



Epping Forest District Council

HOUSING APPEALS AND REVIEW PANEL Thursday, 8th September, 2011

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

Time: 2.30 pm

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

Members:

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

1. APOLOGIES FOR ABSENCE

Councillors Rolfe (Chairman) and Gadsby.

2. SUBSTITUTE MEMBERS

(Assistant to the Chief Executive) To report the attendance of any substitute members for the meeting.

3. MINUTES (Pages 5 - 34)

To agree the minutes of the meetings of the Panel held on 16 and 21 June and 4 August 2011 (attached).

4. DECLARATIONS OF INTEREST

To declare interests in any item on the agenda.

5. TERMS OF REFERENCE - ORDER OF PROCEEDINGS (Pages 35 - 36)

(Director of Housing/Assistant to the Chief Executive) To consider the attached report proposing changes to the order of proceedings of meetings of the Panel.

6. 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
7	Appeal No. 5/2011	1
8	Progress Report on Previous Appeals/Applications	1

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.

7. APPEAL NO. 5/2011 (Pages 37 - 128)

To consider the attached restricted report.

8. PROGRESS REPORT ON PREVIOUS APPEALS/APPLICATIONS (Pages 129 -

136)

To consider the attached restricted report.

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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))

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.

Agenda Item No.	Subject	Exempt Information Paragraph No.
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

EPPING FOREST DISTRICT COUNCIL COMMITTEE MINUTES

Committee: Housing Appeals and Review Panel **Date:** Tuesday, 21 June 2011

Place: Committee Room 1, Civic Offices, High Street, Epping **Time:** 2.30 - 4.40 pm

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

Other Councillors: Councillor Mrs T Cochrane

Apologies: Councillor Ms Y Knight

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

6. SUBSTITUTE MEMBERS

It was noted that Councillor Mrs J Lea was substituting for Councillor Ms Y Knight.

7. DECLARATIONS OF INTEREST

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

8. 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	Application 3/2011	1

9. APPLICATION NO. 3/2011

The Panel considered a request for a review of a decision made by officers under delegated authority that the applicant was not homeless. 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 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. Both parties agreed that they had no objection to Councillor Mrs Cochrane remaining in the meeting as an observer only.

The Chairman outlined the procedure to be followed in order to ensure that proper consideration was given to the application.

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

- (a) copies of documents submitted by the applicant, namely:
 - (i) her application to the Housing Appeals and Review Panel dated 23 May 2011 including a letter of that date and a schedule of reasons why the applicant considered that her present accommodation was unsuitable;
 - (ii) copy of an entry from the Council's system regarding an inspection of the applicant's property by an Environmental Health Officer in September 2010;
 - (iii) numerous photographs of the exterior and interior of the applicant's property (tabled at the meeting);
- (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) notes taken by a Housing Officer at an interview of the applicant on 12 April 2011;
 - (ii) letter dated 4 May 2011 from the Assistant Housing Options Manager (Homelessness) to the applicant
 - (iii) memorandum dated 3 June 2011 from a Council Environmental Health Officer to the Assistant Housing Options Manager (Homelessness).

Presentation of the Applicant's Case

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

- (a) the applicant had received three months, three weeks notice from her landlord to vacate her home on 7 January 2011;
- (b) the applicant had arranged an appointment with the Council's Homeless Prevention Section and had been advised that the Council would assist in finding alternative accommodation; the applicant had been assured that she would not be put into the Council's Homeless Hostel as it was unsuitable for her vulnerable mother;
- (c) the applicant and her mother had submitted a joint housing application to the Council on 1 February 2011; this had been followed by a visit from an officer from the Council's Special Needs Assessment Team;

- (d) the applicant and her mother had been advised that they would be placed on the Housing Register in Band 4;
- (e) the applicant had applied to the Council as homeless and had attended with her mother for an interview with a Housing Officer; the officer had advised of the possibility of going into the Council's Homeless Hostel; the applicant's mother had become very distressed at that prospect and the applicant had advised the officer that the Hostel would be totally unsuitable and would have an adverse effect on her mother's health; the officer had then advised that a private rental of a two bedroom flat was available;
- (f) the applicant and her mother had visited the private rental property; the applicant had felt the property to be unsuitable but her mother had liked it; faced with either the privately rental property or the Council's Homeless Hostel, the applicant had accepted the former;
- (g) when visiting the private rental property again the applicant had established that her bed would not fit into the second bedroom but she had taken possession of the property on 23 April 2011;
- (h) the applicant had complained to Council officers about their delay in resolving matters; whilst having been given three months, three weeks notice by her former landlord she had only found alternative accommodation a few days before she had been required to vacate that property;
- (i) on moving into the private rental property the applicant had discovered mould in every room; around the windows and on the floor in the corners of the bedrooms; under the kitchen sink; in the kitchen cupboard; in the cupboard housing the water tank; after researching the internet the applicant had realised the potential dangers of living with and breathing in mould spores; she had phoned the previous tenant who had informed her that she had vacated the premises temporarily because of a flood and thereafter had complained to the Council about damp; the Council's Environmental Services had inspected the property and decided that there had been no problem with it;
- (j) the landlord of the private rented property had loaned the applicant a dehumidifier; one of the Council's Environmental Health Officers had advised the applicant that she should contact her landlord to make him aware of the problems but he had already been aware of them as he had been cleaning the flat on the day he had handed the keys to the applicant; he had read the meter under the sink which had been very close from a wall that had been completely covered in black mould; he could not have failed therefore to notice the mould; the Council's Environmental Health Section had refused to take any further action;
- (k) after making an application to the Housing Appeals and Review Panel the applicant had requested access to her Housing file; Housing Officers had refused to allow her access to all of the documents on the file;
- (l) the applicant accepted that it had been her decision to move to the private rental property but at that time she had no other choice as the only alternative, the Council's Homeless Hostel had been totally unsuitable for her mother who was 81 years old and disabled and suffered from urinary infections;
- (m) the Panel should have regard to the inspection of the private rental property undertaken by one of the Council's Environmental Health Officers in September 2010 when the previous tenant had been in occupation;

- (n) one of the Council's Environmental Health Officers had carried out a recent inspection following the applicant's application to the Panel but had not undertaken a comprehensive inspection; there was still a problem with the bathroom floor, the electric shower was broken; the washing machine was not used for fear of leaking; what had been described by the Environmental Health Officer as a very slight dribble of water into the bath resulted in five inches of water overnight; all of these issues could be seen from the photographs produced by the applicant to the Panel;
- (o) it was not possible to keep the windows open at certain times as due to being at ground floor level there would be the possibility of unauthorised access;
- (p) due to the cramped conditions it was necessary for the applicant to sleep on a couch in the lounge and not in a bedroom;
- (q) the Council's Environmental Health Officer had stated that the property did not contain any Category 1 hazards as defined in the Housing Act 2004 but the officer had not produced any assessments to support this view; Shelter had put the applicant in touch with an Environmental Group who had come to a different conclusion to the Council's Environmental Health Officer;
- (r) the conclusion of the Council's Environmental Health Officer that the property was in a reasonable condition to occupy was disputed.

Questions from the Assistant Housing Options Manager (Homelessness) to the Applicant

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

- (a) the five minor issues of disrepair noted by the Council's Environmental Health Officer following her inspection on 2 June 2011 had not been reported to the landlord as he had already been aware of three of the issues when he had cleaned the property prior to the applicant moving in; the landlord had read the meter under the sink and could not have failed to have seen the mould; the dribble of water into the bath had only arisen recently but this had not been drawn to the attention of the landlord; neither had the slight leak from an ill-fitting wastepipe joint which had not become apparent until the visit of the Council's Environmental Health Officer; there had been no point in reporting the matters to the landlord as he had been aware of most of the issues;
- (b) the applicant had not attempted to clean the mould as she suffered from asthma and it would have been bad for her health to disturb the mould spores; whilst cleaning might remove some of the mould in the short term the mould would soon return; some of the areas where there was mould could not be accessed easily and would need professional treatment;
- (c) the applicant did not wish to antagonise the landlord as he had said that he would not hold the applicant to her lease conditions if she was able to find another property before the end of the lease period.

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

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

- (a) windows were left opened during the day at times when the property was occupied in an attempt to improve ventilation; the dehumidifier had a fan attachment but this was not a long term solution;
- (b) the applicant had not considered employing a plumber herself to undertake some of the items of disrepair as it would be false economy to spend money on a property in which she did not intend to remain long term;
- (c) the applicant had not pressed the landlord about the issues as it was not her intention to stay at the property long term and she did not wish to antagonise him as he had said he would not hold her to the terms of her lease if she wished to move sooner; the applicant had looked continuously for somewhere else to live but had not found anything suitable;
- (d) the applicant had tried to make an appointment with one of her local ward councillors but had been told it would be two months before an appointment could be made; she had not pursued the matter;
- (e) the applicant accepted that all properties had a small amount of mould but not the extent to which she was being subjected in her current property;
- (f) the mould had not been apparent when the applicant had initially inspected the property as the property had been full of furniture; it had been two days after moving in that the extent of the mould had been established;
- (g) the applicant had not inspected the Council's Homeless Hostel; she had made an appointment to inspect but as her mother had become so upset about the prospect of living in a Hostel she had ruled out the possibility of moving there;
- (h) the applicant's mother would be more likely to suffer infections from sharing accommodation with others and her mother's constant need to visit the toilet during the night made the Hostel an impractical solution;
- (i) the applicant's mother had not made the decision to rule out the Hostel; the applicant had done so but only after taking account of her mother's concerns; the applicant had to care for her mother 24 hours a day, 7 days a week;
- (j) the applicant wished the Council to find her homeless and to place her in the top band on the Housing Register so that she would be able to bid for properties;
- (k) the applicant did not work due to the need to look after her mother;
- (l) the applicant would prefer to remain in the current privately rented property for a few weeks rather than go to the Council's Homeless Hostel;
- (m) documents on the applicant's file which had been withheld from her included a report of the visit from the Special Needs Officer.

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 seeking a review against the decision that she was not homeless; the applicant had made a homelessness application, declined the offer of

hostel accommodation at the Council's Homeless Hostel and secured her own privately rented property; the applicant had received a "not homeless" decision because she had taken up occupation of the privately rented property; the applicant was seeking a review because she believed she was homeless on the basis that it was not reasonable for her to continue to occupy the privately rented property due to its physical condition;

(b) the applicant had made a homelessness application to the Council on 12 April 2011; the applicant had presented herself as homeless with her mother as part of her household; the applicant had stated that she cared for her mother and that they normally lived together; the applicant had applied as homeless because she had been served with notice on her privately rented accommodation; the applicant had been offered interim accommodation in the Council's Homeless Hostel but had chosen to arrange her own private rented accommodation; a "not homeless" decision had been issued to the applicant on 4 May 2011;

(c) on 2 June 2011, an Environmental Health Officer had inspected the applicant's privately rented property and the Panel should have regard to that officer's report;

(d) in making Homelessness decisions, the Council had regard to the Code of Guidance which was used by local authorities to assist with the interpretation of the Homelessness legislation; the Code of Guidance (8.4) stated that there were a number of different factors that determined whether a person was homeless; under Section 175, a person was homeless if he or she had no accommodation in the UK or elsewhere which was available for his or her occupation and which that person had a legal right to occupy; a person was also homeless if he or she had accommodation but could not secure entry to it; a person who had accommodation was to be treated as homeless if it would not be reasonable for him or her to continue to occupy that accommodation;

(e) the Code of Guidance (8.18) also stated that Section 175(3) provided that a person shall not be treated as having accommodation unless it was accommodation which it would be reasonable for him or her to continue to occupy; there were a number of provisions relating to whether or not it was reasonable for someone to continue to occupy accommodation; there was no simple test of reasonableness; it was for the Housing Authority to make a judgement on the facts of each case, taking into account the circumstances of the applicant;

(f) the Code of Guidance (8.26 and 8.27) stated that Section 177(2) provided that, in determining whether it was reasonable for a person to continue to occupy accommodation, housing authorities may have regard to the general housing circumstances prevailing in the housing authority's district; this would apply, for example, where it was suggested that an applicant was homeless because of poor physical conditions in his or her current home; in such cases it would be open to the authority to consider whether the condition of the property was so bad in comparison with other accommodation in the District that it would not be reasonable to expect someone to continue to live there;

(g) the Council's Homeless Team receive details from time to time of properties available in the privately rented sector; in this case one such property had been drawn to the attention of the applicant; applicants were not forced to take such properties and the Council did not recommend such properties; it was up to the applicant to decide whether to take the tenancy;

(h) the applicant had chosen to move to the privately rented property and had declined the offer of Hostel accommodation made to her; the privately rented property had been inspected by an Environmental Health Officer;

(i) the Environmental Health Officer had noted five minor issues of disrepair; a very slight dribble of water into the bath from the w. c. cistern overflow pipe (the applicant had informed the officer that the electric shower did not work); areas of mould growth in the water tank cupboard, kitchen pantry at floor level and under the sink cupboard (not on the shelving only on the walls); slight leak from an ill fitting waste pipe joint underneath the kitchen sink; defective extract ventilation hood in kitchen but a large window to allow sufficient natural ventilation; black mould staining at the junction of glass and timber on all of the windows;

(j) the Environmental Health Officer had concluded that the property was in a reasonable condition for the applicant to occupy; as such the privately rented property was reasonable for the applicant to continue to occupy and consequently the applicant was not homeless;

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

Questions from the applicant 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:

(a) when officers issued a decision on a homelessness application they were required to include in the decision letter details of the review process; this was necessary even if an applicant was already aware of that right;

(b) the Code of Guidance stated that in determining whether it was reasonable for a person to continue to occupy accommodation, the Council could have regard to the general housing circumstances prevailing in the District; in the view of officers and taking account of the report of the Environmental Health Officer, the conditions in the applicant's privately rented property were not so bad compared with other properties in the District; the only issues were with mould which could be treated; the Environmental Health Officer had stated that there were no Category 1 hazards; the views of the Environmental Health Officer had been taken into account as had the applicant's views before a decision had been reached by officers;

(c) there was no change in the officer's opinion as a result of the photographs produced by the applicant to the Panel;

(d) it was not known whether the Environmental Health Officer had undertaken an assessment before concluding that there were no Category 1 hazards; the only document received by Housing Officers was the one before the Panel;

(e) there were effectively two ways of being re-housed by the Council; interim or temporary accommodation if homeless, and provision of permanent social housing following admittance to the Housing Register; the issues before the Panel had in the main related to homelessness but the applicant had also made an application for the Housing Register and a report had been prepared by the Council's Special Needs Officer in order to ascertain what accommodation would be suitable for the applicant and her mother;

(f) applicants could ask for copies of their Housing file; in accordance with Data Protection requirements, copies of documents were made available but certain documents were not; for instance information from third parties; the report of the Special Needs Officer was considered to be a report from a third person and had not been made available to the applicant; if an applicant was not satisfied about documents being withheld it was possible for an application to be made to the Council's Data Protection Officer;

Questions from 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 the Panel:

(a) several documents had been withheld from the applicant including correspondence from third parties; an assessment from the Council's Medical Adviser and the report of the Special Needs Officer; the applicant had not been treated differently to any other applicant; if an approach was made by a solicitor or a court a slightly different approach was taken; information was redacted from certain documents when necessary and those documents were still made available;

(b) for this meeting, the applicant had received the same information as was before the Panel; the applicant's whole file was available for the Panel to view if it wished after the parties had left the meeting; nothing had been withheld to enhance the case against the applicant; if it had been the officers' intention to withhold such information they might have held back the report of the Environmental Health Officer;

(c) a landlord had an obligation to maintain a property at a certain standard.

Question from the Director of Housing to the Assistant Housing Options Manager (Homelessness)

The Assistant Housing Options Manager (Homelessness) gave the following answer to a question from the Director of Housing:

(a) The application to join the Housing Register had been a joint application made in the names of the applicant and her mother as one household; the applicant had stated that she was the full-time carer for her mother.

Closing Statement by the Applicant

The applicant expressed concern that she had been denied access to documents on her file and that the Assistant Housing Options Manager (Homelessness) was proposing to leave the whole file for the Panel to refer to in its deliberations. This would be unfair. It was not for the officer to decide whether information on the file was adverse to the applicant or not. The Council's Environmental Health Officer who had inspected the property had stated that she was not an expert in relation to mould and her conclusions had to be questioned.

Closing Statement by the Assistant Housing Options Manager (Homelessness)

It was reasonable to expect a tenant to report necessary repairs to the landlord and not to assume that the landlord was already aware of issues of disrepair. The approach taken by the applicant had extenuated the problems.

Deliberations

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.

The Panel decided that they could not deliberate or reach a decision on the application and, accordingly, determined that the meeting should be adjourned. The reason for coming to this conclusion was that, based on comments made by the applicant at the meeting, it appeared that she had not been given the opportunity to see documents on files held by the Council which she wanted to see and to which she might have been entitled under the provisions of the Data Protection Act 1998. The Panel accepted that, in accordance with the provisions of that Act, it might have been necessary and appropriate to remove some documents from the applicant's file, or redact parts of documents containing certain information, including information about other individuals (third parties) who could be identified from the information. However, the Panel was of the view, based on what had been said at the meeting by the applicant and the Assistant Housing Options Manager (Homelessness) that some of the documents not disclosed to the applicant did not fall within that category.

The Panel felt that it would be inappropriate and unfair on the applicant to attempt to reach a decision on the review at this meeting. The Panel agreed with the representations made by the applicant that it was for her, and not for a Council officer, to determine whether documents were or were not applicable in support of the applicant's case.

RESOLVED:

- (1) That consideration of the application be deferred and that the meeting be adjourned;
- (2) That the applicant be asked to agree an extension of the 56 day period for determining the review in order to allow sufficient time for:
 - (a) the necessary retrieval, information review and copying process in relation to both the applicant's homelessness and housing application file;
 - (b) the applicant to consider if there are any documents held on file that she wishes to submit to the Panel for consideration, in support of her case;
 - (c) the applicant to provide any further information to the Panel, in relation to any submitted documents;
 - (d) any further information provided by the applicant to be circulated to members of the Panel and the Assistant Housing Options Manager (Homelessness), and for them to consider such information; and
 - (e) the Assistant Housing Options Manager (Homelessness) to provide any information himself in response;
- (3) That, assuming the applicant agrees to an extension of the 56 day period, the Assistant Director of Democratic Services make arrangements for the meeting to be reconvened on a date acceptable to members of the Panel, the applicant and the Assistant Housing Options Manager (Homelessness),

possibly, subject to everyone being available, during the second week of August 2011;

(4) That the file left by the Assistant Housing Options Manager (Homelessness) not be viewed in the interim by members of the Panel and that the issues not be discussed by members of the Panel in advance of the reconvened meeting;

(5) That the reconvened meeting consider only additional information provided by the parties;

(6) That when the Panel deliberates on the matter at the reconvened meeting, in accordance with the requirements of the Housing Acts, they consider whether they feel there has been any deficiency or irregularity in the way the officers reached their decision and, if necessary, address such issues in their decision.

CHAIRMAN

EPPING FOREST DISTRICT COUNCIL COMMITTEE MINUTES

Committee: Housing Appeals and Review Panel **Date:** Thursday, 4 August 2011

Place: Committee Room 1, Civic Offices, High Street, Epping **Time:** 2.30 - 4.30 pm

Members Present: Councillors B Rolfe (Chairman), Mrs J Sutcliffe (Vice-Chairman), Ms J Hart and Mrs J Lea

Other Councillors:

Apologies: Councillors Mrs R Gadsby and Ms Y Knight

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

10. SUBSTITUTE MEMBERS

It was noted that Councillor Mrs J Lea was substituting for Councillor Mrs R Gadsby.

11. DECLARATIONS OF INTEREST

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

12. 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. 4/2011	1

13. APPEAL NO. 4/2011

Introduction

The Panel considered an appeal against a decision made by officers acting under delegated authority concerning a Housing Register banding review. The applicant attended the meeting to present her case accompanied by her sister. 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 20 May 2011;
 - (ii) copy of letter dated 26 April 2011 from the Council's Assistant Director of Housing to the appellant;
 - (iii) copy of letter dated 9 March 2011 from the appellant to the Council;
 - (iv) copy of letter dated 29 March 2011 from the appellant to the Assistant Director of Housing;
 - (v) copy of letter dated 23 March 2011 from the Housing Options Manager to the appellant;
 - (vi) copy of letter dated 26 July 2011 from the appellant's employer to the Council (tabled at the meeting);
- (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 28 January 2004 from the Principal Housing Officer (Allocations) to the appellant;
 - (ii) copy of letter dated 17 May 2006 from the Housing Assistant (Needs) to the appellant;
 - (iii) copy of form of refusal of the offer of a Council property dated 24 August 2006 from the appellant to the Head of Housing Services;
 - (iv) copy of letter dated 29 June 2007 from the Housing Assistant (Needs) to the appellant;
 - (v) copy of letter dated 18 February 2011 from the Assistant Housing Options Officer to the appellant;
 - (vi) copy of letter dated 23 March 2011 from the Housing Options Manager to the appellant;
 - (vii) copy of letter dated 26 April 2011 from the Assistant Director of Housing to the appellant;

(viii) copy of the Council's Housing Allocations Scheme (tabled at the meeting).

Presentation of the Appellant's Case

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

(a) the appellant should be in Band 3 (or Band 1) as she had more than moderate medical health problems and suffered severe hardship with one of her sons having special needs which had not been properly taken into account;

(b) in addition the appellant might qualify under criterion 4(c) of Band 4 (homeseekers living in the District for more than a year immediately prior to application, needing to move or to be nearer to their place of work) which, in conjunction with the Criterion for Band 3 that had already been accepted as being met, would enable the appellant to be in Band 3; the appellant had been made redundant recently and now worked for a charitable organisation in Chestnut;

(c) the appellant was not a high earner and suffered severe hardship; she struggled to pay the rent of her current private accommodation and could not envisage owning her own property;

(d) the appellant was required to provide a lot of support for her younger son aged 16 and found it extremely hard to balance her work with her family responsibilities;

(e) it was unfair that someone being offered long term employment in the District with similar medical grounds to the appellant would be entitled to be placed in Band 3 of the Council's Allocation Scheme whilst the appellant remained in Band 4.

Questions from the Housing Options Manager to the Appellant

The appellant gave the following answers to questions from the Housing Options Manager:

(a) Criterion 4(c) of the Council's Allocations Scheme was not understood by the appellant despite the explanation contained in the letter dated 26 April 2011 from the Assistant Director of Housing;

(b) the appellant had struggled to cope all of her life and the Council should recognise that she suffered severe hardship.

14. ADJOURNMENT

The appellant became distressed and left the meeting room. The appellant's sister advised the Panel that in addition to the stress of attending the meeting, the appellant had recently received some distressing news about her health. The Chairman adjourned the meeting.

After a few minutes the appellant returned to the meeting room and confirmed that she would like the meeting to proceed.

15. RESUMPTION OF MEETING - APPEAL NO 4/2011**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's job was based in Chestnut;
- (b) the appellant's elder son aged 19 was not in employment; he had recently completed a college course and was receiving benefit payments; he did not assist with the payment of the rent of the appellant's current property;
- (c) the appellant had refused the offer of a Council property in Chigwell in 2006 because at that time she had been settled in Waltham Abbey with children in local schools and she had not wished to disrupt their education; the appellant accepted that at that time her Housing Register application indicated that she would be prepared to accept the offer of a property in several parts of the District including Chigwell;
- (d) in 2006 the appellant's current accommodation had been satisfactory as it was two bedroomed accommodation; this level of accommodation was now insufficient taking account of the requirements of herself and her two sons;
- (e) when the appellant had initially moved to Waltham Abbey from London she had been accommodated in a flat provided by her sister; this had been a one bedroom flat which had not been adequate for the long term;
- (f) the appellant had not thought about applying to be placed on the Housing Register for Broxbourne Borough Council; she had established a life in Waltham Abbey and should be allowed to continue to live there;
- (g) the appellant received assistance for her rent;
- (h) the appellant's younger son suffered with asthma and eczema and from severe behavioural problems; he had also been diagnosed as having a severe nut allergy; he did not listen to advice and refused to carry his epipen leading to problems for the appellant; the appellant did not have letters from a qualified professional medical person to support her case but could have obtained letters from The London Hospital in relation to her younger son's personality problems and from his social worker;
- (i) the appellant suffered from depression and had sought medical assistance;
- (j) the appellant's younger son had been expelled from school.

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 had completed and submitted a housing application form to the Council on 16 September 2003; as part of the application, the appellant had stipulated that she was seeking accommodation for herself and her two sons;
- (b) the Council had advised the appellant on 28 January 2004 that she was to be placed in Band 4 of the Council's Housing Allocations Scheme;

- (c) in 2004 the appellant had been an assured tenant with a housing association of a property in London;
- (d) the Council had received a change of circumstances form from the appellant on 4 April 2005 advising that the appellant was now resident in Waltham Abbey, renting private accommodation from an independent landlord;
- (e) a further change in circumstances form had been received from the appellant on 15 May 2006 advising that the appellant and her family had moved to another property in Waltham Abbey which was being rented through a managing agent;
- (f) on 17 May 2006, the appellant had been advised that in accordance with the terms of the Council's Housing Allocations Scheme, at that time, she was to be placed in Band 5;
- (g) on 22 August 2006 the appellant had received a formal offer of accommodation from the Council for a property in Chigwell; the applicant had decided to refuse this property;
- (h) following a review of the housing application submitted by the appellant she had been advised in June 2007 that her application was now in Band 4;
- (i) since 2005, the appellant had submitted a number of completed self assessment medical forms on behalf of herself and her younger son; the appellant had advised that her younger son suffered from asthma and eczema; the appellant had advised that she suffered from depression, asthma and psoriasis; on receipt of these medical forms an assessment had been sought from the Council's Medical Adviser;
- (j) the most recent medical forms submitted by the appellant had been received by the Council on 19 January 2011; these had been assessed by the council's Medical Adviser; the appellant had been notified on 18 February 2011 that there would be no additional preference granted on health grounds;
- (k) the appellant had requested a review against her banding level in March 2011; that review had been undertaken by the Housing Options Manager who had concluded that placement in Band 4 was correct;
- (l) the appellant had appealed against that review and in April 2011 the Council's Assistant Director of Housing had agreed with the view of the Housing Options Manager;
- (m) the appellant was now seeking a further appeal to this Panel against the decision of the Assistant Director of Housing;
- (n) the Assistant Director of Housing had considered all of the essential facts and had concluded that Band 4 was the correct banding for the appellant under the Council's Housing Allocations Scheme;
- (o) in considering the matter it was essential 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 approximately 5,300 applicants on the Housing Register;

- (p) the Council had in place a structured Housing Allocations Scheme that met the statutory requirements of the Housing Act 1996, Part VI;
- (q) in considering the appeal, account should be taken of the particular needs and priority of the local area; when the Council's Medical Adviser assessed medical grounds she was always made aware of the numbers in the various bands; at the time she had undertaken her latest assessment in relation to the appellant there had been 4,791 applicants in Band 4 and 112 applicants in Band 1; applicants satisfying the requirement to have strong medical grounds had normally suffered long term hospitalisation or similar problems; therefore, this level did not apply to the appellant;
- (r) the appellant qualified under Band 4 as she met Criterion (b); the reason Criterion (c) of Band 4 did not apply to the appellant had been set out in the letter to the appellant from the Assistant Director of Housing dated 26 April 2011; in order to move to Band 3 it was necessary for the appellant to meet the criteria of Band 4(a) or (b) of Band 4,, and one other criterion in Band 4 (which could also include (a) or (b)); no other criteria in Band 4 applied to the appellant;
- (s) the appellant's situation had been reassessed several times since 2003 with account being taken of her medical self assessment forms;
- (t) there were a large number of households suffering similar problems to the appellant and in order to be fair it was necessary to adhere strictly to the Council's adopted Housing Allocations Scheme.

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:

- (a) Criterion 4(c) of Band 4 did not apply to the appellant as it was not necessary for her to move to be nearer to her place of work, or to take up an offer of employment, or a long term (full time) training opportunity leading to employment; in order to meet this criterion it would be necessary for an applicant to demonstrate to the Council that they needed to move to an alternative location in order to sustain employment or a training opportunity;
- (b) if an applicant lived in Waltham Abbey but had an offer of a job in another part of the district, say Ongar, the requirement of Criterion (c) of Band 4 might apply;
- (c) the Council's Housing Allocations Scheme was reviewed annually following consultation with numerous interested parties including the Housing Scrutiny Panel and local Tenants and Leaseholders Federation;
- (d) a person working for a charity would not normally be classed as a key worker; a key worker was essentially someone in a profession tied to a particular area e.g. a health worker or a teacher; in any event, the Council's Allocations Scheme did not take account of key worker status;
- (e) other people were currently struggling with day to day expenses and had similar problems to the appellant; it was necessary for the Council to match demands with availability; the Council's Medical Adviser took hardship into account when making an assessment.

(By leave of the Panel, the Director of Housing drew attention to the double asterisk note following Band 6 of the Allocations Scheme which explained how welfare and hardship were assessed).

Questions from Members of the Panel to the Housing Options Manager

- (a) the Council's Homelessness Prevention Team offered advice to families finding it difficult to meet the costs of housing;
- (b) the Council's Medical Adviser had considered the medical grounds of the appellant and her younger son cumulatively;
- (c) the current make-up of the appellant's household did not entitle her to accommodation with one or more additional bedrooms;
- (d) it was possible for an applicant to be on both the Council's Housing Register and that of one or more local housing associations; however, a number of the local housing associations did not run their own lists and relied on nominations from the Council.

Closing Statement by the Appellant

The Panel should have regard to the letter submitted by the appellant's employer. A charity worker should be considered a key worker.

Closing Statement by the Housing Options Manager

The Council had structured its Housing Allocations Scheme in accordance with statutory requirements. The system of adopting bandings had been in operation for approximately five or six years. Applying the appellant's circumstances to the current bands resulted in the appellant being correctly placed in Band 4.

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, her sister and the Housing Options Manager then left the meeting.

The Panel focused on the assessment of the appellant's and one of her son's medical conditions by the Council's Medical Adviser, the submissions which had been made in relation to the appellant's welfare and employment situation and the officers' application of the Allocations Scheme.

At the request of the Panel, the Director of Housing inspected the appellant's file and advised the Panel of the appellant's record of expressions of interest in Council properties through the Council's choice based lettings scheme, including two expressions of interest for properties in Loughton within the last year.

The Panel concluded that the appellant was correctly placed in Band 4 of the Council's Housing Allocations Scheme.

RESOLVED:

(1) 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 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; the appellant states that she suffers from depression, asthma and psoriasis and that her younger son has special needs, suffers from asthma and eczema and has a nut allergy; the appellant's sister also drew our attention to a further illness being suffered by the appellant; 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; 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 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) the appellant considers that she also meets Band 1 Criterion (b) by virtue of suffering severe hardship in that she struggles to pay the rent on her current property and feels she will never have enough money to purchase her own property; she also referred to the difficulties of caring for her younger son whilst working; in accordance with the Council's Allocations Scheme, hardship grounds are assessed on the receipt of written evidence by the Housing Options Manager in consultation with the Council's Medical Adviser and one other member of the Housing Option Section as appropriate; we note that this assessment has to have regard to the housing conditions prevailing across the District; the Council currently has housing stock in the region of 6,500 properties and approximately 5,300 applicants on the Housing Register; we have been advised by the Housing Options Manager that there are currently a large number of households on the Council's Housing Register facing similar hardship to that described by the appellant; we are of the

opinion that the appellant does not meet the requirement of Band 1(b) of needing to move on strong welfare or hardship grounds;

(d) having regard to (b) and (c) above we do not consider that the appellant satisfies the requirements of Criterion (b) of Band 1; no evidence has been submitted to indicate that the appellant meets any of the other criteria in that Band;

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

(f) in addition to meeting Criterion 4(b), which has been accepted by officers, the appellant also considers that she meets Criterion 4(c) (All homeseekers living in the District for more than a year immediately prior to application, needing to move to or be nearer to their place of work, or to take up an offer of permanent employment, or a long term (full-time) training opportunity which will lead to employment);

(g) the appellant currently lives in Waltham Abbey and has submitted a letter from her employer stating that she works in the adjoining Borough of Broxbourne in Cheshunt; however, no evidence has been submitted that the appellant has an offer of alternative employment or a long-term (full-time) training opportunity which will lead to employment necessitating a move to be nearer a new place of work_or training establishment; we do not consider, therefore, that the appellant needs to move to be nearer her place of work; she currently lives in Waltham Abbey which is the part of the Epping Forest District that is closest to the appellant's place of work in Cheshunt; in coming to our conclusion we have also taken account of the fact that the appellant's housing file shows that, during the last year, she has expressed bids of interest in two Council properties in Loughton which is a lot further from Cheshunt than her existing home in Waltham Abbey;

(h) having regard to (g) above, we do not consider that the appellant satisfies the requirements of Criterion (c) of Band 4; no evidence has been submitted to suggest that the appellant meets any of the other criteria listed in Band 4 apart from Criterion (b); therefore we are satisfied the appellant has been correctly assessed for Band 4;

(2) That the appellant be advised that in the event of her own or her children's medical situations deteriorating in the future she can submit further medical evidence at that time for a further assessment by the Council's Medical Adviser; and

(3) That the appellant be advised that if she wishes to move even closer to her place of work she may wish to consider applying for inclusion on Broxbourne Borough Council's Housing Register as well as remaining on this Council's Register.

CHAIRMAN

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Housing Appeals and Review Panel – Terms of Reference

Recommendations:

- (1) That paragraph (6) of the Terms of Reference of the Panel be amended to read:

“(6) In relation to appeals or reviews at which the appellant’s/applicant’s case is presented in person or by a representative, subject to (7) below, the hearing shall be conducted in the following order:

- (a) Chairman’s introductory remarks;
- (b) Presentation of the Officer’s case;
- (c) Questioning by the appellant/applicant (or representative);
- (d) Questioning by members of the Panel;
- (e) Presentation of the case of the appellant/applicant;
- (f) Questioning by the Officer (or representative);
- (g) Questioning by members of the Panel;
- (h) Officer to raise any additional issues arising from the presentations or to clarify any matters previously raised;
- (i) Appellant/applicant to raise any additional issues arising from the presentations or to clarify any matters previously raised;
- (j) Panel considers its findings in the absence of the appellant/applicant and the Officer;
- (k) The decision of the Panel will be conveyed to the appellant/applicant and the Officer in writing;
- (l) The Panel shall have the discretion to reverse the order in which the cases of the Officer and the appellant/applicant are presented, provided that both parties agree.

(7) If requested by the appellant/applicant or their representative, the Chairman may agree to (b)-(d) above taking place after (e)-(g) and to (h) and (i) being reversed”; and

- (2) That, subject to (1) above, the Constitution and Members’ Services Scrutiny Panel be asked to consider the proposals and recommend the Overview and Scrutiny Committee and the Council to agree the amendments and make appropriate changes to the Constitution.

1. (Director of Housing/Assistant to the Chief Executive) The current order of business for consideration of cases by the Housing Appeals and Review Panel provides 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 follows the order of most appeal proceedings it is considered that it does not lend itself particularly well to Housing Appeals and Review Panel meetings. The Panel is therefore being consulted on a proposed change in the order of business, to help increase the effectiveness of the Panel’s deliberations and to assist appellants/ applicants to present their case in the best way.

2. An appellant/applicant normally attends meetings to present their case without being represented by a professional advocate. Despite being advised in advance of the meeting of the procedure to be adopted and the Chairman of the Panel, as part of his opening remarks, attempting to put an appellant/applicant at ease they appear

frequently to be overwhelmed facing a Panel of normally five members in a fairly formal setting.

3. As a result, since appellants/applicants have to present their case first, many struggle to follow the procedure and present a reasonable case. Often it is not until replies are given to questions from the Housing Officer and members of the Panel that the full extent of the appellant's/applicant's case becomes apparent.

4. It is therefore suggested that the order of presentation be reversed, with the Housing Officer presenting their case and answering questions first, followed by the appellant/applicant.

5. A change in the order of proceedings, with the Housing Officer presenting his/her case first, would have the following benefits:

- (a) the Panel will have the benefit of receiving the full facts of the case at the outset as these are set out in the Officer's report; this will enable members to understand better the submissions made subsequently by the appellant/applicant; and
- (b) the appellant/applicant will have time to settle in the meeting before being expected to address the Panel; will have a better appreciation of the proceedings having witnessed the way in which the Officer presents his/her case and answers questions on it; and, should be better prepared when it comes to their turn to present their case.

6. The Director of Corporate Support Services has been consulted on the proposed change and can see no objections. The only observation she makes is that some professional representatives (e.g. solicitors or barristers), who would be used to an appellant presenting their case first in an appeal environment, may object to such an order of business. It is therefore suggested that if, requested by the appellant/applicant or their representative, the Chairman can agree to the appellant/applicant presenting their case first.

7. In any event, the proposed revised procedure still maintains the discretion to reverse the order in which the cases of the Officer and the appellant/applicant are presented, provided that both parties agree.

8. Members views are sought on the proposed changes. If the Panel supports the proposed changes, it is suggested that the Constitution and Members' Services Scrutiny Panel be asked to consider the proposals and recommend the Overview and Scrutiny Committee and, ultimately, the Council to agree the amendments and make appropriate changes to the Constitution.

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