

## **EPPING FOREST DISTRICT COUNCIL COMMITTEE MINUTES**

**Committee:** Housing Appeals and Review Panel    **Date:** Monday, 3 June 2013

**Place:** Committee Room 1, Civic Offices, High Street, Epping    **Time:** 2.30 - 4.20 pm

**Members Present:** Councillors B Rolfe (Chairman), Mrs J Lea (Vice-Chairman), K Avey, L Leonard and P Spencer.

**Other Councillors:** Councillor Ms G Shiell (observer)

**Apologies:** Councillors Ms J Hart and Mrs J H Whitehouse

**Officers Present:** A Hall (Director of Housing), G Lunnun (Assistant Director (Democratic Services)) and J Manning (Area Housing Manager (North)).

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### **1. MINUTES**

#### **RESOLVED:**

That the minutes of the meeting of the Panel held on 22 November 2012 be taken as read and signed by the Chairman as a correct record.

### **2. SUBSTITUTE MEMBERS**

Members were advised that Councillor Leonard was substituting for Councillor Jennie Hart and that Councillor Spencer was substituting for Councillor J H Whitehouse.

### **3. DECLARATIONS OF INTEREST**

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

### **4. EXCLUSION OF PUBLIC AND PRESS**

#### **RESOLVED:**

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

<b>Agenda Item Number</b>	<b>Subject</b>	<b>Exemption Information Paragraph Number</b>
6	Appeal No 1/2013	1

## **5. APPEAL NO 1/2013**

### **Introduction**

The Panel considered an appeal against a decision made by officers under delegated authority that the appellant should not be granted the tenancy of his current home.

The appellant attended the meeting to present his case accompanied by his ward councillor, Councillor Mrs M McEwen, and his sister. Mrs J Manning, Area Housing Manager (North), attended the meeting to present her 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 relevant to the appeal.

The Chairman introduced the members of the Panel and officers present to the appellant. The Chairman sought and obtained the consent of both the appellant and the Area Housing Manager (North) to Councillor G Shiell remaining in the meeting as an observer.

The Chairman explained the procedure to be adopted for the meeting in order to ensure that proper consideration was given to the appeal.

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

(a) copies of documents submitted by the Area Housing Manager (North), namely:

(i) a copy of a letter dated 19 September 2012 from the Assistant Area Housing Manager (North) to the appellant;

(ii) a copy of a Housing Application Form completed by the appellant on 26 September 2012;

(iii) a copy of an undated letter from one of the appellant's clients to the Council's Housing Portfolio Holder;

(iv) a copy of a letter dated 4 April 2013 from the Assistant Director of Housing (Operations) to the appellant;

(b) copies of documents submitted by the appellant, namely:

(i) his application to the Housing Appeals and Review Panel dated 14 April 2013;

(ii) copies of letters dated 1 May 2013, 7 May 2013, 8 May 2013, 9 May 2013, 13 May 2013, and 15 May 2013 from some of the appellant's clients;

(iii) copy of a letter dated 13 May 2013 from the appellant's doctor.

**Presentation of the Case of the Area Housing Manager (North)**

The Panel considered the following submissions in support of the case of the Area Housing Manager (North):

- (a) the appellant was aged 48 years and resided in a three-bedroom semi-detached property;
- (b) the appellant's mother had succeeded to the secure tenancy of the property from her husband on 20 December 1999; on 21 August 2012 the appellant's mother had passed away; the appellant now resided in the property alone on a "use and occupation" basis;
- (c) under the provisions of the Housing Act 1985 only one succession to a secure tenancy was permitted;
- (d) the Council had adopted a policy in circumstances where the one succession had taken place to make a one-off discretionary offer of accommodation to any resident who would have had succession rights should they not have been exhausted; if the property were under-occupied, the Council's Succession Policy would be applied including the requirement to move to smaller accommodation, if appropriate
- (e) on 19 September 2012 a letter had been sent to the appellant explaining the legal position regarding the tenancy of the property and asking him to complete a Housing Application Form with a view to him being offered the tenancy of smaller alternative accommodation;
- (f) the form had been returned on 28 September 2012 and the appellant had indicated that he wished to live in a house or bungalow in one of three areas of the District, one of which was Matching Green;
- (g) the appellant was entitled to the allocation of a one-bedroom flat or studio, or studio bungalow only, under both the Council's current Allocations Scheme and the new Allocations Scheme which would commence on 1 September 2013;
- (h) within the appellant's areas of choice the only one bedroom properties were one-bedroom bungalows which were designated for residents over the age of 60 years; at the age of 48 years, the appellant was not able to be offered a one-bedroom bungalow under the current Allocations Scheme; under the new Allocations Scheme which would commence on 1 September 2013 residents under-occupying who were over 50 years of age and would be "downsizing" from larger to smaller accommodation would be eligible for the bungalows;
- (i) the Council had received a letter of support for the appellant from one of his clients; concern had also been registered by the then County Councillor Gerard McEwen who had contacted the District Council's Housing Portfolio Holder direct;
- (j) on 20 March 2013, the Area Housing Manager (North) and a Housing Management Officer had visited the appellant at his home to discuss the situation; the appellant had been accompanied at that meeting by his sister;
- (k) the appellant had stated that he was very attached to his home, he had always lived in the same property and he had become ill with worry since his mother had passed away; he had cared for her and they had been extremely close; he had

been feeling so worried over the situation that he had visited his doctor for help; he worked as a gardener and if forced to move out of the area he would be at risk of losing his livelihood;

(l) the appellant had understood the issue of his current home being family-sized accommodation but had stated that any offer of alternative accommodation should be suitable for himself and his dog, given his modest income, strong ties to the locality and employment;

(m) the appellant had been advised of a studio bungalow vacancy in Coopersale on 2 April 2013; the appellant had indicated that he would not be prepared to accept the property as it was too far from his work locations;

(n) a letter had been received from the appellant's sister appealing against the decision to offer the appellant a suitable offer of alternative accommodation and asking if he could remain in the property; the Assistant Director of Housing had accepted the letter as an appeal and after due consideration, on 4 April 2013 he had upheld the decision of the Area Housing Manager (North) that the appellant should be offered alternative accommodation;

(o) since receipt of the appellant's completed appeal form to the Panel, a one-bedroom bungalow with a garden had become available in Matching Green, one of the appellant's areas of choice; although the bungalow was currently designated for allocation to applicants over 60 years of age, officers had used their discretion to offer the property to the appellant in recognition of his circumstances; the property had been kept vacant, pending this appeal.

**Questions from Councillor Mrs McEwen on behalf of the Appellant on the case of the Area Housing Manager (North)**

The Area Housing Manager (North) gave the following answers to questions from Councillor Mrs McEwen:

(a) the recent change in Housing Benefit rules, commonly referred to as the "bedroom tax", was not an issue in this case;

(b) the Council had not contacted Social Services regarding the appellant's circumstances; together with a Housing Management Officer she had visited the appellant to discuss his situation and the appellant's sister had been present at that meeting;

(c) to the best of her knowledge there were no "hard to let" properties in the village where the appellant currently lived.

**Questions from Members of the Panel on the case of the Area Housing Manager (North)**

The Area Housing Manager (North) gave the following answers to questions from members of the Panel:

(a) the Council's policy in circumstances where the one statutory succession had already taken place and the property was under-occupied was to make a one-off discretionary offer of alternative accommodation to any resident who would have had succession rights had they not been exhausted; however, as the appellant's current home was more extensive than was reasonably required by him any offer would be for smaller accommodation;

(b) it was understood that the appellant used his own vehicle to undertake his gardening duties at his clients' properties;

(c) she understood that the appellant's clients' properties were in a radius of 10 miles from the appellant's current property; the bungalow which had become available in Matching Green was approximately 3½ miles from the appellant's current home;

(d) it was understood that the appellant had not expressed an interest in the studio bungalow vacancy which had occurred in Coopersale because he had been worried about the additional costs of travel to his clients' properties.

### **Presentation of the Appellant's Case by Councillor McEwen**

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

(a) the appellant had been born and had lived the whole of his life in the property he was now being asked to leave;

(b) after the death of his father in 2000, the appellant's mother had succeeded to the tenancy of the property and the appellant had taken care of her until she had died in 2012;

(c) the appellant had left school aged 13 years and had always supported himself financially, being engaged in various rural pursuits and for the last 25 years as a gardener;

(d) the appellant had built up a group of local clients; moving from his home and living elsewhere would increase his travel costs to his clients' properties;

(e) the appellant was devoted to his large dog and kept ferrets and needed a garden to accommodate them;

(f) the appellant was well respected by all who knew him; he had vast knowledge of rural issues and was reliable; the local community recognised his skills and allowed for his limitations;

(g) whilst still in shock from his mother's death and before a post-mortem had been completed the appellant had received a letter from the Council about his housing situation; as a result he had suffered depression; the GP's letter before the Panel verified the position and pointed out that the appellant had recently been referred to MIND, a mental health charity;

(h) the Panel's attention was drawn to the letters from some of the appellant's clients.

### **Adjournment**

The appellant indicated that he wished to leave the meeting and the Chairman adjourned the proceedings. The appellant and his supporters and the Area Housing Manager (North) left the meeting room. After a short break the parties returned to the meeting.

**Presentation of the Appellant's case by Councillor McEwen (continued)**

- (i) the appellant's sister lived a short distance, only approximately five minutes by car, from the appellant's home and they supported each other;
- (ii) in relation to the offer of a tenancy of a bungalow in Matching Green, the appellant's main companion was his dog and he was concerned how his dog would react to new neighbours; the dog would often need to be left alone at the property when the appellant went to work; there was no off-street parking for the appellant's vehicle; the bungalow was overlooked compared with the appellant's existing home; the appellant would not know anyone in the village and would find it difficult to make new friends; the appellant's travel costs to his clients' properties would be increased.

**Representations made by the Appellant's Sister**

The appellant's sister advised that she visited the appellant once a week to help him and the appellant also supported her. She drew attention to the appellant's relationship with his current neighbours which would be unlikely to be achieved elsewhere.

**Questions from the Area Housing Manager (North) to the Appellant and Councillor McEwen**

The Area Housing Manager (North) advised that she did not wish to ask any questions.

**Additional Question to the Area Housing Manager (North) from a member of the Panel**

The Area Housing Manager (North) gave the following answer to an additional question from a member of the Panel:

- (a) there were a lot of families on the Council's Housing Register awaiting a three-bedroom property; there were some Council bungalows in the village where the appellant currently lived but it could be several years before one became available.

**Questions from Members of the Panel on the case of the Appellant**

The appellant's sister gave the following answers to questions from members of the Panel:

- (a) although she lived close to the appellant, her property was in the Uttlesford District and Epping Forest District Council had no control over the Uttlesford housing stock so it would not be possible to move the appellant to her village;
- (b) a possible mutual exchange had been investigated with a local councillor in the Uttlesford District but nothing had materialised;
- (c) the appellant had no other relatives in the area; and
- (d) she lived with her husband and son; she had two other brothers but they did not live that close to her or the appellant.

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

(e) his dog was a Rottweiler/Labrador-cross aged 7 years; he put her before anyone else; occasionally he took his dog to work with him but it was often not possible especially when the weather was hot;

(f) the furthest he travelled to a client's property was approximately 12 miles from his home; when visiting that furthest property he undertook six hours work but worked less hours when attending clients' properties closer to his home;

(g) all of his clients' properties were further away from Matching Green than his current home;

(h) his lifestyle involved him in rising at approximately 5.00 a.m. and going to bed at approximately 6.00 p.m; and

(i) he had approximately 10 clients, all of whom lived within a radius of approximately 10 miles of his current home.

### **Summing up**

Councillor McEwen advised that she was concerned about the consequences of the appellant having to leave the home in which he had lived all of his life. She again drew attention to the appellant's doctor's letter.

The Area Housing Manager (North) stated that she had nothing to add to her case.

### **Deliberations**

The Chairman indicated that the Panel would consider the matter in the absence of both parties and that the appellant and the Area Housing Manager (North) would be advised in writing of the outcome. The appellant, his sister, Councillor McEwen and the Area Housing Manager (North) then left the meeting.

In coming to its decision, the Panel expressed sympathy about the appellant's situation and spent considerable time deliberating over the issues. The Panel focused on the background to the appellant's situation, the relevant legislation and Council policies regarding succession, the appellant's circumstances, the representations made in support of the appellant's appeal, the information provided in the letter from the appellant's doctor, the high need for family-sized accommodation for families on the Council's Housing Register, the steps taken by officers in an attempt to resolve matters including the offer of tenancy of a vacant bungalow in one of the appellant's area of choice and the likely lower cost of rent to the appellant if he moved to a smaller property (which might offset any increased fuel costs of moving further from his clients' properties).

### **RESOLVED:**

(1) That, having regard to the provisions of the Housing Act 1985, as amended, and the Council's policies on succession, and having taken into consideration the information presented by and on behalf of the appellant and the Area Housing Manager (North) in writing and orally, and whilst being extremely sympathetic to the appellant's situation, on balance, dismisses the appeal and upholds the decision of the officers that you not be granted the tenancy of your current home for the following reasons:

(a) the law relating to succession is set out in Part IV of the Housing Act 1985, sections 87-89 which state that a person is qualified to succeed the tenant under a secure tenancy if he occupies the dwelling house as his only or principal home at the time of the tenant's death and either (i) he is the tenant's spouse (or civil partner), or (ii) he is another member of the tenant's family and has resided with the tenant throughout the period of 12 months ending with the tenant's death;

(b) the law summarised in (a) above, only applies where there has been no previous succession; in this case the appellant's mother was a successor tenant herself and the appellant is not therefore a qualifying person to succeed to the tenancy by virtue of the legislation;

(c) the Council has adopted a discretionary succession policy which provides that where there is no statutory right to succeed following one succession to a tenancy (as in this case) and the remaining occupant would otherwise have been a successor tenant, that occupant will be treated in the same way as if they had the right to succession;

(d) Schedule 2 of the Housing Act 1985 provides grounds on which the Council can seek possession of a property; Ground 16 can be used where there is a right of succession but where the property is deemed too large for the successor tenant's needs; in accordance with this provision the Council has adopted a policy whereby a person under-occupying a property by one bedroom who has lived in the property for more than 10 years is allowed to remain in the property, but that in all other cases the person is expected to move to smaller accommodation, unless there are exceptional circumstances;

(e) the appellant's mother succeeded to the secure tenancy of the appellant's current home from her husband; on 21 August 2012 the appellant's mother passed away since when the appellant has resided in the property alone on a "use and occupation" basis; the property is a three- bedroom semi-detached house; the appellant is therefore under-occupying the property by two bedrooms and in accordance with the Council's policy is expected to move to smaller accommodation, unless there are exceptional circumstances;

(f) in considering whether there were exceptional circumstances in this case, and whether the appellant should be granted the tenancy of the property as a result, the Panel has taken account of the following:

(i) the appellant is aged 48 years and has lived in the property all of his life; he left school aged 13 years and has always been employed in rural pursuits;

(ii) the appellant is a self-employed gardener whose 10 or so clients are all within a 12 mile radius of the property with the majority a lot closer; he has a modest income and is concerned about the increased costs and additional travelling time resulting from living elsewhere and the possible need to establish new clients;



- (iii) the appellant and his sister and her family who live in the Uttlesford District - a short distance from the property - offer each other support;
- (iv) the appellant has a large dog and keeps ferrets and needs a garden for them;
- (v) since the appellant's mother's death and the uncertainty about his housing situation he has suffered depression and has recently been referred to MIND, a mental health charity;
- (vi) on 19 September 2012, the appellant received a letter from the Council's Housing Directorate explaining the tenancy situation of the property and requesting completion of a Housing Application Form with a view to him being offered the tenancy of smaller alternative accommodation; the appellant completed and returned the form and stated that he wished to live in a house or bungalow in one of three areas of the district; one of those areas was Matching Green;
- (vii) within the appellant's areas of choice the only one bedroom properties that are available are bungalows which are designated currently for residents over the age of 60 years; one of the recently agreed changes to the Housing Allocations Scheme that will become effective from 1 September 2013 is to reduce this age limit to 50 years of age;
- (viii) since the time the appellant had completed his Housing Application Form, two vacant one bedroom bungalows had become available and offered to the appellant; one was at Coopersale, some distance from the village in which the appellant currently resides;
- (ix) the other property was a one bedroom bungalow with a garden which had become available within Matching Green, one of the appellant's areas of choice, approximately three and a half miles from the appellant's current home; despite the restriction outlined in (vii) above, under the circumstances, officers had used their discretion to offer the bungalow to the appellant; the Panel was advised at its meeting by the appellant's representative that he did not wish to accept the bungalow because he would find it difficult to make new friends, he did not know how his dog would react to new neighbours, there was no off street parking for his vehicle, he would no longer have the support of his existing neighbours, the location was further from all of his gardening clients and, although in a rural location, he felt the bungalow was overlooked in comparison to his existing home;
- (x) there is a severe shortage of social housing in the district with many families on the Council's Housing Register in need of a three bedroom property;

(g) the Panel has considered whether it is reasonable and whether there are exceptional circumstances to set aside the Council's policy; the Panel is of the opinion that although sympathetic with the appellant's circumstances, they are not unusual or exceptional in that similar cases regarding succession (or the use of the discretionary succession policy) have arisen from time to time in the rural parts of the district; the Panel recognises that it would be extremely difficult for the appellant to live comfortably anywhere other than a rural environment, but believes that this can be achieved by moving to the bungalow with a

garden offered to him in one of his areas of choice some three and a half miles from his existing home; in the opinion of the Panel this distance is not such that it will increase the appellant's travelling costs to such an extent as to make it unviable for him to continue to work for his existing clients, especially when taking account of the likely reduction in rent as a result of moving to a smaller property;

(h) the appellant's circumstances are not considered sufficient to justify him being given priority over the large number of housing applicants (eligible for a three bedroom property) who have been on the Council's Housing Register for many years, bearing in mind that the appellant does not have a three bedroom housing need;

(2) That, despite not meeting the Council's current or new eligibility criteria for a bungalow, the appellant be re-offered the bungalow in Matching Green;

(3) That the appellant be allowed a period of two weeks from the date of this decision letter to notify the Housing Directorate if he wants to accept the offer of the bungalow and that in the event of this offer being refused by the appellant, the officers be authorised to take legal proceedings with a view to securing the re-possession of the appellant's current home; and

(4) That the Panel considers that the officers have been very helpful to the appellant in attempting to resolve this matter.

**CHAIRMAN**