still outstanding what will happen to the appellant? – Officers will review whether temporary accommodation is to be provided;

(g) If the appellant's father had died one day short of the 12 month period would you still say that he could not succeed to the tenancy? – Yes, in law the period is 12 months.

The Chairman asked the appellant and the Housing Options Manager if they wished to raise any further issues in support of their cases. Both parties stated that they 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 Housing Options Manager would be advised in writing of the outcome. The appellant, his cousin and the Housing Options Manager then left the meeting.

The Panel considered all of the evidence and the views which had been expressed by the appellant, his cousin and the Housing Options Manager. The Panel focused on the law relating to the succession, the appellant's circumstances including the length of time that he had resided at the family home and his medical condition.

**RESOLVED:**

That, having taken into consideration the information presented by and on behalf of the appellant and by the Housing Options Manager, in writing and orally, the appeal be dismissed and the officers' decision that the appellant was not entitled to succeed to the tenancy of the family home and to place his Housing Register Application in Band 3 be upheld for the following reasons:

(a) the Housing Act 1985, Part IV, Section 87 states:

"A person is qualified to succeed the tenant under a secure tenancy if he occupies the dwelling-house as his only or principal home at the time of the tenant's death and either –

(a) he is the tenant's spouse; or

(b) he is another member of the tenant's family and has resided with the tenant throughout the period of 12 months ending with the tenant's death ....."

(b) the appellant moved away from the family home in 2005 and returned on 30 September 2007 to care for his father who at that time was the sole tenant of the property; the appellant's father died on 21 August 2008; accordingly the appellant had not resided with the tenant throughout the period of 12 months ending with the tenant's death and therefore has no statutory rights of succession;

(c) the Council is prepared to consider granting offers of a non-statutory succession but only in cases where an applicant fulfils the statutory requirement to have resided with the tenant throughout the period of 12 months ending with the tenant's death; the appellant does not fulfil this requirement;

(d) account has been taken of the length of time the appellant resided at the family home from his birth for approximately 21 years; also the fact that he fails to meet the 12 months period by only a few weeks; whilst the Panel sympathises with the appellant's circumstances an exception cannot be made to the statutory rights;

(d) the appellant's Housing Register application has been dealt with in strict accordance with the law and the Council's Allocation Scheme and the appellant's current banding in Band 3 is correct having regard to the appellant's medical conditions.

**23. APPLICATION NO. 12/2008**

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 accompanied by his wife. Mr J Hunt (Assistant Housing Options Manager - Homelessness) attended the meeting to present his case. Mr R Wilson (Assistant Housing Director – Operations) 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.

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

- (a) copies of documents submitted by the applicant namely:
  - (i) the application to the Housing Appeals and Review Panel dated 19 September 2008;
  - (ii) letter dated 18 July 2008 from the applicant's solicitors to the Council's Legal Services;
  - (iii) letter dated 1 September 2008 from the applicant's solicitors to the Housing Directorate.
- (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) interview report dated 30 April 2008 by a Housing Officer on an interview with the applicant;
  - (ii) interview report dated 2 June 2008 by a Housing Officer on an interview with the applicant;
  - (iii) interview report dated 23 June 2008 by a Housing Officer on an interview with the applicant;
  - (iv) letter dated 19 May 2008 from the Council's Benefits Manager to the applicant;
  - (v) letter dated 4 July 2008 from the Assistant Housing Options Manager – Homelessness to the applicant;
  - (vi) letter dated 18 July 2008 from the applicant's solicitors to the Council's Legal Services;
  - (vii) interview report dated 30 July 2008 by a Housing Officer on an interview with the applicant;

(viii) letter dated 15 August 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 applicant had been treated like a liar by the officers; he always told the truth; he had suffered difficult times throughout his life but on all previous occasions he had managed to resolve the issues without seeking help from the authorities;

(b) he had lived in this country since the 1960s except for three years between 1968 and 1971 when he had emigrated to Australia; on his return he had been homeless but had not approached a local authority even though he had two children at the time and his wife was expecting a third; he had stayed with his brother for two months and had then bought a house in Crouch End; he had started a business but it had not gone well and he had closed the factory; he had become a plumber/heating engineer; he had sold his property and bought another in Palmers Green; he had become a property developer and had been quite successful; he had flaunted his money and had decorated his Christmas tree with £20 notes; when Mrs Thatcher had been Prime Minister he had become a lorry driver and had suffered a serious accident resulting in him spending several months in hospital; since that time he had suffered back, spine and hip problems and had severe osteo-arthritis; he had been unable to work and had his heavy goods vehicle driving licence taken away; he had been placed on a high dose of anti-depressants; his memory had suffered and he had eyesight problems; he had no chance of getting his driving licence back; he had lost his house in Palmers Green and another property which he had bought for his son; his wife had suffered heart problems and from cancer of the bladder and was generally in poor health;

(c) the applicant's daughter had allowed the applicant and his wife to rent a shop/flat which she owned in Leyton; the applicant and his wife had run the business of a mini supermarket/off licence and occupied the flat for a rental of £200 per week; this could be checked with H M Customs and Revenues; the job had entailed working 7.00 a.m. to midnight almost every day and his daughter had decided to sell the property because she had become concerned at the way in which her mother was struggling to cope with the situation;

(d) the applicant had asked his daughter to assist him in buying a property in Loughton until he could obtain a mortgage himself and pay her back; the applicant's daughter had loaned the applicant £150,000 and the property had been acquired in the names of the applicant and his wife; the applicant had tried to get a mortgage from building societies and banks but without success due to his ill health;

(e) the applicant had been fooling his daughter for seven years about his ability to get employment, obtain a mortgage and pay her back the money she had loaned;

(f) the applicant's daughter had three children, two of whom currently lived with the applicant;

(g) the applicant's daughter had needed the money which she was owed by the applicant; the applicant's daughter's husband was a tough character and on one occasion after several alcoholic drinks he had started a discussion with the applicant about the outstanding money and had hit the applicant; the Police had not been called because the applicant was aware that he was in the wrong about the money and he had felt humiliated; the applicant's other daughter's husband worked for the Police and if the assault had become known there would have been family trouble;

(h) the applicant and his wife had agreed to transfer the property to their daughter, to become her tenants in the property and to pay her rent;

(i) the applicant had applied for Housing Benefit but had been refused; the applicant did not know Housing Benefit law and still did not understand it;

(j) the applicant had been unable to pay the rent and the applicant's daughter had served Notice to Quit; the applicant's daughter wanted the property vacant so that she could sell it;

(k) the signing over of the property to the applicant's daughter had not been a deliberate act; the transfer had been forced on the applicant through no choice of his own; the applicant had been concerned that if he did not take steps to resolve the situation there would be a risk of further violence from his daughter's husband and irreparable damage to his daughter's marriage; if the act in question was regarded as the whole transaction (i.e. transfer of the tenancy in favour of a tenancy) the act had not been deliberate because it had been done in good faith (to reconcile the applicant's daughter's legal and beneficial interests and to preserve a home for the applicant) and in ignorance of the relevant fact that the claim for Housing Benefit would not be successful;

(l) it was not accepted that the applicant knew that in all likelihood he would not be able to pay the rent to his daughter and would be served with Notice to Quit; the applicant had genuinely and honestly believed that he would be entitled to Housing Benefit; it was accepted that as a consequence of signing over the property to his daughter the applicant had ceased to be the legal owner of the premises; however, it was not accepted that the consequence of signing over the property and entering into a Tenancy Agreement was that the applicant had ceased to occupy the property; the applicant had relinquished his interest as a legal owner in favour of another legal interest as a tenant with the right to occupy the premises; it could not be said that the act of transferring legal title and entering into a tenancy had caused the loss of the accommodation; the necessary casual connection could only be established if the applicant had entered into the tenancy in the knowledge that he would not be entitled to Housing Benefit;

(m) it was disputed that the property would have continued to be available for the applicant's occupation if it had not been transferred to the applicant's daughter; relationships between the applicant, his daughter and his son-in-law had become increasingly strained and it had become clear that one way or another the applicant's daughter would regain possession of the property;

(n) it was accepted that the property was of sufficient size for the applicant and his household; however, it was not accepted that it was reasonable for the applicant to continue in occupation of the premises; the applicant had become fearful of violence from his son-in-law and the property was not affordable because the applicant was not entitled to Housing Benefit;

(o) whilst it might be obvious to a Housing Officer that the applicant would not be entitled to Housing Benefit in view of his circumstances it had not been obvious to the applicant.

The applicant answered the following questions of the Assistant Housing Options Manager – Homelessness and the Panel:

(a) Did you obtain a temporary loan to acquire the property in Loughton prior to obtaining a loan from your daughter? – Yes, I obtained a loan of £150,000 from the

National Westminster Bank; when my daughter sold the property in Leyton the bank loan was paid off;

(b) Did your daughter own the property in Leyton? – Yes;

(c) Did she have a mortgage to pay back? – Yes;

(d) Did you enter into a written agreement with your daughter about the transaction? – No, we are a close family and trust each other; if I give my word about something I will keep it; we did engage a solicitor to transfer the property and draw up the Tenancy Agreement ;

(e) Is there any evidence that you owe money to your daughter? – No, but it is a question of trust between family members;

(f) What was the arrangement with your daughter in respect of the property in Leyton? – My daughter owned the freehold and she allowed my wife and myself to rent both the shop and flat for a sum of £200 per week; my wife and I ran the business of a mini supermarket/off licence;

(g) Was the property in Leyton sold because of your ill health? – My daughter was concerned about my wife's health;

(h) How did you expect to get a mortgage for the property in Loughton if you were not working? – I was fooling myself and my daughter; I felt that I might get my heavy vehicle driving licence back and be able to earn £700/£800 per week;

(i) When you claimed Housing Benefit why did you not inform the Council that you were related to the landlord (your daughter) ? – I would never deny having a daughter; there must have been a misunderstanding;

(j) Are you denying that you made a false statement? – I would not deny having a daughter;

(k) Are you looking after two of your daughter's children? – Yes;

(l) Why are you helping your daughter in this way when your daughter has made you homeless? – They are my granddaughters and I adore them; the dispute is with my daughter and my son-in-law and has nothing to do with my granddaughters; I drive them to University and back home each day;

(m) On your Homelessness application you have included your granddaughters as part of your household; however they have rarely with you at the Council's Homeless Hostel; can you explain this situation? – There is no television at the Hostel and there is no land telephone line; my granddaughters need to use a computer for their studies and there is no signal for a laptop at the Hostel; I cannot force them to stay at the Hostel; my other daughter is looking after them temporarily;

(n) According to Land Registry records the property was transferred to your daughter on 29 June 2007 but you signed a Tenancy Agreement with her in April 2007; why did you sign a Tenancy Agreement before transferring the property? – The property may have been registered on 29 June 2007 but both agreements were completed on the same day at the same time; perhaps there was a delay in sending the documents to the Land Registry;

- (o) When was your road traffic accident? – 2.36 a.m. on Sunday/Monday 22 July 1996;
- (p) There was a long delay between the accident and when you purchased the property; were you not aware that you would not get your licence back? – I was fooling myself;
- (q) When the property in Leyton was sold where was your daughter living? – In Greece; my son-in-law could not get work in this country and he wanted to return to Greece to be close to his friends;
- (r) Can you clarify who is the mother of the grandchildren who form part of your household? – My daughter who is now living in Greece and who was my landlord;
- (s) Does your daughter have anything to do with her children? – Yes we are a very close family and love each other;
- (t) Does your daughter support her children? – She has her own financial difficulties;
- (u) Did you take any professional advice before transferring the property to your daughter? – No, the property did not belong to me;
- (v) Legally the property was in your name, was it not? – According to the law of the government but I believe in the law of God;

The Panel considered the following submissions in support of the case of the Assistant Housing Options Manager -Homelessness:

- (a) the applicant had made a Homelessness application to the Council on 8 April 2008; he had included in his Housing and Homelessness application his wife and his two granddaughters aged 21 and 20; the applicant had applied as homeless because his daughter who had become his landlord had served him with notice to vacate a property in Loughton when he had not paid her rent;
- (b) the applicant and his wife had taken ownership of the property in Loughton on 25 September 2001; on 27 June 2007 the applicant and his wife had transferred the ownership of the property to their daughter; on 12 April 2007 the applicant and his wife had signed a Tenancy Agreement for the property agreeing to become the tenants of their daughter; the contractual rent for the property had been £1,083.33 per month; unable to work in order to pay the rent due to ill health, the applicant had made a claim for Housing Benefit; the Council's Housing Benefit Department had decided that the applicant was not eligible for Housing Benefit because he had been the previous owner of the property; on 8 February 2008, the applicant and his wife had received notice from their daughter and landlord requesting that they leave the property on 11 April 2008; an interim duty to accommodate the applicant had been accepted by the Council pending further enquiries as it had been believed that he was eligible for assistance because he held a British passport, homeless because he had been served notice by his landlord and may have had a priority need due to his age and ill health; further enquiries had resulted in the Council being satisfied that the applicant was in priority need due to his age and ill health;
- (c) the applicant had claimed that he felt he had to sign over the ownership of the property in Loughton to his daughter and become her tenant; he had stated that he felt he had to transfer the ownership because he had originally purchased the property with financial help from this daughter on the understanding that he would at



some stage obtain a mortgage and pay her back; due to his ill health he had been unable to secure a mortgage; he had been asked by his daughter to transfer her ownership of the property to her and he had become her tenant with a rental liability of £1,083.33 per month;

(d) unable to pay the rent either through his own means or through Housing Benefit, the applicant had accrued rent arrears;

(e) the officers had issued a "minded to" letter at the request of the applicant's solicitors; this letter had explained why officers were minded to deem the applicant intentionally homeless; in response the applicant's solicitors had claimed that the applicant had been forced to sign over the ownership of the property because he was at risk of violence from his son-in-law; this submission had not previously been made to officers during the numerous discussions with the applicant;

(f) the applicant's solicitors had also emphasised that their client had not been aware that he would be unable to receive Housing Benefit;

(g) following a further interview with the applicant a decision letter had been issued finding the applicant intentionally homeless; the Council had exercised its discretion to accommodate the applicant pending the outcome of this review;

(h) account should be had to the Code of Guidance on Homelessness, in particular Paragraph 11.7;

(i) the act of transferring the ownership of the property to his daughter had been a deliberate act; as a consequence the applicant had given up ownership of the property, had become the tenant of his daughter and had accepted rental liability when he should have been aware that he would not be able to pay the rent and this had led to him ceasing to occupy the property; the property would have continued to be available for the applicant's occupation had he not transferred the ownership to his daughter, as he and his wife were the owners and legally entitled to occupy the property; it would have been reasonable for the applicant to continue to occupy the property had he not signed it over to his daughter as it was a home large enough for his household with no mortgage repayments to make;

(j) although the applicant had claimed that it had been necessary to sign over the property to his daughter because he could not get a mortgage to pay her back, he had been the legal owner of that property with his wife and had lived there for over five years; if the applicant needed to sign over the property to his daughter and become her tenant in order to pay the rent, given his ill health and inability to work it would appear that the only way in which he could pay rent would be through Housing Benefit; whilst he had stated that he was unaware that he would be entitled to Housing Benefit it is considered that it was reasonably foreseeable that he would not be able to claim Housing Benefit as he had been the previous owner of the property.

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

(a) Do you agree that if I had known I would not be entitled to Housing Benefit I would have been fooling myself? – It is the view of officers that in the circumstances it was reasonably foreseeable that it would not be possible for you claim Housing Benefit;

(b) If something is illegal would you do it? – No;

The Chairman asked the applicant if he wished to raise any further issues in support of his case. The applicant asked the Panel not to treat him like a criminal. He said that he only wanted to put a roof over the head of himself and his wife for the remaining years of their lives.

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, his wife and the Assistant Housing Options Manager – Homelessness then left the meeting.

The Panel considered all of the evidence and the views which had been expressed by and on behalf of the applicant and by 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 and on behalf of 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 on balance that the act of the applicant in transferring the ownership of his property to his daughter in 2007 and becoming his daughter's tenant was a deliberate act which resulted in him ceasing to occupy the property; in coming to this decision account has been taken of the following:

(i) the applicant and his wife had been the legal owners of that property for nearly six years and had been entitled to occupy it;

(ii) a road traffic accident on 22 July 1996 had severely restricted the applicant's ability to work and he had since suffered problems with his spine, back and hips and he had been aware of the results of these restrictions when attempting to obtain a mortgage for the property to repay the money loaned to him by his daughter to purchase the property in 2001;

(iii) the applicant has admitted that he had been fooling himself and his daughter about his ability to be in a position to obtain employment and a mortgage;

(iv) the loan of money to the applicant by his daughter had not been the subject of any formal documentation;

(v) when transferring the property to his daughter and deciding to be her tenant of the property at a rent of £1,083.33 per month the applicant had been aware that he would be unable to meet the rental liability from his and his wife's own resources;

(vi) the applicant had taken legal advice in relation to the transfer of the property to his daughter and the granting of a tenancy, and bearing this in mind and accepting that the applicant could not be expected to have detailed knowledge of Housing Benefit Regulations it is considered that the applicant having been the owner of a property with a value well in excess of £150,000 and having worked in this country since the 1960s should have foreseen that he would have difficulty in obtaining Housing Benefit; it is noted that the applicant had a knowledge of capital gains and inheritance tax and that when making his Housing Benefit application he had signed a statement stating that he was not related to his landlord (his daughter) - a question which if answered correctly would have made him ineligible for Housing Benefit;

(vii) the applicant has admitted that he has a close relationship with all of his family and that the one incident highlighted with his son-in-law resulting in an assault had only arisen after the son-in-law had been drinking alcohol and had not been considered serious enough to be reported to the Police; it is also noted that the applicant did not disclose this aspect when making his initial Homelessness application to the Council or at his initial interviews with Council Officers;

(2) That had it not been for this deliberate act (transferring the ownership of his property to his daughter and becoming her tenant) the accommodation would have continued to be available and reasonable for the applicant and his family to continue to occupy;

(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;

(4) That the Council continues to provide interim accommodation for the applicant for a period of up to one month from the date of the letter notifying the applicant of the Panel's decision, in order to allow the applicant reasonable opportunity to secure alternative accommodation.

**CHAIRMAN**

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