

EPPING FOREST DISTRICT COUNCIL COMMITTEE MINUTES

Committee: Housing Appeals and Review Panel **Date:** Thursday, 18 October 2012

Place: Committee Room 1, Civic Offices, High Street, Epping **Time:** 2.30 - 5.10 pm

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

Other Councillors:

Apologies: Councillor Mrs J H Whitehouse

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

22. MINUTES

RESOLVED:

That the minutes of the meeting of the Panel held on 6 September 2012 be taken as read and signed by the Chairman as a correct record.

23. SUBSTITUTE MEMBERS

It was noted that Councillor P Spencer was substituting for Councillor Mrs J H Whitehouse.

24. DECLARATIONS OF INTEREST

There were no declarations of interest made by members of the Panel pursuant of the Council's Code of Conduct for Members.

25. 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 |
|--------------------|-----------------------|---|
| 5 | Application No 6/2012 | 1 |

26. APPLICATION NO 6/2012**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 sold the lease of a Council shop which included a flat and garage. The applicant attended the meeting to present her case accompanied by her husband and one of her ward councillors, Councillor Mrs A Grigg. 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 present to the applicant.

The Chairman sought clarification of who was the applicant in this case. The applicant advised that although her husband had completed the application to the Housing Appeals and Review Panel she was the applicant and not her husband.

The applicant requested that the order of presentation at the meeting be changed with the Housing Officer presenting his case first as allowed under the Panel's Terms of Reference. The Panel agreed to this request.

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

- (a) copies of documents submitted by the applicant, namely:
 - (i) her husband's application to the Housing Appeals and Review Panel dated 30 August 2012;
- (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) copy of an e-mail sent on 17 February 2012 by the Council's Senior Legal Executive summarising the situation regarding the applicant's sale of her interest in the lease of her flat, shop and garage;
 - (ii) a typed copy of notes of an interview of the applicant and her husband by a Housing Officer dated 21 March 2012;
 - (iii) copy of a letter dated 24 October 2011 from the Council's Director of Finance and ICT to the applicant and her husband;
 - (iv) copy of a letter dated 17 August 2011 from the Council's Solicitor to the applicant and her husband;
- (v) copies of the applicant's husband's Halifax Bank account statements;

- (vi) a copy of a partially completed Affordability Statement by the applicant;
- (vii) copies of the applicant's HSBC business bank account statements;
- (viii) copies of the applicant's husband's P60 end of year Tax Certificates;
- (ix) extracts from an accountant's report regarding the applicant's business;
- (x) copies of four letters dated 1 May 2012 from individuals stating that the applicant's husband owed them money;
- (xi) schedules showing the amounts due to the Council and the payments made to the Council by the applicant and her husband during the period July 2006 – June 2012;
- (xii) copies of e-mails exchanged by the Assistant Housing Options Manager (Homelessness) dated 6 August 2012 and a Finance Officer dated 7 August 2012;
- (xiii) copy of a letter dated 10 August 2012 from the Assistant Housing Options Manager (Homelessness) to the applicant; and
- (xiv) copies of duplicate bank account statement sheets provided by HSBC in relation to the applicant's business account.

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 had been eligible for assistance because she had Indefinite Leave to Remain in the UK, homeless because she had no accommodation available to her and in priority need because she had a dependant child;
- (b) the homeless legislation had required the Council to be satisfied that the applicant had not made herself intentionally homeless;
- (c) the applicant had occupied a flat leased from the Council together with a shop and garage between 22 March 2006 and 21 March 2012;
- (d) the applicant had explained to the Council's Homelessness Assessment Officer that she and her husband had sold the lease for the flat, shop and garage and became homeless because their business had been deteriorating and they could not continue paying the rent; the flat had been effectively tied to the business;
- (e) the applicant had produced information purportedly supporting her claim that she could not afford to pay the rent on the lease; this included rent demands, Halifax bank account statement sheets, a partially completed Affordability Statement; HSBC bank statement sheets; P60 Tax Forms; extracts from accountant's report; and letters in relation to debts which it was claimed were owed by the applicant's husband to friends and family;
- (f) Housing officers had sought information from the Council's Finance Directorate; a Finance Officer had provided a list of the invoice transactions and replies to a series of questions relating to the applicant's lease;

(g) Housing officers had decided that the applicant was intentionally homeless; 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; the Code also stated (paragraph 11.20) that examples of acts or omissions which could be regarded as deliberate included where someone chose to sell his or her home in circumstances where he or she was under no risk of losing it;

(h) it was considered, based on the information provided by the applicant and the Council's Finance Directorate that the applicant had sold the lease for her flat when she had been under no risk of losing it; with a few exceptions the rent demands had always been met promptly; although the submitted documents included a letter to the applicant and her husband signed in the name of the Council's Solicitor it had in fact been a computer generated letter sent as part of the debt recovery process by the Finance Directorate and not by the Solicitor; the bank statements whilst not being complete showed with a few exceptions that the business account had been in credit, often between £2,000 and £4,000; each rent invoice had been paid before the next one was due apart from two in 2006 where payment had been delayed at the commencement of the lease; the Finance Directorate had confirmed that the applicant had not expressed any difficulty in paying the rent, that there had been no recovery action pending, and that the applicant had been under no risk of losing her flat, shop and garage; the accountant's statements showed the business to be in profit; the letters from friends claiming that the applicant's husband owed them money appeared to be informal arrangements; it was accepted that the documents appeared to show that the applicant and her husband only received modest income; assessing the financial circumstances of the applicant had been made more difficult because the Affordability Form had not been fully completed, the bank statement sheets were incomplete and there were no accountant's financial statements for 2011 and 2012;

(i) information available to Council officers indicated that the applicant had sold her home in circumstances where she had been under no risk of losing it; this had therefore been a deliberate act;

(j) the flat would have continued to be available had the lease not been sold because the applicant had a legal interest in the property; it was also considered that the flat would have been reasonable to continue to occupy because the rent was affordable;

(l) if the Panel upheld the officers' decision the applicant should be given reasonable notice to vacate the Council's Homeless Persons' Hostel and, with the applicant's consent, referral should be made to the Schools, Children and Families Directorate of Essex County Council on account of the applicant's child being at risk of harm through homelessness.

Questions from Councillor Mrs Grigg on behalf of 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 Councillor Mrs Grigg:

(a) it was accepted that the applicant's and her husband's first language was not English;

(b) at no time during the applicant's lease of the property had the matter been referred to the Council's Legal Services to take action in relation to rent arrears; it was accepted that the letter sent to the applicant and her husband on 17 August 2011 on Corporate Support Services headed paper and apparently signed by the Council's Solicitor appeared to indicate that the matter had been referred to Legal Services but that letter had been computer generated for the Finance Directorate and had not been sent by the Solicitor; it was accepted that the letter could be of concern to a recipient in which case they would be expected to telephone the Council to seek an explanation of the position; and

(c) where a business had to be sold for financial reasons one would expect the business bank account to be less healthy than the one before the Panel.

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) it was understood that the lease related to the flat, shop and garage together and that the interest in the shop could not be sold without selling the interest in the flat and the garage;

(b) the Council's permission would have been required for the sale of the interest in the lease;

(c) the management of the lease was dealt with by another Directorate of the Council and it was not known what officers in that Directorate might have said to the applicant and her husband when they had approached the Council for permission to sell their interest in the lease;

(d) having regard to the documents before the Panel it was not accepted that another small business in the same financial position as the applicant and her husband would have sold their interest in the lease of the shop, knowing that this would also require selling their interest in their living accommodation; and

(e) it was possible that the applicant and her husband had been over cautious and anxious about the situation and had possibly intended to seek rented accommodation when leaving their flat rather than becoming homeless.

Presentation of the Applicant's Case

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

(a) the applicant and her husband had been struggling to pay the rent for the flat, shop and garage;

(b) the applicant's and her husband's first language was not English;

(c) the officers' analysis of the bank statements was inaccurate and it was not correct to say that the balances were as generous as had been suggested; the Panel should focus on the balances immediately after the payment of rent each quarter;

- (d) the applicant's husband had asked friends and relations to loan him money rather than go through a formal institution as that would have affected their credit rating for the future; it had been more embarrassing for the applicant and her husband to ask for money from family and friends rather than to go to a formal institution; it was not known when these amounts could be repaid; it was unfair to give less weight to these loans than loans from a formal institution.
- (e) the lease of the shop had been bought for £27,000 and sold for only £4,000;
- (f) the applicant and her husband's daughter suffered from asthma which had not been helped with the damp conditions in the flat; the daughter had suffered from severe burning necessitating a skin-graft;
- (g) the applicant and her husband received very little income;
- (h) the rent of the flat, shop and garage had been increased from approximately £2,060 to £3,000 a quarter; the Council's Estates Department had been advised that this increase could not be afforded;
- (i) the applicant's husband was currently working part-time; he also had to take his daughter to and from school in Waltham Abbey each day at a cost of approximately £40 per week out of the family's weekly income of £150;
- (j) no financial information had been hidden from the Council;
- (l) it was difficult to show proof of the way in which the family had suffered but it should be apparent from their limited income;
- (k) the flat and shop had been in need of repair.

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

The applicant's husband gave the following answer to a question from the Assistant Housing Options Manager (Homelessness):

- (a) before selling their interest in the lease of the flat they had asked the Council what would happen to them; they had been advised that they could seek private accommodation but if they declared themselves homeless they would probably be accommodated at the Council's Homeless Persons' Hostel and in view of the priority which would be afforded to them they would be likely to obtain Council accommodation after approximately six months.

Questions from Members of the Panel to the Applicant

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

- (a) if the interest in the lease had not been sold, the business would have been closed down which would have been more difficult;
- (b) the debts had not yet been paid off; the lenders were pressing for payment;
- (c) living expenses were paid from the business bank account; business and personal items of expenditure had been mixed up which is why an accountant had been appointed to help organise matters;

- (d) some of the £4,000 received for the interest in the lease had been used to pay bills;
- (e) it had been the applicant's and her husband's decision to sell their interest in the lease;
- (f) the letters dated 1 May 2012 regarding the loans were written as confirmation of loans which had been made in the past and did not indicate the date on which the loans had been made; the loans had been made when the applicant and her husband had still been running the business;
- (g) before the increase in rent to £3,000 plus per quarter it had just about been affordable;
- (h) the flat had been vacated for financial reasons but also because the conditions were having a detrimental affect on the health of the applicant's and her husband's daughter; their daughter had not wanted to remain in the property because of the burns she had suffered in the flat in 2009;
- (i) the goodwill figures in the accountant's report were notional figures; an amount of £4,000 had been received for the sale of the interest in the property but no goodwill payment had been received for the business.

Summing Up

Councillor Mrs Grigg emphasised that English was not the first language of the applicant or her husband. She cited their difficulty in understanding the word "goodwill" as an example of the disadvantage they were under because English was not their first language. She submitted that the applicant and her husband had been under pressure financially and that had they not sold their interest in the lease they would have lost it due to rent arrears.

The Assistant Housing Options Manager (Homelessness) stated that he had nothing to add to his case.

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 husband, Councillor Mrs Grigg and the Assistant Housing Options Manager (Homelessness) then left the meeting.

In coming to its decision the Panel focused on whether the applicant could have remained at the property and whether the property had been affordable and took account of the submitted bank statements, invoice transactions, letters regarding debts owed by the applicant's husband and other financial statements.

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 her flat be upheld for the following reasons:

- (a) the applicant when applying as homeless in March 2012 had been eligible for assistance having been granted indefinite leave to remain in the UK, homeless because she had no accommodation available to her, and in priority need because she had a dependent child;
- (b) the applicant and her husband leased a flat together with a shop and a garage from the Council between 22 March 2006 and 21 March 2012;
- (c) in March 2012 the applicant and her husband voluntarily sold their interest in the lease of the flat, shop and garage to another person and as a result had to leave the property and give vacant possession to that person;
- (d) the applicant and her husband submitted that they had to sell their interest in the lease for the flat, shop and garage because their business was deteriorating and they were struggling to continue paying the rent;
- (e) the Council's Housing officers concluded that the applicant and her husband sold their interest in the property in circumstances when they were under no risk of losing it;
- (f) the Panel noted that the 26 HSBC bank account statement sheets (including three duplicate sheets) in the name of the applicant covering parts of the period July 2009 – March 2012 include regular rent payments and show the account continuously in credit except for short periods in June and December 2011, with the credit often being between £1500 and £4000;
- (g) the Panel also noted that the Halifax bank statement sheet in the name of the applicant's husband covering the period September 2006 – November 2006 including a rent payment of £2430 on 13 September 2006, shows the account in credit;
- (h) the Panel further noted that the Council's rent transaction schedules for the applicant and her husband for the period July 2006 – June 2012 show that each invoice was paid before the next one was due, except for two in 2006 shortly after commencement of the lease and one in 2011 paid a few days after the next payment was due; and that the Council's Finance Directorate at no time referred the matter to the Council's Solicitor to commence recovery action because of outstanding rent;
- (i) the applicant's husband suggested that it became more difficult to maintain the rent payments when the rent was increased from £2,637.50 per quarter to £3,067.50 per quarter in 2011 but the bank statements and rent transaction schedules do not support this assertion;
- (j) the Panel noted that neither the applicant nor her husband contacted the Council at any time to express difficulty with payment of the rent before selling their interest in the lease of the flat, shop and garage;
- (k) the Panel has given limited weight to the four letters from persons stating that the applicant's husband owes them money, regarding them as informal arrangements as all of the letters are written in identical terms except for the amounts loaned and do not specify when the amounts were received by the applicant's husband or when and on what terms repayment of the loans is

required; no evidence was submitted to show that the applicant's and her husband's interest in the lease of the flat, shop and garage had to be sold in March 2012 in order to repay the amounts by that time;

(l) in considering matters, the Panel took account of the modest income of the applicant and her husband, the fact that English is not the first language of the applicant or her husband, the gaps in the bank statement sheets submitted by the applicant and her husband, the incomplete affordability form completed by the applicant, and the misleading nature of the letter sent to the applicant and her husband by the Council's Finance Officer on 17 August 2011;

(m) balancing all of the matters summarised in (d) – (l) above, it is the view of the Panel that the lease of the flat, shop and garage was affordable, that the interest in the flat was sold when there was no risk of losing it, and that had it not been for the deliberate act of selling the interest in the lease of the flat, that property would have continued to be available and reasonable for the applicant, her husband and son to occupy;

(n) whilst representations were made about the illness and trauma suffered by the son of the applicant and her husband, this did not influence the decision of the Panel in relation to the matter before it, namely, whether the applicant was intentionally homeless;

(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 will continue to provide her and her family with interim accommodation for a period of three months (until 11.00am on Monday 21 January 2013) in order to allow her 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 find alternative accommodation.

27. APPLICATION NO. 5/2012

The applicant attended the meeting and requested deferment of consideration of her application. She advised that she had expected her solicitor to be in attendance and she did not feel confident about presenting her own case.

28. ADJOURNMENT

The meeting was adjourned to enable the Assistant Director Democratic Services to attempt to contact the applicant's solicitor by telephone in order to establish if she would be in attendance shortly.

The meeting resumed. The Assistant Director of Democratic Services advised that he had spoken to the applicant's solicitors on the telephone and had been advised that they had closed their file on the matter as the applicant had not returned documents to them. They had also advised the applicant that in their opinion she

would be better served by seeking advice face-to-face rather than through solicitors in another part of the country.

29. APPLICATION NO 5/2012 (CONTINUED)

The parties returned to the meeting. The applicant was advised that subject to her agreement to her review not being completed within the 56 day statutory period, consideration of the matter would be deferred to enable her to obtain legal advice/support. The applicant confirmed that she agreed to waiving the 56 day statutory period.

The applicant was advised that consideration of the matter would be deferred for a period of at least two weeks to enable her to obtain the necessary advice/support. She was informed that she would be notified of the new date and that the matter would be decided on that date whether or not she had obtained legal advice/support.

The Assistant Housing Options Manager (Homelessness) advised that he had no objection to deferment of the review.

RESOLVED:

That, taking account of the views of the applicant and the Assistant Housing Options Manager (Homelessness), consideration of the application for a review be deferred to enable the applicant to obtain legal advice/support.

CHAIRMAN