

EPPING FOREST DISTRICT COUNCIL COMMITTEE MINUTES

Committee: Housing Appeals and Review Panel **Date:** Monday, 2 August 2010

Place: Council Chamber, Civic Offices, High Street, Epping **Time:** 2.30 - 4.40 pm

Members Present: Mrs R Gadsby (Chairman), Mrs J Sutcliffe (Vice-Chairman), R Barrett and Ms J Hart

Other Councillors:

Apologies: Mrs C Pond and B Rolfe

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

12. SUBSTITUTE MEMBERS

It was noted that Councillor Ms J Hart was substituting for Councillor Mrs C Pond.

13. DECLARATIONS OF INTEREST

Pursuant to the Council's Code of Member Conduct, Councillor Ms J Sutcliffe declared a personal interest in agenda Item 5 (Appeal No 8/2010) by virtue of having advised the applicant's mother about making an appeal against the officers' decision. The Councillor 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.

14. 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 item 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
5	Appeal No 8/2010	1

15. APPEAL NO. 8/2010

The Panel considered an appeal against a decision made by officers in relation to the banding of the appellant's housing application. The appellant attended the meeting to present her case. Mr R Wallace, Housing Options Manager, 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 the 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 Chairman drew attention to an error in the first paragraph of the report before the Panel regarding the description of the appeal. She advised that this error had been pointed out to members of the Panel and the appellant in advance of the meeting.

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

- (a) copies of documents submitted by the appellant, namely:
 - (i) her application to the Housing Appeals and Review Panel dated 21 May 2010;
 - (ii) letter from the appellant to the Assistant Director of Housing (Operations) received by the Council on 24 March 2010;
 - (iii) letter dated 24 October 2007 from the Council's Housing Needs Section to the appellant;
 - (iv) letter dated 13 November 2009 from the Assistant Housing Options Manager to the appellant;
 - (v) letter dated 13 January 2010 from the Assistant Housing Options Manager to "A N Other" at the appellant's address;
 - (vi) letter dated 9 February 2010 from the Assistant Housing Options Manager to the appellant;
 - (vii) letter dated 15 March 2010 from the Assistant Housing Options Manager to the appellant;
 - (viii) letter dated 16 April 2010 from the Assistant Housing Options Manager (Homelessness) to the appellant;
 - (ix) letter dated 16 July 2010 from the Limes Medical Centre to the Council;
 - (x) outpatient appointment reminder letter from the University College London Hospitals to the appellant;
 - (xi) appointment letter and details for the appellant to have an MRI scan at the University College London Hospital;
 - (xii) letter dated 6 July 2010 from the University College London Hospitals to the appellant;
 - (xiii) letter dated 14 January 2010 from the Limes Medical Centre to the Council's Housing Department;
 - (xiv) letter dated 25 January 2010 from the Princess Alexandra Hospital to the Council's Housing Directorate;

- (xv) letter dated 18 May 2010 from the Limes Medical Centre to “Whom it may concern”;
- (b) a summary of the case and the facts of the case;
- (c) the case of the Housing Options Manager;
- (d) copies of documents submitted by the Housing Options Manager, namely:
 - (i) letter dated 24 October 2007 from a Housing Assistant (Needs) to the appellant;
 - (ii) a form of refusal of the offer of a property completed and signed by the appellant dated 18 November 2008;
 - (iii) letter dated 13 November 2009 from the Assistant Housing Options Officer to the appellant;
 - (iv) letter dated 9 February 2010 from the Assistant Housing Options Officer to the appellant;
 - (v) letter dated 25 January 2010 from the Assistant Housing Options Officer to the appellant;
 - (vi) letter dated 15 March 2010 from the Assistant Housing Options Officer to the appellant;
 - (vii) letter from the appellant to the Assistant Director of Housing (Operations) received by the Council on 24 March 2010;
 - (viii) letter dated 6 April 2010 from the Assistant Director of Housing (Operations) to the appellant;
 - (ix) memorandum dated 27 May 2010 from the Housing Options Manager to the Council’s Medical Adviser and the Medical Adviser’s response dated 4 June 2010;
 - (x) the Council’s Housing Allocations Scheme.

The Council considered the following submissions in support of the appellant’s case:

- (a) the appellant’s mother should have been in attendance with the appellant but had unexpectedly been admitted to hospital; the appellant confirmed that she wished to proceed with the appeal in the absence of her mother;
- (b) the appellant felt that she should be placed in Band 1 of the Council’s Allocations Scheme as she met the criterion of being a homeseeker living in the District for more than a year immediately prior to application needing to move on strong medical or welfare grounds or for reasons of disability;
- (c) the appellant resided with her mother, her daughter, her sister and her sister’s daughter in a small three bedroom property due to circumstances not of the appellant’s making; in 2007 the appellant and her daughter had been living with the appellant’s mother and the appellant’s sister and the accommodation had been adequate; the appellant’s sister had been engaged to be married and had become pregnant in 2007; the appellant’s sister’s baby had been born with a disability and

this had resulted in her engagement being broken off and her sister needing to stay in the family home;

(d) the appellant shared a bed with her daughter who suffered from a kidney problem, convulsions and was also an asthmatic;

(e) the appellant suffered from hardship and depression because of her current housing situation;

(f) the appellant's sister was an epileptic and often woke during the night due to fits;

(g) the appellant's sister's daughter was under Great Ormond Street and Princess Alexandra Hospitals; she had a deformity of the head; the appellant's sister's daughter slept in a cot next to her mother in a small box room; a consultant paediatrician had strongly recommended that the appellant's sister's daughter should have her own bedroom due to the concern regarding her head shape and the need for her to develop normally; it was possible that the appellant's sister's daughter would require facial and head surgery when she reached five years of age;

(h) the appellant's mother was suffering from depression due to the unsatisfactory overcrowding situation in the family home and the medical conditions of all of the other members of the family; however she had not made the appellant homeless, which would have placed the appellant in a more advantageous position in relation to obtaining her own accommodation;

(i) the Council had been provided with a considerable amount of medical evidence regarding the appellant, her daughter and other members of the family residing with the appellant including letters from consultant paediatricians; it was not considered that this evidence had been assessed properly; it appeared that the Council's Medical Adviser had been confused about the different members of the family;

(j) the officers had failed to submit letters to the Panel from the Limes Medical Centre and Princess Alexandra Hospital and these were only before the Panel as a result of the appellant's mother's intervention;

(k) the Council had also wrongly described the nature of the appellant's appeal in the report papers and had breached data protection guidelines by mistakenly sending a letter to the appellant's property which related to a third party;

(l) the appellant had been offered two properties following her making expressions of interest under the Council's Choice Based Lettings Scheme but had good reasons for refusing these properties; when visiting one of the properties with her mother they had been confronted by three youths at the bottom of the stairway to the flat and had been verbally abused; the appellant was particularly nervous about such situations, since when aged 13, she had been seriously assaulted and the matter had been featured in the national press and on national television;

(m) when aged 18, the appellant had collapsed whilst at college and had been given a brain scan which had suggested that she might be at an early stage of suffering from multiple sclerosis; six months ago the appellant had been diagnosed with multiple sclerosis;

(n) in all the circumstances the Council officers had not given due consideration to the medical evidence which had been submitted on behalf of the appellant and other members of her family.

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

(a) Do you stand by the reasons stated in the submitted documents for refusing the two properties which you were offered following you making expressions of interest under the Council's Choice Based Lettings Scheme? The appellant advised that the correct reason had been given in relation to the first offer which she had mentioned earlier; after the confrontation with the youths she had not wished to live in that locality, bearing in mind her background and the need to provide a safe environment for her daughter; she said that she did not accept the officers' evidence that she had refused the second property due to concerns about anti social behaviour; in relation to the second property, she had been advised that it was a ground floor flat but when she had visited it she had established that it was a first floor flat; it had been very small and she had envisaged problems negotiating the stairs; it had no garden; these were her main reasons for refusing the property, not anti social behaviour in the locality.

(b) Do you have a garden available in your current family home? The appellant stated that the property had a small patio.

(c) What accommodation is provided in the current family home? The appellant said that downstairs there was a front room, a kitchen and a bathroom and there were three bedrooms upstairs; it was necessary for her sister to live with her mother as she could not cope on her own due to the condition of her daughter; her sister slept in a bed in a small bedroom with her daughter in a cot beside her although her daughter was now two and a half years old.

(d) Is there room for a second bed in your sister's bedroom? The appellant advised that this would only be possible if the beds were bunk beds.

(e) Would your bedroom accommodate two single beds? The appellant said that the room was large enough for two single beds but as her daughter was comfortable sleeping with her she did not wish to change that arrangement at present.

(f) Are you currently sharing a single bed with your daughter? The appellant said it was a double bed; originally she had a single bed with her daughter in a cot and she used to take her out of the cot to sleep with her.

(g) Is there only one bathroom in the property? The appellant advised that there was only one but there was also a downstairs toilet.

(h) Why do you think the officers have not given proper consideration to your case? The appellant said that a lot of medical evidence had been provided to support her being placed in Band 1 and she did not consider that proper consideration had been given to that evidence.

(i) In relation to the first property which you were offered, are you aware that there are a lot of young couples who live in that locality in peace and quiet? The appellant said that before visiting the property she had not heard anything untoward about the locality; however after the confrontation with the youths she had visited the police station nearby together with her mother; the police station had been closed; she said she had also talked to a Council worker who had been on the estate at the

time of her visit, who had advised that he would not choose to remain on the estate past 4 pm each day.

(j) Are you able to drive? The appellant said that she could.

(k) In relation to the second property you were offered, do you consider that your reasons for rejecting that were sufficient in view of your current situation? The appellant explained that the property had been advertised as a ground floor flat which is why she had expressed an interest; she said she envisaged that she would find stairs hard to negotiate in future years due to her illness; she explained that she needed to look at her longer term situation; she continued that the living room had not been separate from the kitchen area and she would have been unable to erect barriers preventing her daughter from getting close to the cooker etc.

(l) One of the letters submitted by the officers states that you refused the second property because you were concerned about anti social activities in the area; do you dispute this statement? The appellant said that her mother had telephoned the Council to advise that she would be refusing the second property and her mother had also explained her reasons for rejecting the property, which were mainly the unsuitability of a first floor flat and the lack of a suitable garden.

(m) Was the accommodation in the first property offered to you suitable? The appellant said that the property had been good but the location had not been suitable bearing in mind her background and the confrontation with the youths when she had visited the property.

(n) Did you raise the confrontation issue with Council officers? The appellant said she had and they had only asked if the youths had key fobs to get into the building and she had not been aware of how they had got into the building.

(o) Do you still see the father of your child? The appellant said that she did not.

(p) Could your daughter be described as requiring special needs? The appellant advised that her daughter was bright but suffered from the medical conditions she had previously described.

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

(a) the housing application that the appellant had submitted to the Council had been registered on 23 October 2007; within this application the appellant had confirmed that she was seeking accommodation for herself and her daughter; the case before the Panel was unusual in that although the appellant was seeking accommodation for herself and her daughter a lot of evidence had been submitted about other members of the family with whom the appellant was currently residing; the Panel should have regard to all of the medical evidence submitted but should focus on that relating to the appellant and her daughter;

(b) the appellant's application for housing had been placed in Band 3 as she met criterion 4(a) (home seekers living in the District for more than a year immediately prior to application, needing one or more additional bedrooms) and criterion 4(d) (home seekers living in the District for more than a year immediately prior to application, and sharing accommodation with another household);

(c) on 7 November 2008 the appellant had been placed top of a shortlist against an advertised property; she had appeared top of this shortlist following an expression

of interest that she had made for the advertised property; however, on 17 November 2008 the appellant had decided to refuse this property due to an experience when viewing the property; she had said that she needed to provide a safe environment for her daughter and did not consider this would be possible in the locality of the property;

(d) on 5 November 2009 the appellant had submitted a medical form on behalf of her daughter; within the form the appellant had described her daughter's medical condition as asthma and having scarring to the left kidney; the case had been assessed by the Council's Medical Adviser who had been of the opinion that this case did not warrant being placed in a higher band of the Council's Allocations Scheme;

(e) further medical information from others household members, although not forming part of the housing application, had been submitted on 13 January 2010; these had included information about the appellant's mother's condition as suffering from ulcers and depression; another medical statement submitted on behalf of the appellant's sister's daughter stated that she had a craniosynostosis of the skull; a further medical form in relation to the appellant's sister described her condition as epilepsy; all of the medical evidence submitted had been assessed by the Council's Medical Adviser and a decision had been made not to promote the appellant higher than Band 3; the credentials of the Council's Medical Adviser had been questioned by the appellant; the Council's Medical Adviser was a member of the College of Medical Practitioners; although she was not a specialist, she was in a position to determine relative medical priority being aware of all of the known facts relating to an application and how they compared with the medical conditions of other applicants;

(f) on 15 January 2010 the Council had nominated the appellant for a new housing association property; this nomination had arisen after the appellant had become top of a shortlist, having expressed an interest against the advertised property; for the second time the appellant had refused this offer of accommodation; there was a dispute about the reasons for refusing this accommodation but the letter sent to the appellant on 25 January 2010, citing anti social behaviour in the locality as one of the reasons, was accurate;

(g) on 13 January 2010 the Council in error had sent a letter addressed to a third party to the appellant's address; the Housing Options Team had become aware of this administrative error and had notified the Council's Data Protection Officer in view of the concern of a potential breach of the Data Protection Act; however, a decision had been taken by the Data Protection Officer that the matter did not need to be referred on and corrective action had been taken to avoid a repetition of such a situation;

(h) on 25 January 2010 further medical evidence had been submitted on behalf of the appellant's sister's daughter in relation to the condition of piagiocephaly; on 15 March 2010 the appellant had been notified that her application had again been considered by the Council's Medical Adviser in the light of this additional information but that no additional priority would be given;

(i) on 24 March 2010 the appellant had sought an appeal against the decision not to place her in Band 1; the Assistant Director of Housing (Operations) had considered the appeal and had issued his decision on 6 April 2010; having considered all of the available evidence he had decided that the housing application would remain in Band 3 of the Council's Allocations Scheme; in addition the Assistant Director of Housing (Operations) had sought a fresh medical opinion from the Council's Medical Adviser; the Medical Adviser had responded on 4 June 2010

advising that she again saw no medical reason to promote the appellant to Band 1 of the Council's Allocations Scheme; reference had been made to the Council's Medical Officer being confused when undertaking this further assessment; the Medical Adviser had used the word "confusing" because some of the medical evidence submitted appeared to indicate that the appellant's sister's daughter was in fact the daughter of the appellant; however the Medical Adviser had been fully aware of the overall situation;

(j) in dealing with a case such as the one before the Panel it was crucial that consideration was given to the housing conditions prevailing across the Epping Forest District; the Council currently had a housing stock in the region of 6,500 properties and there were currently 5,116 applicants accepted onto the Council's Housing Register; there were currently 561 applicants in Band 3; to be promoted from Band 3 to Band 1 the reasons had to be exceptional and it should be noted that only 22 cases had been placed in Band 1 as a result of strong medical or welfare grounds;

(k) in the light of the acute demand for housing the Council had to structure a Housing Allocations Scheme that met the requirements of the legislation but also took into account the particular needs and priority of the local area; it was considered that the appellant's case was not exceptional and did not warrant promotion to Band 1 of the Allocations Scheme; account should also be taken of the fact that the appellant had refused two offers of accommodation in which she had experienced an interest since submitting her application for housing to the Council.

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

(a) A great deal of medical evidence has been submitted by consultants, do you not consider this is paramount to making a decision? The Housing Options Manager stated that medical evidence was considered by the Council's Medical Adviser who, as he had said previously, was in a good position to determine relative medical priority because she was aware of all the known facts relating to an application and how those facts compared with the medical conditions of other applicants; this could be contrasted with the limited information which was available to an applicant's doctor or consultant about other applicants.

(b) The Council's Medical Adviser should have been clear about the name of the appellant's daughter, so why did she state that the case was confusing? The Housing Options Manager explained that the Medical Adviser had commented on the letter submitted by a consultant paediatrician on behalf of the appellant, which had implied that the appellant's sister's daughter was in fact the appellant's daughter.

(c) The Council's Allocations Scheme states that account should be taken of the needs of an applicant and others; the Council's Medical Adviser does not appear to be following this requirement? The Housing Options Manager stated that the Council's Medical Officer assessed all of the submitted medical evidence before expressing an opinion.

(d) The reference in the Council's letter dated 25 January 2010 stating that anti social behaviour in the locality was a reason for refusing the property is refuted; are you sure that that paragraph of the letter is correct? The Housing Options Manager said that the paragraph reflected a record of a telephone conversation with the appellant's mother; there was no reason for an inaccurate statement to have been made by an officer.

(e) In your view did the second property offered to the appellant meet her requirements? The Housing Options Manager stated that it had been a brand new property built to the required standards and suitable for the appellant's needs.

(f) Once housed in a property can an applicant move to another property? The Housing Options Manager stated that the second property offered to the appellant had been a housing association property; if the appellant had moved into that property she could have sought a transfer to another property under the Allocations Scheme, and that some housing associations operated their own transfer systems; the appellant could also have sought to arrange a mutual exchange.

(g) In relation to the second property offered to the appellant, did the advertised details state whether it was a ground floor or a first floor property? The Housing Options Manager said that when a property was advertised this detail might not be apparent and it was left to an applicant to view a property before deciding whether to accept it.

(h) Would it be a good idea to specify ground floor or first floor etc in future? The Housing Options Manager agreed this was something which should be considered.

(i) Does the Council's Medical Adviser have access to an applicant's file when assessing a case? The Housing Options Manager stated that she did.

(j) Whilst it is necessary for the Panel to take account of the medical conditions of other members of the family should it focus on the medical condition of the appellant and her daughter? The Housing Options Manager suggested that this should be the correct approach.

The Chairman asked the appellant if she wished to raise any further issues in support of her appeal. The appellant requested that the Panel take account of all of the medical evidence which had been submitted in relation to herself and other members of her family.

The Chairman asked the Housing Options Manager 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 Housing Options Manager would be advised in writing of the outcome. The appellant and the Housing Options Manager then left the meeting.

In coming to its decision, the Panel focused on the Council's Housing Allocations Scheme, the evidence regarding the appellant's medical condition, her daughter's medical condition, the medical conditions of other members of the appellant's family with whom she was currently living and the number of applicants currently on the Council's Housing Register.

The Director of Housing obtained for the Panel a copy of the Council's Freesheet advertising vacant properties. Members noted that the advertisements did specify, where appropriate, whether a property was ground floor/first floor etc. The Director of Housing also obtained for the Panel a copy of the advertisement for the second property in which the appellant had expressed an interest. Members noted that this advertisement wrongly stated that the property was a ground floor flat.

RESOLVED:

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

(a) the appellant is currently in Band 3 of the Council's Allocations Scheme by virtue of meeting the criteria of:

(i) Band 4(a) (home seekers living in the District for more than a year immediately prior to application, needing one or more additional bedrooms); and

(ii) Band 4(d) (home seekers living in the District for more than a year immediately prior to application, and sharing accommodation with another household);

(b) in accordance with the Scheme, in order to be promoted to Band 1, the appellant needs to meet one of the criteria of that Band; she considers that she meets criterion 1(b) (home seekers living in the District for more than a year immediately prior to application, needing to move on strong medical or welfare grounds or for reasons of disability);

(c) account has been taken of all of the medical evidence submitted in relation to the appellant, her daughter, her mother, her sister and her niece, all of whom currently live together, and the opinion of the Council's Medical Adviser; the Panel are sympathetic to the appellant's situation, however, at this time based on the opinion of the Council's Medical Adviser it is not considered there is sufficient medical evidence to meet the criterion in Band 1(b) of needing to move on strong medical or welfare grounds or for reasons of disability;

(d) the Council has a housing stock of approximately 6,500 properties and there are currently 5,116 applicants accepted on to the Council's Housing Register; in the light of this demand it is necessary to structure a Housing Allocations Scheme which not only meets the requirements of the legislation but also takes into account particular needs and priorities; the Council's Medical Adviser is in a good position to determine relative medical priority being aware of all of the known facts relating to the application, and how they compare with the medical conditions of other applicants, whereas all of this comparative information is not available to the appellant's doctors and consultants;

(e) the appellant has been offered two properties after expressing interests under the Council's Choice Based Lettings Scheme; account has been taken of the appellant's reasons for refusing those properties including the accepted error in the advertisement of one of those properties by describing it as a ground floor flat whereas it was a first floor flat; however the appellant could have relieved her current housing situation and that of other members of her family by accepting one of those properties; she also could have sought a transfer or mutual exchange from one of those properties;

(2) That the Council's Medical Adviser reassess the medical evidence in the light of any further evidence submitted on behalf of the appellant following her forthcoming MRI scan;

(3) That the appellant be encouraged to express interest in further properties under the Council's Choice Based Lettings Scheme bearing in mind that although she is in Band 3 of the Allocations Scheme she has already been offered two properties in less than three years.

CHAIRMAN