



Epping Forest District Council

HOUSING APPEALS AND REVIEW PANEL **Thursday, 17th December, 2009**

Place: Committee Room 2, Civic Offices, High Street, Epping

Time: 2.30 pm

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

Members:

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

1. APOLOGIES FOR ABSENCE

2. MINUTES (Pages 3 - 16)

To agree the minutes of the meeting of the Panel held on 15 October 2009 (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. 10/2009 | 1 | |
| 7 | Application No. 11/2009 | 1 | |

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. 10/2009 (Pages 17 - 44)

To consider the attached restricted report.

7. APPLICATION NO. 11/2009 (Pages 45 - 78)

To consider the attached restricted report.

EPPING FOREST DISTRICT COUNCIL COMMITTEE MINUTES

Committee: Housing Appeals and Review Panel **Date:** Thursday, 15 October 2009

Place: Committee Room 2, Civic Offices, High Street, Epping **Time:** 2.30 - 5.15 pm

Members Present: Mrs C Pond (Chairman), Mrs R Gadsby (Vice-Chairman), Ms J Hedges, B Rolfe and Mrs J Sutcliffe

Other Councillors:

Apologies: J Wyatt

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

26. MINUTES

RESOLVED:

That the minutes of the meeting of the Panel held on 20 August 2009 be taken as read and signed by the Chairman as a correct record.

27. SUBSTITUTE MEMBERS

It was noted that Councillor Ms J Hedges was substituting for Councillor J Wyatt.

28. DECLARATIONS OF INTEREST

Pursuant to the Council's Code of Member Conduct, Councillor Mrs R Gadsby declared a personal interest in agenda item 6 (Appeal No 8/2009) by virtue of having advised the appellant about the procedure for making an appeal. She advised that she had not expressed any view about the matter and had determined that her interest was not prejudicial and that she would remain in the meeting for the consideration and voting on the matter.

29. 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 paragraph 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 No. |
|-----------------|--|----------------------------------|
| 6 | Appeal No 8/2009 | 1 |
| 7 | Application No 9/2009 | 1 |
| 8 | Progress Report on Previous Appeals/Applications | 1 |

30. APPEAL NO. 8/2009

The Panel considered an appeal against a decision made by officers under delegated authority regarding the banding of the appellant's Housing Application. The appellant attended the meeting to present his case. Ms T Selley, Assistant Housing Options Manager (Allocations) attended the meeting to present her case. Mr A Hall, Director of Housing, attended the meeting to advise the Panel as required on details of the national and local housing policies relative to the appeal. The Chairman introduced members of the Panel and officers present to the appellant.

The Chairman outlined the procedure to be followed in order to ensure that 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:
 - his application to the Housing Appeals and Review Panel dated 6 July 2009;
- (b) the case of the Assistant Housing Options Manager (Allocations);
- (c) a copy of the Bandings forming part of the Council's Housing Allocations Scheme.

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

- (a) the appellant resided in a one bedroom property; three years ago his son had chosen to live with him and not his mother as his mother's current partner was an alcoholic and violent; the appellant had been happy to accommodate his son as he did not want him growing up in the environment being experienced at his son's mother's property;
- (b) the appellant had been demoted from Band 3 to Band 4 of the Council's Housing Allocations Scheme because he was not in need of a garden; the appellant could not understand why a garden was such an issue; the appellant's only concern was to have a property with a second bedroom;
- (c) the appellant's son had reached the age of 15 last May and as a result this had affected the appellant's banding of his Housing Application;
- (d) having only one bedroom was placing restrictions on the day-to-day activities of both the appellant and his son; the appellant was now in a new relationship and although his partner did not live with the appellant she did on occasions stay overnight at the appellant's property; the appellant's son slept on a sofa bed in the living room; his son would be leaving school next year and hoped to attend college and a young man of that age needed his own bedroom;

(e) space in the appellant's property was at a premium and the appellant had erected a small tool shed in the communal garden for the block of flats in which the appellant's property was situated; because the appellant resided in a first floor property he had been told to remove the shed;

(f) the appellant had had six operations on one eye during the last two years and still required further treatment on that eye and on his other eye; when recovering from the operations his son had helped with household chores;

(g) the appellant had consulted his GP about a stress related illness.

The appellant answered the following questions of the Assistant Housing Options Manager (Allocations) and members of the Panel:-

(a) To be within Band 3 of the Council's Housing Allocations Scheme you need to meet the criteria of Band 4(a) or (b) and one other criteria in Band 4 which can also include criteria (a) or (b); apart from criterion (a) in Band 4 what other criterion applies to you? I was put into Band 3 because I needed a garden but I don't need a garden and I cannot understand how my son and myself can be expected to live in a property with only one bedroom.

(b) How long has your son lived with you? Three years.

(c) Have you considered other options e.g. a privately rented property? I am on Incapacity Benefit and Housing Benefit and it is difficult to find a landlord who is prepared to accept a tenant on benefits; also a privately rented property would give me less a security than one with the Council.

(d) Where does your son do his homework? He goes into the bedroom to do his homework; when it is time for him to go to sleep in the living room I have to go to the bedroom; these arrangements place restrictions on our social lives; although my son has a good relationship with my current partner the limited accommodation presents difficulties; also when a neighbour occasionally socialises with me I have to be aware of the need to make the living room available to my son at a reasonable hour.

(e) Did you question why you had been demoted from Band 3 to Band 4? I telephoned the Housing Directorate to find out the status of my application just after my son turned 15 years of age and was advised that I had been demoted to Band 4 because I was no longer in need of a garden.

(f) Do you accept that the reason was your son reaching 15 years of age? - Yes.

(g) Do you have any medical certificates in relation to your stress related illness and/or your eye operations which support the view that two bedroom accommodation would be beneficial for you? I am happy for you to approach my GP who will also advise you that I am awaiting an appointment with a counsellor;

(h) Would you find it easier in a property with two bedrooms? – Yes, my son needs his own space like many of his friends.

(i) Have you applied for properties through the Council's Choice Based Letting Scheme? – Yes, I have bid for several two bedroom properties but I have not been successful; I have also considered Mutual Exchange but our existing property is really only suitable for a couple or a single person; an elderly couple having a

property with two or more bedrooms are unlikely to agree an exchange for a one bedroom flat which is on the first floor with no lift.

(j) Does your son visit his mother? His mother lives a short distance from my property and he does visit her but does not stay there.

(k) Do you have any other children? Yes a 25 year old who lives in another part of the District.

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

(a) the appellant had been the tenant of his existing accommodation since 2001 at which time he had lived alone;

(b) in May 2007, the appellant had applied for re-housing as his son then aged 13, had moved in with him and he needed an extra bedroom; the appellant's application had been assessed in accordance with the Housing Allocations Scheme and placed in Band 3;

(c) the Housing Allocations Scheme, which was considered by the Housing Scrutiny Panel and reviewed by the Cabinet on an annual basis, stated that an order for an application to be assessed at Band 3, the home seeker must meet the criteria of Band 4(a) or (b) and one other criteria in Band 4, which could also include (a) or (b); the appellant's application qualified for Band 3, at that time because he was a home seeker living in the District for more than one year immediately prior to application needing one or more additional bedrooms (criterion 4(a); and the household included a child under the age of 15 living in the District for more than a year immediately prior to application who had no access to a garden (criterion 4(e));

(d) on 13 May 2009 when the appellant's son reached the age of 15 the Housing Application was re-assessed; as the application now only met one of the criteria in Band 4 (criterion (a); the application was moved from Band 3 to Band 4;

(e) the Panel were asked to dismiss the appeal on the basis that the appellant did not meet any of the other criteria in Band 4 and therefore did not qualify for Band 3.

The Assistant Housing Options Manager (Allocations) answered the following questions of the appellant and members of the Panel:-

(a) I was bidding for properties when I was in Band 3 but was not successful; now the time in Band 4 how long is it before I am likely to be offered a property? Currently no offers are being made for applicants in Band 4 unless they are elderly.

(b) Are applicants in Band 3 currently receiving offers? - Yes those that have been on the list for five years.

(c) Does the appellant's date of registration start afresh when he is moved from one Band to another? No, his date of registration remains as the original date i.e. May 2007 in this case.

(d) Has the appellant submitted any evidence to support being offered accommodation on medical and/or welfare grounds? – No.

(e) You stated that you moved from a two bedroom property in another part of the District to be near to your son; what was the age of your son at that time? He was five years old; my son's mother was not married to me and I had to take steps to get parental responsibility;

(f) When did your son start to live with you? In July 2006 and I applied for re-housing in May 2007 when this arrangement became permanent.

The Chairman asked the appellant if he wished to raise any further issues in support of his case. The appellant indicated that he did not understand the restrictions on the use of the communal garden and requested that this be clarified.

The Chairman asked the Assistant Housing Options Manager (Allocations) if she wished to raise any further issues in support of her case. The Assistant Housing Options Manager (Allocations) stated that she did not wish to make any further representations.

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

The Panel considered all of the evidence and the submissions which had been made by the appellant and by the Assistant Housing Options Manager (Allocations). In coming to its decision, the Panel focused on the Council's Housing Allocations Scheme and the evidence submitted in relation to the appellant's current circumstances.

RESOLVED:

(1) That, having regard to the Council's Housing Allocations Scheme, and having taken into consideration the information presented by the appellant and by the Assistant Housing Options Manager (Allocations) in writing and orally, the decision of the officers not to promote the appellant from Band 4 to Band 3 of the Allocations Scheme be upheld for the following reasons:

(a) the appellant is currently in Band 4 of the Council's Housing Allocations Scheme by virtue of being a home seeker living in the District for more than one year immediately prior to application, needing one or more additional bedrooms (criterion (a) of Band 4);

(b) in accordance with the Scheme, in order to be promoted to Band 3, the appellant has to meet the criteria of Band 4(a) or (b), and one other criterion in Band 4 (which can also include Criterion (a) or (b));

(c) account has been taken of the background to the appellant's son living with him, the restrictions on the day-to-day activities of the appellant and his son as a result of the son needing to sleep in the living room and the appellant's health problems, and it is considered, based on the evidence submitted, that the appellant does not meet the requirements of any of the other criteria of Band 4 and does not therefore qualify for promotion to Band 3;

(2) That based on the evidence submitted, no deficiency or irregularity has been identified in the decision made by officers and the manner it was made;

(3) That, if the appellant is of the view that he meets the requirements of Criteria (b) of Band 4 by virtue of needing to move on medical or welfare grounds, he be invited to complete a medical information form in support of that view, with a supporting letter from his GP if appropriate; and

(4) That the Council's Housing Management Section write to the appellant explaining the restrictions imposed on the use of, and erection of, structures in communal gardens.

31. PROGRESS REPORT ON PREVIOUS APPEALS/APPLICATIONS

The Chairman agreed to alter the order of business for the meeting and to take this item next as the applicant for the case Application No 9/2009 had not yet arrived at the Civic Offices.

The Panel considered a progress report on previous appeals/applications.

In relation to Appeal 5/2009, the Director of Housing reported the results of the consultation exercise. He reminded members that they had decided to agree to the removal of a fence if a simple majority of residents and Essex Highways had no objections. He pointed out that the Panel had also agreed that residents not responding to the consultation exercise should be considered to be in favour of removal of the fence. The Panel noted that nine responses had been received from the seventeen households consulted. Five responses had been against the removal of the fence and four had been in favour. However, taking account of those not responding and the Panel's previous decision in relation to those it was clear that the majority of households consulted were in favour of removal of the fence. The Director of Housing advised that a response was still awaited from Essex Highways and if they indicated that they had no objection the fence would be removed. Members agreed that this case should remain on the schedule of outstanding cases.

In relation to Appeal 2/2009, the Director of Housing advised that several repairs had been undertaken to the faulty shower and that following the last repair on 24 August no further representations had been received from the tenant.

RESOLVED:

- (1) That the progress report on previous appeals and applications be noted; and
- (2) That cases Appeal 7/2009, Appeal 6/2009, Application 3/2009, Application 1/2009 and Appeal 2/2009 be deleted from the schedule.

32. APPLICATION NO. 9/2009

The Panel considered a request for a review of a decision made by officers under delegated authority regarding the applicant's Homelessness Application. The applicant attended the meeting to present her case. Mr J Hunt, Assistant Housing Options Manager (Homelessness), attended the meeting to present his case. Mr A Hall, Director of Housing, attended the meeting to advise the Panel as required

on details of the national and local housing policies relative to the application. The Chairman introduced members of the Panel and officers present to the applicant.

The Chairman 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) her application to the Housing Appeals and Review Panel dated 17 September 2009;
 - (ii) warrant to search for and remove patient dated 12 May 2008;
 - (iii) admission to hospital for assessment - patient's information leaflet;
 - (iv) statement of rent account of privately rented property;
 - (v) letter dated 18 September 2009 from a recruitment agency with which the applicant had registered;
- (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) Order for Possession issued on 5 December 2008;
 - (ii) letter dated 6 May 2009 from the applicant's former landlady to the Council together with a statement of the applicant's rent account from July 2007 until April 2009;
 - (iii) Housing Officer file note dated 2 April 2009 following an interview with the applicant;
 - (iv) Housing Officer file note dated 30 July 2009 following a further interview with the applicant;
 - (v) Housing Officer file note dated 13 August 2009 following a further interview with the applicant;
 - (vi) Housing Officer file note dated 4 August 2009 following discussions with officers in the Council's Housing Benefits Section together with details of Housing Benefit paid;
 - (vii) letter dated 1 September 2009 from the Assistant Options Manager (Homelessness) to the applicant.

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

(a) the applicant and her partner had commenced living in privately rented accommodation in July 1999 at which time the applicant had been a part-time student and her partner a full-time student; for years they had paid the rent in full; the rent had not been increased over a long period probably because they had been good tenants and had always paid the rent on time;

(b) the aim of the applicant and her partner had been to obtain a mortgage and own their own property; they had applied for a mortgage but at that time their circumstances had changed and they had been unsuccessful;

(c) the changes in their circumstances had commenced in January 2006 when the applicant's daughter had been born;

(d) in March 2006 the applicant's partner had become unemployed; he had lost his job because legislation regarding the security industry had required all security guards to obtain a licence to work issued by the Security Independent Authority; the applicant's partner had been unable to obtain a licence because his Work Permit had become obsolete and he had not been able to obtain alternative employment for the same reasons; the Home Office had delayed excessively responding to the applicant's partner's several requests for updated documents; the circumstances had led to applicant's partner suffering serious mental health illness as he had become concerned over his right to remain in this country and this had resulted in his admission to hospital against his will in May 2008; he had been sectioned under the Mental Health Act as he had said he wanted to kill himself; however, shortly after being admitted to hospital he had appealed against this sectioning and had been discharged;

(e) although the applicant's partner had been unable to work due to his illness this had not been the primary cause for his unemployment; the applicant's partner had been the principal carer for the applicant's daughter and as a result of his illness it had been necessary to make alternative arrangements;

(f) the applicant had been working full-time until May 2007 when she had decided to start her own business (part-time) and had obtained part-time employment through a recruitment agency in order to have more time to look after her daughter; the applicant's business had not made money;

(g) as a result of the change in their circumstances the applicant and her partner had been unable to pay their bills; they had taken out loans but had been unable to repay the loans; the applicant had not immediately sought Housing Benefit as she had thought her partner's situation would be resolved;

(h) Housing Benefit had been received from June 2007; the applicant had not passed on all of the Housing Benefit to her landlord because she had needed some of it for food and to pay bills; the applicant had not intentionally stopped paying the rent and she had not realised that by June 2008 the rent arrears had amounted to over £2,000; it had been the circumstances which had led to the situation and not the deliberate acts of the applicant or her partner; the applicant had wanted to be independent and self sufficient and that had been part of the reason for some of the mistakes she had made;

(i) when the applicant had applied for Housing Benefit she had not included her partner intentionally because he had told her not to; she had been concerned what he might do to himself if she had disregarded his demand and she had decided to make a false declaration rather than upset him; this action had not been taken to make the applicant and her partner homeless;

(j) when all the pressures had increased in January 2009 the applicant's partner had written her a note indicating that he was determined to kill himself and he had been re-admitted to hospital at that time;

(k) Housing Benefit had been suspended when the Council had established that not all of the relevant information had been revealed; the Housing Benefit Section had taken an unreasonably long time (seven months) to re-assess the case; when the payments had been resumed in February 2009 the balance of the rent arrears had not been covered and had accumulated to such an extent that they had exceeded the ability of the applicant and her partner to pay;

(l) the Council's statement that the occasional non-payment of rent had been wilful, persistent and constituted refusal was demonstrably untrue and took no account of the fact that the applicant and her partner had paid the rent in full during the proceeding seven years residence at the property;

(m) the applicant's homeless situation was neither deliberate nor intentional; the applicant and her partner were currently leading a hand to mouth existence and would find it difficult if not impossible to obtain private accommodation without funds for the deposit or rent in advance and their indebtedness precluded them from obtaining further loans to cover these requirements;

(n) the applicant had started to pay back the money she owed.

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

(a) At the time you applied for Housing Benefit you could have arranged for payment to be made direct to your landlord; why did you not do so? I had been used to paying the landlord from my own account and I opted to continue to do so.

(b) You have stated that you had to use some of the Housing Benefit for essential items such as food; were you aware that you could have claimed Income Benefits e.g. Working Tax Credits? At the time I thought my partner's situation would be resolved; I received so many letters at the time and then was advised that I was being investigated for fraud as I had failed to reveal my partner when making the application for Housing Benefit; I did not apply again until I was accommodated by the Council pending this review.

(c) You accrued debts of over £50,000 and decided to apply Housing Benefit where you thought fit; did you not seek any advice about financial management? I did seek some advice from the Citizens Advice Bureau in 2008.

(d) Is your partner still living with you? Yes.

(e) You said your partner was discharged from hospital; can you clarify the position? He was discharged with consent of professionals after they had considered his appeal; he returned home with medication and continues to be under the care of nurses and psychiatric doctors.

(f) Why did you not reveal your partner when you completed your application for Housing Benefit? Because he asked me not to and I did not want to upset him because I was concerned about the consequences.

(g) You say you have not made yourself homeless intentionally but surely you are responsible as you did not communicate and deceived people; is your partner an illegal immigrant? No; the Home Office has recently written apologising; I now have a lawyer who is presenting our case; the Home Office has always known where my partner was but he did not want me to reveal his address to any other authority.

(h) Do you acknowledge that you deceived an authority which could have helped you? Not intentionally.

(i) Does your partner receive any benefits? No.

(j) Has he applied for any benefits? He applied for Incapacity Benefit over a year ago and is still waiting to hear about that application.

(k) Have you followed up that application? Yes we have not received any satisfactory answers.

(l) Is your partner still receiving care? Yes social workers visit him but they are reviewing the need to do so because his condition has improved.

(m) It appears that the Council considered that you were no longer living at the privately rented property when your Housing Benefit was stopped; can you explain the position? In May 2008 when the police were called they forced entry into the property and as a result a temporary door was put in place; the postman concluded that we had moved from the property and did not deliver our post; however we were still present.

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

(a) the applicant's household also consisted of her partner and their three year old daughter;

(b) the applicant had applied as homeless when she had been evicted from her privately rented accommodation on 6 April 2009; she had been eligible for assistance because she held a British Passport, homeless because she had been evicted from her privately rented home and in priority need as she had a dependant child; pending the outcome of the applicant's Homelessness Application she had been provided with interim accommodation by the Council;

(c) the applicant had lived at privately rented property between 26 July 1999 and 6 April 2009; the property had been a two bedroom flat which the applicant had rented from a private landlord as an assured short-hold tenant; the applicant had been contractually liable to pay the rent of £541.66 per month to her landlord; the rent of £541.66 had been fully eligible for Housing Benefit; the applicant had accrued rent arrears and when the Courts had issued a Possession Order in favour of her landlord on 5 December 2008, a total of £5,833.70 had been owed in unpaid rent;

(d) the rent arrears had accrued over the period August 2007 to April 2009; the applicant had experienced several changes in her circumstances in 2006 and 2007; in January 2006 she had given birth to her daughter; in March 2006 her partner had lost his job and due to his severe mental health problems had been unable to work; in June 2007 the applicant had resigned her regular full-time job to start a self-employed business in cosmetics in addition to commencing a new part-time post;

(e) the applicant had claimed that she had given up her regular full-time work in order to make her childcare arrangements more manageable and also due to stress; the applicant's business had not been successful financially, multiple debts had been built up and her partner had been too unwell to work; the appellant had claimed that due to the changes in her circumstances the household income had reduced and she had been unable to pay her rent;

(f) due to the changes in circumstances and reduced income, the applicant had applied for Housing Benefit from the Council; between 11 June 2007 and 26 June 2008 the applicant had received full Housing Benefit; payments had been paid directly to the applicant; a considerable proportion of the Housing Benefit paid by this Council to the applicant in order for her to pay her rent had not been passed onto her landlord; by June 2007 over £2,000 had been owed to her landlord in rent; the applicant had stated in an interview that she had used some of the Housing Benefit payments to pay for essential items;

(g) the applicant's Housing Benefit claim had been suspended as there had been a query over whether she had been residing at the privately rented property; a check on the property and subsequent interviews with the applicant had revealed that she had not disclosed her partner as being a member of her household when she had claimed Housing Benefit and had not disclosed all the information required of her with respect to her bank accounts and businesses; the applicant's Housing Benefit claim had been suspended for several months whilst investigations had taken place and in January 2009 her claim had been backdated and paid directly to her landlord;

(h) officers had decided that the applicant had made herself intentionally homeless and notice had been served on her to vacate the interim accommodation provided for her; the applicant had requested a review of the decision and she was being accommodated in the interim accommodation pending the outcome of this review;

(i) in making homelessness decisions, the Council was required to have regard to the Code of Guidance which assisted with the interpretation of the homelessness legislation; the Code of Guidance stated that a person became homeless, or threatened with homeless, intentionally if they deliberately did or failed to do anything in consequence of which they ceased to occupy accommodation which was available for their occupation and would have been reasonable for them to continue to occupy;

(j) it was considered that the applicant's wilful and persistent refusal to pay the rent on the privately rented property had been a deliberate act; in consequence of this she had been served notice which had led to her ceasing to occupy the property; the rent arrears had been caused by the applicant's failure to pass on the Housing Benefit payments she had received; the applicant's rent arrears problem had been compounded by the Housing Benefit claim being suspended for several months as a result of her failure to disclose information to the Housing Benefit Department;

(k) the privately rented property would have continued to be available had the applicant complied with the terms of her tenancy and paid her rent; it was considered that the property would have been reasonable for the applicant to have occupied as the property was a two bedroom flat with an affordable rent;

(l) the applicant had stated that she had used part of the Housing Benefit payments for food and other essential items; Housing Benefit was not intended for anything other than rent; in the event of the Panel upholding the officer's decision it will be necessary for the Council to seek an Order from the Court to obtain possession of the interim accommodation currently occupied by the applicant; in

these circumstances it was suggested that reference be made to Children and Family Services on account of the applicant's child being at risk of homelessness.

The applicant stated that she did not wish to ask the Assistant Housing Options Manager (Homelessness) any questions.

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

(a) When the Housing Benefit was backdated in January 2009 what period did it cover? The details are shown on the statement of account attached to the letter dated 6 May 2009 from the applicant's landlord.

(b) Why was the Housing Benefit paid directly to the landlord at that time? Because the applicant had been in arrears for more than eight weeks.

The Chairman asked the applicant if she wished to raise any further issues in support of her application. The applicant requested that the Panel give full consideration to her application.

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 that the applicant and the Assistant Housing Options Manager (Homelessness) would be advised in writing of the outcome. The applicant, and the Assistant Housing Options Manager (Homelessness) then left the meeting.

In coming to its decision the Panel focused on the legislation and the Code of Guidance on Homelessness, the evidence regarding the applicant's occupation of a privately rented property, the evidence regarding the application for, and the use of, Housing Benefit paid to the applicant, the applicant's other debts in excess of £50,000, the circumstances leading to the applicant's partner becoming unemployed, the applicant's ability to work following the birth of her daughter, the applicant's partner's serious mental health illness following the loss of his employment and his concern over his right to remain in this country.

RESOLVED:

(1) That, having regard to the provisions of the Housing Act 1996, as amended, and the Code of Guidance on Homelessness and having taken into consideration the information presented by the applicant and by the Assistant Housing Options Manager (Homelessness) in writing and orally, the decision of the officers that the applicant had become intentionally homeless be upheld for the following reasons:

(a) the applicant rented in her sole name a property from a private landlord between July 1999 and April 2009;

(b) the applicant failed, from August 2007, to pay the rent consistently on the privately rented property she occupied with her partner, resulting in the courts issuing a Possession Order in favour of her landlord on 5 December 2008, at which time there was a total of £5,833.70 arrears of rent;

(c) there was no restriction placed on the rent, meaning that it was eligible for maximum Housing Benefit; between 11 June 2007 and 26 July 2008 the applicant received directly from the Housing Benefit Section of the Council full Housing Benefit for the rent of the privately rented property of £541.66 per month; she did not pass on a considerable proportion of Housing Benefit to her landlord and used the money for other purposes;

(d) in June 2008, at which time the rent arrears amounted to over £2,000 the applicant's Housing Benefit claim was suspended as there was doubt about whether she was occupying the privately rented property; the resultant checks by the Housing Benefit Section revealed that the applicant had not disclosed her partner as being a member of her household when claiming benefit and had not disclosed all the required information in relation to her bank accounts and businesses; in January 2009, following investigations, her claim for Housing Benefit was backdated and paid directly to her landlord, by which time the landlord had obtained a Possession Order; the applicant admitted that she did not disclose relevant information when applying for Housing Benefit;

(e) had it not been for the deliberate act set out in (c) and (d) above, the privately rented property would have continued to be available and reasonable for the applicant, her partner and child to occupy and it was a two bedroom flat with an affordable rent;

(f) no evidence has been submitted indicating that the applicant is incapable of managing her affairs, indeed the applicant demonstrated to the Panel that she is an intelligent and capable person;

(2) That based on the evidence submitted, no deficiency or irregularity has been identified in the original homelessness decision made by officers and the manner in which it was made;

(3) That the Council continues to provide interim accommodation for the applicant, her partner and child for a period of two months from the receipt of the decision letter in order to allow her to secure alternative accommodation;

(4) That the officers refer the applicant to Children and Family Services to seek their assistance in helping the applicant find alternative accommodation.

CHAIRMAN

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