



Epping Forest District Council

HOUSING APPEALS AND REVIEW PANEL Thursday, 22nd November, 2012

You are invited to attend the next meeting of **Housing Appeals and Review Panel**, which will be held at:

**Council Chamber, Civic Offices, High Street, Epping
on Thursday, 22nd November, 2012
at 2.30 pm .**

**Glen Chipp
Chief Executive**

**Democratic Services
Officer**

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

Members:

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

1. APOLOGIES FOR ABSENCE

Councillors Mrs R Gadsby and Mrs J H Whitehouse.

2. MINUTES (Pages 3 - 48)

To agree the minutes of the meetings of the Panel held on 21 September, 18 October and 22 October 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):

<i>Agenda Item No</i>	<i>Subject</i>	<i>Exempt Information Paragraph Number</i>
6	Application No. 5/2012	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. 5/2012 (Pages 49 - 92)

To consider the attached restricted report.

EPPING FOREST DISTRICT COUNCIL COMMITTEE MINUTES

Committee: Housing Appeals and Review Panel **Date:** Friday, 21 September 2012

Place: Committee Room 1, Civic Offices, High Street, Epping **Time:** 2.30 - 6.30 pm

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

Other Councillors:

Apologies: Councillor Ms J Hart

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

17. SUBSTITUTE MEMBERS

It was noted that Councillor L Leonard was substituting for Councillor Ms J Hart.

18. DECLARATIONS OF INTEREST

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

19. 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 No	Subject	Exempt Information Paragraph Number
5	Application No 4/2012	1
6	Application No 3/2012	1

20. APPLICATION NO. 4/2012**Introduction**

The Panel considered a request for a review of a decision made by officers under delegated authority that the applicant was homeless intentionally as a result of being evicted from her last settled accommodation due to rent arrears. The applicant attended the meeting to present her case. Mr J Hunt, Assistant Housing Options Manager (Homelessness), attended the meeting to present his case supported by Mr D Barrett, Area Housing Manager (South). 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.

At the request of the Chairman, the Vice-Chairman introduced the members of the Panel and officers present to the applicant.

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 Reviews Panel dated 14 August 2012;
 - (ii) a copy of a letter dated 10 August 2012 from Essex County Council's Schools, Children and Families Directorate addressed to "To Whom It May Concern";
- (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) applicant's rent transaction history from 21 April 2005 until 29 June 2012;
 - (ii) copy of letter dated 10 June 2010 from a Housing Officer (Management) to the applicant;
 - (iii) copy of letter dated 5 August 2010 from a Housing Officer (Management) to the applicant;
 - (iv) copy of letter dated 3 September 2010 from a Housing Officer (Management) to the applicant;
 - (v) copy of a memorandum dated 24 September 2010 from the Directorate of Corporate Support Services to the Director of Housing;
 - (vi) a typed copy of notes of an interview of the applicant by a Housing Officer dated 4 July 2012;
 - (vii) a schedule showing the addresses at which the applicant had lived since 1993 (tabled).

Presentation of the Applicant's Case

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

- (a) although the applicant's tenancy agreement for the Epping Forest District Council property she had occupied between 2005 and 2010 had been in her sole name, her partner had lived with her at the property from October 2005; after an initial period when they had a good relationship, the applicant's partner had started to control the applicant mentally;
- (b) the applicant had received Child Tax Credit and Child Benefit into her bank account together with her partner's wages; one of the ways the applicant's partner had controlled the applicant had been by keeping her bank card and giving her a weekly allowance of £100 to pay for food shopping, and the gas and electricity supplies on the understanding that he would pay the rent and the TV licence fee; the applicant's partner had stated that he required more money for the bills he was paying although the applicant became aware that he actually needed this money to buy drugs;
- (c) by 2008 the applicant had become very depressed about her life because of the control exercised over her by her partner and the debts which had arisen as a result of her partner not paying bills;
- (d) the applicant admitted getting into arrears with the rent of her Council rented property but submitted it was not solely her fault;
- (e) in September 2009 the applicant had confronted her partner and told him to leave the property; the applicant's partner had left the property taking their elder son without the applicant's consent; the applicant's partner had subsequently tricked the applicant into signing over benefits for their son so that her partner could obtain housing from the Council; the applicant had taken this action because she had not wanted her elder son to continue living at her partner's mother's property because it had been untidy and dirty; she had also agreed to take this action on the understanding that her partner would return their elder son to her when he had obtained a property; however, after obtaining a property the applicant's partner had refused to return their elder son to the applicant;
- (f) the applicant had become more depressed as a result of losing her house, son and car;
- (g) the applicant was now attempting to get her life back on track; she was still suffering from depression and was receiving counselling;
- (h) the applicant's younger son who had remained with her had been badly affected by his brother leaving; the younger son was being supported by Social Care on a Child Protection Plan and a Senior Support Worker was working with him and the applicant by providing strategies to address the concerns faced by the family;
- (i) if the applicant was made homeless again she would lose her younger son because if she had no accommodation, Social Care would take her younger son into care;
- (j) the applicant's circumstances had not been entirely due to her actions; her partner had used her and lied to her;

- (k) the applicant now had overnight contact with her elder son over the weekends; it was not in the children's interests to be separated from their mother.

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) she had returned to her mother's property in November 2010 because she had nowhere else to go; her mother had not wanted her to return but after a Council officer had spoken to her mother and explained the possibility of the applicant's younger child being taken into care, her mother had agreed to accommodate them;
- (b) she did not know why her partner could not open-up his own bank account; she had given him her bank card and her pin number because she had thought they had an open relationship;
- (c) her partner had been given the rent card in order to pay the rent;
- (d) she now acknowledged that her partner had been controlling her for some time but had not accepted it until he had taken their elder son; she had allowed her partner to take her elder son as she had understood this would only be for the period until her partner obtained his own property by using their elder son as a dependant; the applicant now regretted the actions which she had taken which had resulted in her losing her elder son.

Adjournment of the Meeting

The Chairman became unwell and the meeting was adjourned to enable her to leave the meeting room. The Vice-Chairman took over as Chairman of the meeting and the proceedings resumed without the Chairman.

Questions from Members of the Panel to the Applicant

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

- (a) she had not suffered physical violence from her partner but he had controlled her mentally;
- (b) she had been confident that when allowing her elder son to go with her partner he would not come to any harm; she had thought that it was in her elder son's best interests at the time;
- (c) she had worked as a community care worker caring for the elderly but it had been necessary to give up her employment when she had separated from her partner in order to look after her child; she would like to return to this employment in the future;
- (d) she had been tricked by her partner into signing over her elder son's benefits; her partner had been on his own and had been working and without a dependant child he would have been unlikely to have obtained his own Council property;

- (e) she currently had overnight contact with her elder son over the weekends; she also saw her elder son briefly at times when she dropped off her younger son;
- (f) when her elder son stayed with her at her mother's property he slept with her and her younger son had his own bed;
- (g) it had been her intention when returning to her mother in November 2010 that this would be a temporary arrangement; she had argued with her mother in February 2012 and had been told to leave the property;
- (h) since being with her mother she had been looking for her own property via the internet, papers and agencies;
- (i) the drugs which her partner had bought had been cannabis; she had also taken cannabis but had given it up for the sake of her children when her partner had left her;
- (k) when her partner had taken her elder son he had been drunk but she had not called the Police because she had not wanted them to chase him as this could have resulted in an accident; she had called her partner's mother when he had arrived there;
- (l) after her partner had left she had regained control of her bank card;
- (m) she was of the view that when her partner had taken her elder son he was still using cannabis but she had no proof of this;
- (n) it had been unusual for her partner to get drunk.

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 a British passport, homeless because she had been evicted from her parental home and in priority need because she had a dependant child;
- (b) the homelessness legislation had required the Council to be satisfied that the applicant had not made herself intentionally homeless;
- (c) the applicant had lived with her mother between 18 November 2010 and 20 February 2012; the applicant had moved to stay with her mother after she had been evicted from her Epping Forest District Council rented property;
- (d) the applicant's Council rented property had been a two-bedroom property held in her sole name between April 2005 and November 2010; the applicant had owed £4,015.39 in unpaid rent when the Council had applied for possession of the property; at the beginning of the tenancy, the applicant had claimed Income Support and she had received full Housing Benefit towards her rent; rent arrears had started to accumulate from February 2007; the County Court had suspended a warrant of eviction in June 2010 on the basis that the applicant paid the current rent plus £3.30 per week; the applicant had

broken this Order and the Court had granted a warrant to evict her from the property;

- (e) the Council's Homelessness Assessment Officer had interviewed the applicant to give her the opportunity to comment on the information which officers had obtained; the applicant had claimed that the arrears were due to her partner moving in and, because he had been working, the Housing Benefit had been stopped; the applicant had explained that she had married her partner and that he had not given her enough money to pay the rent; the applicant had disclosed that she and her husband had used some of their money to buy cannabis and that this had left her unable to pay the rent; the applicant had separated from her husband and after he had left she had returned to work but had continued to claim benefits which had led to an overpayment in Housing Benefit; the applicant's weekly Housing Benefit had then been reduced as a consequence of this overpayment;
- (f) Council 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;
- (g) it was considered that the applicant's last settled accommodation had been the property she had rented from the Council between 2005 and 2010; after being evicted from that property on 18 November 2010 the applicant had moved in with her mother and had lived with her mother until February 2012 when she had become homeless and had been accommodated at the Council's Homeless Hostel; although the applicant had resided at her mother's property for some 15 months this was considered to have been a precarious arrangement as her mother had already made the applicant homeless from that property once before in March 2004 which had resulted in the applicant being housed by the Council; the applicant had little security of tenure at her mother's property as the property had been in her mother's name; the applicant had disclosed that her relationship with her mother had been difficult and it was clear that her stay at that property was transient;
- (h) the applicant had been given a number of opportunities to make small, regular contributions towards her rent arrears which would have enabled her to continue living at the property she had rented from the District Council; the last arrangement had been a suspended court order of current rent (the majority of which had been met by Housing Benefit, other than a small deduction caused by the Housing Benefit overpayment) plus £3.30 per week making a total of £13.20 per week; the applicant had breached the suspended order and had been evicted;
- (i) the arrears had originally been due to a period when the applicant had lived with her partner and she had not paid the rent when her household income had enabled her to do so; the applicant had disclosed that she and her partner had used the money to buy drugs instead of paying the rent; the applicant had been the sole tenant of the property she had rented from the Council and contractually had been liable to pay the rent even though her partner had been working and receiving an income on behalf of the household;

- (k) the applicant's wilful and persistent refusal to pay her rent had been a deliberate omission; as a consequence of this the applicant had been evicted from her Council rented property; that property was considered reasonable for the applicant to have occupied because it had been a two bedroom social housing property with an affordable rent; that property would have continued to be available for the applicant's occupation if she had paid the rent;
- (l) if the Panel upheld the officers' decision the applicant should be given reasonable notice to vacate the Council's Homeless Hostel and, with the applicant's consent, referral should be made to Schools, Children and Families Directorate of Essex County Council on account of the applicant's younger child being at risk of harm through homelessness.

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

The applicant stated that she had no questions to ask.

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 sum of £81.42 shown on the schedule of the applicant's rent transaction history related to the full rent of the property and had been due at times when the applicant had not been entitled to Housing Benefit;
- (b) the applicant had separated from her husband in 2009;
- (c) the applicant's rent transaction history included payments which had been made by the applicant since her partner had left the property;
- (d) the applicant still owed the Council over £4,000 and was currently making payments of £10 a month (the applicant stated that she was also paying off Council Tax arrears);
- (e) when the applicant's partner had sought a Council property stating that he had a dependant child the officers had not known that he had been in collusion with the applicant in order to secure a property.

Further Questions from Members of the Panel on the Case of the Applicant

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

- (a) she had known that she should not have been claiming Housing Benefit when working but had aimed to obtain as much income as possible for the benefit of her family; she had only ever intended this to be for a short period and on considering her circumstances Council Officers had decided not to prosecute her; and
- (b) she was currently paying £10.00 per month towards her rent arrears, £5.00 towards her Council Tax arrears, rent at the Homeless Hostel and an amount towards a Court fine and all of those sums were being met from the benefits she was receiving.

Summing-Up

The applicant stated that she needed help in order to get her life back on track. She accepted that she had made mistakes in the past and was now attempting to rectify those mistakes.

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

Deliberations

The Vice-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, the Assistant Housing Options Manager (Homelessness) and the Area Housing Manager (South) then left the meeting.

In coming to its decision, the Panel focussed on whether (a) the property the applicant rented from the Council or (b) her mother's home had been her last settled accommodation and then 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 her Council rented property be upheld for the following reasons:

(a) the applicant when applying as homeless in February 2012 had been eligible for assistance being British, homeless because she had been evicted from her parental home and in priority need because she had a dependant child;

(b) the applicant had held the secure tenancy of a Council property in her sole name from April 2005 until November 2010;

(c) between November 2010 and February 2012 the applicant had stayed with her mother after being evicted from her Council property;

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

(i) the applicant had little security of tenure between November 2010 and February 2012 as the property had been in her mother's home;

(ii) the applicant's relationship with her mother had been difficult; the applicant had previously lived at the parental home between May 1998 and March 2004 and had been told to leave the property by her mother resulting in the applicant being homeless in 2004;

- (iii) the applicant advised the Panel that in November 2010 her mother had been reluctant to allow the applicant to move back to the parental home and had only done so in the interests of the applicant's younger child and in view of the applicant's desperate situation; the applicant also advised the Panel that she had regarded the move back to the parental home as temporary;
 - (iv) the applicant advised the Panel that she had argued with her mother in February 2012 and had been told to leave the parental home;
 - (v) having regard to (i) to (iv) above the applicant's occupation of the parental home although some 15 months between November 2010 and February 2012 had been precarious and had not been her last settled accommodation;
- (e) the applicant had owed £4015.39 in unpaid rent when the Council had applied for possession of the property rented to the applicant;
- (f) at the beginning of the tenancy of the Council property the applicant had claimed Income Support and had received full Housing Benefit towards her rent;
- (g) arrears had started to accumulate from February 2007 when the applicant's partner had moved in with her and benefits had been stopped because he had been working; the applicant had married her partner in July 2007; in the opinion of the Panel the household income at those times had been sufficient to pay the rent; the applicant admitted that she and her partner/husband had used money to buy drugs rather than put it towards the rent;
- (h) as sole tenant of the property it had remained the applicant's responsibility to pay the rent even though her partner/husband had been working and receiving an income on behalf of the household;
- (i) the applicant had separated from her husband in 2009 when the arrears had been over £3000; the applicant had received benefits again but had commenced employment and had not informed the Council, as a result there had been an overpayment that she had been required to pay back and her arrears had increased;
- (j) on 10 June 2010 the Edmonton County Court had suspended a warrant of eviction due to rent arrears on terms that the applicant would pay rent plus £3.30 per week (ie £13.20 per week); the applicant broke this Order and the court granted a warrant to evict her;
- (k) in coming to its conclusions the Panel took account of the fact that the applicant stated she had been controlled mentally by her partner/husband; that she had given him details of her bank account including her pin number and bank card into which benefits had been paid and that he had told her that he would pay the rent but had not done so;
- (l) account has also been taken of the fact that the applicant allowed her husband when they separated to take with him their elder son so that he could obtain a property on the understanding that the son would be returned to the applicant when her husband had obtained a property; however, after obtaining a property her husband had refused to return the elder son to the

applicant and she had become depressed and was currently receiving counselling;

(m) had it not been for the deliberate act of refusing to pay the rent of the Council property including the opportunity to make small, regular contributions towards her arrears it is the Panel's view that the property would have continued to be available and reasonable for the applicant and her family to occupy bearing in mind that it had been a two bedroom property with an affordable rent;

(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 3 December 2012) 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.

21. APPLICATION NO. 3/2012

Introduction

The Chairman having recovered returned to the meeting for the consideration of this review but did not feel able to chair the meeting. The Vice-Chairman remained as Chairman of the meeting for this review.

The Panel considered a request for a review of a decision made by officers under delegated authority that the applicant was homeless intentionally as a result of her receiving notice requiring her to leave a privately rented property due to her failure to keep the property and its items in a good and clean condition and not to cause any damage to the property/items. The applicant attended the meeting to present her case accompanied by a friend who was a solicitor and Councillor D Stallan, one of her ward councillors.

Councillor Stallan thanked the Panel for deferring consideration of this review at its meeting on 6 September 2012 when he had been unable to attend as a result of being unavoidably delayed at work. 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 Vice-Chairman introduced the members of the Panel and officers present to the applicant. The applicant requested that the order of presentation at the meeting be changed with the Housing Officer presenting his case first followed by the presentation of her case. 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 application to the Housing Appeals and Review Panel dated 26 July 2012;
 - (ii) copy of letter dated 13 July 2012 from the Epping Forest District Citizen's Advice Bureau to the Director of Housing;
 - (iii) letter dated 2 July 2012 from the University College London Hospitals to the applicant's general practitioner;
 - (iv) letter dated 17 July 2012 from solicitors acting on behalf of the applicant to a Housing Officer;
 - (v) letter dated 4 September 2012 from University College London Hospitals to the applicant; and
 - (vi) 12 photographs taken by the applicant of the privately rented property which she had occupied;
- (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 the applicant's tenancy agreement for her privately rented property;
 - (ii) copy of a notice dated 5 January 2012 requiring the applicant to leave the privately rented property;
 - (iii) letter dated 26 May 2012 from the applicant's former landlord addressed to "To Whom It May Concern";
 - (iv) a typed copy of notes of an interview of the applicant by a Housing Officer dated 7 June 2012;
 - (v) copy of letter dated 26 June 2012 from the Assistant Housing Options Manager (Homelessness) to the applicant;
 - (vi) copy of Homeless Case Notes relating to the applicant summarising telephone conversations between the Assistant Housing Options Manager (Homelessness), the Council's Private Housing Manager and the applicant's former landlord;
 - (vii) 35 photographs showing the interior and garden area of the privately rented property sent to the Council by the applicant's former landlord.

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 a British passport, homeless because she had received notice to vacate a privately rented property and in priority need because she had a dependant child;
- (b) the Homelessness legislation had required the Council to be satisfied that the applicant had not made herself intentionally homeless;
- (c) the applicant had occupied a privately rented property between 11 September 2007 and 5 March 2012; that property had been a four bedroom privately rented property held in the applicant's sole name; the applicant had been served with notice on 5 January 2012 which had required her to leave the property on 5 March 2012;
- (d) in response to a request for information from officers, the applicant's former landlord had written to the Council to explain that he had served the applicant with notice because she had damaged the property and had been keeping it in an unsatisfactory condition; the landlord had submitted photographs showing the condition of the property;
- (e) the Council's Homelessness Assessment Officer had interviewed the applicant to give her the opportunity to comment on the information the Council had received from her former landlord; the applicant had claimed that she had offered to get a skip to dispose of rubbish, that she had not had the time or money to get a van to remove all of her belongings, that some of the items such as beds had been the landlord's, the property had suffered from dampness and mould and that a damaged wall had been painted by the time she had left the property;
- (f) Council 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 occupation, 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;
- (g) the Private Sector Housing Team of the Council had been asked if the applicant had informed them of any problems with the condition of the privately rented property; an Environmental Health Officer in the Private Sector Housing Team had confirmed that no complaint had been received from the applicant regarding the privately rented property;
- (h) the applicant's former landlord had been asked if the applicant had complained about mould or damp, whether she had reported repairs regularly and if he had informed her that he had given her notice because he wanted to move back into the property; the landlord had advised that the applicant had said there was damp in one room at the start of the tenancy and he had painted that room; he had also advised that the applicant had not reported repairs regularly and that he had not told her that he had given her notice because he was moving back into the property; he had further stated that neither he nor his family had moved back into the property and that the property had been rented out again to another tenant;
- (i) the applicant's failure to keep the privately rented property in a reasonable condition had been a deliberate omission, in consequence of which she had received a notice requiring possession which had led to her ceasing to

occupy the property; the property would have been available for her to occupy had she had complied with the terms of her tenancy and kept the property clean and tidy; the property would have been reasonable for her to occupy as it had been a large family sized property and suitable for her needs;

- (k) the applicant had been contractually obliged to keep the property and its items in a good and clean condition and not to cause any damage; the former landlord had made it clear that notice was served because the applicant had broken the terms of her tenancy by keeping the property in an unsatisfactory condition; the photographs supplied by the applicant's former landlord clearly demonstrated the poor condition the property had been kept in, including the cooker encrusted with food and piles of rubbish in the house and garden; the applicant acknowledged in the interview that she had taken up carpets, that a wall had been damaged and rubbish had been piled in the garden; the applicant claimed that the property had been in a poor condition due to disrepair associated with damp and mould and that these problems were the landlord's responsibility, not hers;
- (l) the Panel was invited to uphold the officers' decision; in that event the applicant should be given reasonable notice to vacate the Council's Homeless Hostel and, with the applicant's consent, a referral should be made to the Schools, Children and Family Services Directorate of Essex County Council on account of her having a dependant child at risk of homelessness;
- (m) whilst it was acknowledged that the applicant had vacated the privately rented property as a result of a Section 21 Notice, which meant that the Court had to grant a Possession Order without the need for her former landlord to allege any wrongdoing by the applicant, it was open to the Council to look at the reason why the landlord had sought possession; this had been held in the case of *Bratton v Croydon LBC* (2002) EWCA CW1494;
- (n) the applicant had stated that the condition of the property had been due to mould and damp problems; this did not explain the damage and the unclean conditions shown in the photographs supplied by the applicant's former landlord;
- (o) the lack of an inventory for the property made it more difficult to decide who was responsible for repairs; however, it was submitted that no reasonable person would have taken on the property if it had been in the condition shown in the photographs supplied by the applicant's former landlord; it was reasonable to conclude therefore that the damage to the property and unclean conditions had been caused during the applicant's occupation;
- (p) it was also recognised that the applicant's deposit had not been placed in a protected scheme; the applicant had not sought the return of the deposit at the end of her tenancy thus accepting responsibility for some of the damage caused to the property; it was not known why the landlord had not placed the deposit in a protected scheme; it was a fact that some landlords claimed not to be aware of the relevant legislation; on the balance of probabilities it was reasonable to conclude that the applicant had been responsible for damage and unclean conditions in the property and had thereby breached the terms of her tenancy and as a result had become homeless intentionally.

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

The Assistant Housing Options Manager (Homelessness) gave the following answers to questions from the applicant and her supporters.

- (a) neither the photographs submitted by the applicant's former landlord nor those submitted by the applicant had been dated; the applicant's landlord had been asked for a date when he had taken his photographs but he had been unable to do so;
- (b) no check had been made on the status of the new occupants of the privately rented property following the vacation of the property by the applicant; her former landlord's statements that neither he nor his family had moved into the property and that it had been rented out to another tenant had been accepted;
- (c) the applicant's former landlord had not stated why he had not placed the applicant's deposit in a protected scheme, and he had not been asked to do so; it was a fact that some landlords, particularly those granting tenancies in 2007 (the year when the scheme commenced), had not been aware of the new requirements at that time;
- (d) the applicant had been referred to her former landlord by Council officers through the Homelessness Prevention Service; it was possible that no check would have been made on whether the landlord placed deposits in a protected scheme; the role of Council officers was to match prospective tenants with private landlords; landlords were not recommended by the Council and the prospective tenants were expected to make their own enquiries and decisions; officers did try to take steps to remind private landlords of their obligations; prospective tenants were not advised of the role of the Council's Private Sector Housing Team as a matter of routine;
- (e) the requirements to place a deposit in a protected scheme had commenced in April 2007 and the applicant's tenancy of her privately rented property had commenced in September 2007;

Presentation of the Applicant's Case

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

- (a) the applicant's eviction was not a result of a deliberate act or omission on her part, given that the property was vacated as a result of a Section 21 Notice;
- (b) the applicant's former landlord had stated that he had wanted to move back into the property with his family and had therefore served the Section 21 Notice;
- (c) the deterioration of the property was a result of the applicant's former landlord's failure to address the problems of dampness and mould despite the fact the applicant had on numerous occasions asked him to rectify these problems; the property had not had any ventilation system which had been the root cause of the dampness and mould; despite repeated requests from the applicant, her former landlord had taken no steps to install ventilation systems at the property but had simply asked the applicant to paint the walls herself so as to cover up dampness; before the applicant had vacated the property she had painted the walls and carried out some minor repairs; the

issue of damage to the internal walls was totally irrelevant because it was not the reason for the loss of the accommodation;

- (d) the applicant suffered from cancer and from depression;
- (e) account should be taken of the interests of the applicant's 13 year old daughter;
- (f) the applicant had given her former landlord a deposit of £700 when she had moved into the property which he had not secured in a deposit protection scheme;
- (g) the applicant had lived in the property from September 2007 for nearly five years and had only seen her landlord once a year when he had renewed the tenancy, no electricity or gas safety checks had been carried out by the landlord; when the applicant had moved into the property the furniture present had been old and damaged; the applicant had placed some of it in the garden shed and replaced it with her own;
- (h) when the applicant had wished to undertake any work to the property, she had always contacted her landlord despite the fact that he had been difficult to get hold of as he had often been abroad;
- (i) after giving the applicant notice, her former landlord had harassed and intimidated her by turning up at the property with members of his family without having made an appointment;
- (j) three weeks before the applicant had been due to leave the property her landlord had installed vent covers in the property but these had not been fitted correctly;
- (k) the applicant had been unable to use the two front bedrooms due to dampness; as a result the applicant and her daughter had slept downstairs; within three weeks of the applicant moving out of the property it had been let again which would not have been possible had it been in such a condition as the landlord had stated;
- (l) the property had really been a three bedroom property but the landlord had made it into a four bedroom property;
- (m) the applicant had left a pile of rubbish in the garden when she had left but had offered to pay for a skip for its removal; the landlord had advised her that he would arrange for the rubbish to be removed;
- (n) the applicant had no family members who could help her and no guarantor in order to be able to secure another privately rented property;
- (o) the Council had referred the applicant to a landlord who had not produced an inventory for the property and had not placed the applicant's deposit in a protected scheme;
- (p) the applicant's three sons also lived with her and had been bidding for their own properties without success for over four years;
- (q) reliance should not be placed on the applicant's former landlord's photographs as they were not dated; some of the items shown in the

photographs were not recognised by the applicant and the photograph of a mattress on a bed had not been taken during the applicant's occupation of the property; the room shown without a carpet had not been in that condition when the applicant had left the property; the applicant had cleaned the whole of the property before vacating it; whilst the applicant had left some rubbish in the garden area it had not been as much as that shown in the photographs; a damaged wall had been repaired by the applicant before she had left the property; the door shown with a hole in it had been replaced by the applicant before she had left the property; the hole in the bath panel had been caused by the applicant and was one reason why the applicant had not sought to reclaim her deposit;

- (u) the applicant's photographs had been taken on her mobile phone and had not been reproduced clearly for the Panel (the original photographs were produced and circulated at the meeting); there was no photographic evidence to compare the condition of the property when the applicant had moved in with the condition shown in the photographs; the applicant had not used the loft of the property and some of the items shown in the photographs may have been left by a previous tenant;
- (v) if the applicant's former landlord had placed the applicant's deposit in a protected scheme there would have been no need for this review; in accordance with such a scheme decisions would have been taken elsewhere about the responsibility for repairs and the use or return of the deposit;
- (w) the photographs produced by the applicant's landlord were a snapshot and did not show how the applicant had kept the property over the four and a half years of her occupation; the pile of rubbish simply indicated a person moving out of a property; photographs were not conclusive of what had led to the service of a Section 21 Notice;
- (x) the Panel would need to determine who to believe, the applicant or her former landlord; the applicant could have denied everything but had admitted to leaving rubbish at the property and to certain damage which she had repaired before leaving the property; the landlord had not provided an inventory and had not placed the applicant's deposit in a protected scheme; accordingly, greater weight should be given to the evidence of the applicant;
- (y) the applicant denied that her former landlord had ever expressed concern about the condition in which she had kept the property prior to him serving the Section 21 Notice;
- (z) the Panel should consider the motive behind the service of the Section 21 Notice; in October 2010 the applicant's Housing Benefit had been reduced in recognition of her youngest son reaching the age of 18; it was submitted that this had been one of the reasons for her former landlord serving a Section 21 Notice as he did not want to receive less rent.

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

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

- (a) the applicant's sons living with her were aged 25, 23 and 19; the applicant's daughter living with her was aged 13;

- (b) it was not known whether the amount of the reduction in Housing Benefit as a result of the applicant's youngest son reaching the age of 18 would have been significant;
- (c) some of the photographs before the Panel had been taken before the applicant had moved out of the property and others after she had left the property; she had been present when her landlord had taken some photographs before she had left the property but she could not say when the photographs had been taken;
- (d) she had not contacted the Council's Private Sector Housing Team about the condition of the property as she had thought any representations in relation to a privately rented property should be made to the landlord;
- (e) she had not sought to reclaim any of her deposit as she had simply wished to sever all connections with her former landlord.

Questions from Members of the Panel to the Applicant

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

- (a) the applicant's three sons were all looking for work and regularly submitted their CV's in support of employment but had not yet found any employment;
- (b) the three sons could have contributed to the difference between Housing Benefit and the rent had the applicant remained at the property;
- (c) the applicant's sons helped to pay for gas and electricity at a rate of approximately £25 per fortnight;
- (d) the applicant did not recognise the statement in the interview notes that the landlord should have replaced beds once a year or at least once every four years;
- (e) the applicant had taken up flooring in the kitchen and bathroom after there had been leaks to the toilet and washing machine; her landlord had replaced the washing machine;
- (f) the applicant's sons spent their time visiting the library, looking for work and attending Job Centre courses; one of her sons helped her with work in the house when necessary;
- (g) the applicant's former landlord had caused damage to the property and had photographed the damage in order to enhance his case;
- (h) the applicant's photographs had been taken on her mobile phone and had been developed by a friend; it was not known where the photographs had been developed;
- (i) the applicant had not made any checks on the status of the occupants of the property after she had vacated it;

Summing-Up

The Assistant Housing Options Manager (Homelessness) acknowledged that this was not a straight forward case. He advised that the applicant's former landlord had not been proactive in providing statements and photographs to the Council but had done so in response to requests from Council officers. Officers had concluded on the balance of probabilities that the applicant had caused damage to the property and had not kept it in a clean condition.

The applicant and her supporters advised that they had nothing to add to their case.

The Vice-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 friend, Councillor Stallan and the Assistant Housing Options Manager (Homelessness) then left the meeting.

In coming to its decision, the Panel focussed on the conflicting evidence and presentations made about the condition and damage to the property and items during the applicant's occupation, and whether the actions and/or inactions of the applicant had led to the loss of her privately rented 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 her privately rented property be upheld for the following reasons:

(a) the applicant occupied a privately rented property between 11 September 2007 and 5 March 2012; the applicant held the tenancy in her sole name;

(b) the applicant was served with a notice on 5 January 2012 under section 21 of the Housing Act 1996 requiring her to leave the privately rented property on 5 March 2012;

(c) the Council was advised by the applicant's former landlord that he had served the applicant with notice to leave the property because she had damaged the walls and furniture in the property and had been keeping it in an unsatisfactory condition; he stated that on many occasions he had asked the applicant to keep the property clean and tidy; in support of his assertions he provided the Council with photographs of the interior of the property and the garden;

(d) representations made by and on behalf of the applicant stated that it was her former landlord's failure to make good disrepairs at the property which had contributed to the poor state of the property; those representations submitted that the property was damp and plaster had come off the ceilings and walls due to mould; the applicant stated that she had drawn the attention of her former landlord to disrepairs at the property; the applicant accepted that she had left rubbish at the property because she had been rushed into leaving by the landlord and had been unable to get a van in time in which to

remove items and as a result had left behind items which she had intended to keep; the applicant stated that she had cleaned the property before she left it and that the photographs sent to the Council by her former landlord had been taken before that cleaning; the applicant admitted that she had removed carpets from the property due to wear and tear and lino which had suffered from the toilet and washing machine leaking; the applicant submitted photographs of the interior of the property in support of her assertions;

(e) the Panel weighed the conflicting evidence and representations about the condition of and damage to the applicant's privately rented property and whether the applicant or her former landlord was responsible for undertaking works to remedy defects; taking account of the evidence and representations and the responsibilities of both parties under the terms and conditions of the tenancy agreement the Panel has concluded for the following reasons that on balance the applicant damaged the property and failed to keep the interior of the property and the items within it in a good and clean state and condition:

(i) in the opinion of the Panel a reasonable person would not have entered into a tenancy agreement had the property been in the condition shown in the submitted photographs at the commencement of the applicant's tenancy; it considers therefore that the condition of the property and the items within it deteriorated during the period of the applicant's occupation;

(ii) the applicant was aware that failing to keep the property in a good and clean state and condition and/or damaging the property or items in it could lead to her landlord receiving possession of the property;

(iii) whilst both the photographs supplied by the applicant and her former landlord were undated, the applicant stated that her former landlord's photographs of the kitchen had been taken before she left the property as the kitchen had been clean when she had left the property; the applicant also stated that she had odd days when she did not clean; in the view of the Panel the condition of the gas hob and the oven as shown in the applicant's former landlord's photographs could not have materialised in the short term and reflected neglect by the applicant over a length of time during her occupation of the property;

(iv) similarly the applicant stated that the area under the sink had been clean when she had left the property; in the view of the Panel the photograph of the applicant's former landlord showing the condition of that area shows neglect by the applicant over a length of time;

(v) the applicant admitted to causing damage to a wall, an interior door and a bath panel;

(vi) the Panel is of the view that the applicant, in not seeking the return of any of her deposit of £700, accepted that she had been responsible for damage/unclean conditions in addition to that which she admitted and had repaired before leaving the property; the Panel noted that solicitors making submissions on behalf of the applicant had stated that their client had instructed them that she had offered to make good damage to the property and that her deposit had been kept for this purpose;

(vii) the Panel is not convinced by the suggestion made by the applicant that after she left the property, the landlord had caused damage to the property and items and had placed damaged items in the property in order to take photographs to support his assertion that the applicant had been responsible for the damage/unclean conditions;

(viii) the applicant stated that her former landlord had served a notice requiring her to leave because he wanted to live at the property himself or move in his relations; the applicant's former landlord denied this was the case and stated that neither he nor his family had moved into the property and that it had subsequently been let to another tenant; the applicant provided no evidence to support her view and the Panel has given greater weight to the landlord's statement on this issue;

(ix) the landlord received regular monthly rental payments of £950 from the applicant and the Panel is of the opinion that he would not have given up the receipt of this substantial sum unless there was a good reason to end the tenancy; it was suggested on behalf of the applicant that a reduction in her Housing Benefit due to a non-dependant reduction in October 2010 had been a reason for the landlord seeking possession as he would have received less rent; in the view of the Panel this submission is inaccurate since the landlord would still have been entitled to the same rent with the applicant meeting the difference between the amount of Housing Benefit and the rent and no representations were made by or on behalf of the applicant that she could not afford to meet the difference which is unlikely to have been significant;

(x) the Panel noted that throughout the applicant's tenancy she did not report any problems regarding the condition of the property to the Council's Private Sector Housing Team; the applicant's former landlord stated that the applicant did not generally report repairs to him but had drawn his attention to damp in one room at the start of the tenancy following which he had painted that room; whilst the applicant stated that she drew her former landlord's attention to disrepairs, in the view of the Panel if damage caused as a result of damp and mould had been as bad as suggested by the applicant resulting in certain rooms being unused she would have been expected to make strong representations but no evidence was submitted of such representations;

(xi) account has been taken of the representations made on behalf of the applicant that the tenancy of the privately rented property was an Assured Shorthold Tenancy under the Housing Act 1988 and that she had vacated the property as result of a section 21 notice which meant that the Court had to grant a Possession Order without the need for the landlord to allege any wrongdoing by the applicant; and that accordingly, the applicant had not deliberately done or failed to do anything in consequence of which she had ceased to occupy the property; however, the Panel's attention was drawn to the case of *Bratton v Croydon LBC* (2002) EWCA CW 1494 which held that it is open to a Council to look at the reason why a landlord sought possession, and that where the assured shorthold tenant's deliberate failure to do something was the reason why the landlord served a

section 21 notice and obtained a possession order, a finding of intentionally homeless could be upheld;

(xii) the Panel can see no reason why the applicant's former landlord should not tell the truth; his comments were made in response to an approach made to him in a standard letter sent by Council officers after the applicant had vacated the property; his comments were not proactive and were made at a time when he could not receive any benefit from making such comments;

(xiii) in coming to its conclusions the Panel took account of the facts that there was no inventory of items in the property in accordance with the terms of the tenancy agreement and the landlord did not place the applicant's deposit in a protected scheme;

(f) whilst representations were made and evidence submitted about the applicant's medical condition, this did not influence the decision of the Panel in relation to the matter before it, namely, whether the applicant was intentionally homeless;

(g) whilst the Panel sympathises with the representations made about the effect of an intentionally homeless decision on the applicant's thirteen year old daughter, it does not consider this to be a determining factor since the decision it has to make is dictated by Homelessness legislation and the Code of Guidance on Homelessness; the status of the applicant's daughter was relevant and had been taken into account in the determination previously made by officers that the applicant was in priority need because she had a dependant child;

(h) had it not been for the deliberate act of failing to keep the interior of the privately rented property and items within it in a good and clean state and condition as required under the terms and conditions of her Tenancy Agreement, it is the Panel's view that the property would have continued to be available and reasonable for the applicant and her family to occupy, bearing in mind that it had been a four bedroom property; and

(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.

CHAIRMAN

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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

EPPING FOREST DISTRICT COUNCIL COMMITTEE MINUTES

Committee: Housing Appeals and Review Panel **Date:** Monday, 22 October 2012

Place: Committee Room 1, Civic Offices, High Street, Epping **Time:** 2.30 - 4.15 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), G Lunnun (Assistant Director (Democratic Services)) J Hunt (Assistant Housing Options Manager (Homelessness)) and P Dee (Deputy Manager of the Council's Homeless Persons' Hostel)

30. SUBSTITUTE MEMBERS

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

31. DECLARATIONS OF INTEREST

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

32. 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 No	Subject	Exempt Information Paragraph Number
5	Application No 7/2012	1
6	Application No 8/2012	1

33. APPLICATION NO 7/2012**Introduction**

The Assistant Director Democratic Services advised the Panel that the previous Friday he had received a telephone call from solicitors in Swansea stating that they were acting for the applicant under the Legal Help and Help at Court Scheme. He continued that the solicitors had requested deferment of the review as they had not received the applicant's housing file after requesting it from the Council and could not therefore make arrangements for the applicant to have legal representation at this meeting.

The Assistant Director Democratic Services stated that he had advised the solicitors that a decision on deferment could only be made by the Panel and to enable them to consider the matter the request should be put in writing. He added that he had provided his e-mail address for the solicitors to send their request and had emphasised the need for the request to be received before the start of this meeting.

The Assistant Director Democratic Services reported that he had subsequently been informed by the Housing Directorate that they had received a request from the solicitors for the applicant's file but had advised the solicitors that this could not be provided without the applicant's consent which had still not been received.

The Panel noted that when the Assistant Director Democratic Services had not received a written request from the solicitors by late morning he had contacted the applicant by telephone and had established that she would be attending this meeting. He had also established that she wished to proceed with the review at this meeting without any legal representation/submissions.

The applicant, accompanied by her daughter's grandmother, the Assistant Housing Options Manager (Homelessness) and the Deputy Manager of the Council's Homeless Persons' Hostel attended the meeting.

The Chairman asked the applicant if she wished to proceed with her application being determined by the Panel without any legal representations/submissions. The applicant stated that she wished to proceed with the matter at this meeting without such representation/submissions.

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 was evicted from the Council's Homeless Persons' Hostel and that the duty on the Council to provide her with temporary accommodation had therefore been discharged.

The Chairman introduced the members of the Panel and officers present to the applicant and explained that Mr A Hall, Director of Housing, would be advising the Panel as required on relevant legislation and national and local housing policies relative 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 17 September 2012;

- (ii) a copy of an undated letter from a friend of the applicant;
- (iii) a copy of an undated letter from the applicant to the Council's Assistant Housing Options Manager (Homelessness);
- (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) copies of two licences for the applicant to occupy accommodation at the Council's Homeless Persons' Hostel;
 - (ii) copy of letter dated 11 January 2012 from the Deputy Hostel Manager to the applicant;
 - (iii) copy of letter dated 14 February 2012 from the Deputy Hostel Manager to the applicant;
 - (iv) copy of letter dated 12 March 2012 from the Deputy Hostel Manager to the applicant;
 - (v) copy of letter dated 4 April 2012 from the Deputy Hostel Manager to the applicant;
 - (vi) copy of letter dated 20 July 2012 from the Deputy Hostel Manager to the applicant;
 - (vii) copy of letter dated 20 July 2012 (second letter) from the Deputy Hostel Manager to the applicant;
 - (viii) copy of a written account prepared by the Deputy Hostel Manager regarding an incident involving the applicant and her eldest son on 16 August 2012;
 - (ix) copy of letter dated 20 August 2012 from the Hostel Manager to the applicant;
 - (x) a typed copy of notes of an interview of the applicant by the Homelessness Case Officer dated 22 August 2012;
 - (xi) copy of letter dated 28 August 2012 from the Assistant Housing Options Manager (Homelessness) to the applicant.

Presentation of the 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 accommodated at the Council's Homeless Persons' Hostel for eight months and was still homeless;
- (b) the applicant's children had never had a proper home as they had always lived in temporary accommodation;

- (c) the applicant had suffered depression which had led to her breaching the conditions of her licence at the Council's Homeless Persons' Hostel;
- (d) the applicant's children needed to be in settled accommodation for the benefit of their education;
- (e) the applicant admitted to six breaches of the conditions of her licence of accommodation at the Council's Homeless Persons' Hostel but submitted the following in mitigation of the incidents:
 - (i) between 6 and 8 January 2012 she had allowed the father of her unborn child to stay at the Hostel overnight; at the time she had been suffering from labour pains and heavy bleeding and needed support;
 - (ii) on 13 February 2012 she had allowed one of her sons to play football outside of the building but she had not supervised him because it had been too cold for her to stand outside; without her permission he had entered the building and had kicked a football around the dining room; she had punished him by withdrawing his computer game for a week and telling him to behave appropriately;
 - (iii) on 10 March 2012 she had allowed an overnight stay by the father of her unborn child as she had again required support; she had suffered a miscarriage the year before and had been stressed about being able to carry her baby full term; the sister of her unborn baby's father had also stayed until approximately 11.30 pm to provide support;
 - (iv) in relation to her absence from the Hostel between 30 March and 3 April 2012 she had taken her sons to stay with their father for a few days which was a long distance; after leaving her sons with their father she had stayed with her mother rather than returning to the Hostel; she had attended the Hostel office to report being absent but no one had been present; she had telephoned to advise of her absence but the call had not been logged; she had not realised she had to report absences again each day;
 - (v) on 16 July 2012 she had returned to her room at the Hostel to find that the father of her daughter had broken in; he had been drunk and she could not persuade him to leave and had not known what to do so she had left him on the sofa in her room to recover and he had remained there overnight;
 - (vi) on 16 August 2012 she had suffered post natal depression and needed support; her daughter had been poorly and would not stop crying; she had decided to leave the Hostel with her daughter, whilst cooking, to visit her daughter's aunt who lived approximately seven minutes away; she had stayed with her daughter's aunt for approximately two hours; she had left her sons playing in the Hostel grounds which she considered was a safe environment; her sons had been aware that they could go to another resident if they wished to speak to someone in her absence and they had been given a mobile phone to contact the applicant if necessary; she had punished the son who had been involved in a fight by not allowing him to attend a family party the following weekend; she admitted that she had forgotten to turn off the electric hob before leaving the Hostel because she had been so concerned about her daughter.

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 not informed her sons when she had left the Hostel on 16 August 2012 but they had a mobile phone to contact her if they needed to speak to her; there were times when she was on site and her sons did not know where she was but this was not a problem because they had the mobile phone and were able to contact her if necessary;
- (b) the applicant's sons were aged 11 and 8;
- (c) it was accepted that her sons were young to be left alone on site but she had left the site on 16 August 2012 in a moment of panic as she had been concerned about the condition of her daughter.

Questions from Members of the Panel to the Applicant

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

- (a) she knew that the rules at the Homeless Persons' Hostel were not flexible and she had not sought permission to waive them;
- (b) it had not occurred to her to seek help from the Hostel Management Team as she did not think they would agree to the conditions of her licence being broken;
- (c) she had not been herself whilst pregnant with her daughter;
- (d) she had not used the emergency telephone number or telephoned the Police when the father of her daughter had broken into her accommodation as she had not wanted to get him in trouble; although they were no longer together, they still had an amicable relationship; he had not caused any damage when breaking in and had not been threatening towards her;
- (e) all of the matters she had raised in mitigation had been mentioned when she had been interviewed by her Homelessness Case Officer but they had not all been recorded in the interview report which only represented a summary of the matters discussed at the interview;
- (f) when leaving the Hostel on 16 August 2012 the electric hob had not been switched off because she had panicked and had forgot that she had started cooking; she had not been herself at the time having suffered a bad caesarean operation; she had telephoned the father of her daughter who had suggested that she should go to his sister's for support;
- (g) whilst accommodated at the Homeless Persons' Hostel she had been away for approximately five weeks staying with various people; other than the incidents highlighted at this meeting she had received permission to be away from the Hostel; when she had been pregnant with her daughter she had not been able to look after her sons who had spent time with their father and their grandmother; she had visited her mother as she could not cope with the stairs at the Homeless Persons' Hostel at that time and had been concerned about losing her baby;

- (h) she had lived in Ongar before being accommodated at the Homeless Persons' Hostel; her daughter's father lived in Ongar; she had moved to Ongar in order to be some distance from her former husband who had been unable to accept their divorce and had continuously visited her often at unsocial hours;
- (i) her daughter's father was a friend but he would never take full responsibility for their daughter; the father of her sons helped to support them and they saw him every weekend;
- (j) her daughter's grandmother had been unable to offer a lot of support as she had problems of her own having had seven children;
- (k) (answer given by the grandmother of the applicant's daughter) - the applicant had received another warning about breaching the conditions of her licence on an occasion when it had not been her fault; this had not been mentioned by the officers in the case which they had put to the Panel; on that occasion the complaint had concerned the applicant and her children being in the grounds of the Hostel at 1.00 am; however, this had been necessitated by a carbon monoxide leak in the applicant's chalet which had been serious and could have resulted in deaths if the fault to the flue had not been repaired;
- (l) support had not been sought from the staff at the Homeless Persons' Hostel because they were not there all of the time; the applicant had not intended to stay away from the Hostel for two hours on 16 August 2012 but had lost track of time;
- (m) during the five weeks when the applicant had been away from the Hostel her children had not been to school; the school had been aware of the circumstances;
- (n) the applicant's daughter had been given medicines to help stop her crying but these had little effect;
- (o) the applicant's sons had not been present when the father of her daughter had broken into her Hostel accommodation as it had been at a weekend when they had been with their father;
- (p) prior to moving to Ongar the applicant had lived in the London Borough of Waltham Forest in private rented accommodation; when the rent had been increased she had been unable to afford that accommodation even though in receipt of Housing Benefit.

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 originally approached the Council as homeless when she had received notice to vacate her privately rented accommodation; the applicant had been accepted for the full housing duty in accordance with Section 193 of the Housing Act 1996, as amended; the duty on the Council was to ensure that temporary accommodation was made available to the applicant; the Council provided the applicant with temporary accommodation

- at its Homeless Persons' Hostel; the applicant first moved in to the Hostel on 15 December 2011;
- (b) the applicant had been accommodated initially in a room and subsequently in a chalet at the Homeless Persons' Hostel;
 - (c) the Panel should have regard to the conditions of the licences to occupy accommodation at the Hostel and note that the applicant had signed the licence agreements containing those conditions;
 - (d) the applicant would have continued to occupy accommodation at the Homeless Persons' Hostel until she was re-housed in Council or Housing Association accommodation; however she was considered to have breached the conditions of her licence which led to several warning letters being issued and ultimately notice to leave the accommodation;
 - (e) the first breach of the licence had occurred on 6 and 8 January 2012 due to the applicant having an overnight visitor stay which was not permitted in accordance with Condition 4.3 of the licence agreement; the applicant had been issued with a warning letter;
 - (f) the second breach of the licence conditions had been on 13 February 2012 due to the applicant's son playing with a football in the dining room which was considered to have been a nuisance under Condition 4.5 of the licence agreement; the applicant had received a further warning letter;
 - (g) the third breach of the licence conditions had been on 10 March 2012 when the applicant had allowed a visitor to stay overnight and other guests to stay until after 10.30 pm; the applicant had received a further warning letter;
 - (h) the fourth breach of the licence had taken place between 30 March 2012 and 3 April 2012; the applicant had been absent without notifying the Hostel Management Team on 30 March, 31 March, 2 April and 3 April 2012; the applicant's children had been absent without the applicant notifying the Hostel Management Team on 30 March, 31 March, 1 April, 2 April and 3 April 2012; these were breaches of Condition 4.3 of the licence agreement; a further and final warning letter had been issued to the applicant as a result of this incident;
 - (i) on 20 July 2012 the Deputy Hostel Manager had explained to the applicant that she had received a final warning and that she needed to make sure that she complied with her licence conditions in future or she risked receiving notice and being made homeless; at that time the applicant disclosed that she had again allowed a visitor to stay overnight on 16 July 2012 for which she received a further warning letter;
 - (j) on 16 August 2012 the sixth and final breach of the licence conditions had taken place which had led to the applicant receiving notice; on that day the applicant had left the hostel for two hours leaving two of her children aged 11 and 8 respectively alone and unsupervised; one of her children had been involved in a fight with another child; in addition the applicant had left her cooker on which could have resulted in a fire; these incidents were considered to be in breach of Condition 4.5 of the licence agreement;
 - (k) after leaving the Homeless Persons' Hostel, the Council had been required to decide whether the duty to accommodate the applicant should be discharged

on the basis that she had become intentionally homeless from temporary accommodation; the applicant had been interviewed by her Homelessness Case Officer after she had received the notice to leave the Homeless Persons' Hostel in order to give her the opportunity to comment on the information which officers had received from the Hostel Management Team; the applicant had stated that she had been absent on occasions because she had been unwell and that she had allowed a visitor to stay overnight repeatedly because she had been lonely; she had stated that she had left her two sons unsupervised for two hours on 16 August 2012 because her baby had been crying and she felt that her sons could telephone her on a mobile phone or go to a neighbour if they had a problem; the applicant had admitted to leaving the cooker on when she had left her chalet on 16 August 2012;

- (l) the applicant had been advised that the duty to accommodate her had been discharged because she was considered to have made herself homeless intentionally from temporary accommodation; as a result she was advised that the Council no longer had a duty to provide her with temporary accommodation under Section 193 of the Housing Act 1996 as amended; she was informed that she would be required to vacate the bed and breakfast accommodation which had been provided for her after she had left the Hostel; the applicant had then sought a review of the decision and the Council had exercised its discretion to accommodate her in the bed and breakfast accommodation pending the outcome of this review;
- (m) in making homelessness decisions, the Council must have regard to the Code of Guidance which was used by local authorities to assist with the interpretation of the homelessness legislation; the Code of Guidance 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; Paragraph 14.17 of the Code stated that under Section 193(2) of the Housing Act 1996 the housing authority would also cease to be subject to the duty (to accommodate) if the applicant became homeless intentionally from accommodation made available under Section 193 (temporary accommodation);
- (n) it was considered that the breaches of her licence were deliberate acts by the applicant; as a consequence the applicant had ceased to occupy accommodation at the Council's Homeless Persons' Hostel which would have continued to be available for her occupation had she complied with the conditions of her licence; the accommodation provided was considered to have been reasonable for her to occupy; in the chalet she had occupied two bedrooms whilst sharing a kitchen and bathroom with one other family; the applicant could have received support from the Hostel Management Team and the licence fee had been affordable for her;
- (o) in addition to the warning letters which the applicant had received she had been reminded verbally of the need to comply with her licence conditions because of the risks she faced in becoming homeless if she received notice; the applicant had been fully aware that breaches of her licence conditions could result in the licence being terminated;
- (p) whilst the licence conditions might seem to be very prescriptive it was necessary to have such rules in place as there could be as many as

46 households accommodated at the Hostel at any one time; many of the facilities on the site were shared or of a communal nature and the licence conditions were drawn up for the comfort and welfare of all of the residents; conditions were necessary to ensure that only those authorised to stay at the Hostel were present at any time and for health and safety reasons in the event of an evacuation of the premises; in relation to the communal areas there was a need for residents to ensure that their children were supervised so as not to cause a nuisance to other residents;

- (q) members were invited to uphold the officers' decision; in the event that they did so then reasonable notice should be given to the applicant to vacate her bed and breakfast accommodation and a referral made to the Schools, Children and Families Directorate of Essex County Council because there were children at risk of harm through homelessness.

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

The applicant had no questions to ask.

Questions from Members of the Panel on the Case of the Assistant Housing Options Manager (Homelessness)

The Assistant Housing Options Manager (Homelessness) and the Deputy Hostel Manager gave the following answers to questions from Members of the Panel:

- (a) the Hostel Management Team had been made aware of the break-in by the father of the applicant's daughter as part of the reporting of the incident on 16 July 2012;
- (b) Hostel Management staff were normally available on site from 9am until 5pm Monday to Friday and for two hours on Saturday morning; there was an out of hours emergency number to report emergencies, issues and absences; when messages were taken it was normal for the name, address and a brief explanation of the matter to be recorded; calls out of hours went initially to the Standby Officers at the Civic Offices and if necessary they would call out the Hostel member of staff on standby duty; the pack of documents provided to each resident at the Hostel included details of the emergency number and details were also shown on the office door;
- (c) part of a gas flue had not been fixed properly which had resulted in carbon monoxide fumes in the applicant's accommodation; the matter had been dealt with and it had been possible to go back into the chalet the following day;
- (d) there were often many children accommodated at the Hostel at any one time, from babies to late teenagers; problems were experienced with children but fights resulting in injuries were rare;
- (e) there was no set number of warnings given to residents before serving a notice to terminate a licence; residents were not encouraged to break the conditions; sympathetic consideration was given to requests to be absent if there were good reasons; in cases of emergency a report from the resident the following day would be acceptable;
- (f) the applicant was not given notice following the breach of the conditions immediately after the final warning letter because she was bidding for

properties and would have expected to be successful with a bid in the near future;

- (g) residents were allowed to return to the Hostel after 10.30pm.

Summing Up

The applicant stated that she had been left fat on the bottom of the oven and that was what had set off the alarm. She further stated that another resident had taken off the pan she had left on the hob before any issue had arisen.

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 the applicant and the Assistant Housing Options Manager (Homelessness) would be advised in writing of the outcome.

The applicant, the Assistant Housing Options Manager (Homelessness) and the Deputy Hostel Manager then left the meeting.

In coming to its decision, the Panel focussed on the evidence regarding the incidents which had led to the applicant being served notice to terminate her licence to occupy accommodation at the Council's Homeless Persons' Hostel.

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 information presented by and on behalf of the applicant and the Assistant Housing Options Manager (Homelessness) in writing and orally, the decision of the officers that the applicant was homeless intentionally from temporary accommodation provided by the Council and that as a result the duty on the Council to provide her with accommodation has been discharged, be upheld for the following reasons:

(a) the applicant approached the Council as homeless when she received notice to vacate her private rented accommodation; she was accepted for the full housing duty in accordance with section 193 of the Housing Act 1996, as amended; the duty was to ensure that temporary accommodation was made available and the Council provided her and her family with accommodation at its Homeless Persons' Hostel;

(b) the applicant signed a licence to occupy accommodation at the Council's Homeless Persons' Hostel; conditions of the licence in relation to occupation include restrictions allowing only those people detailed on the homeless application to reside at the dwelling; no visitors being allowed to stay overnight and all guests to leave by 10.30 pm; visitors not to be on the Hostel premises between the hours of 10.30 pm and 9.00 am; all absences to be reported to the Hostel staff; and approval to be obtained from the Hostel Manager for all absences from the Hostel of longer than one night; conditions in relation to nuisance include not causing or allowing members of the licensee's household to cause a nuisance or annoyance to neighbours, tenants, residents or others with the licensee being responsible for the

behaviour of members of their household and their visitors; the licence also stated that any breach of the conditions of the licence could result in the licence being terminated;

(c) the applicant admitted to breaching the conditions of the licence on the following occasions:

(i) between 6 and 8 January 2012, she allowed a male visitor to stay overnight; the applicant received a warning letter on 11 January 2012 drawing attention to the occupation conditions of her licence and pointing out that failure to abide by those conditions could lead to the licence being terminated;

(ii) on 13 February 2012, one of the applicant's sons kicked a football around and was running around the dining room; the applicant received a further warning letter on 14 February 2012 drawing attention to the nuisance conditions of her licence and pointing out that failure to abide by those conditions could lead to the licence being terminated;

(iii) on 10 March 2012, the applicant allowed a male visitor to stay overnight ; the applicant received a further warning letter on 12 March 2012 drawing attention to the occupation conditions of her licence;

(iv) between 30 March and 3 April 2012 the applicant and her children were absent from the Hostel without notifying the Hostel Management Team; the applicant received a further warning letter on 4 April 2012 drawing attention to the occupation conditions of her licence and pointing out that failure to abide by those conditions could lead to the licence being terminated; this letter was headed "final warning";

(v) on 16 July 2012 the applicant informed Hostel staff that she had again allowed a male visitor to stay overnight; the applicant received a further warning letter on 20 July 2012 drawing attention to the occupation conditions of her licence and pointing out that failure to abide by those conditions could lead to the licence being terminated; also on 20 July 2012 the Deputy Hostel Manager explained to the applicant that as she had already received a final warning she could be served with a notice to vacate the property but this action would not be taken on this occasion as she was bidding for properties under Band 1 of the Council's Allocations Scheme and that if she continued to do so could expect to be housed in the near future; the applicant was provided with another copy of her licence at that time and was asked to read it and explain to her children anything she thought they should be aware of in relation to the conditions of the licence;

(vi) on 16 August 2012 the applicant left the Hostel for two hours, leaving her two sons aged eleven and eight alone and unsupervised; one of those children was involved in a fight with another child at the Hostel; subsequently the applicant's child was spoken to in the applicant's presence and he admitted to spitting at the other child and pushing that child to the floor; another resident who witnessed the incident stated that the applicant's child had spat at and hit the other child and the latter had only kicked back when pinned to the floor; also prior to leaving the Hostel the applicant started cooking on the hob in the shared kitchen in the Hostel and she left the Hostel without turning off the electric hob; as a result of this sixth breach of the licence conditions the applicant's licence to occupy the Homeless Hostel was terminated;

- (d) the applicant submitted the following in mitigation of the incidents:
- (i) in relation to (c)(i) above, she needed support because she was pregnant at the time, suffering from labour pains and heavy bleeding and panicked; the overnight visitor was the father of her unborn child;
 - (ii) in relation to (c)(ii) above, she allowed her son to play football outside of the building; she did not supervise him because it had been too cold for her to stand outside; she punished him for playing football inside the building by withdrawing his computer game for a week and telling him to behave appropriately;
 - (iii) in relation to (c)(iii) above, she allowed an overnight stay by the father of her unborn child for the same reasons as in (d)(i) above; she had suffered a miscarriage the year before and was stressed about being able to carry her baby full term; the sister of her unborn baby's father had also stayed until approximately 11.30 pm to provide support;
 - (iv) in relation to (c)(iv) above, she took her sons to stay with their father for a few days which was a long distance; after leaving her sons with their father she stayed with her mother rather than returning to the Hostel; she went to the Hostel office to report being absent but no one was in the office; she telephoned to advise of her absence but the call had not been logged; she had not realised she had to report absences again each day;
 - (v) in relation to (c)(v) above, she returned to her room at the Hostel to find that the father of her daughter had broken in; he was drunk and she could not persuade him to leave and did not know what to do so she left him on the sofa in her room to recover and he remained there overnight;
 - (vi) in relation to (c)(vi) above, she suffered post natal depression and needed support; her daughter was poorly and would not stop crying; she decided to leave the Hostel with her daughter to visit her daughter's aunt who lived approximately seven minutes away; she stayed with her daughter's aunt for approximately two hours; she left her sons playing in the Hostel grounds which was a safe environment; her sons knew they could go to another resident if they wished to speak to someone in her absence and they had a mobile telephone to contact the applicant; she had punished the son who had been involved in the fight by not allowing him to attend a family party the following weekend; she forgot to turn off the electric hob before leaving the Hostel because she was concerned about her daughter;
- (e) the Panel has taken account of the mitigating circumstances but notes that the applicant breached the conditions of her licence on six separate occasions despite receiving repeated warnings, including a final warning, that any breach could result in her licence being terminated; the Panel also notes that all of the warning letters had invited the applicant to discuss any issues with the Hostel Management team but she had not taken up this offer; the Panel further notes that after receiving the fourth warning letter headed "final warning" the Deputy Hostel Manager spoke to the applicant to reiterate the importance of her not breaching the conditions of her licence again and explaining that despite the previous final warning the applicant's licence would not be terminated at that time because she was close to being able to secure a Council property; she had been handed another copy of the licence to read and advised to make her sons aware of the restrictions;

(f) the Panel is of the opinion that the applicant was in no doubt about the possible consequences of breaching the conditions of her licence but continued to do so;

(g) had it not been for this deliberate acts of breaching the conditions of her licence, the accommodation at the Hostel would have been available and reasonable for the applicant and her family to continue to occupy; the accommodation was suitable for the applicant and her family as it comprised one half of a chalet including two bedrooms and a kitchen and a bathroom shared with one other family; the accommodation was affordable;

(h) in the light of the above, the Panel is of the opinion that that the Council's duty to accommodate the applicant has been discharged because she was homeless intentionally from the accommodation made available to her under section 193 of the Act;

(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; it is considered that the decision to issue a notice on 20 August 2012 requiring the applicant to vacate the Homeless Persons' Hostel was appropriate in the circumstances;

(3) That the Council continues to provide the applicant with bed and breakfast accommodation until Sunday 13 January 2013 (the last night) 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 the Children and Families Service to seek their assistance in helping her to find alternative accommodation".

34. APPLICATION NO 8/2012

The Panel was advised that following the receipt of additional information since the application for a review had been made, the officers had reconsidered this case and had decided to set aside the decision to deem the applicant intentionally homeless. As a result there was no need for the Panel to consider this case.

35. FUTURE MEETINGS

The Panel noted that the next meeting would be held on 22 November 2012.

Some members stated that they would prefer meetings of the Panel to be held on a day other than a Thursday.

RESOLVED:

That the Assistant Director Democratic Services seek the views of members and substitutes on the Panel with a view to establishing whether there is a day other than Thursday which is more convenient for members.

CHAIRMAN

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