

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)

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:

Agenda Item No.	Subject	Exempt Information Paragraph Numbers
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