

EPPING FOREST DISTRICT COUNCIL COMMITTEE MINUTES

Committee: Housing Appeals and Review Panel **Date:** Thursday, 22 November 2012

Place: Council Chamber, Civic Offices, High Street, Epping **Time:** 2.30 - 4.00 pm

Members Present: Councillors A Mitchell MBE (Chairman), B Rolfe (Vice-Chairman) and Ms J Hart

Other Councillors:

Apologies: Councillors Mrs R Gadsby, P Spencer and J M Whitehouse

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

36. MINUTES

RESOLVED:

That the minutes of the meetings of the Panel held on 21 September, 18 October and 22 October 2012 be taken as read and signed by the Chairman as a correct record.

37. SUBSTITUTE MEMBERS

It was noted that there were no substitute members present at this meeting.

38. DECLARATIONS OF INTEREST

There were no declarations of interest made by Members of the Panel in pursuance of the Code of Member Conduct.

39. 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 Number
6	Application Number 5/2012	1

40. APPLICATION NO. 5/2012**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 received notice to leave her private rented accommodation due to rent arrears. The applicant attended the meeting to present her case accompanied by 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 explained the procedure to be adopted for the meeting 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 4 September 2012; and
 - (ii) a copy of a letter dated 31 August 2012 from the applicant's solicitors.
- (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) an email sent to the Council on 8 August 2012 by the applicant's former landlord including a rent statement covering the period 19 July 2009 to 19 July 2010;
 - (ii) a copy of a letter dated 6 July 2009 from the applicant to the Council's Housing Benefit Section;
 - (iii) a copy of a letter received by the Council's Housing Benefit Section on 26 October 2009 from the applicant's former landlord;
 - (iv) a schedule of Housing Benefit payments made between December 2004 and February 2010;
 - (v) a typed copy of notes of an interview of the applicant by a Housing Officer dated 13 August 2012;
 - (vi) a schedule of the applicant's address history completed by the applicant covering the period 2001 – 2012;
 - (vii) a copy of a letter dated 15 August 2012 from the Assistant Housing Options Manger (Homelessness) to the applicant.

Presentation of the Applicant's Case

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

- (a) when the applicant had first approached the Council as homeless on 30 October 2010 she had been advised that the Council could not assist her and that if she was homeless her child would be taken away from her; as a result she had spent approximately 15 months with various friends and relations; during one of her stays with her mother she had approached the Council again and had been offered only a loan for one month's deposit to help her find a property; after staying with her aunt on 23 October 2011 until 6 January 2012 the applicant had stayed at a hotel which had cost her £300 per week; after approaching the Council again on 20 January 2012, when she had explained that she had no money left for the hotel she had been placed in the Council's Homeless Persons' Hostel;
- (b) the information supplied to the Council by the applicant's former landlord was untrue; where there were two differing versions of events the benefit of doubt should be given to the applicant;
- (c) when the applicant had received Housing Benefit direct in August, September and October 2009 she had paid her former landlord's agent but the agent had not passed the money onto the landlord;
- (d) some of the applicant's rent arrears were caused by delays in the payment of Housing Benefit after the applicant had commenced work and therefore those rent arrears were not a deliberate act by the applicant which satisfied the definition of intentionally homeless;
- (e) the applicant's former landlord had not asked the applicant for the shortfall in rent payments until the matter went to Court;
- (f) the applicant had offered to make arrangements to pay off her rent arrears at a rate of £500 per week before the matter had gone to Court but the applicant's former landlord had refused to accept the offer; at that time the applicant's former landlord had also stated that he would not wait three months for Housing Benefit payments;
- (g) the applicant's former landlord had not maintained the property during the applicant's six years of occupation; there had been a carbon monoxide leak in the property and no heating and the property had been unreasonable for the applicant to occupy;
- (h) the applicant's last settled accommodation had not been her privately rented property but her friend's property at which she had intended to stay long-term and had remained there for eight months;
- (i) account should be taken of the applicant's and her son's health issues; the applicant suffered from anxiety and agoraphobia and had suffered from domestic violence; the applicant's son suffered from sickle-cell condition;
- (j) in the event of the officers' decision being upheld the applicant should continue to be accommodated by the Council for a reasonable period to enable her to secure alternative accommodation.

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

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

- (a) she had chosen to have Housing Benefit paid direct to her in 2009 because she had wanted proof of making rent payments and the landlord had not been maintaining the property; there had been a carbon monoxide leak, and a water leak in the bathroom;
- (b) she agreed that the rent arrears as at July 2009, just before the rent was paid direct to her, had been only £80.72 and stated the landlord had not asked for this shortfall;
- (c) she had approached the Council's Benefits Section when she had started work in 2010 and had been asked to provide three months wage slips to verify her income; she had explained to her former landlord's agent the reasons for the delay in receiving Housing Benefit but the landlord had stated that he was not prepared to wait for rent payments; she had tried to get a loan to pay off her rent arrears but had been unsuccessful and after begging her relations they had agreed to help her and she had offered to pay off the arrears at a rate of £500 per week; the landlord had refused to accept any further payments because he had wanted to regain possession of the property;
- (d) she had received receipts for the payments made to her landlord's agent but after moving out of the privately rented property these had been lost together with most of her belongings after they had been placed in store.

Questions from Members of the Panel to the Applicant

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

- (a) her landlord had told her that he wanted to regain possession of the property in February 2010;
- (b) on the first occasion her landlord had taken her Court her solicitor had not produced a rent statement; a further date had been arranged for June 2010; she had not been in receipt of Housing Benefit in July 2010; she had thought that she had not been entitled to Housing Benefit once her landlord had applied for possession of the property but she had not sought advice from the Council's Benefits Section about her landlord's entitlement;
- (c) the carbon monoxide leak had occurred towards the end of 2009;
- (d) she had not approached the Council about the condition of the privately rented property because as it had not been a Council property, she had thought that the Council had no control over it;
- (e) she had not been able to afford to pay for the storage of her belongings and receipts and as a result had lost them; when staying with relations and friends she had only been able to keep with her clothes for herself and her son; she had not appreciated at that time that she would need to retain the receipts;
- (f) she appreciated that the Panel would have to decide her application without having the benefit of any documentary evidence in support of her case;

- (g) the shortfall in rent payments had occurred because Housing Benefit had not covered the full rent and she had been unable to afford the shortfall;
- (h) she had not taken the property in the knowledge that the rent was unaffordable even with Housing Benefit as she had moved into the area and had been unaware of how much Housing Benefit she would receive;
- (i) she could not recall the name of the landlord's agent; the agent had an Asian sounding name which she could not pronounce;
- (k) the receipts which she had obtained had been in the form of a rent book;
- (l) her address history was as set out on the documents before the Panel;
- (m) she had not taken her belongings and documents with her when she had left the privately rented property; they had been placed in a garage and she had been unable to afford to retrieve them; as a result they had been lost;
- (n) her son had been educated at the junior school close to the privately rented property and was now attending a secondary school in Epping.

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's household consisted of herself and her son, aged 11;
- (b) the appellant had applied as homeless after she had left an hotel that she had been staying at temporarily, and no longer had friends or family that she could live with; the applicant had been eligible for assistance because she held a British passport, homeless because she had no accommodation available to her and in priority need because she had a dependant child;
- (c) the applicant had occupied a privately rented property between 23 August 2004 and 14 October 2010; the monthly rent charge at the end of the tenancy had been £750; the applicant had held the tenancy of the property in her sole name; rent arrears of £6,224.08 had accrued as at 5 August 2010;
- (d) the applicant's former landlord had stated that the he had applied for possession of the property as a result of the applicant's repeated failure to pay rent, even during periods when she had been in receipt of Housing Benefit; the landlord had also stated that the property would still have been available to the applicant if it had not been for the arrears of rent; he had further stated that the applicant had not expressed difficulty in managing the property during her tenancy;
- (e) the applicant's rent arrears had built up from August 2009; until August 2009 the arrears had been only £80.72; the arrears had increased after this time when the applicant had requested that Housing Benefit be paid to her direct rather than to the landlord; the Council's Benefits Section had received a letter from the applicant's landlord on 26 October 2009 requesting that Housing Benefit payments revert to him because the applicant had not been paying her rent; her arrears had continued in 2010 when the applicant had been working and had not paid her rent from her wages and had not claimed Housing Benefit;

(f) the attention of the Panel was drawn to the schedule of Housing Benefit payments which had been made; in particular the payments made on 20 August 2009, 17 September 2009 and 15 October 2009 which had been made direct to the applicant;

(g) the Council's Homelessness Assessment Officer had interviewed the applicant in order to give the applicant the opportunity to comment on the information the Council had received; the applicant had claimed that she had passed on the Housing Benefit payments she had received during the period 20 August 2009 to 15 October 2009 to her landlord's agent and that the agent had not forwarded the money onto the landlord; the applicant had stated that when she had started working in 2010 she had offered the landlord's agent an amount of money towards the rent but the agent had rejected the offer; the applicant had further claimed that she had problems claiming Housing Benefit as she had been waiting for wage slips from her employer which were required by the Council's Benefits Section;

(h) the applicant had lived with a variety of friends and family after leaving the privately rented property;

(i) the officers had decided that the applicant had made herself intentionally homeless; in making homelessness decisions, the Council must have regard to the Code of Guidance which was required to be used by local authorities to assist with the interpretation of the homeless legislation; 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 for the privately rented property had been a deliberate act; in consequence of this the applicant had been evicted and ceased to occupy the privately rented property; it was believed that the privately rented property would have been reasonable and available for the applicant to occupy;

(k) in 2009, the applicant had applied to receive the Housing Benefit payments direct and she had not passed them onto her landlord; prior to requesting that the Housing Benefit payments be made to her direct, the applicant had only owed £80.72 in rent arrears; in 2010 the applicant had started working and had not claimed Housing Benefit to help her with the housing costs and had not paid the rent from her wages; the applicant had been sent a Housing Benefit claim form but she had not applied for Housing Benefit;

(l) the privately rented property was considered to have been the applicant's last settled accommodation; since leaving that property she had stayed for short periods of time with many various friends and members of her family, the arrangements for which had been precarious and not settled.

(m) the applicant's solicitors had submitted that rent arrears had been caused due to a delay in the applicant receiving Housing Benefit; this had not been the case; the arrears had arisen because the applicant had not passed on to her landlord Housing Benefit payments which she had received direct and had subsequently not claimed Housing Benefit when she had started work; in respect of the latter a claim form had been sent to the applicant but had not been returned; if the applicant had explained to the Council's Benefits Section about her difficulty in submitting wage slips she

would have received advice about providing other acceptable information e.g. a contract of employment;

(n) the applicant's solicitors had also submitted that the privately rented property had been unreasonable for the applicant to occupy; the Council's Private Sector Housing Team had not received any complaints about the condition of the property; if the condition of the property had been as bad as submitted one would have expected the applicant to have complained to the Council;

(o) the applicant's solicitors had also submitted that officers had incorrectly identified the applicant's last settled accommodation; in their view it was not the privately rented accommodation but the applicant's friend's property where she had intended to stay long-term and had remained for eight months; however, the Panel should have regard to the schedule of the applicant's address history which had been completed by the applicant from which it could be seen that stays with friends and relatives had been for short periods of time and had been precarious arrangements;

(p) the reference the applicant had made to being advised by a Housing Officer that her child would be taken away from her was a matter of concern; whilst not being present during that conversation it was suggested that the officer might have said that due to the rent arrears the applicant risked the possibility of being homeless and as a result could be referred to the Children and Families Service for assistance;

(q) the applicant's former landlord's version of events was supported by documents and a decision of the Courts whereas the applicant had been unable to provide any documentary evidence.

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) he was unaware whether the Council's Benefits Section had sent a letter to the applicant when payments had been made direct to her advising her that she needed to pass on the Housing Benefit to her landlord.

(b) he did not think that the Council's Benefits Section undertook checks to ensure that Housing Benefit being paid direct to a tenant was being passed onto the landlord; he pointed out that once arrears reached a certain level a landlord could ask for payments to be made to them as had happened in this case;

(c) he sympathised about the applicant's son's medical condition;

(d) if the officers' decision was upheld the applicant should be given reasonable notice to vacate the Council's Homeless Persons' Hostel and, with the applicant's consent, a 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; Council Officers would also offer advice and assistance on privately rented accommodation, if requested to do so by the applicant.

Question from the Applicant on the Case of the Assistant Housing Options Manager (Homelessness)

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

(a) as far as he was aware all of the information received by the Council from the applicant's former landlord had been included within the documents 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) the privately rented property was considered to have been the applicant's last settled accommodation; since leaving that property the applicant had stayed for short periods with various friends or relatives and all of these arrangements had been precarious and not settled; the applicant's occupation at all of the properties had only been with the permission of the occupiers;

(b) it was not known what letters may have been sent to the applicant by her landlord in relation to rent arrears or other matters.

Summing Up

The applicant and the Assistant Housing Options Manager (Homelessness) stated that they had nothing to add to their cases.

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

In coming to its decision the Panel focussed on which property had been the applicant's last settled accommodation and having reached a decision on that aspect, the circumstances of the applicant becoming homeless from that settled accommodation.

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 she occupied from August 2004 and October 2010 be upheld for the following reasons:

(a) the applicant when applying as homeless on 23 January 2012 had been eligible for assistance being British, homeless because she had no

accommodation available to her and in priority need because she had a dependant child;

(b) the applicant had held an assured shorthold tenancy of a privately rented property in her sole name from 23 August 2004 until 14 October 2010;

(c) between 14 October 2010 after being evicted from her privately rented property and 23 January 2012 when the applicant applied as homeless, the applicant had stayed with her mother, her cousin, her aunt, a friend and at an hotel;

(d) it is considered that the applicant's privately rented property was her last settled accommodation for the following reasons:

- (i) the applicant had little security of tenure between 14 October 2010 and 23 January 2012 as the properties she had stayed at had been the homes of her relations and a friend and at an hotel and her stays had been temporary and of a precarious nature;
- (ii) the applicant's stays with a friend had been for three relatively short periods of time, the first immediately following the eviction from the privately rented property when the applicant's mother had refused to accommodate the applicant; the second over the Christmas period 2011 in respect of which the applicant stated there was not enough room to accommodate her and her son in the longer term; and the third for approximately three weeks in respect of which again the applicant stated there was not enough room to accommodate her and her son in the longer term and their continued occupation could have had a detrimental effect on the friend;
- (iii) the applicant's stays with her cousin had been for three periods of approximately eight weeks, 13 weeks and 10 weeks but as the cousin's accommodation had been a one bedroom flat he had been unable to provide the applicant with accommodation in the longer term especially as at times his girlfriend also had stayed at the flat;
- (iv) the applicant's stays with her mother had been for periods of approximately four weeks and 13 weeks during which times her mother and her mother's husband had stated that the applicant's stays were disrupting their lives and her mother's husband had further stated that he did not want the applicant to live with them;
- (v) the applicant's stay with her aunt had been for a period of approximately 11 weeks to look after her aunt who had suffered a breakdown and this stay had ceased when her aunt's daughter had returned to the property;
- (vi) the applicant had stayed at an hotel for approximately two weeks immediately before she applied to the Council as homeless;
- (vii) written representations made by solicitors on behalf of the applicant submitted that the applicant's last settled accommodation had been at her friend's property where she had intended to stay long term and had remained there for eight

months; it is not clear from the applicant's solicitor's letter which stay is being referred to but it would appear to be the one immediately following the applicant's eviction from her privately rented property; in relation to that stay (i) the applicant advised the Panel that her friend only accommodated her because the applicant's mother refused to do so; (ii) the applicant had no security of tenure; and (iii) the applicant stated that there was not enough room for her and her son at the property; (iv) accordingly, on balance the Panel do not accept the solicitors submissions regarding the applicant's last settled accommodation;

(viii) having regard to (i) to (vii) above the view of the Panel is that the applicant's occupation of properties between October 2010 and January 2012 although some 14/15 months had been precarious and none had not been her last settled accommodation;

(e) the applicant had owed £6,224.08 in unpaid rent when the landlord of her privately rented property obtained a warrant of eviction due to rent arrears;

(f) for a period of approximately five years from the beginning of the applicant's tenancy of her privately rented property in August 2004 until August 2009 the applicant's Housing Benefit had been paid directly to her landlord and her arrears had been only £80.72;

(g) on 6 July 2009 the applicant wrote to the Council with her bank details and stated that she wanted her Housing Benefit paid directly to her so that she could maintain a record of the rent paid and that she would be setting up a direct debit to pay her landlord; as a result Housing Benefit payments made on 20 August, 17 September and 15 October 2009 amounting to £1938.48 were paid direct to the applicant;

(h) on 26 October 2009, the Council's Housing Benefit Section received a letter from the applicant's landlord requesting that Housing Benefit payments be made direct to him again because the applicant was not paying her rent;

(i) between July and October 2009 the applicant claimed that she had handed her rent to the applicant's agent but he had not passed it to the landlord; however, the applicant was unable to provide the Panel with the name of the alleged agent and could not produce receipts for these payments as she said they had been lost during her various accommodation moves; the Panel noted that this claim did not appear to have been made at the Court when the applicant's landlord obtained possession of the property and at which time the applicant would have still held the receipts;

(j) Housing Benefit payments were again paid direct to the applicant's landlord between December 2009 and February 2010 and during this period there was a reduction in the applicant's rent arrears;

(k) in 2010 the applicant started working and did not claim Housing Benefit and did not pay rent to her landlord; the applicant was sent a Housing Benefit claim form but did not return it to the Council; the applicant claimed that the Council's Housing Benefit Section stated that they required three months' wage slips before they could consider an application; the applicant also stated that her landlord had refused to wait three months for his rent; the applicant further stated that that her relations had agreed to help her pay off

the rent arrears but her landlord had refused to accept any more payments as he wanted to regain possession of his property; in respect of these matters the applicant was unable to provide the Panel with any documentary evidence to support her claims;

(l) the Panel has taken account of the other written submissions made by the applicant's solicitors, namely;

(i) rent arrears were caused due to a delay in the applicant receiving Housing Benefit and this cannot be held to be a deliberate act on the part of the applicant; the Panel find that this is not supported by the facts presented to it – initially the arrears arose because the applicant received but did not pass on Housing Benefit payments to her landlord and subsequently the applicant did not claim Housing Benefit when she started working although she was sent a claim form but did not return it or seek assistance from the Housing Benefit Section in an attempt to overcome the delay which would arise before three months' wage slips could be provided;

(ii) the property was unreasonable for the applicant to occupy as there was a carbon monoxide leak and no heating; the Panel noted that the applicant made no reference to this matter when interviewed by Housing officers and at no time did she contact the Council's Private Sector Housing Team to complain about the condition of the property; no evidence was submitted to support this submission and the Panel concluded that whilst these problems may have existed for a comparatively short period of time they were not an issue for the majority of the applicant's period of occupation of approximately six years; and

(iii) if there are differing versions of events between the applicant and her landlord the benefit of doubt should be given to the applicant; the Panel noted that the landlord's version of events is supported by documentary evidence and a decision of a Court whereas the applicant failed to submit any documentary evidence; on balance therefore the Panel considers that it cannot give greater weight to the applicant's version of events;

(m) whilst representations were made about the applicant's and her son's medical conditions, these did not influence the decision of the Panel in relation to the matter before it, namely, whether the applicant was intentionally homeless;

(n) had it not been for the deliberate act of refusing to pay the rent of the privately rented property it is the Panel's view that the property would have continued to be available and reasonable for the applicant and her son to occupy bearing in mind that the rent was affordable with Housing Benefit payments;

(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 eight weeks (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.

CHAIRMAN