

EPPING FOREST DISTRICT COUNCIL COMMITTEE MINUTES

Committee: Housing Appeals and Review Panel **Date:** Thursday, 8 September 2011

Place: Committee Room 1, Civic Offices, High Street, Epping **Time:** 2.30 - 4.35 pm

Members Present: Councillors Mrs J Sutcliffe (Vice-Chairman in the Chair), Ms J Hart and Ms Y Knight

Other Councillors: Councillors Ms R Brookes and L Leonard

Apologies: Councillors B Rolfe and Mrs R Gadsby

Officers Present: A Hall (Director of Housing), G Lunnun (Assistant Director (Democratic Services)) and R Wallace (Housing Options Manager)

16. SUBSTITUTE MEMBERS

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

17. MINUTES

RESOLVED:

That the minutes of the meetings of the Panel held on 16 and 21 June and 4 August 2011 be taken as read and signed by the Chairman as a correct record subject to the word "Cheshunt" for "Chestnut" in the first paragraph (a) of minute 15 of the meeting held on 4 August 2011.

18. DECLARATIONS OF INTEREST

Pursuant to the Council's Code of Member Conduct, Councillor Hart declared a personal interest in agenda item 7 (Appeal No. 5/2011) by virtue of being a member of the Loughton Residents' Association, the same group as Councillors Brookes and Leonard who were supporting the appellant at this meeting. The Councillor advised that she had not been involved in the appeal before this meeting and had determined that her interest was not prejudicial and she would remain in the meeting for the consideration and voting on the matter.

19. TERMS OF REFERENCE - ORDER OF PROCEEDINGS

In order not to delay the hearing of Appeal No. 5/2011, the Panel agreed to change the order of business and to take that appeal before this item.

20. 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 Number	Subject	Exempt Information Paragraph Number
7	Appeal Number 5/2011	1
8	Progress Report on Previous Appeals/Applications	1

21. APPEAL NO. 5/2011**Introduction**

The Panel considered an appeal against a decision made by officers acting under delegated authority concerning a Housing Register Banding Review. The appellant attended the meeting to present her case accompanied by her local Ward Councillors, Councillors R Brookes and L Leonard. 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 relevant legislation and national and local housing policies relative to the appeal.

The Chairman introduced the members of the Panel and officers 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) her application to the Housing Appeals and Review Panel dated 6 July 2011;
 - (ii) sketch plan showing the layout of the lounge/bedroom in the appellant's property;
 - (iii) 6 photographs showing the appellant's lounge/bedroom
 - (iv) copy of letter dated 24 July 2007 from the appellant's General Practitioner to a Housing Officer;
 - (v) copy of a letter dated 5 October 2007 from the Head Teacher of the School attended by one of the appellant's sons to the Council's Senior Housing Officer;
 - (vi) copy of Self Assessment Medical Form completed by the appellant dated 14 January 2008;

- (vii) copy of a Self Assessment Medical Form completed by the appellant in respect of one of her sons dated 14 January 2008;
- (viii) cover sheet for a facsimile transmission submitted by the appellant to the Council on 22 January 2008;
- (ix) copy of letter dated 14 January 2008 from the appellant to the Council's Assistant Head of Housing (Operations);
- (x) copy of letter dated 10 January 2008 from the appellant's General Practitioner to the Assistant Head of Housing (Operations);
- (xi) copy of letter dated 8 January 2008 from the Family Care Counselling Service to the Assistant Head of Housing (Operations);
- (xii) copy of Medical Advice dated 26 September 2007 from the Council's Medical Advisor to a Housing Officer;
- (xiii) copy of letter dated 28 January 2008 from the Assistant Head of Housing (Operations) to the appellant;
- (xiv) copy of memorandum sent on 17 March 2008 from the Assistant Head of Housing (Operations) to a Housing Officer;
- (xv) copy of letter dated 24 March 2008 from the appellant to the Assistant Head of Housing (Operations);
- (xvi) copy of letter dated 7 April 2008 from the Assistant Director of Housing (Operations) to the appellant;
- (xvii) copy of letter dated 15 April 2008 from the appellant to the Assistant Director of Housing (Operations);
- (xviii) copy of letter dated 29 April 2008 from the Assistant Director of Housing (Operations) to the appellant;
- (xix) copy of Medical or Social Welfare Assessment by the Council's Medical Adviser in respect of the appellant dated 12 May 2008;
- (xx) copy of letter dated 13 May 2008 from the Assistant Housing Options Officer to the appellant;
- (xxi) copy of letter dated 19 November 2008 from the North Essex Partnership together with a psychiatric assessment in respect of one of the appellant's sons sent to the appellant's General Practitioner;
- (xxii) copy of letter dated 18 December 2008 from the appellant to the Council;
- (xxiii) copy of letter dated 6 August 2010 from the appellant to the Council's Housing Options;
- (xxiv) copy of label from one of the appellant's medicine bottles;
- (xxv) copy of email sent on 14 January 2011 to the Housing Options Manager from the appellant;

(xxvi) exchange of emails dated 13 January 2011, 14 January 2011 and 17 January 2011 between the appellant and the Housing Options Manager;

(xxvii) copy of letter dated 26 January 2011 from the Housing Options Manager to the appellant;

(xxviii) copy of letter dated 20 December 2010 (reproduced from the Council's system on 22 June 2011 and therefore containing that date) from the Assistant Housing Options Officer to the appellant;

(xxix) copy of letter dated 10 May 2010 from the North Essex Partnership to the Housing Directorate;

(xxx) 12 photographs showing the interior of the appellant's property;

(b) a summary of the case including 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) copy of letter dated 20 December 2007 from the Assistant Housing Options Officer to the appellant;

(ii) copy of letter dated 6 January 2009 from the Assistant Housing Options Officer to the appellant;

(iii) copy of letter dated 20 May 2011 from the Assistant Director of Housing (Operations) to the appellant;

(iv) extracts from the Council's Housing Allocations Scheme showing the bandings and the sizes of properties to be allocated.

Presentation of the Appellant's Case

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

(a) the appellant was a single parent with two sons aged 14 and 11 at the time of her application to the Panel; she was currently housed in a first/second floor two-bed Council maisonette and had been placed there following a Homelessness Application in 2007;

(b) the appellant had moved 6 times since 2001;

(c) the appellant had submitted medical evidence regarding herself and one of her sons which she felt had not been given sufficient weight by the Council's officers;

(d) the appellant had been placed in Band 3 of the Council's Allocations Scheme in May 2008 and had submitted bids regularly for 2-bed properties from October 2009: she had been coming between 11th and 20th on the lists of expressions of interests in properties;

(e) in December 2010 the appellant had been advised that she had been demoted to Band 4 as she no longer met the criterion regarding access to a garden following her younger son reaching the age of 11;

(f) the change in the age of a child in the criterion relating to access to a garden from 15 to 11 years had been unfair and should not have been applied to existing housing applicants; she understood that only 9 families had been demoted from Band 3 to Band 4 and only 52 families in total had been affected by the changes to bandings, so the need for changes was questioned;

(g) in view of the ages of the appellant's sons she felt that they should be entitled to their own bedrooms; to provide her sons with their own bedrooms the appellant had adapted her lounge into a lounge and bedroom for herself;

(h) tenants should be consulted directly about revisions to the Allocations Scheme and the Council should not rely on the views of the Tenants and Leaseholders Federation;

(i) in Band 4 the appellant had little prospect of getting another property; there were currently 562 appellants in Band 3 and 1791 appellants in Band 4;

(j) the appellant was seeking a property with its own front door and a small garden;

(k) the appellant's current property had a small kitchen on the upper floor with 20 steps down to the lounge; it was in an area which suffered from anti-social behaviour; the previous night the appellant had been awoken at 1 a.m. by shouting nearby which had included threats to fire bomb a maisonette in the same block as the appellant's maisonette; she had felt trapped with no escape route and had been concerned about the effect this incident would have had on one of her sons had he woken up.

Questions from the Housing Options Manager to the Appellant

The appellant gave the following answer to a question from the Housing Options Manager:

(a) she had not considered appealing to the County Court when a decision had been made that the allocation of her current property had been considered suitable in 2008 as she had felt that the Council's decision would not be altered.

Questions from Members of the Panel to the Appellant

The appellant gave the following answers to questions from members of the Panel:

(a) the appellant should be in Band 3 due to her medical condition; she had received general counselling for a long time in Loughton but the counsellor had moved to Waltham Abbey and it had not been possible to continue to see him; more recently, for approximately the last year the appellant had received counselling from the Loughton Mental Health Centre which had helped her to understand her anxiety; her anxiety could not be cured but could be managed;

(b) the appellant would be able to cope with the stress of moving house but not with moving out of the district because of the disruption this would cause for her sons' education; when the appellant had been housed in the Council's Homeless Persons Hostel in North Weald in 2007 it had been recognised that she needed to be located in Loughton in order to get her sons to school having regard to her agoraphobia;

- (c) the appellant had not been outside of Loughton for many years apart from one trip to Romford;
- (d) the appellant had considered a mutual exchange but had found it difficult to find anyone wanting to move to a two bedroom property in her locality;
- (e) when the appellant had decided not to appeal to the County Council in 2008 she had engaged a solicitor who had advised her not to pursue the matter;
- (f) during the first year of occupation of her current property a teenager had built a fire on the nearby recreation ground which had alarmed one of her sons;
- (g) the appellant recognised that some of the problems she was currently suffering might still arise in a different property; however the appellant envisaged that a ground floor property with its own front door and a garden would relieve the pressure she was currently suffering;
- (h) as well as suffering from agoraphobia the appellant also suffered symptoms of panic; this often occurred if she became stuck in traffic;
- (i) the change in the Allocations Scheme had not helped very many people having regard to the number of applicants on the Housing Register; she believed that only 9 families had been moved from Band 3 to Band 4; it had been unfair to inflict this demotion on existing applicants and it should have applied only to new applicants;
- (j) the appellant accepted that the Allocations Scheme provided for a two bedroom property for a family of the size of the appellant's;
- (k) the appellant had not called the Police in relation to the incident the previous evening but if a similar incident happened again she would call the Police;
- (l) one of her sons had settled well into school but still had panic attacks at school; she had recently learnt of a panic attack at a parents' evening which had not previously been drawn to her attention; her son also appeared to suffer stress when travelling, similar to that suffered by the appellant;
- (m) the appellant had kept a diary listing anti-social behaviour incidents but had not submitted it; there appeared to be a difference in mentality in relation to anti-social behaviour in areas of private housing and areas of public housing;
- (n) the appellant had recently changed from part-time working to full-time working; she worked from home on telephone sales; she had been given an opportunity to expand this role to visiting people but, at present, she had no car as it had been written-off and she did not yet feel sufficiently confident to use public transport;
- (o) the appellant would find it difficult to deal with a panic attack outside of her home although she recognised the benefits of being able to leave her home for work.

Presentation of the Case of the Housing Options Manager

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

- (a) the appellant was the sole tenant of her current property which was a Council two bedroom first/second floor maisonette;
- (b) in October 2007 the appellant had been residing at the Council's Homeless Persons Hostel; at that time, following advice from the Council's Medical Adviser, it had been accepted that the Hostel accommodation had been unsuitable for the appellant;
- (c) following completion of that review the Council had been contacted by the appellant's solicitor on 22 November 2007; the solicitor had referred to the pending offer of alternative accommodation and had asked the Council to bear in mind that any future offers of accommodation needed to be suitable and that any offer of accommodation not in the immediate area of the appellant's sons' schools would be unsuitable; having regard to these comments on 26 November 2007, the appellant had been offered her current accommodation; the appellant had accepted the accommodation on 27 November 2007; the tenancy had commenced on 3 December 2007;
- (d) the appellant had made a subsequent Housing Application for a transfer from her property; the request for a transfer had been dated 29 November 2007 but had not been received by the Council until 19 December 2007; within the application the appellant had confirmed that she was seeking alternative accommodation for herself and her two sons;
- (e) on 20 December 2007 the appellant had been advised that she was to be placed into Band 4 of the Council's Housing Allocations Scheme as she had no access to a garden;
- (f) on 28 January 2008 the Assistant Director of Housing (Operations) had reviewed the matter and had concluded that the appellant's accommodation was suitable; the appellant had not pursued the matter further to the County Court on a point of law;
- (g) the appellant had submitted Self Assessment Medical Forms on behalf of herself and one of her sons; within these forms the appellant had confirmed that she suffered from agoraphobia, anxiety and panic attacks and one of her son's condition was declared as having psychological problems; the self assessment forms had been assessed by the Council's Medical Adviser who had also considered supporting medical evidence; this had included letters on behalf of the appellant from the Epping Forest Family Care Counselling Service and her General Practitioner; following the assessment of these medical conditions the appellant had been granted additional preference and had been promoted to Band 3;
- (h) further medical evidence had been provided on behalf of one of the appellant's sons from the North Essex Partnership Trust in December 2008; this evidence had been considered by the Council's Medical Adviser who, on this occasion had not been prepared to grant additional preference;
- (i) on 27 July 2010 the appellant had submitted further medical forms on behalf of herself and one of her sons; this again had included supporting medical detail from North Essex NHS Trust and her General Practitioner; following a further assessment, no further priority had been given;
- (j) on 1 December 2010 the Council had reviewed its Housing Allocations Scheme and this resulted in some applicants on the HomeOption Scheme being demoted in Bands; the appellant had been demoted to Band 4 because she no

longer had children under 5 years of age living in a property above first floor level and no longer had children under 11 years of age with no access to a garden;

(k) the appellant sought a review of this decision and on 26 January 2011 the Housing Options Manager had concluded that Banding Level 4 was correct;

(l) the appellant had sought a further review of this decision and on 20 May 2011 the Assistant Director of Housing (Operations) had agreed with the decision of the Housing Options Manager that the application had been correctly banded at Band 4;

(m) the Housing Application made by the appellant had been dealt with in full accordance with the Council's Housing Allocations Scheme; when undertaking an assessment on a case it was important to take account of the housing conditions prevailing across the district; this Council had a housing stock in the region of 6,500 properties and there were also around 5,300 applicants on the Housing Register;

(n) the Council's Housing Allocations Scheme met the full requirements of the Housing Act 1996 Part VI;

(o) in addition to the appellant, a total of 52 other housing appellants had been demoted following the changes implemented from December 2010; these included 9 from Band 3 to Band 4; 28 from Band 4 to Band 6; and 15 from Band 5 to Band 6.

Questions from the Appellant on the Case of the Housing Options Manager

The Housing Options Manager gave the following answers to questions from the appellant and her supporters;

(a) the Council's Housing Allocations Scheme was normally reviewed annually in order to ensure that the system was as fair as possible having regard to the limited resources available; some councils only updated their schemes every 5 years;

(b) one of the appellant's sons had been 11 years of age when the scheme had been changed in December 2010 but Criterion (f) of Band 4 stated "households including a child under the age of 11"; that age had been chosen because it had been considered to be fair having regard to all of the circumstances; prior to the scheme being changed there had been full consultation, not only with members of the Council but also the Tenants and Leaseholders Federation, housing applicants, tenants and partner agencies; the revised Allocations Scheme had been approved by members of the Council and the role of officers was to work within the requirements of the Scheme;

(c) the appellant had been treated fairly throughout all of her applications and her requests had been processed correctly in accordance with the adopted Housing Allocations Scheme;

(d) it was not known when the appellant could have reasonably expected to obtain a property if she had remained in Band 3; it was up to an appellant to express interests.

Questions from Members of the Panel to the Housing Options Manager

The Housing Options Manager gave the following answers to questions from members of the Panel:

- (a) the Allocations Scheme had to be implemented consistently; medical conditions were taken into account; any medical evidence submitted was assessed by the Council's Medical Adviser; in order to move from Band 4 on medical grounds it would be necessary for the Medical Adviser to accept that there were strong medical grounds and this would then result in promotion to Band 1;
- (b) when the applicant had been offered her current property she had effectively been given priority over other non-homeless applicants on the Housing Register;
- (c) having regard to the appellant's circumstances when she had been housed in the Council's Homeless Persons Hostel she would have been advised to seriously consider accepting the offer of her current property because if she had not done so she would have run the risk of refusing an offer of accommodation which was considered suitable and this could have led to the Council discharging its duty towards her;
- (d) all of the medical evidence which had been submitted by the appellant had been assessed by the Council's Medical Adviser; it was not known whether the appellant was receiving any benefits;
- (e) very few responses had been received from the other 52 families affected by the changes made to the Housing Allocations Scheme in December 2010.

Closing Statement by the Appellant

The appellant advised that she had been in receipt of Incapacity Benefit for a period of approximately one year but that when this had been due for renewal she had been advised that she would no longer receive it. The appellant had been grateful to the Council for providing her with a home as her previous rented property had been totally unsuitable. It was accepted that the Council's procedures had been followed correctly and the Panel was asked to consider this as a special case.

Closing Statement by the Housing Options Manager

He advised he had nothing further to add.

Deliberations

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, Councillors Brookes and Leonard and the Housing Options Manager then left the meeting.

In coming to its decision, the Panel focussed on the assessment of the appellant's medical condition and that of one of her sons by the Council's Medical Adviser, the ages of the appellant's sons, the submissions made by the appellant regarding conditions in her current property and the size of the property she required, and the officers' application of the Housing Allocations Scheme – in particular the reasons for the appellant's demotion from Band 3 to Band 4.

RESOLVED:

That, having regard to the provisions of the Housing Act 1996, as amended, and the Council's adopted 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 4 to Band 1 or Band 3 of the Allocations Scheme be upheld for the following reasons:

(a) the appellant is currently in Band 4 of the Council's Housing Allocations Scheme by virtue of meeting the following criterion:

“4(b) Homeseekers living in the District for more than a year immediately prior to the application, needing to move on moderate medical or welfare grounds or for reasons of disability, or needing to move to a particular locality in the District where failure to do so will result in them or others suffering hardship”;

(b) to be promoted to a higher band due to medical reasons could only be to Band 1 under the Allocations Scheme; to be eligible for Band 1 the appellant needs to meet one of the criteria in that Band; she considers that she meets Criterion 1(b) of Band 1 (Homeseekers 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); we have taken account of the fact that the appellant has submitted a number of medical self assessment forms for herself and one of her sons together with letters from medical and mental health practitioners; the appellant states that she suffers from agoraphobia, anxiety and panic attacks and that her younger son suffers from anxiety and has psychological problems; in accordance with the Council's Allocations Scheme, medical priorities are assessed by the Council's Medical Adviser taking account of all known facts relating to the application; the Council's Medical Adviser also has the benefit of seeing all cases where a medical assessment is required and is in the best position therefore to be able to compare cases and decisions on which cases constitute strong and which ones constitute moderate medical needs; we note that the medical forms submitted by the appellant have been assessed by the Council's Medical Adviser and that she has determined the need for the appellant to move is based on moderate medical grounds as required under Band 4 (Criterion (b)) but not strong medical grounds as required under Band 1 (Criterion (b)); we are therefore of the opinion that the appellant does not have a need to move on strong medical grounds;

(c) having regard to (b) above we do not consider that the appellant satisfies the requirements of Criterion (b) of Band 1; the evidence submitted does not indicate that the appellant meets any of the other criteria in that Band;

(d) in order to be promoted to Band 3 of the Allocations Scheme, the appellant needs to meet the criterion of Band 4(a) or (b), and one other criterion in Band 4 (which can also include (a) or (b));

(e) in addition to meeting Criterion 4(b), which has been accepted by officers, the appellant drew attention to Band 4 Criterion (f) (Households including a child under the age of 11 living in the District for more than a year immediately prior to application who have no access to a garden); prior to 1 December 2010 this criterion related to a child under the age of 15 and the appellant met this criterion at that time and was placed in Band 3; however, on 1 December 2010 following the annual review of its Housing Allocations Scheme, the Council's Cabinet after extensive consultation (including all housing applicants) and consideration by the Housing Scrutiny Panel changed Band 3 Criterion (f) to its current wording and the appellant no longer met that criterion; the appellant's sons are aged 12 and 15 years; the appellant believes that the change made by the Council's Cabinet to Band 3 Criterion (b) is unfair

and should not have applied to existing housing applicants; it is not within the Panel's Terms of Reference to change the criteria in the Bands of the Allocations Scheme; the role of the Panel is restricted to determining whether an appellant has been correctly placed in a Band by officers having regard to the facts; in view of the ages of the appellant's sons we have concluded that she does not meet the current Band 4 Criterion (f);

(f) the appellant also considers that she meets Band 4 Criterion (a) (Homeseekers living in the district for more than a year immediately prior to application, needing one or more additional bedrooms); the appellant's household comprises herself and her two sons; the appellant's current property is a two bedroom 1st/2nd floor maisonette; the Council's Housing Allocations Scheme, Appendix 2, states the sizes of properties to be allocated to homeseekers on the Housing Register and the size considered suitable as existing accommodation; the Scheme states that homeseekers with two children of the same sex will generally be allocated a two bedroom property; Appendix 2 states that, in exceptional circumstances, homeseekers may be allocated a property which is one bedroom above the need of their household where the Council's Medical Adviser agrees that there are strong medical reasons for doing so; the Council's Medical Adviser has determined the need for the appellant to move on moderate medical grounds only; we are therefore of the opinion that the appellant does not have strong medical grounds justifying the allocation of a property which is one bedroom above the needs of her household; accordingly we have concluded that the appellant does not meet Band 4 Criterion (a);

(g) having regard to (e) and (f) above, we do not consider that the appellant satisfies the requirements of either Criterion (f) or Criterion (a) of Band 4; no evidence has been submitted to suggest that the appellant meets any of the other criteria listed for Band 4;

(h) in all the circumstances, therefore, we are satisfied the officers' decision to assess the appellant for Band 4 is correct.

22. PROGRESS REPORT ON PREVIOUS APPEALS/APPLICATIONS

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 4/2011, 2/2011, 1/2011, 6/2010, 5/2010 and 9/2010 be deleted from the schedule.

23. INCLUSION OF PUBLIC AND PRESS

RESOLVED:

That the remaining item of business be considered in public session.

24. TERMS OF REFERENCE - ORDER OF PROCEEDINGS

The Panel considered a report proposing changes to the order of proceedings of meetings of the Panel.

Members noted that the current order of business for consideration of cases by the Panel provided for the applicant/appellant to present their case and answer questions first, followed by the appropriate Housing Officer presenting his/her case and answering questions. Whilst this followed the order of most appeal proceedings it was considered that it did not lend itself particularly well to Housing Appeals and Review Panel meetings. The reasons for this view were set out in the report to the Panel.

The Panel was advised of views expressed by members and substitutes of the Panel who were not present at this meeting on the proposed changes. Members present expressed their views and it became apparent that there was not a consensus of view, although the majority view expressed by Panel members was in support of the proposed change.

RESOLVED:

That the Constitution and Members' Services Scrutiny Panel be asked to consider if the Terms of Reference of the Panel should be changed to provide for applicants/appellants to present their case and answer questions after the appropriate Housing Officer, and that the varying views expressed by Panel members be passed on to the Scrutiny Panel.

CHAIRMAN