

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