

EPPING FOREST DISTRICT COUNCIL COMMITTEE MINUTES

Committee: Housing Appeals and Review Panel **Date:** Thursday, 22 April 2010

Place: Committee Room 1, Civic Offices, High Street, Epping **Time:** 2.30 - 5.35 pm

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

Other Councillors:

Apologies:

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

44. MINUTES

RESOLVED:

That the minutes of the meeting of the Panel held on 18 March 2010 be taken as read and signed by the Chairman as a correct record.

45. SUBSTITUTE MEMBERS

It was noted that there were no substitute members at this meeting.

46. DECLARATIONS OF INTEREST

There were no declarations of interest by members of the Panel under this item.

47. 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. 2/2010	1
7	Application No. 3/2010	1

48. APPEAL No. 2/2010

The Panel considered an appeal against a decision made by officers under delegated authority not to reinstate the appellant on the Housing Register back to the appellant's original date/banding. The applicant attended the meeting to present his case accompanied by his wife. Mr R Wilson, Assistant Director of Housing (Operations), attended the meeting to present his case. Mr A Hall, Director of Housing, attended the meeting to advise the Panel as required on details of the national and local housing policies relative to the appeal. The Chairman introduced 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:
 - (i) his application to the Housing Appeals and Review Panel dated 25 February 2010;
 - (ii) copy of letter from the appellant to the Council's Compliments and Complaints Section dated 22 January 2010;
 - (iii) copy of letter dated 26 February 2010 from the appellant to the Council's Housing Directorate;
- (b) a summary of the case;
- (c) the case of the Assistant Director of Housing (Operations);
- (d) copies of documents submitted by the Assistant Director of Housing (Operations), namely:
 - (i) copy of letter dated 15 April 2009 from the appellant to a Housing Officer;
 - (ii) copy of letter dated 16 December 2009 from the appellant to the Housing Directorate;
 - (iii) copy of letter dated 7 January 2010 from the Housing Options Manager to the appellant and his wife;
 - (iv) copy of letter dated 22 January 2010 from the appellant to the Council's Compliments and Complaints Section.

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

- (a) although the appellant had received three offers of accommodation, the properties had not been accepted in the interests of standards of living and peace of mind;

(b) as a result of refusing the tenancy offers, the appellant had lost his position on the Housing Register; if he had fallen foul of the housing process, he asked for leniency and understanding as he had acted in the best interests of his family;

(c) the appellant had lost financially; time waiting, travelling and moving; and was still living in a property which was unsuitable;

(d) the Council's system penalised home seekers who turned down properties as their banding and medical needs might be re-assessed and this might lead to a longer wait for a property;

(e) the appellant had signed tenancy agreements because he had feared he would not be offered any other properties if he had refused to sign;

(f) the first property offered to the appellant had been very small with no kitchen installed apart from a sink and a small worktop; it had hardly any garden, although it had been advertised as having an exclusive garden;

(g) the second property offered to the appellant had been a good size but two days after signing the tenancy agreement, the appellant had established that a travellers' site might be provided to the rear of the property; as it had not been possible to return the keys immediately, a month's rent had become due and had been paid;

(h) when moving into the third property offered to the appellant, it had been established when in the kitchen of that property, that normal talk could be heard from the property next door through the party wall; the noise had also travelled up the wall and could be heard in one of the bedrooms; as the appellant worked shifts and needed to have a good level of sleep for his job, and having suffered noisy neighbours in the past, he could not afford to take a chance on this property; also the bedrooms had been small; the appellant and his wife had two children of their own but two older children from a previous marriage stayed with them on alternate weekends and as a result, there had been inadequate sleeping accommodation in the property; this decision had not been taken lightly as the family had liked the area and had applied for a pre-school place in the village;

(i) the keys to the properties had been returned as quickly as possible; the events had been stressful for the appellant and his family, especially as they were now so low on the Housing Register that it was like starting again; the Panel were asked to reinstate the appellant to his previous position on the register;

(j) the appellant needed to move in order to have a house with a garden and because the staircase in his existing property was not suitable for young children.

The appellant answered the following questions of the Assistant Director of Housing (Operations) and members of the Panel:-

(a) You have given reasons why you turned down three properties; can you indicate what you are seeking in a property? – The third property offered was close to our needs but we could not afford to take it due to the potential of being woken up by noise from the adjoining property; we would like a three bedroom property with a back garden; the first property offered to us had been small with a minimal garden although it had been advertised with an exclusive garden; we do not consider that we are being too prescriptive; the last two properties offered to us would have been suitable had there not been the problems we have outlined.

(b) In relation to the third property, could you have slept in one of the bedrooms which did not have a party wall with the adjoining property?- Yes.

(c) Did you attempt to sleep in the third property offered to you? – No, I was concerned about the potential of not being able to get an adequate night's sleep.

(d) You referred to a proposed travellers' site, how did you get to hear about this possibility? – One of the neighbours told us and we read about it in the local newspaper; we looked at the property on Google before making an offer and there had been trees in the vicinity; when we inspected the property, all of the trees had been chopped down and the site levelled, possibly in preparation for a potential travellers' site;

(e) Did you make further enquiries about the possibility of a travellers' site? – No, if it had been made clear about a potential travellers' site at the outset, we would not have bid for the property.

(f) Can you clarify your reasons for not accepting the first offer of a property? – The whole house had been quite small and there had been no fittings in the kitchen apart from a sink and a small worktop; we also considered that the property would be quite cold in the winter; there had been no heating in the bathroom.

(g) What type of house was the first one offered to you? – A semi-detached house.

(h) Where were you accommodated after you returned the keys for the third property offered to you? – We had an understanding landlord and although we had given notice on the property we occupied at the time, he allowed us to go back to it.

(i) Did you visit the properties offered to you? – Yes, before we made decisions on them.

(j) Have you paid any rent due on the properties? – Yes, it has all been paid.

The Panel considered the following submissions in support of the case of the Assistant Director of Housing (Operations):

(a) the appellant had originally joined the Council's Housing Register on 9 April 1999; his application had been cancelled on 8 October 1999 as he had failed to respond to two requests for further information; a letter had been sent to him confirming the cancellation;

(b) on 31 August 2000, the appellant had registered again, but had failed to respond to two requests for information and as a result it had been cancelled;

(c) on 23 July 2003, the appellant had joined the Housing Register with his wife being added to the application on 10 August 2005; they had a daughter aged three years and a son aged two years; the appellant also had children from a previous relationship who visited him;

(d) on 10 December 2008, the appellant had been offered a three bedroom house; this offer of accommodation had been refused for the reason "we felt it was too small for us, especially the bathroom";

(e) on 3 April 2009, the appellant had been offered a three bedroom house; he had signed the tenancy agreement on 3 April 2009 and the tenancy would have commenced on 13 April 2009; however, the appellant had returned the keys to the property on 7 April 2009 and a letter received from the appellant on the same day had stated "it would have been nice to be told from the outset of this bidding that there was a proposal of a travellers' site to the rear of the property as we would never have bid on it, and wasted money on moving fees";

(f) on 8 April 2009, the Assistant Housing Options Manager (Allocations) had advised the appellant that his Housing Application had been cancelled and that if he wished to join the Housing Register in the future, he would need to request a new application form; it was normal practice for applicants to re-register should they be rehoused by the Council;

(g) on 15 April 2009, the Council had received a letter from the appellant asking for the decision to remove him from the Housing Register to be reconsidered and asking if his application could be reinstated back to July 2003; the Housing Options Manager had agreed to reinstate the application at that time, but that had been subject to the medical evidence being reassessed;

(h) on 24 April 2009, the Council had advised the appellant that his application had been reinstated but that following the medical information being re-assessed, he had been demoted to Band 4;

(i) on 22 May 2009, the Council had advised the appellant that following the assessment of further medical evidence, he had been awarded "additional preference" and moved to Band 3 of the Allocations Scheme; the grounds for the "additional preference" had been due to the difficulties that the appellant had been experiencing in his current accommodation due to the design of the staircase in relation to his two young children; when a Housing Options Officer had visited the property, it had been established that there was a steep winding staircase which met with another wide staircase which was very difficult to negotiate;

(j) on 12 October 2009, the appellant had been offered a three bedroom house; the appellant had accepted the offer and signed the tenancy agreement on 14 October 2009, with the tenancy commencing on 19 October 2009; on 30 October 2009, the appellant had returned the keys to the property and terminated the tenancy; in a letter dated 16 December 2009, the appellant had stated that "the house appealed to us, although the third bedroom was quite small, but we weren't aware of the noise from next door"; "since my job is shift work, I really need to be able to sleep in the daytime otherwise I would be a hazard at work"; "we are writing this letter hoping that you will allow us to return on the housing list with the position we had before";

(k) on 7 January 2010, the Housing Options Manager had advised the appellant and his wife that they would not be reinstated and that they should submit a new application;

(l) on 22 January 2010, the appellant had appealed against the decision and had asked to be reinstated to his previous position at the top of the list;

(m) on 1 February 2010, the case had been reviewed and the decision of the Housing Options Manager had been upheld;

(n) the Panel were asked to agree that following the refusal of three offers of suitable accommodation, the appellant's original housing application should remain

cancelled; and that if he wished to rejoin the Council's Housing Register, he should be required to make a fresh application.

The appellant advised that he did not wish to ask the Assistant Director of Housing (Operations) any questions. The Assistant Director of Housing (Operations) answered the following questions of members of the Panel:-

(a) In relation to the third property offered to the appellant, were other houses in the locality occupied by families? – The property was part of an estate of similar semi-detached properties; (the appellant advised that there had been a family similar to his own in the adjoining property);

(b) Does the Council offer assistance/guidance to applicants and suggest things for them to look for when advertising properties? – A free sheet was produced including a photograph of the property and describing its attributes; details were also placed on the Council's website; the offer letter explained various aspects of the property, and also pointed out the opportunity to view the property; officers felt that adequate opportunity was given to applicants before they were required to make a final decision;

(c) Would it have been appropriate to draw attention to the potential travellers' site? - No

(d) Do you penalise applicants who refuse properties? – No, but in this case, the appellant had signed two tenancy agreements before refusing the properties; if an offer was turned down and circumstances need to be reassessed, a fresh application is made which may result in a different position on the list;

(e) Can you explain why there were so few facilities in the kitchen of the first property offered to the appellant? – If the appellant had been concerned about the kitchen, he could have made representations and a decision would have been taken on whether the facilities were fair and reasonable; if it had been determined that they were not so, works would have been carried out to improve the situation.

The Chairman asked the appellant if he wished to raise any further issues in support of his appeal. The appellant indicated that he did not wish to make any further representations but did wish to point out that the Council officers had been very helpful throughout the whole process.

The Chairman asked the Assistant Director of Housing (Operations) if he wished to raise any further issues in support of his case. He advised that he 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 Director of Housing (Operations) would be advised in writing of the outcome. The appellant, his wife, and the Assistant Director of Housing (Operations) then left the meeting.

In coming to its decision, the Panel focused on the appellant's expressions of interest in three properties, two of which he had accepted and signed the tenancy agreements, and his reasons for subsequently terminating the tenancies and refusing the tenancy offers made in respect of all of those properties.

RESOLVED:

(1) That, having taken into consideration the information presented by the appellant and the Assistant Director of Housing (Operations) in writing and orally, the decision of the officers to cancel the appellant's original housing application and to require that he make a fresh application if he wishes to rejoin the Council's Housing Register be upheld for the following reasons:

(a) since December 2008, the appellant has received three offers of accommodation as a result of successful expressions of interest placed on Homeoption; in relation to two of those offers, the appellant signed a tenancy agreement but he terminated the tenancies without occupying the properties;

(b) the reason given by the appellant for refusing the first offer in December 2008 was that the property was too small, especially the bathroom; this was a three bedroom house, which was considered reasonable for the appellant and his family to occupy;

(c) the reason given by the appellant for terminating the tenancy of the second property was the alleged possibility of a gypsy and travellers' site being provided to the rear of the property; according to the appellant, a site has been identified by the Council within the vicinity of the property as a potential gypsy and traveller site but no decision would have been made on whether it would be used for that purpose as it would be dependent on the strategy to be adopted for additional pitch provision within the district; in any event, this is not considered to be a material factor for refusing a tenancy; the Council has statutory responsibilities to eliminate discrimination, provide good community relations and make adequate provision for gypsy and traveller sites within its district; to highlight the location of potential gypsy and traveller sites when publicising properties would be contrary to these responsibilities; this property refused by the appellant was again a three bedroom house;

(d) the reason given by the appellant for terminating the tenancy of the third property was the amount of noise emanating from the adjoining property; this was a three bedroom, semi-detached house; the appellant and members of his family stated that whilst present at the property, they could hear normal talking from the adjoining property whilst in the kitchen and one bedroom which shared the party wall with the adjoining property; the appellant stated this would affect his sleep but returned the keys without attempting to sleep in that bedroom or either of the other bedrooms that did not have a party wall; in our view, the noise experienced from a semi-detached house from adjoining properties is likely to be less than that experienced in a terraced property;

(e) the reasons given by the appellant for refusing all three properties which were offered to him were generally not personal to him, except for the demands of his shift working, and would equally apply to any tenant; if these reasons are given weight, it would be difficult to let the properties to any family; we have taken account of the fact that the appellant works shifts and needs to be able to sleep during the day, but we do not consider this to be a sufficient reason for refusing a property, especially given that he made no attempt to sleep at the property;

(f) the appellant chose to bid for all three properties, had an opportunity to view the properties before accepting them, and accepted the tenancies of two; with regards to his reasons for refusing the properties, we are of the

opinion that the appellant has too high an expectation of what the Council is able to offer him in terms of accommodation, having regard to the shortage of vacant Council properties and the type of Council accommodation generally available;

(2) That, based on the evidence submitted, no deficiency or irregularity has been identified in the decision made by officers and the manner in which it was made; indeed, we are of the opinion that officers have been very understanding to the appellant, given that after initially cancelling his housing application following his refusal of the second offer of a property, the Housing Options Manager agreed to reinstate the appellant's application, subject to the medical evidence being reassessed; also, subsequently after advising the appellant that he had been demoted to Band 4 of the Allocations Scheme, following reassessment of the medical evidence available at that time, he was allowed within one month of that decision to move to Band 3 following the assessment of further medical evidence;

(3) That, in the event of the appellant making a fresh application to rejoin the Council's Housing Register within 14 days from the receipt of the decision letter, the effective date of that application be 16 December 2009 (the date of the appellant's letter expressing a wish to rejoin the Register following his refusal of the third offer of a property).

49. APPLICATION No 3/2010

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 Assistant Director, Democratic Services advised the Panel that earlier in the day, a letter had been received from the applicant's solicitors. They had referred to an approach from the applicant who had advised them that some of the information included in the documents before the Panel was inaccurate. In the circumstances, they had asked that consideration of this application be postponed and a fresh date arranged for a meeting of the Panel during the week commencing 3 May 2010 in order to allow them sufficient time to take instructions on the matter.

The Assistant Director, Democratic Services advised that in reply he had suggested to the solicitors that the applicant, if in attendance, could draw attention to the alleged errors which could then be discussed. He had also advised that deferment of the matter until the week commencing 3 May 2010 was totally unacceptable as there were Parliamentary and District Council elections that week affecting members of the Panel.

The Chairman asked the applicant if she was happy to proceed with the matter, without taking further advice from her solicitors, by drawing attention to the alleged errors during the presentation of her case. The applicant stated that she was happy to proceed without taking further legal advice and confirmed that she would draw attention to the alleged errors.

In the light of the applicant's responses, the Panel determined that there was no need to defer consideration of the review.

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 12 March 2010;
 - (ii) copy of a letter dated 6 April 2010 from the applicant's solicitors to the Council's Head of Legal Department;
 - (iii) copy of letter dated 2 March 2010 from Assistant Housing Options Manager (Homelessness) to the applicant;
 - (iv) copy of letter dated 1 April 2009 from the Assistant Housing Options Officer to the applicant;
 - (v) copy of letter dated 24 September 2009 from the Assistant Housing Options Manager (Homelessness) to the applicant;
 - (vi) the house rules of the interim accommodation in which the applicant had been placed;
 - (vii) a copy of the Licence Agreement signed by the applicant in relation to the interim accommodation;
 - (viii) an extract from the case of Moran v Manchester City Council and the Secretary of State;
- (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) the house rules of the interim accommodation in which the applicant had been placed;
 - (ii) an accident and incident report form in relation to the applicant's occupation of the interim accommodation;
 - (iii) Housing Officer file note dated 2 February 2010 following an interview with the applicant;
 - (iv) copy of letter dated 2 March 2010 from the Assistant Housing Options Manager (Homelessness) to the applicant;

(e) applicant's solicitors' letter dated 22 April 2010 to the Council's Head of Legal Department;

(f) email dated 22 April 2010 from the Assistant Director, Democratic Services to the applicant's solicitors.

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

(a) the following errors had been made in the facts of the case which were before the Panel:

(i) the applicant had been accommodated in a refuge for nine months, not five months as stated, when she had approached the Council as homeless; she had first moved into that refuge on 11 June 2008 and she had taken up occupation of the similar accommodation provided by the Council on 23 March 2009;

(ii) the applicant had not been asked to leave the refuge which she had occupied for nine months; she had been ready to move on as she had no longer required the extra support and security offered by such accommodation and wished to be housed in another district;

(iii) the first Section 21 Notice had been served by the Housing Association managing the accommodation provided by the Council on 14 December 2009 to take effect on 14 January 2010; however, it had been taken back and another had been issued on 14 January 2010 to take effect on 1 March 2010; the applicant had been advised by the Housing Association that this would result in her occupation of the accommodation being close to a year's stay which would place her in a better position to obtain permanent accommodation from the Council;

(b) the applicant had three children aged five, two and one; she had fled her home due to domestic violence in June 2008 and had resided in a refuge in London under a licence agreement; her youngest son had been born whilst she was at that refuge;

(c) The applicant had continued to reside in the refuge in London whilst her homelessness application had been considered by the Council and on 18 March 2009, the Council had accepted a full housing duty; temporary accommodation had been provided by the Council pursuant to Section 193 of the Housing Act 1996; the applicant had been accommodated in a refuge type property and had been granted an assured short-hold tenancy which had commenced on 23 March 2009;

(d) the house rules both at the refuge in London and the one provided by the Council had been restrictive; however, the London refuge had allowed female visitors to stay until 11pm and although that refuge had been geographically far from the applicant's family, it had been possible for her mother and cousins to visit her there;

(e) when the applicant had moved to the refuge style accommodation provided by the Council, she had been advised that visitors were only allowed during working hours, i.e., 9.00am to 5.00pm Mondays to Fridays; that, as there were no staff members at the accommodation during the weekend, visitors were not allowed during the weekend; the applicant's mother had worked full-time and had not been able to visit her daughter during the week; the applicant had explained her situation when she had arrived and had asked that her mother be permitted to visit her at

weekends or evenings; this request had been refused by the management of the accommodation;

(f) it had been difficult for the applicant to visit her mother because she had been aware from friends and relatives that her ex partner lived in the area and that by visiting her mother she would be putting herself at risk;

(g) the applicant had asked the Council when she could expect to be provided with permanent accommodation; she had received a reply which stated that the Council operated a Choice Based Letting Scheme and that under this scheme, home seekers accepted as homeless and living in the accommodation occupied by the applicant could not participate until at least six months had passed from the date they moved in and when they had been served with a Section 21 Notice by the Housing Association;

(h) after six months, the applicant had again made enquiries as to how long she would be expected to live in the accommodation and whether she was eligible to participate in the Choice Based Letting Scheme and bid for a permanent property; she had been advised on 24 September 2009 that in accordance with the Local Service Level Agreement between the Council and the Housing Association, the anticipated length of stay in the accommodation was, on average, 12 months;

(i) when the applicant had learnt that she would have to stay at the accommodation for at least 12 months, she had again approached the management and asked if they would allow her mother to visit her at weekends or evenings; this request had again been refused;

(j) the applicant had felt totally cut off from her family and friends and had felt isolated and lonely;

(k) in October 2009, the applicant had met a young man; they had struck up a friendship and had met in the park or in the library; they had started texting each other and calling each other and eventually they had met almost once a week;

(l) the applicant had admitted that on three occasions, this gentleman had visited her at her accommodation; given the fact that the applicant had been living under the strict rules of refuges, it had been only human to seek the company of another person, after being denied any semblance of normal life for such a prolonged period;

(m) in the decision of 2 March 2010, the officers had concluded that the accommodation would have been available for the applicant to continue to occupy had she not breached the rules of the accommodation; the decision had also stated that it would have been reasonable for the applicant to continue to occupy that accommodation; it was submitted that it would not have been reasonable for the applicant to continue to occupy her accommodation and for this reason, she had not made herself intentionally homeless and as a result, the Council's housing duty towards her had not been discharged;

(n) the Panel should have regard to the case of Moran v Manchester City Council and the Secretary of State for Communities and Local Government (2008) HLR39; in that case, Wilson L J, giving the leading judgement, had concluded that "where the enquiry is whether it would be.... reasonable for a woman to continue to occupy a refuge as opposed to other accommodation, particular matters fall to be considered in addition to general matters which fall to be considered at any enquiry under Section 175(3) or Section 191(1) of the Act;

(o) the officers' decision was flawed firstly because it was simplistic and amounted to saying to the applicant you breached the rules and therefore you made yourself intentionally homeless; a decision that was so simplistic could not possibly be deemed to be a reasonable decision especially given the applicant's complex circumstances;

(p) the decision of the officers had also been unlawful because it had not taken into consideration either the particular matters or the general matters raised in *Moran v Manchester City Council*;

(q) the general matters which should have been considered were:

(i) the length of time the facilities had been occupied; and

(ii) the length of time which... they might expect to continue to occupy it;

(r) the applicant had been living in refuge type accommodation since June 2008; when she had moved to the accommodation provided by the Council, she had been led to believe that she would be able to move out of that accommodation after six months; she had been told after six months that an average stay in the accommodation was for 12 months; the applicant had been given no clear idea of how long she would be required to remain in the refuge and comply with the onerous restrictions which clearly did not allow for a normal way of life; it was unreasonable to require a young woman with three children to continue to occupy a refuge for this length of time, especially this particular refuge where even her mother was not able to visit her;

(s) the officers had failed to take into consideration the particular matters, especially the extent to which any conditions of the Licence Agreement, by way, for example, of the prohibition of visitors or of the dissemination of the address of the refuge, made it reasonable or otherwise for her, in the light of the length of her occupation to date to continue to occupy it;

(t) it was clear that the prohibition of visitors, and the lack of flexibility demonstrated by the management of the accommodation provided by the Council made a difficult situation even less tolerable and it had been manifestly unreasonable to expect anyone to remain living under such restrictions for such a prolonged period;

(u) after leaving the accommodation provided by the Council, the applicant had been accommodated in bed and breakfast accommodation by the Council; she had been in this accommodation for approximately seven weeks; this accommodation was not satisfactory and was affecting her family; the applicant had enjoyed a good relationship with the staff of the accommodation provided by the Council and she had not broken any of their rules since being served with a Section 21 Notice on 14 December 2009 and moving out of the accommodation on 1 March 2010.

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

(a) Do you agree that when you presented yourself as homeless, you were in a position requiring support and protection? – Yes but I had been accommodated in refuge type accommodation for nine months and I no longer felt that I required the extra support and security offered by such accommodation; the Council's district was outside of the area in which I was at risk and I did not need the amount of support offered in the accommodation provided by the Council; I had recovered from my issues and needed to start a new life;

(b) Do you understand the need for restrictions to be placed on those occupying refuge accommodation? – Yes;

(c) You have referred to the increased restrictions imposed on you in the accommodation provided by the Council; can you clarify your views? – In the refuge in London, the rules relating to visitors were more relaxed and women visitors were allowed until 11pm; in the accommodation provided by the Council, visitors were only allowed between the hours of nine to five Mondays to Fridays and as my mother was working full-time, it was not possible for her to visit me during those times;

(d) Why could you not visit the gentleman you met instead of him coming to the refuge? – I have three children and it is not possible to make visits without taking my children with me; the gentleman did not have his own accommodation; I did not have any friends in the locality so I was unable to arrange for any childcare; when I went to the accommodation provided by the Council, there was only one other resident present and the other flats were vacant;

(e) Are you saying that when you approached this Council, you were seeking an ordinary property and not refuge type accommodation? – Yes;

(f) Why were you put into refuge type accommodation? – I do not know; when I accepted the offer of temporary accommodation, I was not told it was a refuge until I attended it and were shown around it; I was expecting the accommodation to be a house; I was initially told that I would only need to reside at the hostel type accommodation for six months but I was then told it would be one year; when I asked for an explanation of the difference in timescales, I was advised that this was in accordance with the agreement between the Council and the Housing Association;

(g) Was the accommodation at the refuge better than the accommodation you are now occupying? – Yes;

(h) Why is it so difficult for you to visit your mother? – My mother lives in an area where I would be putting myself at risk; the refuge I occupied in London was a long way from the area where my mother lives in another part of London.

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

(a) in relation to the alleged errors in the facts of the case:

(i) it was accepted that the applicant had been in a refuge in London for a period of approximately nine months when she had been accepted by the Council as statutorily homeless;

(ii) it was accepted that a notice had been served by the Housing Association on the applicant for breaching the house rules of the accommodation provided by the Council on 14 December 2009; it was understood that it had been established that the notice had been defective, and as a result, a second notice had been served on 14 January 2010 to expire on 1 March 2010 at which time, the applicant had vacated the property;

(iii) a letter from the authority responsible for the refuge in London had stated that the applicant had been asked to move from that property;

(b) the applicant was aged 25 and the other members of her household included her three sons aged five, two and one; the applicant had originally approached this Council as homeless when she had left a women's refuge in London; the applicant had been living in a women's refuge because she had fled domestic violence from her partner and the father of her children; many women's refuges provided refuge accommodation for a limited period of time in order that women could move on to alternative accommodation, allowing the refuge to offer vacancies for new victims of domestic violence; the applicant had been in the refuge in London for approximately nine months when she had approached this Council as homeless; she had made a statutory declaration in which she had given an account of the domestic violence she had experienced; on one occasion an assault on the applicant by her partner had led to her requiring hospital treatment;

(c) the applicant had been accepted by this Council as statutorily homeless (owed the full housing duty) on 18 March 2009 and had been offered a flat in accommodation in the District managed by a Housing Association which provided self-contained accommodation for victims of domestic violence, many of whom had previously been occupying shared refuge accommodation elsewhere in the country; the house rules of the accommodation provided that no personal visitors were allowed for the safety of residents and that due to the risk of harm that many women faced who had fled domestic violence, this rule was strictly enforced by the Housing Association;

(d) in December 2009 and in January 2010, the Housing Association had served notices on the applicant for breaching the house rules by meeting with a male visitor at her flat; there was CCTV footage of two occasions showing a breach of this rule and there was a witness to one of the occasions; there had also been another incident in respect of which the applicant's male visitor had been seen on CCTV jumping the fence in the back garden of the property;

(e) had the applicant not breached the house rules then she would have been able to continue residing at the accommodation until the Council had offered her permanent Council or Housing Association accommodation and discharged its duty to her as a homeless person;

(f) the partnership agreement between the Council and the Housing Association stated that women would be expected to reside at the property for 12 months; the Council's allocations policy enabled those residing at the accommodation to participate in the Council's Choice Based Lettings Scheme after a period of six months and when they had received a Section 21 notice to leave the property; in accordance with the terms of a protocol between the Council and the Housing Association, a Section 21 notice would normally only be served approximately 12 months after first occupation; the applicant had moved to the accommodation on 23 March 2009 and had spent eight months at the scheme when she had carried out the acts which had breached the house rules;

(g) the applicant had admitted to both the staff at the accommodation and her Homelessness Case Officer that she had met with a male visitor at her flat; she had stated that she had met with a man at her flat because she had felt lonely; the applicant's Solicitor had submitted that the accommodation had not been reasonable to occupy because of the length of time the applicant had resided at the scheme and the restrictions which had been placed on the applicant whilst living there;

(h) after leaving the accommodation, the Council had been required to decide whether the duty to accommodate the applicant should be discharged on the basis that she had become intentionally homeless; the applicant had been interviewed by

her Homelessness Case Officer after the Notice had been served and she had been provided with bed and breakfast accommodation; on 2 March 2010 the applicant had been advised that the duty to accommodate her had been discharged because it was considered that she had made herself homeless intentionally; as a result, the Council no longer had a duty to provide the applicant with temporary accommodation under Section 193 of the Housing Act 1996 as amended; the applicant had been informed that she would be required to vacate the bed and breakfast accommodation and that she had 21 days in which to seek a review against that decision; the applicant had sought a review and the Council had exercised its discretion to accommodate her pending the outcome of the review;

(i) in making homelessness decisions, the Council was required to have regard to the Code of Guidance which was used by local authorities to assist with the interpretation of the homelessness legislation; the Guidance stated that a person became homeless, or threatened with homelessness, intentionally if they deliberately did or failed to do anything in consequence of which they ceased to occupy accommodation (or the likely result of which was that they would be forced to leave the accommodation) – it was submitted in this case that the breach of the house rules had been a deliberate act as a result of which the applicant had ceased to occupy the accommodation; the Code also required that the accommodation was available for the person's occupation – in this case, it was submitted that the accommodation would have continued to be available until the Council had been in a position to house the applicant through the Choice Based Lettings Scheme; the Code further required that the accommodation would have been reasonable for the person to continue to occupy the accommodation – it was this element that the applicant's solicitors were contesting and reference had been made to case law (*Moran v Manchester City Council*) the extract from that case before the Panel set out the matters which required consideration (paragraphs 49 and 50) - in relation to the paragraph 49 requirements, the applicant had been placed in a two bedroom self-contained purpose-built flat which had its own bathroom; the accommodation had been subject to a short tenancy and not to a licence; the rental charge had been eligible for Housing Benefit; the applicant had applied to this Council; the property had a garden available; the applicant had been resident in the accommodation for approximately nine months when she had been required to leave but there was an expectation to occupy the property for approximately 12 months before being able to participate in the Council's Choice Based Letting Scheme; extensive support was available for the applicant at the accommodation; the majority of occupants in the accommodation had already been accepted as homeless when placed in it; the accommodation provided by the Council was not a normal women's refuge; different restrictions were in place in relation to visitors in order to protect the occupants from repeated incidents of domestic violence; there was an office on site, staff were available to provide the level of support required; the length of the period for which women generally occupied the accommodation was 12 months and this was reflected in the protocol with the Housing Association; generally the accommodation was full but there were voids from time to time; the accommodation was not normally the first accommodation offered to women escaping domestic violence and the need to provide accommodation to victims in an emergency did not normally arise; the restrictions on visiting were considered reasonable having regard to the need to provide a safe environment for the occupants;

(j) occupation of the accommodation for 12 months was considered reasonable; the criteria before the Panel in relation to the case of *Moran v Manchester City Council* had been formulated in the Court of Appeal, that the case had subsequently been considered by the House of Lords which had concluded that refuge accommodation might be considered unreasonable if a person was required to occupy it for a long period – in this case, in view of the level of accommodation

provided, it was not considered that 12 months was an unreasonable period to occupy the accommodation;

(k) the applicant's mother had been able to visit the applicant at the property when staff had been present but not at weekends when there were no staff present, as it was considered that visitors needed to be policed;

(l) residents were able to stay away from the property for two nights out of seven, if they obtained prior approval from the management;

(m) it was understood that the applicant's mother had visited the applicant occasionally but that this was difficult as the applicant's mother worked full-time; it was also understood that it was difficult for the applicant to visit her mother because her mother lived in an area where the applicant would have been at risk;

(n) it was considered that the breaches of the house rules were deliberate acts by the applicant; the applicant had been aware of the house rules and had understood that she had not been allowed to meet with a male visitor at her flat; the applicant had occupied a refuge before moving to the accommodation provided by the Council and had been made aware of the need not to meet with visitors for her safety and for the welfare of other residents; the applicant had admitted to the acts that she had carried out in meeting with a male visitor at her flat and had been aware that she could have placed herself and other residents at risk of harm; in consequence of these breaches of the house rules, the applicant had ceased to reside at the accommodation; the restrictions imposed on the applicant's lifestyle whilst she resided at the accommodation had been for her own protection and had been clearly reasonable given the risk to her safety;

(o) it was considered that the duty to accommodate the applicant had been discharged because she had become homeless intentionally from accommodation made available to her under Section 193 of the Act;

(p) in the event that the officers' decision was upheld, reasonable notice should be given to the applicant to vacate her bed and breakfast accommodation and, with her consent, a referral should be made to Children and Family Services 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 members of the Panel:-

(a) You have referred to a period of 12 months before a person could expect to be able to express interests for permanent accommodation; in this case, was it not almost 12 months when the applicant was asked to leave the accommodation? Yes, but the 12 month period was not achieved due to the breach of the house rules; in terms of the allocations policy, the period of six months had been met but a Section 21 Notice had not been served; normally this is not an issue as a notice was served after approximately 12 months;

(b) The case of Moran v Manchester City Council referred to a reasonable period of time in a hostel; taking into consideration the time spent in the refuge in London and the time spent in the accommodation provided by the Council, do you consider that period to have been reasonable? – Account was taken of the time spent in a refuge in London and when added to the time spent in the accommodation provided by the Council, the period was considered reasonable;

(c) Is the accommodation provided by the Council, owned by the Council? No, it was owned and run by East Homes Housing Association who work in partnership with the Council by offering vacant flats to suitable occupants; the Housing Association consulted with the Council about house rules but ultimately it was for the Housing Association to determine the rules; the rules relating to visitors were similar to those in most women's refuges;

(d) Are flats in the accommodation offered to persons who are not victims of domestic violence? The Council had the first rights to nominate to vacancies; if the Council was not in a position to nominate a suitable person, the Housing Association was able to go to other agencies to seek an occupant but it was not believed that this situation has yet arisen;

(e) Do the Housing Association have a standard set of rules for such accommodation and are prospective occupants able to see these rules before being placed? The Housing Association had a number of schemes in other parts of the country and the house rules were consistent at all schemes; the rules were similar to those applying to women's refuges; the rules applying at the refuge in London where the applicant resided had been similar to those imposed by the Housing Association;

(f) Do you consider the rules are reasonable if a person is expected to spend an inordinate amount of time in the property? A year was not considered an unreasonable period; the rules needed to be prohibitive in order to protect the occupants from the reoccurrence of violence;

(g) Do you consider it reasonable not to allow visitors at weekends? It was appreciated that this was difficult in the applicant's case in that her mother worked full-time during the week; the problem at the accommodation is that staff were not present at weekends so it was difficult to police visitors; traditionally refuges suffered problems with visits from other relatives and friends; there were five flats in the accommodation and it was difficult to justify staff being present seven days a week; there were emergency arrangements available for contacting staff if necessary;

(h) Was the applicant made aware that she was to be accommodated in a refuge type accommodation? She would have received an offer letter regarding temporary accommodation and the Management Team of the accommodation would have contacted her; it is accepted that the type of accommodation being offered could have been made clearer;

(i) Was the applicant offered this accommodation because of her background? The Council tried to offer flats in the accommodation to persons previously occupied in women's refuges who wished to move on; other councils might offer different types of accommodation to such persons, e.g., houses or flats but this Council had decided not to take that option as it was felt that a person still required a certain amount of support and protection;

(j) Can you clarify why the allocations policy allows participation in the Council's Choice Base Lettings Scheme after six months but occupants of the accommodation had to wait also for a Section 21 Notice to be served? In accordance with the allocations policy, persons occupied at the accommodation would be in Band 1 and are able to participate in the Council's Choice Based Letting Scheme after six months; however, it was a requirement of the protocol with the Housing Association that a Section 21 Notice was also served before bids can be made.

The Chairman asked the applicant if she wished to raise any further issues in support of her application.

The applicant stated that she appreciated that some persons might require refuge type accommodation for a period of time after being moved from a women's refuge, however, in her case, she considered that her issues had been resolved when she had approached the Council and that she did not require the extra support and security offered by the accommodation provided for her. She suggested that the Council should be more flexible in relation to the period of time occupants were housed in the accommodation.

The Chairman asked the Assistant Housing Options Manager (Homelessness) if he wished to raise any further issues in support of his case. He advised 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 evidence regarding the applicant's breaches of the house rules at the interim accommodation secured by the Council, and her reasons; the relevance of that accommodation to her situation; the length of time that the applicant had previously spent in a women's refuge and then the similar accommodation provided by the Council; the reasonableness of the conditions/restrictions applying to occupation of the accommodation to which the applicant had been nominated by the Council; and relevant case law.

Attention was drawn to the extract from the case of *Moran v Manchester City Council* provided by the applicant's solicitors. The Director of Housing pointed out the extract had related to proceedings in the Court of Appeal but the matter had subsequently been considered by the House of Lords. The Court of Appeal had allowed an appeal by the Council in that case but the House of Lords had changed that decision. Both Courts had considered the same issues but had come to a different conclusion. Both had considered the length of time spent in a refuge accommodation and whilst the Court of Appeal had concluded that the period in that case had been reasonable, the House of Lords had come to a different conclusion.

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 made herself homeless intentionally from temporary accommodation provided by the Council and that the duty on the Council to provide her with temporary accommodation has been discharged be not upheld for the following reasons:

(a) in relation to the breaches of house rules relating to the occupation of the accommodation secured for the applicant by the Council, the applicant admitted and the evidence shows that she allowed a male visitor into her flat on three occasions, in breach of the rules requiring that she should not give the address of the accommodation to any person and that she must not have any personal visitors in the accommodation (apart from her mother, during weekday office hours); however:

- (i) the applicant had previously been living in a women's refuge for nine months, because she had fled domestic violence, when she approached the Council as homeless;
- (ii) when the applicant was accepted by the Council as statutorily homeless and owed a full housing duty, she was offered temporary accommodation by the Council, but it was not made clear to her until she attended the property that it was accommodation for victims of domestic violence; despite being subjected to conditions more restrictive than those imposed upon her in the women's refuge which she had previously occupied, the applicant had not felt able to refuse the offer of accommodation, despite her view that she was ready to resume a normal lifestyle as she no longer required the extra support and security offered by such accommodation;
- (iii) the applicant appeared to have received conflicting advice about the actual length of time before she could expect to be able to express interests for permanent accommodation; she was advised that she could not participate in the Council's Choice Based Lettings Scheme until she had occupied the accommodation for victims of domestic violence for at least six months and had been served with a Section 21 Notice by the Housing Association managing the accommodation; it was only after six months had elapsed that she was advised that a Section 21 Notice would normally only be served approximately 12 months after first occupation in accordance with the terms of a protocol between the Council and the Housing Association;
- (iv) it is considered unreasonable for the applicant, with her three young children, to have been expected to accept that she would have to reside in accommodation with restrictive conditions for approximately 12 months, taking account of the time she had already spent in a women's refuge elsewhere;
- (v) the rules relating to visitors at the accommodation provided by the Housing Association only allowed the applicant's mother to visit between the hours of 9 a.m. and 5 p.m. Mondays to Fridays and, as the applicant's mother worked full-time and lived/worked some distance from the accommodation, it was very difficult for her to visit her daughter; no other visitors were allowed and, having regard to the ages of the applicant's three children and the lack of any friends/relatives close to the accommodation, it was not possible for the applicant to have any social life without her children being present; the applicant was not able to visit her mother because her mother lived in an area where the applicant's presence could have put the applicant at risk; this led to the applicant feeling isolated and lonely;
- (vi) the applicant has not breached the house rules of the accommodation relating to visitors between 14 December 2009 when she had received her first Section 21 Notice (due to her breach) and 1 March 2010 when she had left the accommodation and in all other regards the applicant had been a good tenant;
- (vii) on balance, and in all the circumstances, although it is not considered inappropriate for the Housing Association to have evicted her from the accommodation, it is not considered that the breaches of the house rules were sufficiently deliberate acts on the part of the applicant to reach a conclusion that the applicant was intentionally homeless from temporary accommodation;

(viii) accordingly, it is not considered that the applicant made herself homeless intentionally from the temporary accommodation secured by the Council; and it is therefore considered that the Council has not discharged its duty to provide the applicant with accommodation;

(2) That, when the Housing Scrutiny Panel next reviews the Housing Allocations Scheme, it be asked to consider clarified wording for when residents of the accommodation for victims of domestic violence are placed in Band One;

(3) That officers discuss with East Thames the protocol between the Housing Association and the Council for the operation of the accommodation for victims of domestic violence, with a view to reducing the period that residents are generally expected to reside there, from around 12 months to around six months, subject to a resident's main issues being resolved and to them no longer needing the level of available support;

(4) That officers discuss with East Thames the possibility of slightly relaxing the relatively restrictive current visiting rules, with a view to allowing:

(a) no more than one female member of the resident's family at a time being able to visit them at the accommodation for victims of domestic violence between 7 a.m. and 9 p.m. on any day of the week; and

(b) no more than one non-family female visitor being able to visit residents at the accommodation for victims of domestic violence between the hours of 9 a.m. and 5 p.m. Mondays to Fridays.

50. APPEALS/APPLICATIONS PROGRESS REPORT

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

RESOLVED:

(1) That the progress report on previous appeals and applications be noted; and

(2) That cases 10/2009, 9/2009, 8/2009 and 5/2009 be deleted from the schedule.

CHAIRMAN