



Epping Forest District Council

HOUSING APPEALS AND REVIEW PANEL Monday, 10th February, 2014

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

**Committee Room 1, Civic Offices, High Street, Epping
on Monday, 10th February, 2014
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 B Rolfe (Chairman), Mrs J Lea (Vice-Chairman), K Avey, Ms J Hart and Mrs J H Whitehouse

1. APOLOGIES FOR ABSENCE

2. MINUTES (Pages 3 - 24)

To agree the minutes of the meeting of the Panel held on 2 October 2013 (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	Appeal No. 1/2014	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. APPEAL NO. 1/2014 (Pages 25 - 46)

To consider the attached restricted report.

EPPING FOREST DISTRICT COUNCIL COMMITTEE MINUTES

Committee: Housing Appeals and Review Panel **Date:** Wednesday, 2 October 2013

Place: Committee Room 1, Civic Offices, High Street, Epping **Time:** 2.30 - 6.15 pm on 2 October
4.00pm - 4.50pm on 3 October

Members Present: Councillors B Rolfe (Chairman), Mrs J Lea (Vice-Chairman), K Avey and Ms J Hart

Other Councillors:

Apologies: Councillors Mrs J H Whitehouse and P Spencer (substitute)

Officers Present: A Hall (Director of Housing), J Hunt (Assistant Housing Options Manager (Homelessness)), G Lunnun (Assistant Director Democratic Services) and Ms P Black (Environmental Health Officer).

12. MINUTES

RESOLVED:

That the minutes of the meeting of the Panel held on 5 August 2013 be taken as read and signed by the Chairman as a correct record.

13. SUBSTITUTE MEMBERS

The Panel was advised that there were no substitute members present.

14. DECLARATIONS OF INTEREST

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

15. 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 Paragraph Number
6	Application No 4/2013	1
7	Application No 5/2013	1
8	Progress Report on Previous Appeals/applications	1

16. APPLICATION NO 4/2013

Introduction

The Panel considered an application for a review of a decision made by officers under delegated authority that the applicant was intentionally homeless.

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 Ms P Black, Environmental Health Officer from the Council's Private Sector Housing Team. 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 application.

The Chairman introduced the members of the Panel and the officers present to the applicant.

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

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

- (a) a summary of the case including the facts of the case;
- (b) the case of the Assistant Housing Options Manager (Homelessness);
- (c) copies of documents submitted by the Assistant Housing Options Manager (Homelessness), namely:
 - (i) Possession Order dated 21 March 2013 in respect of the applicant's privately rented property;
 - (ii) a typed copy of notes dated 26 March 2013 of an interview of the applicant by a Housing officer;
 - (iii) copies of 36 colour photographs of the applicant's privately rented property sent to the Council by the applicant;
 - (iv) the applicant's rent statement provided by the applicant's former landlord showing rent arrears and a completed form stating that the privately rented property would have continued to be available to the applicant had there not been rent arrears;

- (v) letters between the applicant and her former landlord dated 15 October 2012 and 30 October 2012 regarding the rent and condition of the applicant's privately rented property;
- (vi) letter dated 13 March 2013 from a Council Environmental Health Officer to the applicant, copies of 8 colour photographs of the privately rented property taken by the Environmental Health Officer and an exchange of emails between the Environmental Health Officer and a Housing Officer;
- (vii) letter dated 20 June 2013 from the Assistant Housing Options Manager (Homelessness) to the applicant;
- (viii) extract from Shelter Legal website setting out the recommended procedure to be followed by tenants proposing to withhold rent to pay for the cost of repairs;
- (d) copies of documents submitted by the applicant, namely:
 - (i) her completed application form to the Housing Appeals and Review Panel dated 24 July 2013;
 - (ii) copies of the applicant's medical records;
 - (iii) copies of the applicant's younger son's medical records;
 - (iv) letter dated 2 April 2012 from the Department of Rheumatology, Princess Alexandra Hospital;
 - (v) letter dated 19 April 2013 from the Cardiology Assessment Unit, Princess Alexandra Hospital;
 - (vi) letters dated 9 July 2012 and 18 January 2013 from the applicant's General Practitioners;
 - (vii) letters dated 24 January 2013 and 23 May 2013 from the applicant's sons' school;
 - (viii) an extract from an article regarding intentionally homeless;
 - (ix) an article regarding councils' powers regarding homelessness;
 - (x) copies of text messages between the applicant and her former landlord;
 - (xi) letters dated 7 May 2013 and 17 May 2013 from the applicant to the Council's Housing Options;
 - (xii) copy of letter dated 17 December 2012 from the applicant to the Council's Compliments and Complaints Officer;
 - (xiii) copies of letters from the applicant to her former landlord dated 15 October 2012, 28 October 2012, 22 November 2012, 12 December 2012 and an undated one;
 - (xiv) copy of an electrical report regarding the applicant's privately rented property;
 - (xv) four documents/articles relating to mould, electrics, health and landlords;

(xvi) copy of letter dated 13 March 2013 from one of the Council's Environmental Health Officers to the applicant;

(xvii) copy of letter dated 22 December 2012 from the applicant to the Council's Benefits Section;

(xviii) copy of letter dated 19 September 2013 from solicitors instructed by the applicant.

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 was British and 33 years of age; her household also consisted of her partner and their two sons aged 8 and 4 years; the applicant had applied as homeless because she had received a Possession Order requiring her to vacate her privately rented property; the applicant had owed £2,432.64 in rent arrears at the time she had left the privately rented property;

(b) the applicant had been eligible for assistance because she was British, homeless because she had received a Possession Order for her privately rented property, and in priority need because she had dependent children;

(c) the applicant had lived at her privately rented property between 8 August 2008 and 3 April 2013; the privately rented property had been a two bedroom house; the applicant had held the assured shorthold tenancy for the property in her sole name; the applicant had received a notice to vacate the property on 26 October 2012 which had expired on 7 January 2013; the landlord of the property had then obtained a Possession Order from the court dated 21 March 2013 which had required the applicant to leave on 3 April 2013;

(d) the applicant had advised the Council that she had withheld rent payments because of the condition of the property; the applicant had stated that she had experienced dampness and condensation problems at the property which had caused her to repaint some of the interior walls of the house; she had also stated that she had lost clothing and possessions due to the damp; the applicant had said that she felt she should be reimbursed by the landlord for these costs; the applicant had provided copies of colour photographs which she believed demonstrated the poor condition of the property; the applicant had also claimed that the state of the property had caused her family to have health problems;

(e) the landlord of the privately rented property had provided the Council with a form and rent statement showing that £2,432.64 had been owed in rent arrears at the time of vacation and had stated that the accommodation would have continued to be available to the applicant had there not been rent arrears;

(f) the Panel should have regard to letters about the rent and the condition of the property exchanged between the applicant and her landlord; in a letter dated 15 October 2012, the applicant had requested that deductions be made from the rent due to the condition of the property and costs incurred; on 30 October 2012 the applicant's landlord had replied that any works should not have taken place without the landlord being consulted about costs and the use of tradesmen;

(g) an Environmental Health Officer from the Private Sector Housing Team of the Council had visited the privately rented property on 2 July 2012; minor growth had been found in the property and the applicant had been advised to clean it off; on 8 March 2013 an Environmental Health Officer from the Council had inspected the property again and had noted that there was some mould growth to the bathroom ceiling, water staining at the wall and ceiling junction in the rear bedroom consistent with previous condensation; there had also been mould growth to the front door and by the kitchen door; the Environmental Health Officer had noted that the cooker hood extractor fan was not working and there was no mechanical ventilation to the bathroom, although both the kitchen and bathroom had windows which could be opened; the officer inspecting the property had recommended additional loft insulation, earth bonding to an electrical fitting and any future redecoration to be with a fungicidal paint; the Panel's attention was drawn to photographs taken by the officer inspecting the property;

(h) officers had concluded that the applicant had made herself intentionally homeless; in making homelessness decisions, the Council must have regard to the Homelessness Code of Guidance which was required to be used by local authorities to assist with the interpretation of the homeless legislation; the Code of Guidance on Homelessness (Paragraph 11.7) stated that a person became homeless, or threatened with homelessness, intentionally: if he or she deliberately did or failed to do anything in consequence of which he or she ceased to occupy accommodation; the accommodation was available for his or her occupation; and it would have been reasonable for him or her to continue to occupy the accommodation;

(i) in response to the representations made by solicitors on behalf of the applicant:

(i) *the arrears were not due to rent being withheld but as a result of the applicant's financial situation* – an affordability assessment had not been undertaken by the Council as the applicant had stated when interviewed by a Housing Officer that she had withheld rent due to the condition of the property; in addition there were other references to withholding the rent in the paperwork before the Panel including the applicant's application form to the Panel and the letter from the applicant to her landlord dated 22 November 2012; it was, therefore, considered that the overriding reason had been the withholding of rent due to a disagreement about the state of repairs and the condition of the property; as the applicant had stated that the rent had been withheld it was reasonable to conclude that she must have been in possession of it in the first place;

(ii) *if the reason for issuing notice had been rent arrears the landlord should have served a notice under Section 8 of the Housing Act 1988 and not Section 21* – whilst Section 8 could specifically be used to regain a property due to rent arrears, it was also possible to use Section 21 which simply required two months' notice to be given without the need for the matter to go to court if a tenant left of their own accord; under Section 21 no reason had to be given for the notice and it was usually a quicker and easier process for landlords; dealing on a daily basis with issues such as the one before the Panel, the Assistant Housing Options Manager (Homelessness) saw many more Section 21 Notices used than Section 8 Notices for such cases;

(iii) *the condition of the property made it unreasonable for occupation* – the representations made by the solicitor about statements made by health professionals were not accurate; there was no evidence before the Panel from a health professional stating that the applicant's or one of her son's symptoms were due to the condition of the property; there was one reference from a General Practitioner to the possibility that mould in the property had contributed to the applicant's symptoms;

little mould had been seen by the Council's Environmental Health Officers during the two visits to the property; the statement attributed to one of the Environmental Health Officers by the applicant that Social Services would have been called had the mould not been cleaned off was totally refuted by the officer concerned; the applicant, in a letter dated 22 December 2012 to the Council's Benefits Section, had stated that her partner had made the property habitable;

(iv) *repair works undertaken to the garden* – it was submitted that someone struggling financially would be unlikely to carry out works to the garden;

(v) *the arrears were not a financial problem for the landlord* – the landlord had clearly stated in a text message to the applicant that she required the rent in order to pay her mortgage;

(vi) *the extent of the repairs undertaken by the applicant and her partner* – the alleged sums spent on repairs as set out in the applicant's letter dated 15 October 2012 to her landlord were contrary to statements the applicant had made in her text messages to her landlord, eg the text sent at 8.56 am on 9 July 2012;

(j) it was considered that the applicant's wilful and persistent refusal to pay her rent had been a deliberate omission; in consequence of this, the applicant had received a Possession Order which had led to her ceasing to occupy her home; the arrears had been caused by the applicant withholding the rent from her landlord; the property would have continued to be available had the applicant complied with the terms of her tenancy and not accrued rent arrears; the property would have been reasonable for the applicant to occupy as it was a two bedroom house suitable for her household's needs; whilst there had been some minor repair problems, the physical condition had not been so poor as to make the property unreasonable to continue to occupy;

(k) generally, tenants do not have the right to withhold rent if they have repair problems; there are particular circumstances, based on case law, where a tenant may pay for repairs and deduct the cost from future rent; in such cases there is a recommended procedure to be followed including the tenant obtaining three estimates for work and giving the landlord the opportunity to carry out the works; the applicant had not followed this procedure; given that the substantive repair problems had been relatively minor (some mould growth and water staining consistent with condensation) it had not been necessary to withhold rent in any event;

(l) the Panel was invited to uphold the officers' decision; in the event of upholding that decision the applicant should be given reasonable notice to vacate the Council's Homeless Persons' Hostel and, with her consent, a referral should be made to Children and Families Services on account of the applicant's children being at risk of homelessness.

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

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

referrals to the Children and Families Service, with the consent of an applicant, was standard practice with cases of intentional homelessness when dependent children were involved.

Questions from Members of the Panel on the Case of the Assistant Housing Options Manager (Homelessness) and the Council's Environmental Health Officer

The Assistant Housing Options Manager (Homelessness) and the Council's Environmental Health Officer gave the following answers to questions from Members of the Panel:

- (a) the Environmental Health Officer advised that she had inspected the property in March 2013 in order to advise the applicant on steps which could be taken to improve the condition of the property; on the day of the inspection the property had been suitable for occupation; some houses were more susceptible to condensation than others; a family's lifestyle was often the main variable factor in relation to condensation issues; the applicant had appeared to have a good knowledge of the causes of condensation and had stated that she had done everything possible to avoid condensation in the property; only minor issues had been identified during the inspection as set out in the letter to the applicant dated 13 March 2013 and none of those had warranted enforcement action;
- (b) the Environmental Health Officer advised that the windows in the property had been open at the time of her inspection;
- (c) the Assistant Housing Options Manager (Homelessness) stated that the alleged amount of money spent by the applicant and her partner on repairs as set out in the schedule attached to the applicant's letter to her landlord dated 18 October 2012 was high when compared with other evidence before the Panel;
- (d) the Assistant Housing Options Manager (Homelessness) stated that the rent schedule for the period 5 May 2012 – 18 March 2013 was accurate;
- (e) the Assistant Housing Options Manager (Homelessness) stated that the overriding reason for the arrears explained to officers by the applicant had been the withholding of rent because of the condition of the property; if the applicant had advised officers that she had been unable to afford the rent the officers would have undertaken an affordability assessment;
- (f) the Assistant Housing Options Manager (Homelessness) advised that the applicant had received Housing Benefit and had been expected to pass this on to the landlord, together with the balance required for the rent.

Presentation of the Applicant's Case

The Panel considered the following submissions made by the applicant:

- (a) the privately rented property occupied by the applicant had suffered from mould for four years during virtually the whole of the applicant's occupation; despite decorating and cleaning, the mould persistently returned;
- (b) the applicant's former landlord had arranged for a surveyor to inspect the property but he had been a salesman who had only been interested in selling the landlord a humidifier; his verdict had been that the property suffered from condensation;
- (c) in the Winter of 2010 the boiler in the property had broken leaving the applicant with no hot water or heating for five days when her children had been aged five years and one year; the boiler had not been serviced that year;

- (d) in 2012 the applicant and her younger son had become ill; the applicant's younger son had been admitted to hospital with a chest infection and had suffered nose bleeding and rashes; the applicant had suffered repeated bouts of bronchitis, pleurisy, breathlessness, coughing and had been admitted to hospital for a blood clot on her lung; she also had suffered from nose bleeds;
- (e) the applicant had suffered from a muscle disorder, scoliosis of the spine, degenerative disc disease, Raynaud's disease, psoriasis and depression;
- (f) the applicant had started to take a lot of medication since moving into the property due to the condition of the property;
- (g) the electrics in the property had required urgent attention but had not been looked at despite the landlord's attention being drawn to the problem;
- (h) the boiler in the property had not been serviced regularly;
- (i) on one occasion the landlord, her husband and a third person had visited the property and the applicant had felt sufficiently threatened by them to call the police;
- (j) when the applicant and her younger son had been ill, the applicant's partner had taken time off work and, being self-employed, the household's income had suffered; at these times the applicant's older son's education had suffered;
- (k) the property had been inspected twice by the Council's Environmental Health Officers; on the second occasion the Environmental Health Officer had stated that the mould in the property was not due to the way the applicant lived; the Environmental Health Officer had drawn attention to the lack of mechanical vents in the kitchen and bathroom, inadequate loft insulation and the fact that the extractor cooker hood had not been working; the Environmental Health Officer had stated that had the mould been left on the walls she would have been required to notify Social Services;
- (l) the applicant and her partner had lost approximately £7,000 due to the condition of the property including: clothing and possessions affected by damp; time off work for illness and hospital appointments; and a break in receiving in Housing Benefit;
- (m) the applicant had been advised that rent could be withheld if the landlord failed to carry out repairs;
- (n) the applicant had been in receipt of insufficient funds to move to another property;
- (o) the applicant had left the property in a perfect condition;
- (p) the applicant had been faced with making a decision between starving her children and paying the rent, or redecorating the property to make it a healthy place in which to live and being able to feed her children;
- (q) the applicant had asked the landlord to enter into a payment arrangement but the landlord had not responded;

- (r) during the homelessness investigation by Council Officers no account had been taken of the applicant's income and expenditure; the applicant had only received £139.36 Housing Benefit a fortnight towards her rent of £900 a month;
- (s) the reason the landlord had wanted the applicant to leave the property had not been due to rent arrears but because the landlord had decided the property was not suitable for a family; if the landlord had wanted to evict the applicant for rent arrears, proceedings should have been brought under Section 8 of the Housing Act 1988 and not Section 21;
- (t) the "physical" condition of the property had been so poor as to make the property unreasonable to continue to occupy;
- (u) the applicant had undertaken repair work in the garden but had not charged the landlord;
- (v) the applicant had not acted in bad faith and had not wilfully withheld rent which she had available to her; the applicant was trying to pay a rent that was too high for her financial circumstances having regard to the repairs she had been required to undertake;
- (w) the applicant and her younger son had been in the property most of the time and as a result had suffered health-wise more than the applicant's partner and her older son who left the property regularly to attend work and school respectively.

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 rent payment schedule was correct including the references to rent arrears;
- (b) rent had been withheld in lieu of undertaking repair work; the landlord would not respond to approaches and it was felt shock tactics by her were necessary in order to get a response from the landlord;
- (c) the full possible effects of mould on one's health had not been fully appreciated by the applicant until she had researched the matter and, as a result the applicant had concluded that the condition of the property was a contributing factor to her ill health;
- (d) the medical form on the Council's housing file completed in 2011 had mentioned a number of medical problems but these had not been caused by mould in the property; respiratory conditions had not been mentioned on the form as at that time the applicant had still been researching the issue and had not formulated a conclusion;
- (e) lifestyle issues had not contributed to the condition of the property.

Questions from Members of the Panel to the Applicant

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

- (a) when the property had first been occupied there had been no issues with its condition;
- (b) the applicant's partner was self-employed;
- (c) the expenditure quoted by the applicant to the landlord in the letter dated 15 October 2012 had only been given as an indication of what the costs could have been and did not represent actual expenditure; it had not been an invoice to the landlord; the work had been undertaken by the applicant and her partner and not by a contractor; the applicant's partner had been registered for VAT but was no longer;
- (d) an air vent to the bathroom had been tiled over;
- (e) mould in the property had been worse during winter months than summer months; when the applicant had first moved into the property she had smoked but no longer did so; she acknowledged that smoking could have been a contributory factor to her respiratory problems;
- (f) washing was tumble-dried and aired on the line outside when weather permitted; if clothing was placed inside to dry it was at a time when there had been heating on and windows opened; when the tumble dryer had been used the outlet hose had been placed out of the back door;
- (g) the works undertaken to the garden had been repair works to a fence which had weathered due to being so old.

Summing Up

The applicant stated that she had not deliberately withheld rent but had fallen on hard times and if she had been able to afford to move to another property she would have done so. She stated that since residing at the Council's Homeless Persons' Hostel she had paid all of the rent due at the Hostel without fail.

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, the Assistant Housing Options Manager (Homelessness) and the Environmental Health Officer then left the meeting.

In coming to its decision, the Panel focussed on:

- (a) reaching a view on why the applicant had not paid the rent for her privately rented property;
- (b) whether the applicant had deliberately done or failed to do anything as a consequence of which she had ceased to occupy the property; and
- (c) whether the property would have been affordable and reasonable for the applicant had she continued to occupy it.

RESOLVED:

(1) That, having regard to the provisions of the Housing Act 1996, as amended, and the Code of Guidance on Homelessness, and having taken into consideration the information presented by and on behalf of the applicant and by the Assistant Housing Options Manager (Homelessness) in writing and orally, the decision of the officers that the applicant was homeless intentionally from the privately rented property she occupied from 8 August 2008 and 3 April 2013 be upheld for the following reasons:

(a) the applicant when applying as homeless in March 2013 had been eligible for assistance being British, homeless because she had received a Possession Order requiring her to leave the privately rented property she had occupied and in priority need because she had dependent children; the household consisted of the applicant, her partner, and their two sons aged 8 and 4 years;

(b) the applicant had occupied a two bedroom privately rented house between 8 August 2008 and 3 April 2013; the Assured Shorthold Tenancy for the property had been in her sole name;

(c) the landlord of the applicant's former privately rented property had obtained a Possession Order from the Court dated 21 March 2013 which had required the applicant to leave the property on 3 April 2013;

(d) the landlord of the applicant's former privately rented property had stated that she had taken proceedings to end the applicant's tenancy because of rent arrears; the landlord had stated that the property would have continued to be available to the applicant had there not been rent arrears;

(e) the applicant advised the Panel that she had been in arrears with her rent due to rent being withheld by her due to repairs being required to the property by the landlord; part of the sum withheld had been Housing Benefit payments; the applicant agreed that at the time her tenancy had ended there had been rent arrears of £2,432.64 and that the arrears had started to accrue in September 2012;

(f) the applicant advised the Panel that the property had suffered from mould and condensation which she alleged had been detrimental to her health and the health of her younger son; the Panel took account of submitted medical records and letters from Princess Alexandra Hospital and general practitioners, but noted that none had stated that the applicant's health or her son's health had been affected by the condition of the property, only that they could be; the property had been inspected by an Environmental Health Officer from the Council's Private Sector Housing Team in July 2012 when only minor mould growth had been found and the applicant had been advised to clean it off; there had been a further inspection by an Environmental Health Officer from the Private Sector Housing Team on 8 March 2013 when some damp and mould had been found but not sufficient to score on the Housing Health and Safety Rating System; the only inadequacies by the landlord had been the loft had only 100mm of insulation and an extractor fan in the kitchen had not been working and there had been no mechanical ventilation in the bathroom but both the kitchen and bathroom had windows which opened; none of the issues had warranted enforcement action; the Panel took account of separate copies of colour photographs showing the condition of the property taken by both the applicant and one of

the Environmental Health Officers; the Panel also took account of the applicant's statements about the cleaning of the property she and her partner had undertaken;

(g) the Panel took account of the submissions that the landlord had not been prepared to undertake repairs to the property and as a result the applicant and her partner had undertaken repairs themselves; the Panel noted the statement of the applicant listing the repairs undertaken by her partner and herself, which also included a list of personal items allegedly ruined by mould and figures, showing the cost of the work undertaken and including a sum for loss of income; however, the Panel established from questions to the applicant that the sums listed did not represent actual expenditure and had included estimates for labour and VAT, the former of which would have been applicable had the works been undertaken by a contractor and the latter which may not have been applicable;

(h) in general, tenants do not have the right to withhold rent if a landlord fails to carry out repairs but in certain cases (based on case law) a tenant can pay for repairs and deduct the cost from future rent; the Courts have determined the correct procedure to follow if a tenant proposes to undertake repairs themselves including obtaining three estimates, sending copies of the estimates to the landlord, engaging the contractor supplying the lowest estimate and sending the landlord an accurate invoice; the applicant did not follow this procedure;

(i) the Panel took account of written representations made by solicitors instructed by the applicant, as follows;

- that if rent arrears had been the reason for the applicant being evicted, the landlord should have brought proceedings under Section 8 of the Housing Act 1988 and not section 21 and therefore the reason the landlord had ended the tenancy would not have been as a result of rent arrears – the Panel received advice from the Assistant Housing Options Manager (Homelessness) that whilst Section 8 can be used to regain possession for arrears it is also possible to use Section 21 in such circumstances and use of the latter by landlords is common practice as it is a quicker and easier process; the Panel also took account of the view of the Assistant Housing Options Manager (Homelessness) who deals with such matters on a daily basis and advised that he sees many more Section 21 notices than section 8 notices in cases similar to the one before the Panel;
- the applicant did not wilfully withhold rent – in the view of the Panel this representation is not supported by the statements made personally by the applicant when interviewed by a Housing Officer on 26 March 2013 and at the Panel meeting when she stated that she did purposefully withhold rent payments; also, in the applicant's own written representations to the Panel, the applicant made a number of references to withholding rent payments in lieu of undertaking repairs to the property;
- it was unreasonable to reside in the property due to its condition – this representation was not supported by the reports of Environmental Health Officers; also the Panel noted that the solicitors relied on a statement that "doctors insisted" the applicant's medical conditions were likely to be caused by mould and damp in the property; the Panel could find no evidence from a medical practitioner to support this claim; there had been

a reference by a medical practitioner but only to the “possibility of” mould in the property contributing to the applicant’s symptom; in addition the applicant in a letter dated 22 December 2012 had stated that the property was habitable;

- the property was not affordable – in the opinion of the Panel this is not borne out by the evidence before it which, shows that on several occasions the applicant refers to withholding the rent due to disagreements with the landlord about the condition of the property, and not due to her inability to pay; in the view of the Panel the references to withholding the rent suggest that the money was available in the first place;

(j) had it not been for the deliberate act of refusing to pay the rent of the privately rented property it is the Panel’s view that the property would have continued to be available and reasonable for the applicant, her partner and their sons to occupy;

(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 six weeks (until 11.00am on Monday 18 November 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.

17. APPLICATION NO 5/2013

The Panel considered an application for a review of a decision made by officers under delegated authority that the applicant was intentionally homeless.

The applicant attended the meeting to present her case, supported by her cousin. 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 relevant to the application.

The Chairman introduced the members of the Panel and officers present to the applicant and her cousin.

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

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

- (a) a summary of the case including the facts of the case;
- (b) the case of the Assistant Housing Options Manager (Homelessness);

(c) copies of documents submitted by the Assistant Housing Options Manager (Homelessness), namely:

(i) a typed copy of notes of an interview of the applicant by a Housing Officer dated 1 February 2013;

(ii) a copy of the applicant's tenancy agreement dated 5 February 2011 of the private rented property she had occupied;

(iii) a copy of a notice served on the applicant requiring possession of the privately rented property;

(iv) a form completed by the applicant's former landlord regarding the applicant's tenancy including problems which had arisen during the tenancy and a rent statement for the period 10 June 2011 – 4 February 2013;

(v) letters dated 8 October 2012 and 6 December 2012 from the applicant's former landlord to the Council's Benefits Section requesting that Housing Benefit payments be paid direct to the landlord;

(vi) emails dated 2 January 2013 and 4 March 2013 from one of the Council's Environmental Health Officers to Housing Officers together with a copy of a letter dated 21 December 2012 from the applicant's former landlords to the applicant;

(vii) a typed copy of notes of an interview of the applicant by a Housing Officer dated 4 March 2013;

(viii) a copy of a letter dated 5 July 2013 from the Assistant Housing Options Manager (Homelessness) to the applicant;

(d) copies of documents submitted by the applicant, namely:

(i) her application to the Housing Appeals and Review Panel dated 7 August 2013;

(ii) copy of a letter dated 1 October 2013 from solicitors acting on behalf of the applicant under the Legal Help and Help At Court Scheme.

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 applied as homeless because she had received a notice requiring possession of her privately rented property which expired on 4 February 2013;

(b) the applicant had been eligible for assistance because she was British, homeless because she had received notice to vacate her privately rented accommodation and in priority need because her 20 year old son was deemed to be vulnerable due to his diabetes;

(c) the applicant had lived at the privately rented property between 5 February 2011 and 4 February 2013; the property had been a two bedroom privately rented

ground floor flat, the tenancy for which had been held in the applicant's sole name; the contractual rent had been £725 per month;

(d) the applicant's former landlord had advised the Council that £1,450 (two months' rent) had been owed when notice had been served on the applicant and that there had been other problems with the way the applicant had conducted the tenancy; the landlord had also informed the Council's Benefits Section that the applicant had not paid her rent and that he had asked to receive the Housing Benefit payments directly from the Council because the money was not being passed on;

(d) an Environmental Health Officer from the Council had inspected the privately rented property on 19 December 2012; the officer had concluded that there had been a number of defects, the most important of which regarded the gas boiler which was not working; the Environmental Health Officer and the landlord had contacted the applicant to arrange for a gas engineer to repair the boiler, but the applicant had not co-operated or provided access; the Environmental Health Officer had confirmed that the property was habitable and that the landlord had tried to arrange the repair;

(e) a further interview had been arranged with the applicant in order to give her the right to comment on the adverse information which the Council had received from her former landlord; the applicant, had claimed that she had not been in arrears because she had given the two months rent to a cousin who had passed it on to the landlord;

(f) officers had concluded that the applicant was intentionally homeless; in making homelessness decisions, the Council must have regard to the Homelessness Code of Guidance which was required to be used by local authorities to assist with the interpretation of the homeless legislation; the Code of Guidance on Homelessness (Paragraph 11.7) stated that a person became homeless, or threatened with homelessness, intentionally if: he or she deliberately did or failed to do anything in consequence of which he or she ceased to occupy the 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) in response to the representations made by solicitors on behalf of the applicant:

(i) *Housing Benefit payments* – Housing Officers had consulted further with their colleagues in the Council's Benefits Section and had been assured that between 26 November 2012 and 4 February 2013 the applicant had received Housing Benefit of £694.98 per calendar month leaving a shortfall of approximately £30 per month for the rent;

(ii) *Notice under Section 21 of the Housing Act 1998* – whilst Section 8 of the Act could be specifically used to regain a property due to rent arrears it was also possible to use Section 21, which simply required two months' notice to be given without the need to go to court if a tenant left of their own accord; under Section 21 no reason had to be given for the notice and it was usually a quicker and easier process for landlords;

(iii) *the applicant suffered with severe mental health issues* – the applicant had made no mention of mental health problems when interviewed by officers;

(h) it was considered that the applicant's wilful and persistent refusal to pay her rent was a deliberate omission; in consequence of this the applicant had received

notice which had led to her ceasing to occupy her privately rented property; the privately rented property would have continued to be available had the applicant complied with the terms of her tenancy and not accrued rent arrears nor caused problems to her landlord and neighbours; it was considered that the property would have been reasonable for the applicant to occupy as it had been a two bedroom flat suitable for her household's needs; whilst there had been some minor repair problems, the physical condition of the property had not been so poor as to make the property unreasonable to continue to occupy; Epping Forest Housing Aid had guaranteed the applicant's deposit and a sum of £673.49 had been paid out to cover repairs which had been considered to have been the applicant's responsibility – this supported the landlord's version of the events;

(i) the applicant claimed that she had passed her rent to a cousin who had paid the landlord; the landlord had denied receiving these payments; the applicant had advised officers that no receipts for the rent had been given to her cousin and there was no other proof that she had paid her rent; the landlord had advised the Council that a County Court Judgement had been obtained for the rent arrears which indicated that a judge had been satisfied that the rent was unpaid; it had been the applicant's obligation to pay the rent and this responsibility could not be passed on to her cousin; had the money been paid over by the cousin to the landlord and the money not been credited on to the rent account then it would have been expected that the applicant would have taken further action, such as formally reporting the matter to the relevant agency or seeking advice from the Citizens Advice Bureau; the applicant did not appear to have pursued her claim that the landlord misappropriated her rent money; the applicant had not raised the issue of the missing two months' rent at her homelessness interview and it could have been expected that she would have made reference to this if she had felt aggrieved at the way her landlord had treated her; the account given by the applicant was not credible and on the balance of probabilities it was believed that the arrears were due to the applicant not paying her rent;

(j) the Panel was invited to uphold the officers' decision; in the event that the decision was upheld the applicant should be given reasonable notice to vacate the Council's Homeless Persons Hostel.

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

The applicant stated that she had no questions to ask of the Assistant Housing Options Manager (Homelessness).

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 Housing Directorate had received an email from Epping Forest Housing Aid listing the items which made up the £673.49 payment made to the landlord due to damage to the applicant's property including repairs to the front door and bedroom walls and a contribution towards new curtains;

(b) it was not known how many times the applicant had been asked to allow access to the property for a gas engineer to repair the boiler;

(c) according to the landlord the only cash payment made by the applicant for rent had been in respect of the rent for the first month of the tenancy; the landlord had also stated that a receipt had been issued for that payment; it was good practice to issue receipts for cash payments;

(d) private tenants normally paid rent through a bank transfer or by cheque; cash payments were not widely used because of the current high level of rents; the schedule from the landlord before the Panel provided a record of rent payments made by the applicant; the last two entries related to Housing Benefit paid direct to the landlord;

(e) an affordability assessment had not been undertaken as the officers had been informed by the applicant that the majority of the rent had been met by Housing Benefit and it had been considered reasonable to assume that the extra £30 per month could be met by the applicant; the focus had been on the two months' rent which the applicant stated had been paid, but which the landlord had stated he had not received.

Presentation of the Applicant's Case

The Panel considered the following submissions in support of the applicant's case from the applicant and her cousin:

(a) due to the applicant's mental health, her cousin had often paid the applicant's rent; the cousin always got paid for his work in cash and on occasions he would pay the landlord in cash for the applicant's rent; to make rent payments he sometimes would draw money out of the applicant's account as she had provided him with her card and pin number; the applicant's cousin had always made sure that the applicant's rent was paid on time;

(b) in relation to the two months' rent in question, the applicant's cousin had taken two envelopes, each one containing £725 in cash, and handed them to the landlord who at the time had suitcases packed as he was about to go on holiday; the landlord had informed the applicant's cousin that he would provide a receipt in due course but had not done so;

(c) the applicant's cousin had paid the landlord in cash on several occasions; the applicant's cousin had probably seen the landlord more often than the applicant;

(d) the applicant had only received one tenancy agreement at the start of the tenancy covering the period 5 February 2011 – 4 February 2012; the applicant had asked the landlord for a rent book but had not been given one;

(e) rent was sometimes paid into the applicant's partner's bank account (she subsequently became his wife); receipts were never provided when the rent was paid in cash;

(f) the landlord had stated that he no longer wished to rent the property to someone in receipt of Housing Benefit;

(g) the boiler had been fixed and the applicant had not refused access to a gas engineer;

(h) the applicant had only been in receipt of £530 Housing Benefit leaving her with a shortfall for the rent of £160.98 per month; the applicant had limited income (Jobseekers Allowance) and as a result had struggled to pay the shortfall each

month; however, the rent had been paid in full each month; officers had not considered whether the shortfall would be unaffordable for the applicant;

(i) the applicant had resided at the property from March 2011 and the alleged non-payment related only to the months of October 2012 and November 2012; this did not amount to a persistent refusal to pay rent;

(j) the applicant had been served with a notice seeking possession in accordance with Section 21 of the Housing Act 1998 which applied when a landlord wanted a property returned and not due to a breach in the tenancy;

(k) the applicant suffered with severe mental health issues; an act or omission, if applicable, should not be considered deliberate if it was as a result of limited mental capacity or a temporary aberration caused by mental illness;

(l) officers had taken no account of the reasons why it had been necessary for the applicant's cousin to pay the applicant's rent; the applicant had acted in good faith and could not be held responsible for two months' arrears at a time when she had been suffering from mental health issues;

(m) there was no explanation from the landlord as to why the arrears had been reduced from £1,450 (two months' rent) to £1,255.32 by the end of the tenancy;

(n) at the time the applicant moved into the property it had recently been painted; soon after her occupation mould had become apparent in various places;

(o) the property had warm air heating and when it was put on it blew black particles into the air; the landlord had been informed but had taken no action;

(p) the crack in the bath had been present when the applicant had moved in; during the last two months' of occupation the crack had become so wide that it had not been possible to use the bath;

(q) the front door had swollen and jammed; on one occasion the applicant had been unable to open it;

(r) the landlord had become hostile to the applicant when he had wanted her to leave the property;

(s) the applicant also suffered from osteoarthritis, acute asthma and depression; her son had suffered several diabetic comas and was currently very ill; the applicant was his carer.

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

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

(a) references in the documentation before the Panel to the "applicant's brother" should have been references to the applicant's cousin; the landlord had only known the applicant's cousin by his first name;

(b) the rent had been paid sometimes in cash and sometimes into the landlord's partner's/wife's bank account; the statement made by the landlord that cash had only been paid for the first month's rent was not correct; the representations made by the

applicant's solicitors that the normal way of paying rent had been through bank transfer was not correct as the rent had been paid in cash on several occasions;

(c) at the time of the applicant's interview with a Housing Officer on 1 February 2013 the issue of the alleged unpaid rent had not been known to the applicant;

(d) the Council's Benefits Section had advised the applicant to continue to pay the rent although the applicant had been unhappy with the condition of the property;

(e) the applicant had arranged for Housing Benefit payments to be paid direct to the landlord; many of the landlord's statements had been fabricated;

(f) the applicant's cousin had a small dog which was occasionally at the applicant's property during his visits; the landlord had initially stated that this was not an issue but subsequently changed his mind; the applicant's cousin had been present at the property at the time of the inspection by the Environmental Health Officer and the dog had also been present at that time;

(g) the landlord had stated that he did not have a problem with the holes left following the removal of shelves from walls.

Questions from Members of the Panel to the Applicant and her Cousin

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

(a) the applicant's cousin had handed the landlord the cash for the October and November 2012 months' rent at the landlord's house on a Friday evening at approximately 7 pm; it had been apparent that the landlord was about to go on holiday as there were packed suitcases in his property; the landlord had stated that he would provide a receipt for the cash payments for the October and November 2012 rent when he walked his dog later;

(At this point in the proceedings Councillor Hart advised that she had to leave to attend another engagement. The Chairman explained that as a result of Councillor Hart leaving the meeting before all of the evidence had been heard she would not be taking part in the decision process. He further advised the applicant that the Panel was still quorate with three members).

(b) sometimes the applicant's cousin drew out £300 from an ATM at Barclays Bank, another £300 from an ATM at a Santander branch for the applicant's rent and if he was still short of cash he would make up the balance from his own money; on occasions he also drew out money from ATMs on different days in order to ensure that he had sufficient to pay the rent.

Summing Up

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

Deliberations

The Chairman indicated that the Panel would consider the matter in the absence of both parties and that the applicant and the Assistant Housing Options Manager (Homelessness) would be advised in writing of the outcome. He further advised that

as the remaining members of the Panel had other commitments the meeting would be adjourned and would resume at 4 pm on 3 October 2013 to reach a decision on the matter.

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

Resumption of the Panel Meeting

On resuming on 3 October 2013, the Panel comprising Councillors Rolfe (Chairman), Lea and Avey, focussed on:

- (a) the conflicting evidence submitted regarding payment of the two months' rent for October and November 2012;
- (b) the condition in which the applicant kept the privately rented flat and the way in which she had conducted her tenancy;
- (c) whether the applicant had deliberately done or failed to do anything as a consequence of which she had ceased to occupy the property; and
- (d) whether the property would have been affordable and reasonable for the applicant had she continued to occupy it.

RESOLVED:

(1) That, having regard to the provisions of the Housing Act 1996, as amended, and the Code of Guidance on Homelessness, and having taken into consideration the information presented by and on behalf of the applicant and by the Assistant Housing Options Manager (Homelessness) in writing and orally, the decision of the officers that the applicant was homeless intentionally from the privately rented property she occupied from 5 February 2011 and 4 February 2013 be not upheld for the following reasons:

- (k) the applicant when applying as homeless in February 2013 had been eligible for assistance being British, homeless because she had received notice on the privately rented property she had occupied and in priority need because her 20 year old son who resided with her was deemed to be vulnerable due to his diabetes;
- (l) the applicant had held an Assured Shorthold Tenancy of a two bedroom privately rented flat between 5 February 2011 and 4 February 2013; the tenancy for the property had been in her sole name;
- (m) the landlord of the privately rented property had advised the Council that £1,450 (two months) rent was owed when notice was served on the applicant; the landlord also informed the Benefits Section of the Council in October 2012 that the applicant had not paid her rent and had asked to receive payments direct because the applicant was not passing on the payments;
- (n) the applicant asserted a different claim to the landlord, that there had been no arrears of rent because cash for the two months in question had been handed to the landlord by the applicant's cousin; the landlord denied receiving the cash for the months in question;

(o) on balance the Council officers had determined that the two months payments had not been handed to the landlord, taking account of the evidence from the applicant and the landlord and the fact that a County Court judgement had been made for rent arrears - which suggested that a judge had been satisfied that rent was unpaid; the officers had also taken account of the fact that the applicant's cousin had not obtained a receipt for the cash he allegedly handed to the landlord; unlike the officers, the Panel had the advantage of being addressed by the applicant's cousin who described in detail his actions in handing the cash for two months rent to the landlord; despite the evidence of the applicant's cousin adding to the applicant's version of the events, the Panel was still faced with two completely conflicting versions regarding the payments and was unable, on the evidence available to it, to give greater weight to either the applicant's version or the landlord's version; the Panel decided therefore, having regard to the consequences for the applicant of finding against her on this issue and the advice provided by the Homelessness Code of Guidance in such circumstances to give her the benefit of the doubt;

(p) the landlord informed the Council that the applicant had not taken care of the property during her occupation; the Panel considered a list of alleged damage to the property and other alleged breaches of the tenancy agreement submitted by the landlord; having regard to the fact that no other evidence was submitted to support these allegations the Panel formed the view that the items listed were not sufficiently serious to warrant cessation of the tenancy;

(q) having regard to (e) and (f) above, the Panel did not find it necessary to reach a view on the other matters raised by the solicitors instructed by the applicant;

(r) for the reasons set out in (e) and (f) above, the Panel finds the applicant unintentionally homeless;

(2) That, subject to it being found that the applicant has a local connection to the District, the Council owes the applicant a full housing duty in accordance with the provisions of the Housing Act 1996, as amended; and

(3) 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, particularly having regard to the fact that some evidence given to the Panel had not been provided to officers at the time they took their decision.

18. PROGRESS REPORT ON PREVIOUS APPEALS/APPLICATIONS

The Panel considered a progress report on previous appeals/applications.

RESOLVED:

- (1) That the Progress Report on previous appeals and applications be noted; and

- (2) That Cases 3/13, 5/12, 7/12, 6/12, 4/12, 3/12, 2/12 and 1/12 be deleted from the Schedule.

CHAIRMAN

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