

EPPING FOREST DISTRICT COUNCIL COMMITTEE MINUTES

Committee: Housing Appeals and Review Panel **Date:** Thursday, 20 December 2007

Place: Committee Room 1, Civic Offices, High Street, Epping **Time:** 4.15 - 6.15 pm

Members Present: Mrs P K Rush (Chairman), Mrs R Gadsby (Vice-Chairman),
Mrs P Richardson, B Rolfe and J Wyatt

Other Councillors: T Frankland (Observer)

Apologies: R D'Souza

Officers Present: G Lunnun (Democratic Services Manager) and R Wilson (Assistant Head of Housing Services (Operations))

84. MINUTES

RESOLVED:

That the minutes of the meetings of the Panel held on 16 and 18 October 2007 be taken as read and signed by the Chairman as a correct record.

85. SUBSTITUTE MEMBERS

It was noted that Councillor B Rolfe was substituting for Councillor R D'Souza.

86. DECLARATIONS OF INTEREST

Pursuant to the Council's Code of Member Conduct, Councillor J Wyatt declared a personal interest in agenda item 7 (Appeal No. 13/2007) by virtue of having been contacted by the appellant for advice on procedural matters only. The Councillor determined that his interest was not prejudicial and that he would remain in the meeting for the duration of the consideration and determination of the appeal.

87. 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 paragraphs of Part 1 of Schedule 12A of the Act indicated and the exemption is considered to outweigh the potential public interest in disclosing the information:

Agenda Item No	Subject	Exempt Information Paragraph Numbers
6	Application No. 12/2007	1 and 2
7	Appeal No. 13/2007	1 and 2
8	Previous Appeals and Applications - Current Position	1 and 2

88. APPLICATION NO. 12/2007

Members were advised that following an approach from the solicitors acting on behalf of the applicant it had been agreed that consideration of this application be deferred to the meeting of the Panel arranged for 29 January 2007.

RESOLVED:

That the reason for deferral of consideration of this application be noted.

89. ORDER OF BUSINESS

The Chairman sought agreement to alter the order of business.

RESOLVED:

That agenda item 8 (Previous Appeals and Applications - Current Position) be taken as the next item of business.

90. PREVIOUS APPEALS AND APPLICATIONS- CURRENT POSITION

The Panel received schedules giving a progress report on recent cases where the matter was still active within Housing Services.

Members expressed concern about the apparent delay in completing disabled adaptations approved by the Panel at its meeting on 16 February 2006. The Assistant Head of Housing Services (Operations) agreed to advise members in writing of the current position and the reasons for the apparent delay.

The Democratic Services Manager reminded the Panel that consideration of Appeal No. 9/07 seeing permission under the terms of a lease for the retention of an extension and a conservatory had been deferred at a meeting held on 20 September 2007 pending the outcome of decisions by the Planning Inspectorate on appeals against the refusal of planning permission and the issue of an enforcement notice. The Panel was informed that the appeals against the refusal of planning permission and the issue of an enforcement notice had been dismissed by the Planning Inspectorate and that the enforcement notice had been upheld and required removal of the conservatory by 18 April 2008. Members of the Panel present who had initially considered this matter on 20 September 2007 were invited to determine the appeal in the light of the decisions made by the Planning Inspectorate. Members were advised

that at that previous meeting they had agreed to give further consideration to this application in the absence of the parties.

The Panel noted that the enforcement notice only required the removal of the conservatory and therefore had the effect of granting planning permission for the existing extension. The Panel was also advised that there was an outstanding and still valid planning permission for a different design of conservatory and extension. The Panel was informed that the Area Housing Manager had written to the appellant on 13 October 2007 seeking clarification of her intentions in relation to compliance with the enforcement notice but had not received any response. In coming to its decision, the Panel took full account of the appellant's medical condition, her family circumstances, the Council's duties under the Disability Discrimination Act, the terms of the appellant's lease and the design of the conservatory and the extension. The Panel concluded that as the appeal related to the extension and the conservatory as built its decision had to be made in relation to both elements.

RESOLVED:

- (1) That the progress report on previously heard cases be noted and that cases 7/07, 11/07, 10/07, 8/07, 4/07, 3/07, 9/06 and 8/06 be deleted from future schedules.
- (2) That the Assistant Head of Housing Services (Operations) advised members in writing of the reasons for the delay in resolving Appeal 1/06;
- (3) That Appeal No. 9/07 be dismissed as it is not possible to grant consent under the terms of a lease for development which does not have the benefit of planning permission; and
- (4) That the appellant in Appeal 9/07 be advised that if it is her intention to demolish the conservatory in accordance with the enforcement notice and seek to retain the extension as built, she should make a further application to the Council's Housing Services for consent for the retention of the extension alone under the terms of the lease.

91. APPEAL NO. 13/2007

The Panel considered an appeal against a decision made by officers under delegated authority requiring the appellant to pay service and maintenance leasehold charges on a property which he had acquired. The appellant attended the meeting to present his case. Mr H Thorpe (Housing Assets Manager) attended the meeting to present his case assisted by Mrs S Lindsay (Housing Resources Manager), Mr R Wilson (Assistant Head of Housing Services (Operations)) attended the meeting to advise the Panel as required on details of the national and local housing policies relative to the appeal. The Chairman introduced the members of the Panel and officers present to the appellant and outlined the procedure to be followed in order to ensure that proper consideration was given to the appeal.

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

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

- (i) a copy of the application to the Housing Appeals and Review Panel dated 27 October 2007;
- (ii) a 1:100 scale sealed plan dated 18 March 1999 attached to the leasehold sale agreement;
- (iii) Council Tax bills for 2006-2007 and 2007-2008;
- (iv) letter dated 16 July 2007 from G A B Robins to the appellant;
- (v) letter dated 29 June 2007 from Purkelly to the Council's Housing Assets;
- (vi) letter dated 7 August 2007 from G A B Robins to the appellant;
- (vii) letter dated 24 October 2007 from Duncan Phillips Limited to the appellant;
- (viii) letter dated 30 October 2007 from the appellant's former neighbour addressed to "whom it may concern";
- (ix) letter dated 26 November 2007 from Complete Integrated Services Limited to the appellant;
- (b) the case of the Housing Assets Manager;
- (c) copies of documents submitted by the Housing Assets Manager, namely:
 - (i) notes dated 2 October 2007 of a telephone conversation between a Housing Officer and the appellant;
 - (ii) letter dated 22 November 2006 from the Council's Principal Housing Officer (House Sales and Leasehold Services) to the appellant;
 - (iii) letter dated 17 November 2006 from the appellant to the Council's Principal Housing Officer (House Sales and Leasehold Services);
 - (iv) memorandum dated 4 January 2007 from the Council's Principal Housing Officer (House Sales and Leasehold Services) to the Council's Legal Services;
 - (v) memorandum dated 5 February 2007 from the Council's Legal Services to the Principal Housing Officer (House Sales and Leasehold Services);
 - (vi) letter dated 12 February 2007 from the appellant to the Council's Assistant Head of Housing Services (Property and Resources);
 - (vii) letter dated 19 February 2007 from the Council's Housing Assets Manager to the appellant;
 - (viii) letter dated 2 April 2007 from the appellant to an officer in the Council's Housing Services;
 - (ix) letter dated 12 April 2007 from the Council's Housing Assets Manager to the appellant;
- (x) report dated 24 May 2006 of John Pryke and Partners to the Council;

- (xi) e-mail dated 20 April 2007 from the Council's Executive Assistant to the Assistant Head of Housing Services (Property and Resources);
- (xii) memorandum dated 11 May 2007 from one of the Council's Environmental Health Officers to the Environmental Health Team Leader including a dwelling assessment and an inspection report;
- (xiii) letter dated 22 May 2007 from the Assistant Head of Housing Services (Property and Resources) to the appellant;
- (xiv) letter dated 26 May 2007 from the appellant to the Assistant Head of Housing Services (Property and Resources);
- (xv) letter dated 25 April 2007 from Duncan Phillips Limited to the appellant;
- (xvi) letter dated 20 October 2006 from Complete Integrated Services Limited to the appellant;
- (xvii) letter dated 31 May 2007 from the Assistant Head of Housing Services (Property and Resources) to the appellant;
- (xviii) letter dated 7 June 2007 from the appellant to the Assistant Head of Housing Services (Property and Resources);
- (xix) letter dated 21 July 2007 from the appellant to the Assistant Head of Housing Services (Property and Resources);
- (xx) letter dated 30 July 2007 from the Housing Assets Manager to the appellant;
- (xxi) report of Purkelly dated 29 June 2007;
- (xxii) letter dated 28 September 2007 from the appellant to the Housing Assets Manager;
- (xxiii) letter dated 2 October 2007 from the Housing Assets Manager to the appellant; and
- (xxiv) Certificate of Practical Completion dated 23 August 2007.

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

- (a) the property had suffered structural problems and had been uninhabitable and there should have been a reduction in service/maintenance charges;
- (b) Housing Officers had refused to acknowledge the extent of the problem until the appellant had spoken to the Assistant Head of Housing Services (Property and Resources) in February 2007; the appellant had suggested that an independent survey of the property should be undertaken and had offered to pay for such a survey; the Council had eventually arranged for a survey being undertaken but it had been carried out by a Council Environmental Health Officer who as an employee of the Council could not be regarded as independent;
- (c) the survey undertaken by the Environmental Health Officer had been flawed since it had not recognised any Category 1 hazards; when undertaking the survey the Environmental Health Officer had admitted that she would not be making any

conclusions herself as these would be generated by feeding input into a computer programme;

(d) the appellant had requested in writing three times (22 August 2007, 6 September 2007 and 28 September 2007) a copy of the Environmental Health Officer's report and had been denied access three times; this amounted to a breach of Freedom of Information and the requests had been ignored as Council officers had not wanted to give the appellant an opportunity to challenge the results of the survey;

(e) the appellant had engaged four experts who had all described the property as uninhabitable; an exemption to the payment of Council Tax had been granted by the Council based on these views;

(f) the Council had received a structural engineer's report regarding the property in 1990 advising of problems due to soil shrinkage, thermal and foundation movement: these matters had deteriorated over 16 years before a further structural engineer had been engaged and as a result underpinning had been carried out in 2007; a 17-year delay was unreasonable.

The appellant answered the following questions of the Housing Assets Manager, the Housing Resources Manager and the Panel:

(a) the letter from one of your advisers dated 25 April 2007 does not say the property was uninhabitable but was unsuitable for letting; do you accept that there is a difference between these two statements? - there are two letters from that adviser before the Panel and the other one dated 24 October 2007 confirms that the property would have been described as uninhabitable had that question been asked at the time;

(b) if your contention about the condition of the property is correct, why did the dwelling assessment undertaken by the Environmental Health Officer not contain any category 1 hazards? - she did not put any in the report;

(c) do you accept that to be uninhabitable there must be category 1 hazards? - the lack of reference to any category 1 hazards in the report does not mean there were not any;

(d) are you aware of the scoring system under the Housing Health and Safety Rating System? - I am aware of the Environmental Health Officer's report;

(e) were you aware of the condition of the property prior to purchasing it? - that is not relevant;

(f) as you were committing yourself to a substantial investment do you not agree that you should have made enquiries about the condition of the property prior to purchase? - I read the legal pack and passed it to my solicitor; I was not aware of the condition of the inside of the property;

(g) when did you first become aware of the defects to the property? - when I received the Council's letter dated 22 September 2006;

(h) so you were aware of the defects before you completed the purchase of the property in October 2006? - yes, but not before I had exchanged contracts;

(i) when was the auction at which you agreed to acquire the property? - at the beginning of September 2006;

- (j) when did you exchange contracts? - on the day of the auction;
- (k) can you confirm that you did not view the property and had no means of knowing about its condition when you exchanged contracts? - I saw the legal pack and passed it to my solicitor; no disclosures about damage were made by the freeholder or the person previously occupying the property; the previous occupier had not been living at the property for some four to five months prior to the sale;
- (l) did the Council inform the previous occupier about the condition of the property? - on 22 September 2006 by which time I had exchanged contracts;
- (m) do you know if the Council had informed the previous occupier earlier than 22 September 2006? - a signed statement was provided to my solicitor by the previous occupier advising that he had no knowledge of receiving any earlier correspondence from the Council about the condition of the property;
- (n) as he was not living at the property for some time is it possible that he had not collected his correspondence which may have been sent there? - he stated that he had not received any correspondence from the Council about the condition of the property;
- (o) are you aware of the term "buyer beware"? - yes, but I relied on the documents I was given and which I had passed onto my solicitor;
- (p) why did you not view the property prior to the auction? - there was a limited timescale; this was the first property I had bought at an auction; I was moving to Hertfordshire and initially intended to live in the property myself and then let it.

The Panel considered the following submissions of the Housing Assets Manager:

- (a) the appellant had purchased the property, a first floor flat in October 2006;
- (b) on 2 October 2006, the appellant had telephoned Housing Services requesting information on an existing structural problem at the block of flats; during the telephone conversation the appellant had stated that he had purchased the property at auction unseen and had not had it surveyed;
- (c) in November 2006 the appellant had sought a reduction in the leasehold charges on the property due to its condition; this was refused as the property was considered habitable;
- (d) there is no provision in the appellant's lease for a reduction in service charges prior to or during repair work being undertaken;
- (e) in February 2007 the Housing Assets Manager had offered to meet the appellant at the property in order to carry out an internal inspection prior to appointing a contractor to carry out repair works; this offer had been repeated in April 2007; the appellant had advised that he did not want the Housing Assets Manager to visit the property but would be prepared to meet the Assistant Head of Housing Services (Property and Resources);
- (f) a structural engineer's inspection of another flat in the same block in May 2006 had concluded that internal cracking to that property was consistent with thermal movement and that a 12 month crack and level monitoring exercise should be undertaken; in the light of that advice and the reluctance of the appellant to allow

for an internal inspection of his property there had been no proof in early 2007 that the property was uninhabitable;

(g) as a result of further representations from the appellant, the Assistant Head of Housing Services (Property and Resources) had commissioned an independent survey of the property to be carried out by the Council's Environmental Health Team in line with the Housing Health and Safety Rating Scheme as set out in the Housing Act 2004; this assessment had concluded that as the property did not contain any category 1 hazards there was no evidence to support the view that the property was uninhabitable; the assessment was a national scheme, designed to produce consistent scores and results therefore whoever undertook the assessment the results were more or less comparable; the appellant's property had been rated in Band F, a category 2 hazard; Band A-C were considered to be the most serious bands and were described as a category 1 hazard; even allowing for slight differences to the scoring between assessors the gap between Band F and Band C was far too great to produce any other outcome than a category 2 hazard;

(h) the appellant had submitted letters from four advisers in support of his case but he had submitted no evidence to support the views expressed by those advisers; one of the advisers had been reluctant to explain his reasoning for stating that the property was not habitable;

(i) the schedule of internal works to the appellant's property had ranged from crack repairs, plaster reveals, metal wall ties, door and window adjustments and decorating, none of which were major works or works that required the decanting of occupiers; similar but more extensive works had been undertaken in another flat in the block and the occupiers had remained in residence throughout those works;

(j) the date of practical completion of the works had been 23 August 2007;

(k) since the appellant had purchased the property he had not paid service charges, ground rent or insurance premiums to the Council.

The Housing Assets Manager and the Housing Resources Manager answered the following questions of the appellant and the Panel:

(a) in relation to the condition of the property do you rely on the Environmental Health Officer's report? – yes, and the letter dated 25 April 2007 from one of your advisers;

(b) do you accept that adviser in a subsequent letter described the property as uninhabitable? – yes, but there is no evidence before the Panel to show how he reached that conclusion;

(c) do you agree that my other advisers describe the property as uninhabitable? - yes but again there is no evidence submitted to explain how those conclusions were reached;

(d) could a property be uninhabitable and occupied? - no;

(e) do you accept that the Council's insurance company have paid me for loss of rent as they considered the property uninhabitable? - no evidence has been submitted as to how they reached that conclusion;

- (f) how is it possible that the appellant received payment from the insurance company when he had not paid the premiums; - the Council pays the premiums and then seeks to recover them from leaseholders;
- (g) how much did the appellant receive from the insurance company - £4,375;
- (h) do you accept that the Environmental Health Officer cherry picked from the safety manual and only listed the least damaging aspects in the report? - no;
- (i) is there anything about communal areas in the report? - no;
- (j) do you not agree that the report of the Environmental Health Officer was flawed? – no, the report concluded that as the property did not contain any category 1 hazards there was no evidence to support the view that the property was uninhabitable;
- (k) did the Council provide the previous occupier with any information about structural defects to the building? – no, but he was aware of the internal defects;
- (l) when was a decision made that repairs were required to the property? - the property was being monitored and as it started to move quite badly a structural engineer was engaged in 2006;
- (m) when did the property previously change hands? - the Council's records show that this was in 2000 but leaseholders do not always inform the freeholder of sales;
- (n) should the Council have included information about the condition of the property in the householder pack referred to by the appellant? – no, unless questions were asked directly of the Council this information would not have been made known; sometimes leaseholders sell properties without informing the Council as freeholder; the Council does not see documents which are exchanged between a leaseholder and a potential purchaser;
- (o) why was a decision suddenly made in 2006 to commission a structural engineer's inspection? - we were made aware of the problems and as the result of the report undertook monitoring of the property;
- (p) before that time was there any evidence of dangerous cracks to the property? - no;
- (q) can you confirm that more extensive works were undertaken in another flat in the same block? - yes;
- (r) are you aware of the instructions which were given to the Council's Environmental Health Officer prior to her undertaking the assessment? - no; the instructions were issued by the Assistant Head of Housing Services (Property and Resources);
- (s) is there anything on file which shows that the previous occupier was notified of the monitoring of the condition of the property? - no.

The Chairman asked the appellant if he wished to raise any further issues in support of his case. The appellant submitted that the report of the Council's Environmental Health Officer was flawed as it had missed aspects which would have been apparent at the time of the inspection. He stated that Council officers had refused to accept the facts, that they had made misleading statements to him and that they had breached Freedom of Information legislation by denying him access to documents.

The Chairman asked the Housing Assets Manager if he wished to raise any further issues in support of his case. The Housing Assets Manager advised that he had nothing further to add.

The Chairman indicated that the Panel would consider the matter in the absence of both parties and that the appellant and the Housing Assets Manager would be advised in writing of the outcome. The appellant, the Housing Assets Manager and the Housing Resources Manager then left the meeting.

The Panel considered all of the evidence and focused on the condition of the property. The Panel weighed the evidence submitted by the Housing Assets Manager and the appellant in relation to the condition of the property. The Panel noted that whilst the submissions of the Housing Assets Manager had been supported by the dwelling assessment undertaken in accordance with the Housing Health and Safety Rating System, the views submitted on behalf of the appellant had not been supported by any evidence.

RESOLVED:

That, having taken into consideration the information presented by, and on behalf of, the appellant and by the Housing Assets Manager and the Housing Resources Manager in writing and orally, the appeal be dismissed and the decision of the Housing Assets Manager to require the payment in full of outstanding service/maintenance charges be upheld for the following reasons:

- (a) the Housing Health and Safety Rating System dwelling assessment undertaken by an Environmental Health Officer took account of windows and door frames being warped and difficult to open but only rated the property in Band F, a category 2 hazard; the scheme is a national scheme, designed to produce consistent scores and results and therefore whoever undertakes such a survey the results are more or less comparable; even allowing for a slight difference in the scoring between assessors, the difference between Band F and Bands A-C (category 1 hazards) is too great to produce any other outcome; in the absence of any category 1 hazards there was no evidence to support the view that the property was uninhabitable;
- (b) the views submitted by the appellant about the condition of the property were not supported with any detailed evidence as to how those conclusions were reached;
- (c) similar but more extensive repair works were undertaken to another flat in the same block as the appellant's property and the occupiers of that property remained in occupation throughout the duration of the repair works;
- (d) having regard to (a)-(c) above, it is considered, on balance, that the property was not uninhabitable;

(e) there is no provision in the lease for any reduction in service charges prior to or during the carrying out of repairs.

CHAIRMAN