

EPPING FOREST DISTRICT COUNCIL COMMITTEE MINUTES

Committee: Housing Appeals and Review Panel **Date:** Tuesday, 29 May 2012

Place: Committee Room 2, Civic Offices, High Street, Epping **Time:** 2.30 - 4.20 pm

Members Present: Councillors A Mitchell MBE (Chairman), B Rolfe (Vice-Chairman), Mrs R Gadsby, Ms J Hart and Mrs J H Whitehouse

Other 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 meeting of the Panel held on 19 January 2012 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.

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 Number | Subject | Exempt Information and Paragraph Number |
|---------------------------|-----------------------|--|
| 6 | Application No 1/2012 | 1 |

5. APPLICATION No. 1/2012**Introduction**

The Panel considered a request for a review of a decision made by officers under delegated authority that the applicant was homeless intentionally when she had received a possession order requiring her to vacate privately rented property due to rent arrears. The applicant attended the meeting to present her case accompanied by her partner and one of her ward councillors, Councillor D Stallan. 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, members of the Panel and officers present introduced themselves to the applicant.

The Assistant Director Democratic Services advised the Panel that since the publication of the agenda and reports for this meeting, the applicant had requested that the order of presentation at the meeting be changed with the Housing Officer presenting his case first. In the light of this request 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 2 April 2012;
 - (ii) a letter from the Head Teacher of the applicant's children's school dated 28 May 2012 (tabled at the meeting);
- (b) a summary of the case including the facts of the case;
- (c) the case of the Assistant Housing Options Manager (Homelessness);
- (d) copies of documents submitted by the Assistant Housing Options Manager (Homelessness), namely:
 - (i) a copy of the applicant's assured shorthold tenancy agreement for her privately rented property;
 - (ii) County Court Order for Possession of the applicant's privately rented property;
 - (iii) a copy of an e-mail from a London Borough of Redbridge officer sent to Epping Forest District Council on 9 February 2012;
 - (iv) a copy of an e-mail from the applicant's former landlord sent to the Epping Forest District Council on 21 February 2012;
 - (v) a typed copy of notes of an interview of the applicant by a Housing Officer dated 12 October 2011;

- (vi) a typed copy of notes of an interview of the applicant by a Housing Officer dated 28 February 2012;
- (vii) a copy of a letter dated 27 March 2012 from the Assistant Housing Options Manager (Homelessness) to the applicant;
- (viii) a copy of an e-mail from a London Borough of Redbridge officer to Epping Forest District Council dated 3 May 2012 together with a copy of an e-mail from the Assistant Housing Options Manager (Homelessness) to the London Borough Council sent on 3 April 2012;
- (ix) schedule of Housing Benefit payments made by the London Borough of Redbridge to the applicant's landlord and to the applicant;
- (x) a copy of an e-mail from the Metropolitan Police to the Epping Forest District Council sent on 8 May 2012;
- (xi) a copy of an e-mail from the Homelessness Prevention and Reviews Manager of the London Borough of Redbridge.

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 eligible for assistance because she was British, homeless because she had received a possession order requiring her to leave privately rented accommodation and in priority need because she had dependent children; the applicant's local connection with this district was through her mother who had lived within the district for over five years;
- (b) the applicant had occupied a privately rented property between 3 February 2010 and 3 July 2011; the applicant had held the assured shorthold tenancy in her sole name; the rent had been £1,000 per month; the applicant had received a Possession Order on 5 May 2011 requiring her to leave the privately rented property on 19 May 2011 because £8,350 was owed in rent arrears at that time;
- (c) the applicant had first claimed Housing Benefit on 4 February 2010; the Housing Benefit had ceased on 3 July 2011 when she had advised the London Borough of Redbridge that she would be vacating the privately rented property; all of the rent had been eligible for Housing Benefit which had meant there was no shortfall between the rent and Housing Benefit; Housing Benefit had initially been paid directly to the landlord and then subsequently to the applicant;
- (d) information had been sought from the landlord regarding the reason for the applicant having to leave the privately rented property; the landlord had confirmed that the applicant had owed him £8,350 in rent arrears and that the property had been returned to him in poor condition;
- (e) the Council's Homelessness Assessment Officer had interviewed the applicant first when she had made her homelessness application and subsequently to give her the opportunity to comment on the information the Council had received; the applicant had claimed that the arrears had been due to: her having to wait several months to receive Housing Benefit; to the London Borough Council losing the

claim form; to the claim being suspended when she had begun working; and as a result of the Housing Benefit claim not being backdated;

(f) it had been decided that the applicant had made herself intentionally homeless; the applicant and her family had been provided with interim accommodation at the Council's Homeless Persons Hostel pending the outcome of this review;

(g) in preparation for this review, Housing officers had contacted the London Borough of Redbridge Housing Benefit Department to obtain further information regarding the applicant's Housing Benefit claim; the London Borough Council had confirmed that the applicant had been entitled to full Housing Benefit continuously from 4 February 2010 until 3 July 2011;

(h) in advance of the review, Housing officers had also made enquiries with the Police through the Safer Communities Team and the London Borough of Redbridge with regard to the applicant's claim that she had contacted them regarding her landlord; neither the Police nor the London Borough Council had found any record of the applicant making a complaint about her landlord;

(i) the Code of Guidance on Homelessness (paragraph 11.7) stated that a person became homeless, or threatened with homelessness, intentionally if he or she deliberately did or failed to do anything in consequence of which he or she ceased to occupy accommodation, the accommodation was available for his or her occupation, and it would have been reasonable for him or her to continue to occupy the accommodation;

(j) it was considered that the applicant's wilful and persistent refusal to pay her rent at the privately rented property had been a deliberate omission on her part; especially since the rent arrears had resulted from the applicant's failure to pass on the Housing Benefit she had received to her landlord;

(k) it was considered that the accommodation would have continued to be available for the applicant's occupation had she not accrued rent arrears; furthermore, it was considered that the accommodation would have been reasonable for the applicant and her family to continue to occupy;

(l) the applicant had received full Housing Benefit continuously from 4 February 2010 until 3 July 2011 for the privately rented property; it was clear that had the applicant passed on all of the Housing Benefit she had received to her landlord she would not have fallen into arrears and would not have become homeless as a result;

(m) the Panel was invited to uphold the officers' decision; in the event that the officers' decision was upheld the applicant should be given reasonable notice to vacate the Council's Homeless Persons Hostel and, subject to the applicant's consent, a referral should be made to Children and Families Service in order to seek their assistance in helping the applicant to find alternative accommodation.

Questions from Councillor Stellan on the case of the Assistant Housing Options Manager (Homelessness)

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

(a) although the Housing Benefit payment schedule from the London Borough of Redbridge indicated that an amount of £4,034.08 Housing Benefit had been paid on 20 December 2010, it had covered the period from December 2010 until April 2011 and it had been assumed therefore that the amount had actually been credited to the applicant's account in April 2011;

(b) on occasions a County Court Judge might refuse to make an Order for Possession if a defendant could provide evidence that there was an outstanding claim for Housing Benefit but it would depend on the circumstances; in the applicant's case it appeared that the lump sum had been received in April 2011 and the Possession Order had not been made until 5 May 2011 by which time it could have been expected that payment in the full amount should have been passed to her landlord before the hearing;

(c) the Council had sought a rent statement from the applicant's landlord on two occasions but it had not been received;

(d) there were a number of photographs on the applicant's Housing file showing the condition of the property but these were not dated; whilst reference had been made to the condition of the property within the applicant's homelessness decision, the decisions of both the County Court and Housing officers had been based on rent arrears and not the condition of the property.

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:

(a) the statement in the e-mail sent from the Assistant Housing Options Manager (Homelessness) to the London Borough of Redbridge on 3 April 2010 had repeated a statement made by the applicant, namely that she had moved to the privately rented property and claimed Housing Benefit; she had then began working part time and had still been entitled to full Housing Benefit; because she had been working Housing Benefit had been stopped for four months whilst the situation had been assessed; the London Borough of Redbridge had lost her claim form; she had reapplied for Housing Benefit and had asked for it to be backdated; this had taken a long time and had led to arrears; the Housing Benefit had been backdated eventually and the landlord had received the money and the arrears had been cleared;

(b) the arrears had arisen because the full amount of Housing Benefit received had not been passed to the landlord; the schedule provided by the London Borough of Redbridge showed the Housing Benefit payments but the Council does not have a rent statement to compare with that; however, it is clear that if all of the Housing Benefit payments received had been handed over to the landlord there would have been no arrears;

(c) the first Housing Benefit payment had been made to the landlord but all subsequent ones had been made direct to the applicant, some by cheque and some into her bank account by BACS.

Presentation of Applicant's Case

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

(a) the officers' decision was unfair; the applicant had been entitled to Housing Benefit but had not received it consistently as the London Borough of Redbridge had stopped payments due to a change in her circumstances and had taken a long time to reinstate and backdate payments; during the period that Housing Benefit had not been received the applicant had not been in a position to pay the rent;

(b) the officers' decision was based on information provided by the applicant's landlord and a lot of that information was untrue;

(c) the reason the Police and the London Borough Council had been unable to provide reports of the applicant's complaints was because she had phoned them for advice but had not made formal complaints;

(d) the poor condition and damage to the privately rented property had taken place before the applicant had moved in; the landlord had been aware of the situation as he had made an insurance claim;

(e) the landlord had applied for the Possession Order in March 2011 initially, before the backdated Housing Benefit payment had been received; contact had been made with the County Court for written confirmation of the timescales in relation to the application made to the Court but this had not been received in time for the meeting of the Panel;

(f) the Panel should take account of the representations made on behalf of the applicant by the Head Teacher of the primary school attended by the applicant's children;

(g) the landlord had advertised the privately rented property for sale in May/June 2010; he had been unable to sell it because of its poor condition and he had rented it to the applicant; within four months of the applicant taking up residence the landlord had indicated that he proposed to sell the property before the end of the applicant's tenancy; the estate agent had been asked for documentation to support this submission but had not been prepared to provide it because he was still working for the landlord in respect of other properties; the real reason for the landlord seeking a Possession Order was to enable him to sell the property and not because of rent arrears.

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 applicant had attended the County Court when the Possession Order had been made; she had advised the Judge that she was waiting to hear from the London Borough of Redbridge about the break in her Housing Benefit payments; due to the amount owed to the landlord the Judge had made a Possession Order despite the problems with Housing Benefit;

(b) the London Borough of Redbridge had made the first Housing Benefit payment to the applicant's landlord whilst steps were being taken to obtain details of the applicant's bank account; all subsequent payments had been made direct to the applicant; it had been the London Borough Council's decision to make the subsequent payments direct to the applicant and not as a result of a request by the applicant;

(c) Housing Benefit payments had been passed to the landlord as and when they had been received.

Questions from Members of the Panel to the Applicant

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

(a) when the applicant had received cheques from the London Borough Council these had been paid into her bank account and she had then subsequently paid cash into the landlord's bank account or transferred money to his account;

(b) it was accepted that the Judge in the County Court had found that not all of the Housing Benefit received by the applicant had been passed on to the landlord;

(c) the applicant had receipts for the amounts she had paid her landlord but did not have those receipts with her at this meeting and did not have them available at the County Court hearing; when she had paid cash into her landlord's account she had received a receipt from his bank;

(d) when the applicant had moved into the property the landlord had been aware of its condition and he had agreed to waive the requirement for a deposit in exchange for the applicant decorating the property;

(e) the landlord's attention had been drawn to the water leak and he had advised that he would repair it after the applicant had left the property;

(f) following the applicant moving out of the property it had been sold and converted to flats; the applicant had moved out of the property in June 2011 and persons interested in acquiring the property had inspected it before that time;

(g) the London Borough Council had advised her that Housing Benefit payments would only be made to the landlord if a tenant had a history of gambling, drinking or a similar problem;

(At the request of the Chairman, the Assistant Housing Options Manager (Homelessness) confirmed that at the time the applicant had been in receipt of Housing Benefit payments they would normally only be made direct to a landlord if a tenant had debt problems, or if a tenant was vulnerable or fell into arrears for more than two months; he advised that in his experience the landlord would normally ask for Housing Benefit to be paid direct shortly after the expiry of such a two month period and he did not know why the applicant's landlord had not taken this action).

(h) the applicant had moved out of the property in June 2011 but Housing Benefit payments had continued to be received in July 2011 as they were paid in arrears;

(i) the status of the applicant's bank account had not enabled her to set up direct debit payments to her landlord;

(j) the amount of £8,350 quoted in the Order for Possession comprised rent arrears and interest payments to the landlord; the assured shorthold tenancy agreement provided for the payment of interest on rent or other money owed to the landlord;

(k) when the applicant had left the property there had been no arrears outstanding;

- (l) at the County Court hearing the Judge had made no comment on how the arrears had been made up;
- (m) the insurance claim made by the landlord prior to the applicant moving in had been as a result of damage caused by squatters in the property; it had been necessary for the landlord to go to court to get the squatters evicted; when the applicant had moved into the property she had been asked to leave certain rooms in poor condition so that they could be inspected in relation to the insurance claim; moreover, the applicant's partner had undertaken a lot of work in the property which the landlord had included within his insurance claim;
- (n) the applicant had not left the property until June 2011, after the date quoted in the Possession Order as a result of receiving advice from the London Borough of Redbridge;
- (o) the applicant had cleaned the property completely before she had left it; the applicant had a small dog but did not accept the references made by the landlord to animal faeces in the property;
- (p) it would take the applicant a couple of days to obtain the receipts of amounts she had paid to her landlord as she did not have all of her paperwork with her at the Council's Homeless Persons Hostel;
- (o) the applicant could obtain bank statements from her bank if required.

Summing Up

The applicant advised that she had nothing further to add at this stage.

The Assistant Housing Options Manager (Homelessness) stated that the decision taken by the officers had been based on the information available to them. The applicant's landlord had demonstrated rent arrears and the County Court had accepted this claim and had made a Possession Order due to rent arrears. If the applicant had passed on all of the Housing Benefit she had received to her landlord a Possession Order would not have been made. The applicant had not produced documents in support of her case to the County Court, to officers or to this meeting.

Further Questions from Members of the Panel to the Assistant Housing Options Manager (Homelessness)

The Chairman agreed that further questions could be put at this stage in order to clarify matters.

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

- (a) it was considered unlikely that the landlord would have credited amounts paid into his bank account by the applicant to the accounts of other tenants since such landlords are used to receiving, recording and crediting payments for different clients' tenants; it was suggested that the County Court would not have made a Possession Order if there had been any doubt about the amount of arrears owed by the applicant.

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, her partner, Councillor Stallan and the Assistant Housing Options Manager (Homelessness) then left the meeting.

In coming to its decision, the Panel focused on the evidence regarding the receipt by the applicant of Housing Benefit from the London Borough of Redbridge; the effect of a break in the applicant's Housing Benefit claim and the subsequent delay by the London Borough Council in resolving the applicant's change of circumstances before paying her the amount covering the period of the break; whether the applicant passed on all of the Housing Benefit received to her landlord (including her assertions that she had done so); the timescale of payments received and made, including in relation to the County Court proceedings, the level and certainty of the rent arrears; and the Possession Order made by the County Court.

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 by the Assistant Housing Options Manager (Homelessness) in writing and orally, the decision of the officers that the applicant was homeless intentionally from the privately rented property, be upheld for the following reasons:

(a) the applicant held in her sole name an assured shorthold tenancy of a privately rented property between 3 February 2010 and 3 July 2011;

(b) the applicant first claimed Housing Benefit on 4 February 2010; the first Housing Benefit payment was made direct to her landlord on 23 February 2010; the final Housing Benefit payment was made on 25 July 2011 after the applicant notified the London Borough of Redbridge that she would be vacating the privately rented property; all of the rent was eligible for Housing Benefit, meaning that there was no shortfall between the rent and the Housing Benefit; after the first payment all subsequent payments were made direct to the applicant for passing on to her landlord;

(c) it is apparent from a payment schedule provided by the London Borough of Redbridge that the amount of Housing Benefit paid between 23 February 2010 and 25 July 2011 fully covered the rent due during the period of the applicant's tenancy;

(d) a Possession Order was made against the applicant on 5 May 2011 requiring her to leave the privately rented property because the District Judge found that the applicant had rent arrears and interest payments due to her landlord amounting to £8,350;

(e) the applicant stated at the meeting of the Panel that she passed on all her Housing Benefit payments to her landlord and that she had not owed her landlord the amount stated in the Possession Order; however, at no time did the applicant provide any documentary evidence to support this statement despite having the opportunity to do so at the County Court hearing, at the two separate interviews with Epping Forest District Council's Housing Officers

in October 2011 and February 2012, and at the Panel meeting despite being advised in two separate letters prior to the Panel meeting that it was her responsibility to provide evidence to the Panel including documents in support of her case;

(f) account has been taken that there was a break of four months in the applicant's Housing Benefit payments due to a change in her circumstances and a delay in her subsequently receiving the amount covering that period after the London Borough of Redbridge advised that she was entitled to full Housing Benefit during that period despite her change of circumstances; we have considered the conflicting evidence and we have concluded on balance that the amount of £4,034 Housing Benefit in respect of the four month period was received by the applicant in April 2011 but was not passed on to her landlord by the time the County Court made the Possession Order for rent arrears on 5 May 2011;

(g) the applicant's landlord stated that the property had been returned to him in a poor condition and the applicant denied that she was responsible for any damage; we have not reached a conclusion on these conflicting statements as it is clear that the condition of the property was not a reason for the making of the Possession Order, nor for the officers' decision that the applicant was intentionally homeless, both of which had been restricted to rent arrears;

(h) had it not been for the deliberate act of failing within a reasonable period to pass on to her landlord all of the Housing Benefit the applicant received from the London Borough of Redbridge, it is the Panel's view that the privately rented property would have continued to be available and reasonable for the applicant and her family to occupy:

(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 provided the applicant complies with the terms of her licence at Norway House, the Council's Homeless Persons Hostel, the Council continues to provide her and her family with interim accommodation for a period of three months 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; and

(4) That the officers, with the applicant's consent, refer the applicant to Children and Families Services to seek their assistance in helping her to find alternative accommodation.

CHAIRMAN