

EPPING FOREST DISTRICT COUNCIL COMMITTEE MINUTES

Committee: Housing Appeals and Review Panel **Date:** Monday, 7 December 2015

Place: Committee Room 1, Civic Offices, High Street, Epping **Time:** 5.25 pm

Members Present: Councillors B Rolfe (Chairman), A Mitchell (Vice-Chairman) and G Shiel

Other Councillors: Councillors

Apologies: J Lea and L Mead

Officers Present: A Hall (Director of Communities), A Hendry (Senior Democratic Services Officer), J Hunt (Assistant Housing Options Manager (Homelessness)), R Wilson (Assistant Director (Housing Operations)), J Leither (Democratic Services Officer), D Barrett (Area Housing Manager (South)), P Gardener (Communities Safety Officer) and C Walsh (Assistant Area Housing Manager)

12. SUBSTITUTE MEMBERS

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

13. DECLARATIONS OF INTEREST

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

14. ANY OTHER BUSINESS

The Assistant Director (Housing Operations) advised the Panel that when Applicants/Appellants attended a meeting of the Housing Appeals and Review Panel they would be told that they were allowed to only have one person in attendance for support. However, they may also bring one professional person to represent them, for example a Solicitor or a representative from an organisation such as Shelter.

RESOLVED:

That Panel Members agreed that Applicants/Appellants attending Housing Appeals and Review Panel meetings would only be allowed to bring one person for support and one professional person to represent them.

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
5	Application No. HS/RW/MB/07/2015	1
6	Application No. HS/RW/MB/08/2015	1

16. APPLICATION NO. HS/RW/MB/07/2015

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. Mr R Wilson, Assistant Director (Housing Operations) attended the meeting to advise the Panel as required on relevant legislation and on national and local housing policies relevant to the application.

The Chairman asked everyone present to introduce themselves 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) Copy of the Assured Shorthold Tenancy Agreement between the Landlord and the Applicant;
 - (ii) A Notice Requiring Possession, and Order for Possession and a Notice of Eviction;
 - (iii) Notice from the Landlord advising the Council that the Applicant had been served notice due to rent arrears;
 - (iv) Note of a formal interview between the Applicant and Officers dated 2 July 2015 and 22 September 2015;
 - (v) Notes of Interview between Homelessness Officer and Environmental Health Officer dated 13 July 2015;
 - (vi) A schedule of Housing Benefit awarded to the Applicant from 17 July 2013 until 13 August 2015 and a letter from the Landlord;
 - (vii) A letter to the Applicant dated 7 October 2015 advising the Applicant that the Council considered she had made herself homeless intentionally under section 191 under the Homelessness Act 2002;

- (viii) A copy of pages 172 and 173 from the publication Homelessness and Allocations by the Legal Action Group Charitable Organisation; and
 - (ix) Guidance from the Shelter Legal Website setting out the recommended procedure to be followed when requesting property repairs.
- (d) Copies of documents submitted by the Applicant, namely:
- (i) The Applicant's application letter to the Housing Appeals and Review Panel dated 26 October 2015;
 - (ii) A letter from Sternberg Reed Solicitors dated 28 October 2015; and
 - (iii) Photographs and letters of support for the Applicant tabled at the meeting.

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 is British and 48 years of age, her household consists of her and her two daughters. She held an assured shorthold tenancy from May 2013 until July 2015.

(b) The Landlord advised the Council in November 2014 that notice had been served on the Applicant due to "rent arrears" which totalled £7,923 at the end of the tenancy. The Homelessness Legislation required this Council to be satisfied that she had not made herself intentionally homeless.

(c) The Applicant was interviewed by her Homelessness Case Officer, she was asked why had she stopped paying the rent. The Applicant advised that the property had a lot of repairs to be carried out and had reported them to the Landlord in October 2014. The Applicant advised that there was mould due to the damp conditions of the property she had reported hearing running water, the heating did not work and there was a rat infestation. In December 2014 she came home from work and the flat had been flooded as there was a leak under the floorboards, the rats had chewed through electric cables leaving the water that was leaking and electric cables chewed in the bathroom. The Applicant considered this to be highly dangerous to her and her family and that is why she withheld the rent until all the repairs had been done.

(d) On 27 November 2014 the Applicant reported the state of the flat to the Housing department at the Council who informed the Environmental Health department. On the same day an Environmental Health Officer (EHO) visited the property and reported that she found mould growth in both bedrooms which indicated a condensation problem in the property. The Applicant explained that the Landlord had recently replaced the boiler but only two radiators were working in the property. She also advised that the Landlord was sending a builder the following day to look at the radiators. The EHO advised her to clean the mould off of the walls and to ventilate the property on a regular basis.

(e) On 8 December 2014 the Applicant contacted the EHO and stated that the Landlord had still not carried out any works to the property and that she had a leak under the floorboards and a rat infestation under the bath. The EHO immediately contacted the Landlord who advised that the tenant had never mentioned the problem with the radiators but there had been a number of contractors visiting the

property since the tenant had reported the water leak in the bathroom at the beginning of December 2014.

(f) On 27 January 2015 the EHO met with the Landlord and the Applicant. The Applicant was advised that the obligation of the Landlord was to do the repairs and the duty of the tenant was to pay the rent. The Applicant responded that she intended to pay the rent when the repairs were done. The EHO advised the Applicant that she needed to pay the rent otherwise she could be evicted and the Council may not assist her.

(g) The EHO advised on 24 February 2015 that Landlord requested a joint inspection meeting with the tenant to finalise any outstanding works.

(h) The EHO met with the Applicant and the Landlord on 27 February 2015 at the property. The Applicant was still not satisfied with the works that had been carried out and the Landlord advised that it was difficult to make an appointment to gain entry to the property. The Landlord arranged for an alternative gas and electrical contractor to visit and offered to provide them with access to carry out works to free up the Applicant's time.

(i) On 19 March 2015 the Landlord informed the EHO that the decorator had not been able to finish the works because the Applicant was not happy with the way they were painting/treating the mould. The Landlord felt he had done everything to appease the Applicant and that he was now instructing his solicitor to serve a s21 notice.

(j) The Homelessness Officer decided that the Applicant had made herself intentionally homeless and she was informed of this. She requested a review of this decision by this Panel.

The Panel noted the relevant homelessness legislation and that the Code of Guidance (11.7) states that: *a person becomes homeless, or threatened with homelessness, intentionally if:*

- i) *he or she deliberately does or fails to do anything in consequence of which he or she ceases to occupy accommodation (or the likely result of which is that he or she will be forced to leave accommodation)*
- ii) *the accommodation is available for his or her occupation, and*
- iii) *it would have been reasonable for him or her to continue to occupy the accommodation*

(k) In conclusion the Assistant Housing Options Manager (Homelessness) said that the Applicant had made herself homeless by wilful and persistent refusal to pay her rent. The property would have continued to be available to her for continued occupation had she paid the rent.

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:

(a) The Environmental Health Officer states in her report that she did visit the property on several occasions with the Landlord and was informed that it had been difficult to gain entry into the property due to the Applicant's work commitments.

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

The Panel had no questions for the Officer.

Presentation of the Applicant's Case

The Panel considered the following submissions made by the Applicant:

(a) The Applicant had submitted late correspondence which the Applicant says is evidence that she had contacted the Landlord on several occasions; and also letters and photographs which the Applicant says supports the work needed doing, and that it had not been done.

(b) The Applicant stated that when she moved into the property in May 2013 the flat had been newly decorated and there didn't, at that time, seem to be any problems. The problems started in October 2013 when the weather became colder and mould started to appear on the walls. The boiler was replaced as the heating did not work but this did not make much difference as for the 2 years the Applicant lived there only two of the radiators worked. The Applicant did contact the Landlord to advise him of the mould and that the radiators were not working but his answer was to bleed the radiators.

(c) The Applicant advised the Landlord in 2014 that she could hear running water but the Landlord did not investigate and when she returned from work in early December 2014 the property was flooded. It appeared that there had been a leak, and under the bath there was an infestation of rats who had chewed through electricity wires. The next day a plumber arrived but refused to do any of the works as he deemed it to be too dangerous with the water the chewed wires and the rats.

(d) The Applicant supplied photographs that show the mould and damp that she was living in and now that she had been evicted the Landlord seems to be doing all of the works that was needed as he is now living in the property himself.

(e) The Applicant advised that she had been withholding the rent until the repairs to the property had been carried out. Once she was advised by the EHO that she wasn't within her rights to withhold the rent and that she could be evicted she found that it was too late to rectify this as Notice Requiring Possession had been served.

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 advised that she came to Council to see a housing officer regarding the works that needed doing and she was never told that she shouldn't withhold the rent.

Questions from Members of the Panel to the Applicant

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

(a) The Applicant stated that she did not have any of the rent arrears left as she had to buy heaters and replace furniture, which had been damaged by the mould and flood and she was now having to pay to store her furniture.

(b) The Applicant advised that she was in discussion with the Council now with regards to paying back the Housing Benefit.

(c) The Applicant clarified that the tenancy was arranged through a mutual acquaintance and that she did not view the property before she moved in because she had nowhere else to go so she accepted the tenancy on good faith.

Summing Up

Neither the Applicant nor the Assistant Housing Options Manager (Homelessness) had anything to add to their cases.

Deliberations

The Chairman indicated that the Panel would consider the matter in the absence of both parties and that the Applicant and the Assistant Housing Options Manager (Homelessness) would be advised in writing of the outcome. The Applicant was advised that she could telephone the next day after 11am when she would be advised of the decision. The Applicant and the Assistant Housing Options Manager (Homelessness) then left the meeting.

In coming to its decision, the Panel focussed on:

(a) Whether the applicant deliberately did or failed to do anything as a consequence of which she ceased to occupy the property;

(b) Whether the property would have been available for the applicant's continued occupancy had there not been any rent arrears; and

(c) Whether the property would have been reasonable for the applicant had she continued to occupy it.

RESOLVED:

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 the applicant and by the Assistant Housing Options Manager (Homelessness) in writing and orally, the decision of officers that the Applicant was homeless intentionally from the property that the Applicant, her Partner and Children occupied from 22 June 2008 to 5 January 2015 be upheld for the following reasons:

(a) the Applicant was aware that any breach of the tenancy agreement could result in the tenancy being terminated;

(b) the Landlord of the property had advised the Council that notice had been served on the Applicant due to "rent arrears";

(c) the arrears were £4,400 when notice was served and they had increased to £7,923 by the end of the tenancy;

(d) on being interviewed by the Homelessness Case Officer it was stated that the Applicant decided to withhold the rent until repairs to the property had been carried out;

- (e) an Environmental Health Officer from this Council visited the property and found that there were repairs to be carried out by the Landlord and advised the Applicant that she should not withhold the rent as her tenancy could be terminated;
 - (f) the Applicant was aware that she had to adhere to the terms of the tenancy agreement by paying the rent. She withheld the rent until repairs to the property had been carried out, not always making the property accessible to tradesmen and in July 2015 she became homeless;
 - (g) the Panel further concluded that it would have been reasonable for the Applicant and her family to have continued to be housed at the property if the rent had continued to be paid;
 - (h) for the reasons set out in (a) - (g), the Panel found that the Applicant had failed to comply with her tenancy agreement and was aware that any breaches of the agreement could result in the tenancy being terminated;
 - (i) for the reasons set out above, the decision of the Panel is that 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 notice period of eight weeks (until 11.00am on Monday 1 February 2016) in order to allow her reasonable opportunity to secure alternative accommodation.
- (4) That the Officers (with the Applicant's consent) would refer the Applicant to Children's Social Care Services to seek their assistance in helping her find alternative accommodation and that the officers continue to offer housing advice and assistance to the Applicant.

17. APPLICATION NO. HS/RW/MB/08/2015

Introduction

The Panel considered an application for a review of a decision made by officers for a refusal of a Priority Transfer request.

The appellant attended the meeting to present his case supported by his father.

Mr D Barrett, Area Housing Manager (South), attended the meeting to present his case. He was accompanied by Mr C Walsh, Assistant Area Housing Manager and Mr P Gardner the Community Safety Officer. Mr A Hall, Director of Communities attended the meeting to advise the Panel as required on relevant legislation and on national and local housing policies relevant to the application.

The Chairman asked everyone present to introduce themselves to the Appellant and his father.

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 decision.

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 Area Housing Manager (South);
- (c) Copies of documents submitted by the Area Housing Manager (South), namely:
 - (i) Report from the Ombudsman;
 - (ii) Letter from the Area Housing Manager (South) to the appellant dated 2 October 2015 confirming that a priority transfer could not be approved;
 - (iii) An email from the Assistant Director Housing (Housing Operations) to the Area Housing Manager (South) containing an email from the appellant requesting to raise their complaint to a level 2;
 - (iv) Letter from the Assistant Director Housing (Housing Operations) dated 21 October 2015 to the appellant, including advice from the Council's Medical advisor confirming the Area Housing Manager's (South) original decision;
 - (v) Statement and report from the Council's Community Safety Officer.
- (d) Copies of documents submitted by the Appellant, namely:
 - (i) The Appellant's completed application form to the Housing Appeals and Review Panel dated 6 November 2015;
 - (ii) Detailed appeal notes;
 - (iii) Proof of repeats of medication dated 19 October 2015;
 - (iv) A letter from the appellants doctor, dated 30 September 2015;
 - (v) A letter from another doctor dated 4 August 2015;
 - (vi) A NHS internet information sheet on TIAs;
 - (vii) Various papers tabled at the meeting including extracts from the Council's Housing Allocation's Scheme rules and a letter from the NHS Healthy Minds, undated and quick guide to the smokefree law.

Presentation of the case of the Area Housing Manager (South)

The Panel considered the following submission in support of the case of the Area Housing Manager (South):

- (a) The property was let under a Secure Tenancy to the appellant, his partner and young son.
- (b) From August 2014 numerous complaints were made by the appellant against his neighbour, claiming they were using cannabis and requesting he be given a Priority Transfer which was not granted. He made further complaints and stated he was not satisfied with the way in which the Council dealt with it. He subsequently took this through the Council's full step by step Complaints Procedure. No fault was found. This was eventually taken to the Local Government Ombudsman in May 2015. The Ombudsman concluded that there was no fault by the Council.
- (c) Following the receipt of further allegations of drug use and further requests for a Priority Transfer in October 2015, the appellant was written to by the Area Housing Manager (South) confirming that a Priority Transfer could not be approved under the circumstances.

(d) Following a further appeal to the Assistant Director (Housing Operations), the Assistant Director investigated the matter and subsequently wrote to the applicant on 21 October 2015 restating the Council's position. The Assistant Director's consideration also included a consultation with the Council's Medical Advisor to consider the medical aspects of the case, who concurred with the Council's position.

(e) The Area Housing Manager (South) took the Panel through those parts of the Council's Housing Allocations Scheme relevant to the case, which stated:

"Priority Transfers will only be granted on a like-for-like accommodation basis for urgent reasons including;

- *urgent circumstances (in accommodation away from the local area) where there is clear written evidence that an existing tenant's safety is at risk including, as a result of violence or threats of violence, intimidated witnesses and those escaping anti-social behaviour or domestic violence*
- *those who need to move urgently because of life threatening illness or sudden disability. Decisions will take into account the advice of the Council's Medical Advisor following consideration of the impact it has upon the tenant's housing requirements and whether the tenant's current accommodation is directly contributing to the deterioration of the tenant's health. It will be considered based on the extent that the health of a tenant, or an immediate member of their family, will significantly improve by a move to alternative accommodation."*

(f) Council Officers and 'Parkguard' a private security company employed by the Council at the Limes Farm Estate had investigated the complaints made against the neighbour's alleged drug use. It was apparent that there was not a case to justify that an urgent Priority Transfer be granted.

(g) A Priority Transfer sets a high bar and transfer would only be granted under "urgent circumstances". Such urgent circumstances would have to justify and warrant placing such applicants at the top of the Council's Housing Register as a priority amongst the 1,400 other households in the Epping Forest District who were in recognised Housing Need. The case would normally also require the support of the Police to confirm the serious level of the risk. Priority Transfers were, therefore, only granted in very exceptional circumstances with only about 2-3 cases being approved each year and it was not felt that this case met this criteria.

(h) Mr C Walsh, the Assistant Area Housing Manager, noted that his involvement with the case began in May 2015. He advised the appellant the Council would need a good deal of evidence with corroborating evidence from neighbours, about the alleged use of drugs. He was asked by the appellant to attend the property in question to witness the smell marijuana in and around his property. He did so and noted the smell. Following this he spoke to the appellant and also asked the Police to keep an eye out for any transgressions from that area. Although he had smelt marijuana he could not pin it down to any one property.

(i) Mr P Gardner the Community Safety Officer, had directed the Parkguard force, who were community safety-accredited and experienced in dealing with environmental crime, drugs and weapons issues, to monitor this area and report back when carrying out their other duties. Their subsequent reports did not contain any evidence of cannabis usage at the location monitored. The reports did indicate some residents smoking cigarettes whilst on the balconies.

(j) In conclusion, Mr Barrett concluded that a Priority Transfer could not be offered to the appellant as there was not enough evidence to warrant such a Transfer.

Questions from the Appellant on the case of the Area Housing Manager (South)

The officers gave the following answer to the appellant's question:

(a) A Community Protection Warning was given to his neighbour, not a Community Protection Notice.

(b) The matter of residents smoking on the balconies had not been raised before.

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

The Panel had no questions for the officers.

Presentation of the Appellants case

(a) The appellant expressed the view that the Assistant Director (Housing Operations) had only made a minimal response to this application for a Priority Transfer.

(b) He had always been helpful to the Council. He said that Mr Walsh had said that he had had a Transient Ischaemic Attack (TIA), but he was actually being treated for a TIA.

(c) The one thing he was told that he needed to stay away from was smoke. His doctor was concerned for him. Also his three year old son was at risk.

(d) He was now under the Community Mental Health Team (CMHT) and had tabled a letter from them at this meeting. His GP has put him on the highest dosage of Salbutamol. He was also on Naproxen, as he had bad headaches all the time.

(e) There had been other complaints by other neighbours about drugs.

(f) The smell of cannabis had been noted by other officers at the time, as well as some Council workers.

(g) He had asked for a meeting with the Area Housing Manager (South) but that did not take place. If it did happen, he suggested that perhaps an action plan could have been constructed and there would not have been a need to convene an Appeals Panel meeting.

(h) Overall this has had a detrimental affect on his and his family's physical health.

Questions from the Area Housing Manager (South) to the Appellant

The officers had no questions for the Appellant.

Questions from Members of the Panel to the Appellant

The Appellant gave the following answers to questions from Members of the Panel:

(a) He had to keep away from any type of smoke, in order to avoid having a TIA. Limes Farm properties are very close together, with less than a metre gap between the windows.

(b) The offending property is next door to the appellant's, to his left. It was a block of maisonettes. The neighbour's ventilation shaft comes out near to the appellant's front door.

(c) When Mr Walsh visited there were also seven other Council workers there at the time.

Mr Walsh added that they were part of his team, as well as an Environmental Protection Officer. They both smelled the cannabis at the time, so there was no need to involve the other Council workers, as they both could make a statement to that effect.

Summing Up by the Area Housing Manager (South)

The Area Housing Manager (South) said that, in summary, there were two elements to this case; one was medical, and he had sought the opinion of the Council Medical Advisor on this. The other was an Anti Social Behaviour issue. This had been investigated; with a lot of time spent investigating the allegations.

Finally Mr Barrett referred to the Council's Allocations Scheme, and reiterated that any reason for a Priority Transfer has to be very urgent indeed.

Summing up by the Appellant

The Appellant referred the Panel to the Council's Housing Allocations Scheme where it referred to a reason for an urgent Priority Transfer which says: "...that an existing tenant's safety is at risk including as a result of violence or threats of violence..." and "...whether the tenant's current accommodation is directly contributing to the deterioration of the tenant's health. It will be considered based on the extant the health of a tenant, or an immediate member of their family, will significantly improve by a move to alternative accommodation."

Deliberation

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 (South) would be advised in writing of the outcome. The Appellant was advised that he could be given the decision by 11am the next day if he contacted the Democratic Services Officer by telephone. The appellant and the Area Housing Manager (South) along with the Assistant Area Housing Manager and the Community Safety Officer, left the meeting.

In coming to its decision the Panel focused on:

- a) The circumstances of the Appellant's accommodation;
- b) The Appellant's concerns about marijuana apparently wafting into his accommodation;
- c) The latest information brought to the meeting by the Appellant;
- d) The officers' application of the Council's Housing Allocations Scheme;
- e) The advice given by the Council's Medical Advisor; and
- f) The advice of the Community Safety Officer.

RESOLVED:

(1) That, having regard to the provisions of the Council's Housing Allocations Scheme and having taken into consideration the information presented by and on behalf of the appellant and by the Area Housing Manager (South) in writing and orally, the decision of the officers not to provide a Priority Transfer be upheld for the following reasons:

a) that the appellant's case did not meet the Council's Housing Allocations Scheme criteria for a Priority Transfer as they were only granted under "urgent circumstances" and it was not felt that this case met that criteria;

b) that the Council's Medical Advisor had advised that a Priority Transfer was not warranted and the Panel was of the view that the letter submitted by the applicant from NHS Healthy Minds immediately prior to the Hearing and its applicability to the circumstances of the case did not warrant further determination from the Council's Medical Advisor;

c) the Panel noted that the Community Safety Officer, in conjunction with 'Parkguard', had investigated the complaints made against the neighbours' alleged drug abuse and had found that there was no case to support or justify an urgent Priority Transfer;

d) they had noted the new information tabled on the day by the Appellant, including the letter from the NHS Healthy Minds practitioner, but concluded that its applicability to the circumstances of the case did not warrant further determination from the Council's Medical Advisor;

e) for the reasons set out above, the decision of the Panel was to uphold the officer's decision that the appellant should not be provided with a Priority Transfer.

(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