



Epping Forest District Council

HOUSING APPEALS AND REVIEW PANEL **Thursday, 22nd April, 2010**

Place: Committee Room 1, Civic Offices, High Street, Epping

Time: 2.30 pm

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

Members:

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

1. APOLOGIES FOR ABSENCE

2. MINUTES (Pages 3 - 12)

To agree the minutes of the meeting of the Panel held on 18 March 2010 (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 Information Paragraph Number
6	Appeal No. 2/2010	1
7	Application No. 3/2010	1
8	Appeals/Applications	1

Progress Report

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. APPEAL NO. 2/2010 (Pages 13 - 28)

To consider the attached report.

7. APPLICATION NO 3/2010 (Pages 29 - 78)

To consider the attached restricted report.

8. APPEALS/APPLICATIONS PROGRESS REPORT (Pages 79 - 86)

To consider the attached schedules.

EPPING FOREST DISTRICT COUNCIL COMMITTEE MINUTES

Committee: Housing Appeals and Review Panel **Date:** Thursday, 18 March 2010

Place: Committee Room 1, Civic Offices, High Street, Epping **Time:** 2.30 - 3.45 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))

39. MINUTES

RESOLVED:

That the minutes of the meeting of the Panel held on 17 December 2009 be taken as read and signed by the Chairman as a correct record.

40. SUBSTITUTE MEMBERS

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

41. DECLARATIONS OF INTEREST

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

42. 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 it 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	Application No. 1/2010	1

43. APPLICATION NO. 1/2010

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 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 her application to the Housing Appeals and Review Panel dated 22 February 2010;
- (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 applicant's rent transaction history;
 - (ii) a copy of a Possession Order made on 8 October 2009 requiring the applicant to vacate her rented property as she was in arrears with her rent;
 - (iii) Housing Officer file note dated 22 October 2009 following an interview with the applicant;
 - (iv) Housing Officer file note dated 7 December 2009 following a further interview with the applicant;
 - (v) Affordability Statement completed retrospectively by the applicant for January 2009;
 - (vi) Affordability Statement completed retrospectively by the applicant for February 2009;
 - (vii) summary of periods of sickness of the applicant's husband;
 - (viii) copy of letter dated 11 February 2010 from the Assistant Housing Options Manager (Homelessness) to the applicant.

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

- (a) the applicant had tried hard to clear her rent arrears prior to the matter going to Court; by that time she had managed to reduce the arrears to £570;

- (b) after the Court hearing the applicant had further reduced her rent arrears to £146 but in order to correct an error the Council Tax Section had taken back two payments from her rent account which had increased her rent arrears by £320;
- (c) the applicant had kept the Council's Housing Management Section informed about her husband's sickness and had been in regular contact with them about her arrears of rent; she had always made them aware of her situation;
- (d) the applicant had paid her rent at times when she was able to do so;
- (e) the applicant had not realised initially that she could claim Housing Benefit when her husband was not working due to sickness;
- (f) the Council's Homeless Prevention Team had not advised the applicant about applying to Court for an N244 Form (Court Order Suspension); the applicant would have been able to offer to the Court a repayment plan to pay off her arrears; the applicant had only been advised by the Homeless Prevention Team to seek private accommodation.

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

- (a) Why did you not claim Housing Benefit when your husband was not working? I did not realise that I could claim until I was due to go to Court and spoke to one of the Housing Officers; I claimed for my husband's first period of sickness and was able to get Housing Benefit backdated; in relation to other periods I neglected to apply for Housing Benefit;
- (b) Can you confirm that you did claim for one period? Yes, although it was past the normal timescale for claiming but I was able to get it backdated with the help of a Housing Officer;
- (c) Can you confirm that you were aware that you should have claimed at all times when your husband was not working due to sickness? – Yes, I claimed for the first period but failure to claim for other periods was entirely my error;
- (d) When Notice of Possession proceedings was served on you why did you not take the opportunity to seek a review of your situation? It was my intention to pay off the arrears before the Court date; I had reduced the arrears to £570 when the matter went to Court and the day after that I had reduced them further to approximately £147; previously when I had been in arrears I had always been able to clear the arrears before going to Court;
- (e) Can you elaborate on those previous situations? I received Notice to Quit previously in November 2008 but as I paid £1,500 before the Court hearing the Possession Order was suspended;
- (f) Why were you not able to pay smaller amounts on a regular basis? I have had a bad learning curve; I was only working part-time but had to give up that employment because my husband was getting home from work late and my job necessitated me starting work in the early evening; I was not getting Housing Benefit at the time and an error was made in relation to my Tax Credits; the household expenditure was more than the income being received and matters got on top of me; I am not brilliant at financial management; I am looking for work again now but it is difficult as I have to look after my children and cannot afford child care;

(g) In May 2009 you asked the Housing Benefit Department to review your entitlement to benefit and they asked you to complete a form but you did not respond; can you explain why you did not follow up this matter? It was my error; the Department requested a review of my husband's wage slip and I thought that I had sent a Change of Circumstances form with his wage slip;

(h) Did the arrears occur mainly when your husband was working rather than when you were on Housing Benefit? Yes; the periods of my husband's sickness are in the papers before you; he is still in pain but he is working through the pain;

(i) Did you arrange any payment plan in order to clear your arrears? No, I had a Standing Order set up to pay the rent but at times there was insufficient money in the account to cover the rent and so I fell into arrears;

(j) What payments did your husband receive when he was not working due to sickness? The national rate Statutory Sickness payment of £11.00 a day;

(k) What is your husband's occupation? He is a Water Engineer;

(l) Your husband appears to have had many periods of short term sickness can you elaborate? He had a problem with his foot, he had a sprained ankle, he was suspended from work whilst investigations were being carried out in relation to why he was not at work due to sickness; he is now making more of an effort as he realises that we cannot afford for him to stay off work; he enjoys his job and works when he is physically able to do so.

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

(a) the applicant had first taken up occupation of a District Council maisonette in December 2004 when she was granted a Non-Secure Tenancy; at that time, this type of tenancy was granted to people who were homeless; the applicant had presented herself to the Council because she had been pregnant and unable to stay with her father; she had initially been housed in the Council's Homeless Hostel and had then moved to the maisonette; the Non-Secure Tenancy had ran until January 2008 when the applicant had become the sole Introductory Tenant of the maisonette; there had been a delay in giving the applicant an Introductory Tenancy due to rent arrears;

(b) in January 2008 the applicant's rent account had been clear; however arrears had accumulated throughout 2008 and 2009 and by 29 June 2009 the arrears had increased to £1,958.33;

(c) the maisonette occupied by the applicant had been a two-bedroom property with a weekly rent of £77.00;

(d) a Possession Order had been made on 8 October 2009 requiring the applicant to vacant the maisonette as she owed £570.30 in rent arrears at that time; on 1 November 2009 the applicant's tenancy of the maisonette had ended;

(e) the applicant had made a Homelessness Application to the Council and had been provided with interim accommodation in the Council's Homeless Hostel; the applicant had been eligible for assistance because she had held a British passport, homeless because she had received a Possession Order to vacant the maisonette and in priority need because she had dependant children;

(f) the applicant had stated that the arrears had been caused by her husband's fluctuating earnings due to his ill health;

(g) for the first week of the Introductory Tenancy in January 2008 the applicant had received full Housing Benefit towards the rent; on 28 January 2008 the applicant had notified the Housing Department of the Council that her husband had started work and that she no longer wished to claim Housing Benefit; after that time, the applicant had not paid her rent regularly throughout 2008; no claim for Housing Benefit had been made by the applicant between 23 January 2008 and 6 November 2008;

(h) on 7 November 2008 the applicant had claimed Housing Benefit again; she had advised the Housing Benefit Department that her husband had not worked fully in September and October 2008 due to ill health; the applicant had received Housing Benefit in February 2009 but Housing Benefit had been unable to award further benefit because the applicant's husband had returned to work and the applicant had not qualified for benefit due to the level of her household income;

(i) in May 2009 the applicant had asked the Housing Benefit Department to review her entitlement to Housing Benefit; on 14 May 2009 the Housing Benefit Department had written to the applicant asking her to complete an application form but the applicant had not responded and had not communicated any further with the Housing Benefit Department for the remainder of her tenancy of the maisonette;

(j) when the applicant had received a Notice of Possession proceedings on 22 April 2009 she had been given the opportunity to seek a review; she had not sought a review and a Possession Order had been granted on 8 October 2009; due to the applicant having an Introductory Tenancy, once possession had been requested the Court had been required to grant a Possession Order; the applicant had written to the Housing Directorate on 12 October 2009 and had made a number of payments in October 2009 but it had been too late for her to retain the tenancy;

(k) the applicant had completed retrospectively, Affordability Statements for January 2009 when her husband had been working and for February 2009 when he had been unwell; the applicant had also provided information about the periods when her husband had been not working due to ill health;

(l) the officers had decided that the applicant had made herself intentionally homeless; in coming to this decision regard had been had to the Code of Guidance which was used by local authorities to assist with the interpretation of the Homelessness legislation;

(m) it was considered that the applicant's wilful and persistent refusal to pay the rent on the Council's maisonette and to claim housing benefit was a deliberate omission; in consequence of this the applicant had received a Possession Order which had led to her ceasing to occupy the property; the rent arrears had been caused by the applicant refusing to pay the rent fully when her husband had been working and her failure to claim Housing Benefit for the periods when her husband had not been working due to ill health;

(n) it was considered that the applicant's accommodation would have continued to be available had she complied with the terms of the tenancy and not accrued rent arrears; furthermore it was considered that the property would have been reasonable for the applicant to have occupied as the property was a two bedroom maisonette with an affordable rent;

(o) the Affordability Statements demonstrated that the applicant had sufficient income when her husband was working to pay the rent if she had managed her finances more effectively; the applicant had been aware that she may have been entitled to Housing Benefit when her husband was not working as she had already received a payment with respect to this previously; the applicant had known how to claim Housing Benefit and had been aware that it was her responsibility to pay the rent either through the income received in a wage and Tax Credits or when her husband was not working through Housing Benefit; whilst it would have taken a certain amount of personal organisation for the applicant to claim Housing Benefit each time her husband's income reduced due to ill health it was her responsibility to do this as she was contractually liable to pay the rent and there was no evidence of her being unable to manage her affairs;

(p) the Council's Housing Management Department had been sympathetic to the applicant's situation and her Housing Management Officer had held numerous meetings with her and had written repeatedly to warn her about the arrears and the consequences of non-payment of rent;

(q) the Panel was invited to uphold the officers' decision.

The Assistant Housing Options Manager (Homelessness) answered the following questions of the Panel after the applicant had stated that she did not wish to ask any questions:-

(a) What help did the Housing Directorate offer the applicant? The applicant had sought advice from the Homeless Prevention Team and had also been in regular communication with her Housing Management Officer; the applicant could have sought a review of her situation when Notice of Possession proceedings had been served on her; the key problems had been the applicant not paying her rent and not seeking a review of the position when Notice of Possession proceedings had been served on her;

(The Chairman allowed the applicant to make further representations in the light of the above answer given by the Assistant Housing Options Manager (Homelessness). The applicant stated that she had not been made aware of what would happen at a review which might have included payment options; also she had not seen the Housing Prevention Team until the day of her Court hearing and at that stage they could only advise her to seek accommodation in the private sector. In response, the Assistant Housing Options Manager (Homelessness) pointed out that there was a letter on file dated 22 October 2008 advising the applicant of the opportunity to request a review within 14 days. The applicant responded that she acknowledged that letter but it had not advised her of what might happen at a review. The Assistant Housing Options Manager (Homelessness) advised that at a review the applicant could have asked for a deferment of the proceedings but as she had not done so the Judge had had no discretion in the matter. The applicant stated that she blamed her husband for not taking the initiative and accepted that when she had seen the Housing Prevention Team it had been too late to change matters).

(b) Can you confirm that the applicant had several interviews with Housing Officers before being evicted? The applicant had been in regular communication with Housing Officers but these had not been formal interviews with notes being taken;

(c) The applicant refers to a Form N244 on her Application Form to the Panel can you explain the status of this form? I believe that is a form applying for a suspension of the proceedings; however with an Introductory Tenancy which the applicant had the Judge would have had no discretion to suspend the proceedings and a Form

N244 would not have helped; Introductory Tenancies are less secure for a tenant making it easier for the Council to take action if necessary;

(d) Are the amounts shown on the Affordability Statements weekly figures or monthly figures? They are monthly figures;

(e) The dates in paragraph 6.12 of the Facts of the Case do not appear to relate to the dates in the documents attached to your case; are the dates in that paragraph correct? I apologise that there are errors in that paragraph; the date on the first line should be 22 April 2009 and all of the other dates in that paragraph should be 2009 and not 2008.

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

The applicant advised that she was expecting another child in June 2010 and was now trying to manage her affairs better. She stated that she had not been made aware of what might happen at a review following Notice of Possession proceedings and in particular that a review might result in a payment option and a suspension of the Order.

The Chairman asked the Assistant Housing Options Manager (Homelessness) if he wished to raise any further issues in support of his case. In doing so she asked him to clarify the ability of the applicant to claim for Housing Benefit at times when the applicant's husband did not work due to ill health.

The Assistant Housing Options Manager (Homelessness) confirmed that the applicant could have claimed for Housing Benefit for the periods when her husband had not worked due to sickness and pointed out that the applicant had received benefit for a period of time. He drew attention to entries on the applicant's rent transaction history schedule dated 21 December 2009 and 5 January 2010. He pointed out that although these were described as payments they were shown as debits on the schedule. He explained that this was due to Council Tax payments being placed in the wrong account.

In response to a further question from the Chairman, the Assistant Housing Options Manager (Homelessness) advised that since being accommodated in the Council's Homeless Hostel the applicant had accrued arrears of £740.52 in relation to her accommodation charges. He advised that any Housing Benefit payments which had been due to the applicant during her occupation of accommodation at the Homeless Hostel would have been paid direct to the Council.

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 rent payments, her household income and her claims for Housing Benefit.

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 became homeless intentionally be upheld for the following reasons:

(a) the applicant and her husband failed to pay the rent due on the Epping Forest District Council maisonette they occupied and as a result of the arrears they were evicted from the property; the arrears arose due to:

(i) rent not being paid when the applicant's husband was working and the applicant and her husband had sufficient income to pay the rent; and

(ii) the failure of the applicant to claim Housing Benefit to assist with the payment of the rent during the periods when the applicant's husband was not working due to ill health;

(b) the applicant admitted that she had been aware of the ability to claim Housing Benefit when her husband was not working as she had received Housing Benefit when her Introductory Tenancy had commenced in January 2008; the applicant admitted that she neglected to claim Housing Benefit at other appropriate times; in May 2009 the applicant had sought a review of her entitlement to receive Housing Benefit but had not followed up her request for a review;

(c) when the applicant had received a Notice of Possession proceedings in April 2009 she had been given the opportunity to seek a review before the matter went to Court but she had not requested a review;

(d) the applicant was aware of her responsibility to pay the rent for the property either through income or Housing Benefit but consistently allowed the rent account to fall into arrears reaching nearly £2,000 at one time (since being accommodated at the Council's Homeless Hostel, the applicant has failed to pay accommodation charges and has built up arrears of approximately £740);

(e) had it not been for the deliberate acts/omissions set out in (a), (b), (c) and (d) above, the Epping Forest District Council maisonette would have continued to be available and reasonable for the applicant and her family to occupy as it was a two-bedroom property with an affordable rent;

(f) the Affordability Assessment Statement completed retrospectively for January 2009 signed by the applicant shows that when the applicant's husband was working the rent was affordable if the applicant and her husband had managed their finances more effectively; account has been taken of the evidence which indicates that when the applicant's husband was working the family income was such that the applicant did not qualify for Housing Benefit suggesting that the rent was affordable;

(g) the Affordability Assessment Statement completed retrospectively for February 2009 and signed by the applicant shows that when the applicant's husband was not working the applicant could have claimed Housing Benefit to help pay the rent but did not do so;

(h) no evidence has been submitted indicating that the applicant was incapable of managing her affairs; it is accepted that the applicant would have had to make applications for Housing Benefit each time her husband's income reduced due to ill health but this is not considered sufficient reason for failing to make claims;

(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; it is noted that Housing Management had numerous meetings with the applicant and sent her letters warning about the arrears and the consequences of non-payment of rent;

(3) That the Council continues to provide accommodation for the applicant for a period of six weeks from the receipt of the decision letter in order to allow the applicant and her husband to find alternative accommodation; and

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

CHAIRMAN

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