

## EPPING FOREST DISTRICT COUNCIL COMMITTEE MINUTES

**Committee:** Housing Appeals and Review Panel      **Date:** Thursday, 16 June 2011

**Place:** Committee Room 1, Civic Offices, High Street, Epping      **Time:** 2.30 - 4.10 pm

**Members Present:** Councillors B Rolfe (Chairman), Mrs J Sutcliffe (Vice-Chairman), Mrs R Gadsby, Ms J Hart and Ms Y Knight

**Other Councillors:** Councillors

**Apologies:**

**Officers Present:** A Hall (Director of Housing), J Hunt (Assistant Housing Options Manager (Homelessness)) and G Lunnun (Assistant Director (Democratic Services))

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### 1. MINUTES

#### RESOLVED:

That the minutes of the meetings of the Panel held on 17 June 2010 and 20 January 2011 be taken as read and signed by the Chairman as a correct record.

### 2. SUBSTITUTE MEMBERS

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

### 3. DECLARATIONS OF INTEREST

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

### 4. 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.

<b>Agenda Item No.</b>	<b>Subject</b>	<b>Exempt Information Paragraph No.</b>
6	Application No. 2/2011	1

**5. APPLICATION NO. 2/2011**

The Panel considered a request for a review of decision made by officers under delegated authority that the applicant was homeless intentionally when he was evicted by his Housing Association landlord for rent arrears. The applicant was represented at the meeting by Ms A Randle and Ms R Calderwood, Housing Support Workers, Hyde In-Touch. 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 relevant legislation and national and local housing policies relative to the application.

The Chairman introduced the Members of the Panel and Officers to the applicant's representatives.

The Chairman outlined the procedure to be followed 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 on behalf of the applicant, namely:
  - (i) an application to the Housing Appeals and Review Panel dated 17 May 2011;
  - (ii) letter dated 23 May 2011 from Ms Randle to the Council's Assistant Housing Options Manager;
  - (iii) letter dated 3 June 2011 from the applicant's Drugs Support Worker.
- (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) letter dated 16 December 2010 from the Council's Medical Adviser to a Housing Officer;
  - (ii) letter dated 6 January 2011 from the applicant's former landlord together with a statement of the applicant's rent account;
  - (iii) notes taken by a Housing Officer at an interview of the applicant on 28 February 2011;
  - (iv) letter dated 23 March 2011 from the Assistant Housing Options Manager (Homelessness) to the Council's Medical Adviser;
  - (v) letter dated 24 March 2011 from the Council's Medical Adviser to a Housing Officer;
  - (vi) letter dated 27 April 2011 from the Assistant Housing Options Manager (Homelessness) to the applicant.

**Submissions made on behalf of the Applicant**

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

- (a) one of the applicant's representatives present had been the applicant's Support Worker for approximately five months helping the applicant with his housing and financial issues;
- (b) the applicant had been working as a drugs counsellor and had applied for housing with a Housing Association; within one month he had been suitably housed by the Housing Association in a one bedroom flat in London;
- (c) the applicant had lost his job soon after the tenancy had begun and he had applied for Housing Benefit which had been awarded to him; the Housing Benefit had been paid direct to the applicant and not to the Housing Association;
- (d) the applicant had not used the majority of his Housing Benefit to pay his landlord for the rent but had instead used it to buy drugs;
- (e) during the applicant's tenancy he had taken Class "A" drugs on a regular basis; the tenancy had lasted only one year and during that time the applicant had made only five rent payments amounting to just under £1,000;
- (f) the applicant had been aware of the need to pay rent but the need to buy drugs had been a greater priority for him;
- (g) the applicant had not been in control of his actions during most of his tenancy as he had been addicted to drugs and had not been able to make the decision to pay rent; although the Council's Medical Adviser had stated that the applicant had not shown any evidence that he had been suffering from an aberration of mind as a result of mental illness, it was considered that this was not the case as when someone was taking drugs or alcohol for any length of time they were not in their right state of mind and the need for drugs takes over;
- (h) the applicant had presented himself as homeless to the Council as he had had to leave London to get away from the drugs and the problems that he had encountered while he had lived there;
- (i) the applicant had been placed in interim accommodation by the Council and with support from various agencies he had managed to pay all of the charges whilst there;
- (j) the applicant's Drugs Support Worker had been working with the applicant since October 2010 when the applicant had voluntarily presented himself for help and support with his drug addiction; the applicant had engaged with the Drug Support Services and had been very open and honest throughout his appointments;
- (k) the applicant had researched different rehabilitation centre options and had contacted the one where he had subsequently been housed to ask questions about what the programme entailed;
- (l) the applicant had originally been admitted to a rehabilitation centre for a period of 12 weeks commencing 10 May 2011; on completion of that 12 week period the applicant would have had the opportunity to extend his stay for a further 12 weeks; alternatively the applicant would have been able to return to his home area with the skills obtained at the rehabilitation centre and being free from

methadone and illicit substances; the applicant had been prescribed 90 millilitres of methadone in December and had reduced this intake to 50 millilitres when commencing treatment at the rehabilitation centre;

(m) until the previous week the applicant had made excellent progress at the rehabilitation centre; at the centre the applicant had been able to speak to trained psychiatrists, counsellors and other people who had had a similar experience to overcome; the applicant had also been able to explore his past issues relating to the reasons behind using drugs;

(n) the applicant had been discharged from the rehabilitation centre the previous week for unknown reasons; the applicant had immediately been sent to another rehabilitation centre but had also been discharged from that one; following being discharged from the second rehabilitation centre the applicant had attempted suicide; the applicant was currently residing in London with a relation but had been unable to get to this Housing Appeals and Review Panel meeting; attempts were being made to move the applicant back into Essex;

(o) if the applicant could not secure permanent housing this would be likely to have a detrimental impact on his further rehabilitation.

The Chairman asked the applicant's representatives if they were still able to represent him having regard to his recent discharge from the rehabilitation centres and subsequent events. The representatives stated that they still had authority to represent the applicant.

**Questions from the Assistant Housing Options Manger (Homelessness) on the applicant's case.**

The applicant's representatives gave the following answers to questions from the Assistant Housing Options Manager (Homelessness):

(i) the applicant had been a drugs counsellor and had been aware of the problems related to the taking of drugs but had not been more capable of paying rent than others because addiction led to spending on drugs rather than paying rent; the problem had been Housing Benefit being paid to the applicant and not direct to his landlord;

(ii) it was not known why the applicant had chosen to have the Housing Benefit paid to himself; it was possibly that he was attempting to become more independent;

(iii) before the applicant had been employed as a drugs counsellor he had been an addict but he had stopped taking drugs and had obtained the job of a counsellor; he had then started taking drugs again; the applicant had faced many problems during his life and this had possibly resulted in him taking drugs; being around drugs all the time as a drugs counsellor had made it easier for him to take drugs;

(iv) a drug addict could not be absolved of all responsibility but could not be considered to be in control of his actions; some drug takers had some functionality but others did not; account should be taken of the applicant's underlying psychiatric problems as well as his addiction.

**Questions from Members of the Panel on the Applicant's Case**

The applicant's representatives gave the following answers to questions from Members of the Panel:

- (i) the majority of drugs counsellors were ex-drug addicts; they had the benefit of knowing how a person felt;
- (ii) the applicant had stayed at the rehabilitation centre for five weeks before being discharged; it was unusual for a person to be discharged so soon and the reasons for his discharge were not known; the applicant had not been seen by the representatives present at the meeting since being discharged and the discharge had only become known to them the previous day;
- (iii) the applicant's mother and father were no longer alive; the applicant had an uncle in London who was an alcoholic; the applicant had an ex-partner and daughter in the Epping Forest District; the applicant also had a sister but she was unwilling to help him;
- (iv) the applicant's latest suicide attempt had been the previous Friday;
- (v) it was not known how long the applicant had been free of drugs before being employed as a drugs counsellor;
- (vi) the applicant had been aware of the need to pay rent but having been given the choice had spent his money on drugs;
- (vii) the applicant's first suicide attempt had been before Christmas 2010;
- (viii) the applicant had improved whilst in hospital after his first suicide attempt and subsequently in the interim accommodation provided by the Council; he had also been progressing at the rehabilitation centre; it was not known what had led to his recent discharge from that centre; it was common practice for a centre to ask the resident to leave if a particular problem arose which was likely to upset other residents;
- (ix) in the event of the applicant obtaining permanent accommodation he would receive support from various agencies for a period of at least two years; the possibility of hospital psychiatric care would be pursued with the applicant but in the longer term he would still require his own accommodation;
- (x) the applicant would not have been employed as a drugs counsellor had he been taking drugs at the time he started; whilst working as a drugs counsellor he had started taking drugs again;
- (xi) it was understood that the applicant had been clear of drugs for a few years immediately prior to being employed as a drugs counsellor;
- (xii) the applicant had lost his job as a drugs counsellor as it had been a temporary post and the contract had come to an end;
- (xiii) the applicant's representatives had not been allowed to have any contact with the applicant during the first four weeks of his rehabilitation; feedback from the rehabilitation centre after the four week period had been positive with the applicant making progress and reducing his methadone intake;
- (xiv) when the applicant had secured the tenancy of his Housing Association property he had been clear of drugs and in a clear mind.

**Presentation of the case of the Assistant Housing Options Manager (Homelessness)**

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

(a) the applicant was a single man, holding a British Passport and homeless because he had no accommodation available to him on his discharge from hospital and in priority need because he had been deemed to be vulnerable; in deciding that the applicant was vulnerable, advice on his health had been obtained from the Council's Medical Adviser; the homelessness legislation had then required the Council to be satisfied that the applicant had not made himself intentionally homeless;

(b) the applicant had occupied a Housing Association property between 21 December 2009 and 21 November 2010; the accommodation had been a one bedroom flat and the applicant had held the tenancy for this property in his sole name; the weekly rent for the property had been initially £102.21 on the commencement of the tenancy but had subsequently been reduced to £100.63 per week; the applicant had applied for Housing Benefit in January 2010 and he had received £96 per week; the Housing Benefit had been paid directly to the applicant and he had been expected to use the money received to pay his rent to his landlord and to pay the small difference from his own income-related benefits in order that the rent was fully paid;

(c) the rent account statement provided by the Housing Association for the applicant's tenancy showed that only five rent payments had been made by the applicant throughout the whole period of the tenancy; due to non-payment of rent amounting to £3,943.94, the applicant had been evicted by the Housing Association;

(d) in the month preceding his eviction, on 4 October 2010 the applicant had taken an overdose of heroine; on 5 October 2010 he had cut his wrists and had been admitted to hospital; the applicant had been discharged from hospital on 2 December 2010 by which time he had been evicted; the hospital psychiatric team had believed the applicant's local connection to be with this Council as he had advised them that he had been staying at a property in this District; subsequent to the applicant's discharge from hospital and placement in interim accommodation it had been established that the applicant's last settled address had been the Housing Association property in London;

(e) an interview had taken place between the applicant and his Homelessness Assessment Officer in which the applicant had explained why the rent had not been paid in full; the applicant had admitted that he had used the Housing Benefit he had received to purchase drugs, including cocaine and heroine instead of paying his rent; the applicant had stated that he had been a drug addict at the time and had believed that he was not "thinking properly" when he did not pay his rent;

(f) advice on the applicant's ability to manage his affairs due to his drug taking and mental ill health had been obtained from the Council's Medical Adviser;

(g) it had been decided the applicant had made himself intentionally homeless; on being notified of that decision the applicant had sought a review of the decision;

(h) in making homeless decisions, the Council must have regard to the Code of Guidance on Homelessness which was used by local authorities to assist with the interpretation of the homelessness legislation;

(i) the Code of Guidance (11.7) 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 they would be forced to leave accommodation); and that the accommodation was available for their occupation and it would have been reasonable for them to continue to occupy the accommodation;

(j) it was considered that the applicant's wilful and persistent refusal to pay his rent at the Housing Association property had been a deliberate act; in consequence of this, the applicant had been evicted; the substantive arrears on the rent account of the Housing Association property had been caused by the applicant's failure to utilise the Housing Benefit he had received to pay his rent to his Housing Association landlord;

(k) it was considered that the applicant's Housing Association accommodation would have continued to be available had he complied with the terms of his tenancy and not accrued rent arrears; it was further believed that the property would have been reasonable for the applicant to occupy as the property had been a one bedroom flat and the rent had been fully eligible for Housing Benefit; it was clear that had the applicant passed on all of his Housing Benefit he had received to his Housing Association landlord he would not have become homeless;

(l) advice had been sought from the Council's Medical Adviser, a psychiatric specialist, on whether the applicant's non-payment of rent could be held to be deliberate, taking into account his mental health and drug problems; the advice of the Medical Adviser had been that the applicant should be considered capable of decision-making and in control of his actions when he had lived at the Housing Association property;

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

**Questions from the Applicant's Representatives on the Case of the Assistant Housing Options Manager (Homelessness)**

The Assistant Housing Options Manager (Homelessness) gave the following answers to questions from the applicant's representatives:

(i) whilst it was possible that the applicant had been in hospital and unable to attend Court to provide evidence of his vulnerability when the eviction order had been made, it should be noted that such Court procedures normally took some time; the arrears had been at a high level in November 2010 and it would be expected that the Housing Association would have sent the applicant warning letters advising him of possible Court action well before the Court proceedings;

By leave of the Panel the Director of Housing pointed out that in relation to Housing Association tenancies, if a certain amount of rent was owed and proof of this was provided to the Court, the Judge had no discretion but to give a Possession Order.

**Questions from Members of the Panel on the case of the Assistant Housing Options Manager (Homelessness)**

The Assistant Housing Options Manager (Homelessness) gave the following answers to questions from Members of the Panel:

- (i) the applicant had chosen to take drugs as a result of which it could have been difficult for him to deal with his affairs; however, as a drugs counsellor he should have been more aware of the issues than others; the applicant had been free of drugs for a few years; he had chosen to have his Housing Benefit paid direct to him; he could have taken that decision with the intention that he would use the money for drugs or could have been seeking to manage his affairs; it cannot be said that he was not responsible for his actions; his lack of action in failing to pay rent was deliberate;
- (b) it was not known whether the applicant had been provided with a statement from the Housing Association about his rent arrears prior to losing his job;
- (c) there was no evidence to indicate that anyone had looked after the applicant's affairs whilst he had been in hospital;
- (d) the applicant had been provided with interim accommodation whilst officers had carried out enquiries about his situation; if the Panel decided that the applicant was intentionally homeless the Council would have a duty to provide him with interim accommodation, if requested, for a reasonable time so that he could find alternative accommodation; if the Panel decided that the applicant was not intentionally homeless the Council would have a long term duty to accommodate him;
- (e) it was not known what warnings, if any, the Housing Association had given the applicant about his rent arrears; however, it is usually normal practice for a responsible landlord such as a housing association to send a number of warning letters prior to a matter going to Court.

#### **Additional issues raised by the Applicant's Representatives**

The applicant's representatives raised a further point that they felt there had been conflicting evidence submitted about the applicant's condition. It was asserted by the representatives, that the applicant had a personality disorder which, combined with his addiction for drugs, would have affected his ability to pay the rent for his Housing Association property.

#### **Additional issues raised by the Assistant Housing Options Manager (Homelessness)**

The Assistant Housing Options Manager (Homelessness) explained that the applicant's file would be left for the Panel to refer to if necessary. He asserted that it contained no evidence of the applicant having severe enduring mental health issues. There was no evidence that the applicant had suffered from an aberration of mind as a result of mental illness at the time in question. Personality disorders were difficult to treat but the applicant had been assessed by the council's Medical Advisor as being in control of his actions.

#### **Deliberations**

The Chairman indicated that the Panel would consider the matter in the absence of both parties and that the applicant's representatives and the Assistant Housing Options Manager (Homelessness) would be advised in writing of the outcome. The applicant's representatives 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 receipt of Housing Benefit, his rent arrears, the explanation given by the applicant

and his representatives for not passing on the majority of the Housing Benefit to his landlord, the applicant's health at the time of his rent arrears, the availability and reasonableness of the applicant continuing to occupy the Housing Association flat and the explanations given by officers for reaching their decision.

**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 the Assistant Housing Options Manager (Homelessness) in writing and orally, the decision of the officers that the applicant was homeless intentionally be upheld for the following reasons:
- (a) the applicant held the tenancy of a Housing Association flat between 21 December 2009 and 21 November 2010 in his sole name; this was his last settled address;
- (b) the rent for the applicant's Housing Association flat was initially £102.21 per week and was reduced to £100.63 per week in April 2010; the applicant applied for Housing Benefit in January 2010 and was granted £96.00 per week;
- (c) the applicant was evicted from his Housing Association flat in November 2010 for rent arrears of £3,943.94; during the period of his tenancy he made only five rent payments to the Housing Association, totalling £910.00;
- (d) the evidence submitted on behalf of the applicant was that he was aware of the need to pay rent but used his Housing Benefit to buy drugs; account has been taken of the fact that the applicant appeared to choose to have his Housing Benefit paid direct to himself and not direct to his landlord; it is considered by the Panel that the failure to pay the rent was a deliberate act by the applicant;
- (e) consideration has been given as to whether the applicant had been in control of his actions and capable of making decisions at the time of him not paying his rent; the evidence submitted on behalf of the applicant was that at the time his tenancy of the Housing Association flat began, he was employed as a drugs counsellor and was not taking drugs; the applicant's employment ended in January 2010 and as at 4 January 2010 he was already in arrears with his rent; some time after becoming unemployed, the applicant spent significant amounts of money on crack cocaine and opiate misuse for his own use;
- (f) account has been taken of the advice from the Council's Medical Advisor, a psychiatric specialist, that there is no evidence that the applicant was suffering from an aberration of mind as a result of mental illness at the time; the Advisor also expressed the view that whilst the applicant's misuse of substances became a compulsive behaviour, in keeping with dependence criteria often seen in substance misuse, in a court of law, the applicant would be judged to be in control of his actions and capacious in his decision making; we have contrasted this advice with the representations made on behalf of the applicant that someone taking drugs for any length of time cannot be in a right state of mind as the need for drugs takes over; it is considered by the

Panel that having been a drugs counsellor, the applicant should have been more aware than others of the possible effects of drugs; on balance, we believe that at the time of his rent arrears and the eventual eviction, the applicant had been in control of his actions and capable of making decisions, and that the applicant's failure to pay rent from the Housing Benefit provided was a deliberate act;

(g) the applicant's Housing Association landlord has stated that the flat would have remained available to the applicant had he maintained his rent payments; no evidence was submitted to the contrary and we have concluded that the flat would have continued to be available to the applicant had he complied with the terms of his tenancy and not accrued rent arrears;

(h) it is also considered that it would have been reasonable for the applicant to continue to occupy the flat, as it had been a one bedroom flat with the majority of the rent eligible for Housing Benefit;

(2) That no deficiency or irregularity has been identified in the original decision made by the Council officers or the manner in which it was made;

(3) That, if requested by the applicant and in accordance with its statutory duty, the Council continues to offer the provision of interim accommodation to the applicant for a period of six weeks from the date of the letter notifying the applicant of the Panel's decision in order to allow the applicant reasonable opportunity to secure alternative accommodation.

**CHAIRMAN**