



Epping Forest District Council

HOUSING APPEALS AND REVIEW PANEL

Tuesday, 29th May, 2012

Place: Conference Room, Civic Offices, High Street, Epping

Time: 2.30 pm

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

Members:

As appointed at the Annual Council meeting on 22 May 2012

1. APOLOGIES FOR ABSENCE

2. MINUTES (Pages 3 - 14)

To agree the minutes of the meeting of the Panel held on 19 January 2012 (attached).

3. SUBSTITUTE MEMBERS

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

4. DECLARATIONS OF INTEREST

To declare interests in any item on the agenda.

5. 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 Paragraph Number	Information
6	Application No.1/2012	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.

6. APPLICATION NO.1/2012 (Pages 15 - 40)

To consider the attached restricted report.

EPPING FOREST DISTRICT COUNCIL COMMITTEE MINUTES

Committee: Housing Appeals and Review Panel **Date:** Thursday, 19 January 2012

Place: Committee Room 1, Civic Offices, High Street, Epping **Time:** 2.30 - 6.20 pm

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

Other Councillors:

Apologies: Councillor Ms Y Knight

Officers Present: A Hall (Director of Housing), R Wallace (Housing Options Manager) and A Hendry (Democratic Services Officer)

50. MINUTES

RESOLVED:

That the minutes of the meetings of the Panel held on 15 December 2011 be taken as read and signed by the Chairman as a correct record.

51. SUBSTITUTE MEMBERS

It was noted that there were no substitute members present.

52. DECLARATIONS OF INTEREST

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

53. Exclusion of Public and Press

RESOLVED:

That in accordance with Section 100(A)(4) of the Local Government Act 1972, the public and press be excluded from the meeting for the items of business set out below as they would involve the likely disclosure of exempt information as defined in the paragraph of Part 1 of Schedule 12A of the Act indicated and the exemption is considered to outweigh the potential public interest in disclosing the information.

Agenda Item Number	Subject	Exempt Information and Paragraph Number
6	Application No 14/2011	1
7	Application No 15/2011	1

54. Appeal No. 14/2011**Introduction**

The Panel considered the submissions made by the applicant regarding their housing circumstances and in particular: a) whether or not their household (including their partner) had to live apart because of lack of accommodation; b) whether or not their household was statutorily overcrowded, either with or without their partner; c) whether they were lacking a bedroom for the purpose of the Council Housing Allocations Scheme (in respect of criterion (a) of Band 4); and d) whether the applicant was given erroneous or misleading information by officers that had a detrimental effect on their housing application.

The applicant attended the meeting along with her partner to present their case. 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 application.

The Chairman introduced the members of the Panel and officers to the applicants. 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 applicant, namely;
 - (i) her application to the Housing Appeals and Review Panel dated 01 November 2011;
 - (ii) her letter outlining and expanding on her formal application form also dated 1 November 2011;
 - (iii) a copy of her initial appeal to the Assistant Director of Housing received on 7 July 2011;
 - (iv) the Assistant Director's reply dated 2 August 2011;
 - (v) the applicants and her partners Financial Statements (essential weekly expenditure) dated 1 October 2011 and 1 November 2011;
 - (vi) a proposed joint financial statement, undated;
 - (vii) background papers on the Housing Act 1985.
- (b) A summary of the case including the facts of the case; and
- (c) the case of the Housing Options Manager.

Presentation of Applicant's Case

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

- (a) that the applicant currently in Band 4 of the Council's Housing Allocations Scheme should be in Band 2 or higher because of a lack of a bedroom;
- (b) that the applicant's household had to live apart from her partner because of a lack of accommodation and arguably, that as 'Homeseekers' who have to live apart they should be put into Band 2;

- (c) that the applicant considered herself to be statutorily overcrowded in her current privately rented accommodation, even without her partner in residence;
- (d) the applicant asserted that with four children, one being over 12 years of age, which according to Section 326 of the Housing Act that they were overcrowded by virtue of not having enough square footage. To illustrate this the square footage of two of the bedrooms were given;
- (e) that the applicant had been given incorrect and misleading information by officers that had a detrimental effect on her housing application;
- (f) that the applicant and her partner could not afford to privately rent bigger accommodation and had supplied financial statements to illustrate their point;
- (g) the applicant's ex-husband, a known violent criminal, now knows her address;
- (h) the Council's own bidding system allows them to bid for four bedroom houses, with one child being over 12 years old, they should be put up a band to Band 3;
- (i) in summing up, they would like to be housed together as a family.

Questions from the Housing Options Manager to the Applicant

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

- (a) there were not always suitable properties to bid for, and they did not want to leave this area in order to support her parents and had been advised not to uproot their children from their schools.

Questions from members of the Panel to the Applicant

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

- (a) we can't fit bunk beds because of the size of the rooms and have to have special beds in the room. The point being that the rooms fall outside the criteria for Space Standards for individuals. The rooms are not big enough;
- (b) they used the Direct.Gov website calculator for their financial statements. According to this they would not be entitled to housing rent benefits. They understood that there was a shortage of suitable properties in the area and they would have to wait their turn. Under Housing Law the applicant thought they should be in Band 3;
- (c) the applicant was trying to start up her own business at present;
- (d) the applicant had a lot of debts carried over from her ex-husband. Her partner also had debts, whose interest had been frozen by agreement;
- (e) the applicant's partner had taken out an internet and mobile contract some months ago in order to save money. As for working full time, he was only able to work part time because of past mental health problems;
- (f) the applicant's ex-husband was in contact with her children and by this method found out her current address. He was not allowed to see them anymore;
- (g) the applicant's mobile phone was for emergency contact for her children.

Presentation of the case of the Housing Options Manager

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

(a) he clarified that the applicant had asserted that her application sent in 2007 had been lost, but he had not found any evidence of any documents in the system. They should have made a representation at the time to ascertain that we had the documents;

(b) in March 2009 the applicant was registered with this authority when she was put on the Choice Based Letting Scheme and on to Band 6. The letter dated 10 March 2009 to the applicant explained the reasons for this and asking if anything was not understood then we could be contacted for a further explanation. No contact was made;

(c) in October 2009 we received a medical submission in support of the applicant's application; as a result of this it was reassessed and moved up to Band 4;

(d) we received a further application in June 2011 asking to include the applicants partner as a joint applicant and asked to be moved up to Band 2 on grounds of overcrowding. The case was reassessed by the medical advisor but no further upgrading was allowed. The Assistant Director of Housing wrote to her on 2 August 2011 stating exactly why she had not been moved from Band 4 to Band 2;

(e) the Assistant Director Housing agreed with the Housing Options Manager that under the Housing Act 1985, part X (324) that the room standard, clearly indicated that the applicant was not overcrowded at her current address. Using this standard it was not necessary for the space standard to be used;

(g) we must also be mindful of the demands on the Council's Housing Stock;

(h) in summing up, the Housing Options Manager said that that Assistant Director of Housing had applied the correct criteria for Band 4 grading and that the applicant's current property was adequate for their needs. He noted that the applicant had not expressed any interest in any of the twenty three, 3 and 4 bedroom properties that has been on offer since. He was satisfied that the banding levels were correct.

Questions from the Applicant on the case to the Housing Options Manager

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

(a) members need to be made aware of the demand for housing in our area;

(b) Local authorities are expected to adopt an open policy to banding;

(c) no matter how many other cases are on the register, we have a duty to look at your case on its merits.

Further Statement by the Appellants

The appellant said it should make no difference to their case as to how many other people are on the list. She added that she did not on her first application, add her

partner on to the application as they were not at that stage in their relationship at that time.

Questions from Members of the Panel on the case to the Housing Options Manager

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

- (a) officers try to be as understanding as possible, but Loughton is a prime area of the district for housing requests;
- (b) it was a valid comment to find a new area to rent in because of the threat from the applicants ex-husband;
- (c) the Council also has a team of homeless prevention officers who can offer help and advice.

Closing Statement by the Appellant Present at the Meeting

The appellants reminded that Panel that the Council Charter said that everyone should be treated politely and with respect, and that they should appropriately consider the needs of everyone involved. They did not feel that their reasons had been listened too.

Closing Statement by the Housing Options Manager

The Housing Options Manager stated that he was satisfied that the applicant had been treated as individuals and as importantly, the law had been applied correctly.

Deliberations

The Chairman indicated that the Panel would consider the matter in the absence of both parties and that the applicant and the Housing Options Manager would be advised in writing of the outcome. The applicant, her partner and the Housing Options Manager then left the meeting.

In coming to its decision, the Panel focused on the submissions the applicant made regarding their housing circumstances and, in particular: whether or not their household (including her partner) had to live apart because of a lack of accommodation; whether or not their household was statutorily overcrowded – either now or if the applicants partner was to move in with her; whether they were lacking a bedroom for the purposes of the Council's Housing Allocations Scheme (in respect of Criterion (a) of Band 4); and whether she was given incorrect, erroneous or misleading information by officers that had a detrimental effect on their housing application.

The Panel experienced a difficulty in reaching a decision in respect of the claim that the property would be statutorily overcrowded if the applicant's partner moved into the property since, in her submission, she only provided the room sizes of two smallest bedrooms. In order to consider whether or not the applicant was, or would be, statutorily overcrowded, it was necessary for the Panel to know the floor areas of the bedrooms and any living rooms in the property.

No evidence was provided to back-up the assertion that that the applicant was given incorrect, erroneous or misleading information by officers that had a detrimental

effect on her housing application, and the Housing Options Manager stated at the meeting that there was no information recorded on file of any advice or information that had been given that was incorrect.

The Panel was of the view that the assertion made by the Housing Options Manager that, effectively, the Council could “choose” whether it applies the “Room Standard” or the “Space Standard” in determining whether a property was overcrowded was an incorrect interpretation of Part X of the Housing Act; moreover, the Panel was of the view that the Assistant Director of Housing, when he considered the appeal in the first instance, should have applied both the Room Standard and the Space Standard when he considered whether or not the applicant was statutorily overcrowded. This he did not do, since he only applied the Room Standard; the Panel noted that, by virtue of Section 324 of the Act, “a dwelling is overcrowded...when the number of persons sleeping in the dwelling is such as to contravene...the room standard or...the space standard.” It was therefore necessary for the Panel to seek to calculate for itself whether or not your property was statutorily overcrowded, by virtue of the Space Standard.

The Panel also took into consideration the appellant’s assertion that she must live apart from her partner, whilst she lived at this address, due to the problems she had with her ex-husband and her assertion that it would be unaffordable for her household if her partner moved in; however, the Panel concluded that, whatever the merits of these assertions, neither of these reasons were due to a “lack of accommodation”, and therefore Criterion (a) of Band 2 of the Housing Allocations Scheme did not apply in relation to these two points.

RESOLVED:

(1) That, having regard to the provisions of the Housing Act 1996, as amended, the Housing Act 1985 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 2 or higher of the Allocations Scheme be:

(A) **Upheld** if the Permitted Number of the applicant’s property, calculated in accordance with the “Space Standard” of Part X of the Housing Act 1985, based on the appellant’s partner both living and not living at the property, was **not** exceeded; or

(B) **Not upheld, and the appeal allowed**, if the Permitted Number of the applicant’s property, calculated in accordance with the “Space Standard” of Part X of the Housing Act 1985, based on the appellant’s partner both living and not living at the property, **is** exceeded;

(2) That arrangements be made for a Council officer to visit the applicant’s property to measure the sizes of all rooms in the house, and to calculate whether or not the Permitted Number was currently exceeded, or would be exceeded if the appellant’s partner was to live with the applicant;

(3) That, if the Permitted Number was **currently** being exceeded, without the applicant’s partner living at the property, the applicant be placed in Band 1 of the Council’s Housing Allocation Scheme;

(4) That, if the Permitted Number was **not currently** being exceeded, without the applicant's partner living at the property, but it would be exceeded if her partner were to move in, the applicant be placed in Band 2 of the of the Council's Housing Allocation Scheme;

(5) That, if the Permitted Number was **not currently** being exceeded, without the applicant's partner living at the property, and it would **not** be exceeded if her partner were to move in either, the applicant remains in Band 4 of the of the Council's Housing Allocation Scheme; and

(6) That there was no evidence to suggest that the applicant was given incorrect, erroneous or misleading information by officers that had a detrimental effect on her housing application."

55. Appeal No. 15/2011

Introduction

The Panel considered the submissions made by the Applicant regarding their housing circumstances and in particular against his banding level on the housing register application he has with this council. The applicant attended the meeting along with his wife to present their case. 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 application.

The Chairman introduced the members of the Panel and officers to the applicants. 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 applicant, namely:
 - (i) His application to the Housing Appeals and Review Panel 12 December 2012.
- (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) Letter acknowledging the housing application;
 - (ii) A follow up letter from June 2010;
 - (iii) A letter dated September 2010, upgrading the applicant to Band 3;
 - (iv) A signed copy of the offer checklist dated 21 September 2011;
 - (v) A letter to the applicant dated 22 September 2011 explaining the council's position;
 - (vi) A letter on the decision of the applicant's appeal dated 20 October 2011;
 - (vii) A decision on a further appeal dated 24 November 2011.

Presentation of the Applicant's Case

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

- (a) in October 2008 the applicant and his family moved into his current address in Loughton;
- (b) in December 2008 he registered to go on the Council's Choice Based Letting Scheme, 'HomeOption', where he was at first placed in Band 6;
- (c) in 2010 on reapplying and supplying further information he was put on to Band 3 and then subsequently reassessed to Band 4. This was because he was considered not be sharing his accommodation as he had decided to move a tenant into his property to help share the rent;
- (d) his tenant had moved in from the first day he had started at that address in order to share the expenses as it was very hard to cope without her monetary input. They did not ask for Housing Benefits and tried to pay their own way.

Questions from the Housing Options Manager to the Applicant

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

- (a) the applicant thought that they were sharing their house and because of this should be moved up a band. He did not accept the officers contrary assertion;
- (b) in his initial application his mother was not included because his English was not very good then and he did not understand the form.

Questions from Members of the Panel to the Applicant

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

- (a) there are 7 people living at my address, myself, my wife, my mother, three children and the tenant. Our daughter sleeps with us in our room; the tenant has her own room; my youngest son shares a room with my mother and my eldest son sleeps in the living room;
- (b) my mother is a happy person by nature, but my son would be happier if he had his own room;
- (c) both myself and my wife work; my eldest child goes to Epping Forest College. My mother does not work. It would be impossible to pay our rent without our lodger.
- (d) we had the option to take up benefits but took the option to invite someone to help pay the rent; we try not to take any money from the Council.
- (e) we would still need a bigger house whether we had a tenant or not;
- (f) we have had problems with work over the last few months and are not making the same amount as before;
- (g) if we were allocated a bigger house we would not take our lodger with us.

Presentation of the case of the Housing Options Manager

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

- (a) an application form was received on 9 December 2008 for the applicant, his wife and three children only. He was living in private rented property;
- (b) on 18 December 2008 we wrote to the applicant and confirmed his application form had been received. We said that he had no housing needs at that time;
- (c) on 5 August 2010 we wrote cancelling his application as he had not responded to other letters we had sent. Following this he contacted us and reapplied updating his application form, in this new application he added his mother and said he was sharing his accommodation. We wrote back saying that he had been moved to Band 3.
- (d) we reviewed his claim in September 2011 and assessed that he should be in Band 4 and then wrote to the applicant confirming that he should be in Band 4 and apologised for the error made. He had not been assessed as sharing as he had decided to move a tenant into his property to help with the rent;
- (e) the applicant subsequently appealed against this which was not upheld, and neither was his following appeal to the Assistant Director of Housing, who considered all aspects of the case and came to the conclusion that the applicant was indeed in the correct banding.

Questions from the Applicant on the case to the Housing Options Manager

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

- (a) we have over 5000 applicants and a large amount of correspondence, it took a long time to correct your banding because we physically could not check every person who bids for a property and usually only check the top 5 or 6 applicants for a property.

Questions from Members of the Panel on the case to the Housing Options Manager

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

- (a) the applicant was incorrectly put into Band 3 initially, it was corrected when his checklist was reviewed. An extra safeguard has now been put in place to ensure that this does not happen again;
- (b) we define sharing as something on a commercial basis or a family member seeking accommodation in their own right. If his son were to seek accommodation in his own right we would review the circumstances in the light of this new application;
- (c) it was the applicant's decision to allow the tenant to reside in his property and as she did not form part of the agreement to occupy the accommodation, we considered that his household had been expanded by his own choice;

(d) he could apply for assistance to pay his rent and could ask to see someone from our Housing Options team to help him with this.

Deliberations

The Chairman indicated that the Panel would consider the matter in the absence of both parties and that the applicant and the Housing Options Manager would be advised in writing of the outcome. The applicant, his partner and the Housing Options Manager then left the meeting.

In coming to a decision the Panel focused on the assessment of the applicant's Housing Register Banding level, his property and the size of property he required and the officers' application of the Housing Allocations Scheme – in particular the reasons for his demotion from Band 3 to Band 4.

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 3 of the Allocations Scheme be upheld for the following reasons:

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

“4(a) Homeseekers living in the District for more than a year immediately prior to the application, needing one or more additional bedrooms”;

(b) we did not consider that the applicant qualified for Criterion (c) of Band 4 as a homeseeker living in the District for more than a year immediately prior to the application and sharing accommodation with another household. This was because the applicant decided to allow a tenant to reside in his property and this could not be classified as having to share accommodation, since the applicant explained that it was his decision to invite an additional person to live in the property with him in order to assist with the rent, expanding his household by his own choice;

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

(d) having regard to (b) and (c) 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 for Band 4;

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

(2) The Panel were regretful that the applicants original application had not been banded properly and noted that the officers concerned had apologised for the error. However, the Panel also noted that this error had

come to light through the Housing Directorate's internal quality control processes. Having considered all the facts of the case the Panel were satisfied that Band 4 was the correct banding in your case.

(3) The Panel were of a mind to remind the applicant that, despite this decision, he was still able to express an interest in properties through the Choice Based Lettings scheme, HomeOption.

CHAIRMAN

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