

EPPING FOREST DISTRICT COUNCIL COMMITTEE MINUTES

Committee: Housing Appeals and Review Panel **Date:** Thursday, 23 October 2008

Place: Committee Room 1, Civic Offices, High Street, Epping **Time:** 2.30 - 5.45 pm

Members Present: Councillors Mrs C Pond (Chairman), Mrs R Gadsby (Vice-Chairman), B Rolfe, Mrs J Sutcliffe and J Wyatt

Other Councillors:

Apologies: Councillor Mrs J H Whitehouse

Officers Present: G Lunnun (Assistant Director Democratic Services), D Barrett (Area Housing Manager (South))(for minutes 13 - 17 only) and G Oakley (Managing Legal Executive)(for minute 18 only).

13. MINUTES

RESOLVED:

That the minutes of the meeting of the Panel held on 14 August 2008 be taken as read and signed by the Chairman as a correct record.

14. SUBSTITUTE MEMBERS

It was noted that Councillor Mrs J Sutcliffe was substituting for Councillor Mrs J H Whitehouse.

15. DECLARATIONS OF INTEREST

No declarations of interest were made pursuant to the Council's Code of Conduct for Members.

Councillor J Wyatt reported that the appellant in case Appeal No.10/2008 resided within the ward which he represented but he had no knowledge of the appellant.

16. 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	Appeal No. 10/2008	1 and 2
7	Application No. 8/2008	1 and 2

17. APPEAL NO. 10/2008

The Panel considered an appeal against a decision made by officers under delegated authority not to provide sound insulation to the property occupied by the appellant. The appellant attended the meeting to present his case. Mr N Taylor (Area Housing Manager) attended the meeting to present his case. Mr D Barrett (Area Housing Manager) 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 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, the application to the Housing Appeals and Review Panel dated 20 August 2008;
- (b) the case of the Area Housing Manager;
- (c) copies of documents submitted by the Area Housing Manager, namely:-
 - (i) letter dated 25 October 2007 from the Area Housing Manager to the appellant;
 - (ii) letter dated 1 November 2007 from the Assistant Head of Housing Services (Operations) to the appellant;
 - (iii) letter dated 12 February 2008 from solicitors acting on behalf of the appellant to the Area Housing Manager;
 - (iv) form of authority dated 11 February 2008 from the appellant authorising the Council to transfer information to his solicitors;
 - (v) letter dated 19 February 2008 from the Area Housing Manager to the appellant's solicitors.

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

- (a) the appellant had signed a secure tenancy agreement for his current one bedroom second floor flat on 17 December 2001; the appellant resided in the property with his partner;
- (b) the appellant suffered from stress and as a result of his accommodation problems he suffered from regular panic attacks, stiffness in his neck, anxiety, insomnia, headaches and loss of appetite; he had been given medication to take and had been referred for counselling;

(c) the appellant's stress had become worse since 2005 when the problems with his existing accommodation had started;

(d) the appellant had been born with a cleft palate; he had continued to have operations throughout his life as he had grown older to continually correct this condition; the operations had not run smoothly necessitating his return for corrective surgery; the appellant had been subject to five operations in the past six months and was due to have another operation;

(e) after every operation, the appellant needed to return home to rest; there was a lot of pain associated with each operation and even after his return home, the appellant was required to take many painkillers to reduce the pain;

(f) the appellant had suffered a motorbike accident when he was twenty and as a result he had problems with his spine; there was no treatment for this condition apart from an operation but he had been advised that such an operation could leave him paralysed;

(g) the appellant's partner also suffered from stress and this had been made worse by the problems being experienced in the flat; as a result their relationship had suffered;

(h) when the appellant had first moved into the property he had not encountered any problems as there were no neighbours below his flat and the neighbours next door spent a lot of time away from the property; however, when another tenant moved into the flat below, the appellant started to hear a lot of noise;

(i) by May 2005, the level of noise from the neighbouring flats had become unbearable; the appellant could hear everyday noise not only from the flat below, but also from the flat next door and the flat underneath the flat next door;

(j) the nature of noises heard from the appellant on a regular basis included:-

light switches being turned on and off;
plug sockets being switched on and off;
curtains being drawn;
doors being closed;
neighbours running taps;
neighbours urinating;
walking and running of neighbours;
neighbours washing up;
microwave being turned on and off; and
cooking and cleaning of utensils;

(k) the noises were those of an everyday nature and would continue until all the neighbours went to sleep at night; the appellant was conscious of his own actions, particularly when needing to go to the toilet or when he was in bed with his partner, as both the bathroom and bedroom were adjacent to the neighbouring flat and he did not want to disturb his neighbours;

(l) the noise problems were due to lack of insulation between the flats; there was nothing more than plasterboard covering the concrete;

(m) the appellant had reported the noise problems to the Council on a number of occasions and in June 2005 the appellant had been asked to complete diary sheets

which could be relied upon if further action became necessary; the appellant had been completing diary sheets since that time;

(n) in January 2006 the Council had carried out a noise test in relation to music being played by a neighbour and had concluded that there was insulation problem with the flats;

(o) the Council had discussed noise issues with a neighbour of the appellant in March 2006 and that appellant had also referred to noises from other flats;

(p) in October 2007, the appellant after returning from hospital had advised the Council that it was no longer practical for him to continue to complete diary sheets or to raise issues with his neighbours as the noises were not their fault; he had repeated his request for insulation to be provided to the flats;

(q) the appellant did not wish to create unnecessary problems with his neighbours by reporting their daily activities, especially since the large majority of the noises which could be heard were from quite reasonable everyday activities which the neighbours could not reasonably be expected to stop;

(r) disruption to tenants caused by renovation work to provide sound insulation would be considerably less than the disruption currently being caused to the residents and the costs involved were entirely justified;

(s) the costs involved in taking any civil action against individual tenants could not be justified given the fact that the noise disturbance was primarily due to the lack of insulation, as opposed to any unreasonable conduct by the individual tenants;

(t) the appellant had lived all of his life in flats and had therefore extensive experience of the conditions; those making decisions at the Council did not have first hand experience or knowledge of what it was like to live in a flat;

(u) some of the issues raised by the appellant about noise made by other tenants should have been dealt with as breaches of the Tenancy Agreement;

(v) the block of flats in which the appellant resided were designed for older people and were not suitable for accommodating young families;

(w) when moving into the flat, the appellant had to prove himself as a good tenant before being given a secure tenancy after one year; there appeared to be different rules for other tenants;

(x) the Council had responded to the appellant by quoting the law rather than giving his requests proper consideration; officers had reacted to a complaint about noise from a particular anti-social activity late at night and that situation had improved but they had not reacted to the complaints about general noise from other flats; video evidence had been offered but had not been accepted.

The appellant answered the following questions of the Area Housing Manager and the Panel:-

(a) What advice have you received from your solicitors about the situation? – That is a matter between myself and my solicitors;

(b) Are you at home during the day? – Yes, I have had many operations during the last few years and it is not nice to be at home trying to recover when there is so much noise from the other flats;

(c) There is a Tenant/Leaseholder meeting every quarter in your locality where problems can be discussed; have you attended any of those meetings? – No, I was not aware of those meetings;

(d) Do you have a television or a radio and could you not use these as background noise so that the noise from the other flats would not be so disturbing? – I have a television with digital channels. If I were to use it as you suggest I would get complaints from my neighbours about noise as I would need to set it at a very high volume;

(e) Is your stress made worse by the noises from other flats? – Yes and it is also affecting my partner who wants to move;

(f) Would carpeting in the flats improve the situation? – I have good quality carpets in my flat; the flat below mine has only been carpeted for one year; carpets help reduce hollow sounds but do not alleviate foot treads;

(g) Would you say your tolerance to noise is less than others? – Over the last couple of years I have been very aware of the noises being suffered in my flat, particularly during the evenings; one should not expect to have their activities dictated by noise from other flats; when I close doors I do so quietly and I have placed layers of polystyrene under paper in my bedroom in order to dampen noises; I am conscious of having to do everything very quietly in order not to annoy others; I believe I have the same tolerance to noise as others;

(h) I am surprised that you say you can hear light switches in other flats; did you say that? – If you come to my flat you will hear them I have asked the officers to come and assess the position but they have not done so as they already know what the problems are;

(i) The figure of £3.6m has been quoted as being required to provide sound insulation to all of the Council flats which are similar to yours; do you think this is a reasonable amount to spend? – No, but the problem is not so great in flats which are only occupied by single people;

(j) Do you go on holiday and stay in hotels and, if so, do you suffer noise from adjoining rooms? – I do not sit in a hotel room throughout the day and during evenings;

(k) If we are to resolve this issue do you not think we should be provided with the advice you have received from your solicitors? – My solicitors are building a case and I am willing to go to Court if this appeal fails;

(l) Have you discussed the problems with your neighbours? – Yes.

(m) What was their reaction? – They listened to me but the problems continued; my neighbours cannot stop their everyday noises; the flats were designed for older people and the fault is with the Council in accommodating families within the flats;

(n) Have you considered moving or seeking a transfer to another property? – No, I have made the flat my home; I have spent a lot of time on improving it and I have rebuilt my life in the property;

- (o) Does your partner live at home during the day? – Yes she is not working;
- (p) Where do your parents live? – In the London Borough of Waltham Forest;
- (q) Is it at nights when the problems are worse? – Noises during the day affect me as well.

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

- (a) the block of flats in which the appellant resided had been built by the Greater London Council in 1975; over 200 flats of a similar design had been constructed; the ground floor of the building consisted of a row of garages with two storeys of flats above;
- (b) the flats were originally designated for older persons but in more recent times had been re-designated, due to a lack of older applicants; as a result, many were now occupied by younger residents, in the main by single persons or couples without children;
- (c) the appellant had taken up occupation of his second floor flat on 17 December 2001; priority had been given to his application because of his health conditions;
- (d) in June 2003 the appellant had made his first complaint about noise nuisance some thirty months after moving in to the property; the complaints had related to groups of people visiting a neighbour;
- (e) in March 2005 another complaint had been made regarding neighbouring tenants in two flats; the complaint had included a complaint of noise from a crying baby;
- (f) in April 2005 the appellant had made a further complaint about children climbing up an external drainpipe and the misuse of a property by a relative of the tenant; at that time the appellant had been given nuisance record sheets for completion;
- (g) in June 2005 the appellant had been interviewed and given further advice; further noise nuisance record sheets had been provided for him to complete and return;
- (h) in October 2005 the appellant had returned some completed nuisance record sheets to the Council's Environmental Services; most of the complaints related to loud music;
- (i) by January 2006, one of the Council's officers in Environmental Services had visited one of the appellant's neighbours and had noted that a wooden floor had been laid in the flat; the tenant had been given advice about the use of a stereo and about the flooring;
- (j) in February 2006 the appellant had returned completed nuisance record sheets regarding music, banging and DIY associated noises; the tenant of the flat involved had been visited and it had been noted that the whole floor had been covered in wood but there were a number of rugs on the floor which helped reduce any noise; the tenant had advised that her family members had been laying the flooring and this

had involved quite a lot of noise; the flat had been sparsely furnished with a hollow feeling and the tenant had complained of noise she could hear from other flats;

(k) in March 2006 the appellant had been advised that the information supplied suggested that the issues arose from poor insulation; a letter sent to other residents in the block of flats asking if they experienced any noise disturbance had not resulted in any replies being received;

(l) in May 2006 the appellant had advised that things were much improved;

(m) in January 2007 the appellant again had complained about noise from another flat and advised that he would complete more nuisance record sheets;

(n) in September 2007 the appellant had visited the Civic Offices and had complained about noise nuisance from two flats; he had been advised that no steps could be taken without evidence and that he should continue to complete and return nuisance record sheets;

(o) no nuisance record sheets had been returned by the appellant since February 2006 and the tenant against whom he had complained about in March 2005 had left the property;

(p) in February 2008 the appellant's solicitors had sent a letter to the Council outlining their client's health problems and the noise nuisance he was experiencing; a letter had been sent in response;

(q) the two key issues in this case were the appellant's ill health and the fact that the noise nuisance was primarily caused by the everyday actions of his neighbours;

(r) similar complaints from other residents of other blocks of flats on the estate had not been received; although the appellant had been advised that the problems appeared to be the result of poor insulation no response had been received from other residents to a letter sent by the Council and it appeared that the appellant found everyday noises a nuisance as a result of his ill health;

(s) the advice given to the appellant in respect of his request to improve the sound insulation had been based on the Council's policy and case-law; in March 2003, the Housing Portfolio Holder had decided that improvements in sound insulation to existing purpose built flats could not be undertaken due to the cost to the Council and leaseholders and the significant disruption involved;

(t) in 2003 there had been 244 other blocks of flats in the District and it had been estimated that the cost to sound insulate all of these properties would have been £3.6m;

(u) in making its policy and in responding to the appellant regard had been had to cases which had been determined by the House of Lords;

(v) specific issues raised by the appellant had been investigated by Council officers and the situation had been improved but in the main the appellant's complaints related to everyday noises of his neighbours;

(w) it was acknowledged that the appellant had longstanding health problems and it appeared that this had a direct bearing on his tolerance level in respect of noise; there had been long periods when the appellant had not made any complaints and it had been some 3½ years since the appellant had complained about one of his neighbours; no other resident had made any similar complaints.

The Area Housing Manager answered the following questions of the appellant and the Panel:-

(a) You have said that there have been no complaints from other residents but this is not so – I refer to paragraph 6.16 of your report – have you not given contradictory evidence? – I said that there had been no response to the letter sent to other residents;

(b) The Council's Tenancy Agreement requires that floors are covered in order to reduce noise; why did you not treat the laying of wooden floors in the flats as a breach of the Tenancy Agreement? – Laminated flooring had been provided in one flat which when inspected was bereft of soft furnishing so that noise was amplified, a letter was sent to the tenant about the flooring; I visited a flat in February 2006 following the appellant's completion of noise nuisance forms; the tenant of that flat admitted her family had laid the flooring and this would have created a lot of noise at the time; there were a number of rugs on the floor and I considered this to be sufficient action to reduce noise; in May 2006 the appellant had telephoned to advise that the situation had been much improved; no written evidence about noise nuisance had been submitted to the Council by the appellant since February 2006;

(c) Officers were adamant that they would not be taking any action about the appellant's noise nuisance complaints and they kept referring to case-law; what difference would it have made if the appellant had submitted further noise nuisance forms? - Environmental Health responded to the completed forms returned by the appellant in October 2005; I visited a tenant following receipt of further forms from the appellant in February 2006; if further forms had been received about other non everyday noise issues they would have been investigated;

(d) Do you consider the Council has responded to the specific (non everyday) noises reported by the appellant? – Yes, and there have been no written complaints from the appellant since February 2006; the Council cannot respond to complaints about everyday noise issues;

(e) Is it possible to tighten up the Tenancy Agreement about noise late at night/laying of floors etc? – It would be difficult to enforce through the Tenancy Agreement; if wooden floors have been laid in first floor and above flats they are taken up when the flats become void;

(f) There are approximately 200 similar properties to the appellant's flat on this estate; do you receive complaints from tenants about noise outside of the flats, e.g. in the car parks? – No, my housing management experience is that double glazing masks noises from outside but enhances noises from inside properties;

(g) Why did the appellant initially not have a Secure Tenancy? – I do not know;

(h) In your experience are occupiers of flats likely to hear general everyday noises from their neighbours' properties? – I lived in a flat for six years and I could hear everyday noises from other flats;

(i) Do private landlords take a stricter approach to problems like those suffered by the appellant? – The Council has evicted tenants for noise nuisance but it is not possible to do so in respect of everyday living noises.

The Chairman asked the appellant if he wished to raise any further issues in support of his case. The appellant advised that he had numerous other completed noise

complaint forms but had seen little point in submitting them to the Council as officers had already made up their minds about the issues. He advised that he was building a Court case and the sheets would be part of the submission to the Court. He also advised that he had several video tape recordings which the Panel could view if they wished. The appellant submitted a newspaper cutting.

The Chairman advised that the Panel did not wish to view the video tape recordings.

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

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

The Panel considered all of the evidence and the views which had been expressed by the appellant and the Area Housing Manager. The Panel focused on the Council's policy in relation to sound insulation in existing purpose built flats within the District, case-law in relation to the provision of soundproofing in Local Authority accommodation, the noises described by the appellant, and the appellant's health conditions.

RESOLVED:

That having taken into consideration the information presented by the appellant and by the Area Housing Manager, in writing and orally, the appeal be dismissed and the decision of the Area Housing Manager not to provide sound insulation to the appellant's property be upheld for the following reasons:

- (a) the appellant's request is contrary to the Council's policy which is that improvements in sound insulation to existing purpose built flats within the District not be undertaken, due to the cost of the Council and leaseholders, and the significant disruption involved;
- (b) the Council's policy has been made having regard to case-law which states that local authority tenants have no re-dress under the law that entitles them to require their landlords to install adequate soundproofing so as to block out the noise from neighbouring premises, such noise being the ordinary incident of everyday living;
- (c) the evidence submitted shows that the noises being described by the appellant are primarily caused by the everyday living activities of his neighbours; other complaints by the appellant about specific noise issues, e.g. the laying of a wooden floor by a neighbour, have been dealt with by the officers speaking to his neighbours and as a result the situation has improved;
- (d) no response has been received from letters sent to other residents in the block of flats in which the appellant resides asking if they suffer problems with noise;
- (e) account has been taken of the appellant's health conditions but it is not considered that these are sufficient to justify an exception being made to Council policy; and

- (f) it is not considered that there are any special circumstances in this case which justify an exception being made to Council policy.

18. APPLICATION NO. 8/2008

The Panel considered a request for a review of a decision made by officers under delegated authority regarding the applicant's homelessness application. The applicant attended the meeting accompanied by his wife and a family friend/interpreter. Mr J Hunt (Assistant Housing Options Manager – Homelessness) attended the meeting to present his case assisted by Mr B Howland (Council's Homeless Hostel Manager). Mr G Oakley (Senior Legal Executive) attended the meeting to advise the Panel as required on details of the national and local housing policies relative to the appeal. Mr D Clifton (Principal Housing Officer – IT Systems) attended the meeting as a technician to show a CCTV recording. The Chairman introduced the members of the Panel and officers present to the applicant and outlined the procedure to be followed in order to ensure that proper consideration was given to the application.

The Chairman noticed that the appellant did not appear to have an agenda for the meeting or the papers relating to his application. The appellant stated that he had received the Council's letter dated 10 October 2008 together with a copy of the agenda and the papers for his case but he had not shown these to his family friend/interpreter and he had not brought them to the meeting. He confirmed that he had read the papers. A copy of the agenda and the appellant's case was provided and the family friend/interpreter was given time to read the papers.

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

- (a) copies of documents submitted by the applicant namely:
- (i) the application to the Housing Appeals and Review Panel dated 2 July 2008 from the applicant's solicitors to the Housing Directorate;
 - (ii) letter dated 6 August 2008 from the applicant's solicitors to the Housing Directorate;
 - (iii) letter dated 30 September 2008 from the applicant's solicitors to the Housing Directorate;
- (b) a summary of the case including the facts of the case and an outline of the homelessness legislation;
- (c) the case of the Assistant Housing Options Manager - Homelessness;
- (d) copies of documents submitted by the Assistant Housing Options Manager - Homelessness, namely:
- (i) Hostel Manager's file note regarding an incident on 28 May 2008;
 - (ii) letter dated 29 May 2008 from the Assistant Housing Options Manager - Homelessness to the applicant;
 - (iii) interview report dated 29 May 2008 by a Housing Officer on an interview with the applicant's wife;

- (iv) interview report dated 2 June 2008 by a Housing Officer on an interview with the applicant;
- (v) letter dated 24 June 2008 from the Assistant Housing Options Manager - Homelessness to the applicant.

The applicant commenced his case with his family friend/interpreter interpreting his submissions.

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

- (a) on 28 May 2008, the applicant had been in the kitchen of the Homeless Hostel with his family; another resident had entered into the kitchen wishing to speak to the applicant and his wife as he was angry about something; the other resident had taken the applicant to the playroom and showed him some clementine peel on the floor; the other resident had told the applicant that the applicant's children, amongst others, had made the mess; the applicant had offered to clean it up and then went to the room of another family to ask why they had brought the clementines into the playroom and why they had not cleared up the peelings; at that point the resident who had first confronted the applicant had intervened and had sworn at the children using the "f" word; the applicant had told the other resident to stop swearing at the children and at this point the other resident had started to swear repeatedly at the applicant; the applicant had advised the other resident that he needed a drink of water and the other resident had accused the applicant of laughing at him; the applicant had gone to the kitchen but the swearing had continued; whilst in the kitchen the applicant had felt angry about the aggressive behaviour to which he had been subjected and he had come out of the kitchen holding a butter knife which he had picked up from the kitchen; the applicant's wife had restrained her husband and after a while the situation had been resolved;
- (b) the applicant had felt intimidated and frightened by the aggressive manner and language of the other resident and had felt provoked because when he tried to walk away from the situation the other resident had re-engaged him by continuing to swear at him; the applicant had no intention of using the knife and had been hiding it from the other resident; the applicant had picked up the knife to scare off the other resident;
- (c) the CCTV footage did not clearly show that the applicant had deliberately behaved in an anti-social manner towards another resident in the hostel; the overwhelming impression from the footage was that the other resident, a man significantly larger in build than the applicant and apparently without the applicant's level of disability, had been threatening the applicant by taking hold of his elbow with his left hand and waving his right hand at the applicant in an aggressive manner;
- (d) the applicant had been arrested immediately after the incident and had been interviewed by Police Officers who had seen the CCTV footage; following that interview the applicant had been released without charge and the applicant understood that this decision had been taken because of the limited evidential value of the CCTV footage;
- (e) given the provocation that the applicant had been subjected to and the nature of the CCTV footage there was an overwhelming case that the applicant's conduct did not constitute a deliberate act within the meaning of Section 191 of the Housing Act 1996 and interpreted by the Homelessness Code of Guidance; an act or omission should not generally be treated as deliberate even where deliberately

carried out if it was forced upon the applicant through no fault of their own; generally an act of omission should not be considered deliberate where that action was made when an applicant was under duress;

(f) the incident had occurred at 8.05 p.m. on 28 May 2008; the applicant had been arrested by the Police that evening and had been held at the Police Station until 9.00 p.m. the following day; at 12 noon on 29 May 2008 the applicant had been given a two hour notice to vacate the Homeless Hostel; the decision to issue the notice had been taken before the applicant's wife had been interviewed; the applicant himself had not been interviewed until 2 June 2008; had the Council delayed a decision about the appropriateness of issuing a notice until the Police had completed their enquiries and the applicant and his wife had been interviewed the Council might well have reached a different conclusion about the appropriateness of issuing an Eviction Notice; the Council had acted prematurely in issuing the notice;

(g) whilst it was acknowledged that the Council had been concerned to ensure the safety of all of its residents at the Homeless Hostel it also had a general duty in public law to act fairly and proportionately and the Council had failed to fulfil these obligations in deciding to evict the applicant and his family before a full investigation had been carried out; a different decision might well have been taken if the incident had been more fully investigated;

(h) in view of factual disputes over the event on 29 May 2008 the Council should consider contracting out an investigation of the incident to a third party to ensure independent and impartial consideration of the evidence; the Housing Appeals and Review Panel was not an Independent Panel and should not be reviewing this matter;

(i) the applicant was very sorry for his behaviour but had felt stressed at the time and had felt responsible for the children in attendance.

Mr G Oakley pointed out that the applicant had been interviewed in English by a Housing Officer and that he should attempt to answer questions himself rather than respond through his family friend/interpreter.

The applicant answered the following questions of the Assistant Housing Options Manager - Homelessness and the Panel (the applicant answered some of the questions himself in English but others were answered by the family friend/interpreter after she had interpreted what the applicant had stated):-

(a) You have said that you felt provoked by the other resident and you tried to walk away from the situation; the CCTV footage shows that you initially walked away but you then propped open the kitchen door, took a knife and went back out of the kitchen towards the other resident and it was necessary for your wife to restrain you; why did you prop open the door? – The CCTV footage only shows the final stages of the incident you need to take account of what had happened earlier; the other resident came with me in the first place and made me crazy; five times I asked him to back down;

(b) Some of the build up to the end of the incident will be seen on the CCTV footage; it does not show that you walked away from the incident; do you wish to comment further? – I knew that if I did not stand up to the other resident he would keep coming back at me and I got distressed;

(c) If you had no intention of using the knife why did you pick it up? – I was afraid; the other resident kept shouting at me. I am not stupid I have learned to read and write English but I am not good at speaking it.

At this stage the Chairman determined that it would be beneficial for the Panel to view the CCTV footage. The CCTV footage was shown. As it was not clear to the Panel who was being shown on the recording it was agreed that the Hostel Manager should point out the various parties. The footage was shown again and stopped several times in order for the Panel to be able to identify the various parties to the incident.

The applicant and his family friend/interpreter continued to answer the following questions:-

(d) On your Application Form to the Panel your wife's year of birth is given as 1994, do you mean 1974? – Yes;

(e) You said that you felt that children were under threat, why? – The other resident was swearing at them and I felt if I did not take a stand the other resident would continue to act in this manner;

(f) Are you used to be sworn at? – No I am a polite person myself;

(g) Did you find the actions of the other resident provocative? – Yes, he was bigger than me and I felt frightened;

(h) Do you feel that other residents of the Hostel sided with the other resident? – Yes, three or four others did so;

(i) Can you describe the butter knife? – It was a knife used to cut cheese; it was small but not sharp;

(j) Was it a butter knife or a cheese knife? – An English cheese knife is completely different from a cheese knife in my country which is like an English butter knife;

(k) I understand that you have spent some time in the army; did you not witness language like that of the other resident when you were in the army? – It was the fact that the language was directed at children which I found to be unacceptable;

(l) I note from the CCTV recording that you seemed to be quite agile but today you are on crutches and have difficulty in moving; why is there this difference? – From time to time I get sores from my false leg and it is necessary for me to use a crutch when I am in pain;

(m) Did you feel discriminated against? – Yes.

The Panel considered the following submissions of the Assistant Housing Options Manager – Homelessness:

(a) the applicant was aged 34 and the other members of his household included his wife, their son and two daughters;

(b) the applicant had been living in accommodation provided by the Immigration and Nationality Directorate whilst his application for asylum had been assessed; the applicant and his family were Kurdish and had fled Turkey to claim asylum in the United Kingdom;

(c) when the applicant's asylum application had been determined and he was granted leave to remain, the support and accommodation he was provided with from the Immigration and Nationality Directorate was brought to an end; at that stage the applicant had approached the Council as homeless and he was accepted as statutorily homeless and owed a duty to be housed in accordance with Section 193 of the Housing Act 1996 as amended; the duty was ensure that temporary accommodation was made available; the Council fulfilled its duty in this respect by providing the applicant and his family with accommodation in the Council's Homeless Hostel; the applicant moved into the hostel on 27 November 2007;

(d) on 28 May 2008, a resident of the Homeless Hostel had alleged that the applicant had threatened him with a knife; the Police and the Hostel Manager had been called to attend and the applicant had been arrested by the Police; on 29 May 2008 the applicant had been served with a 2 hour notice for having committed a serious act of anti-social behaviour which terminated his Licence to Occupy the Homeless Hostel; the applicant's wife had been interviewed on 29 May and the applicant on 2 June 2008; those interviews by their Homelessness Case Officer had been held to consider whether the Council's duty to accommodate the applicant had been discharged; the applicant and his family had been provided with bed and breakfast accommodation; on 24 June 2008 the Council had advised the applicant that it had discharged his duty to accommodate him because he was considered to have made himself homeless intentionally; as a result the Council no longer had a duty to provide the applicant with temporary accommodation and he had been informed that he would need to vacate the bed and breakfast accommodation that had been provided for him; on 27 June 2008 the applicant had sought a review of the decision and the Council had exercised its discretion to accommodate the applicant pending the outcome of this review;

(e) account should be had to the Code of Guidance on Homelessness, in particular Paragraphs 11.7 and 14.17;

(f) the applicant had breached his Licence to Occupy accommodation at the Homeless Hostel by threatening another resident with a knife; this anti-social behaviour was considered to be a deliberate act by the applicant; the accommodation that the applicant had occupied at the Hostel would have continued to be available for him, had he complied with his Licence conditions and that accommodation was considered to be reasonable for him and his family to occupy;

(g) the applicant's mental health problems had been taken into account but there was no evidence to suggest that the incident was due to a temporary aberration caused by mental illness;

(h) the applicant was considered to have made himself homeless intentionally from the temporary accommodation and the Council had discharged its duty to provide him with housing;

(i) in the event of the officer's decision being upheld reasonable notice should be given to the applicant to vacate his bed and breakfast accommodation and a referral should be made to Social Care in order that the provisions of the Children Act 1989 could be applied.

The Assistant Housing Options Manager - Homelessness answered the following questions of the applicant and the Panel:-

(a) Why did you not show more of the CCTV footage? – The problem with CCTV at the Hostel is that not all areas are covered and it was not possible to pick up all of the

exchanges between the applicant and the other resident; it was accepted that the other resident had been arguing with the applicant; that the other resident was a larger man and had been acting in an assertive manner; however some of the build up to the picking up of the knife could be seen on the CCTV footage;

(b) The Police looked at more footage; why can we not see more footage? – As far as I am aware the footage shown to the Panel was the same footage seen by the Police;

(c) (Question to the Hostel Manager) Can you provide any background about the other resident and advise whether any action was taken against him? – There are up to 48 families accommodated at the Hostel and there are constant squabbles between residents; staff deal with them as they arise; I understand that the incident on 28 May 2008 started because tangerine peel had been left on the floor in a play area; I am not aware of any previous dispute between the applicant and the resident who confronted the applicant;

(d) (Further question to the Hostel Manager) Who were the other residents afraid of – the applicant or the resident who confronted the applicant? – All of the families in the Hostel sign a Licence Agreement and one of the conditions is that they should not act in an anti-social manner; the staff are responsible for ensuring that residents comply with the Licence conditions; if residents do not act in a reasonable manner the conditions have to be enforced;

(e) (Further question to the Hostel Manager) Was any action taken by the Council against the resident who confronted the applicant? – No and he has now been re-housed;

(f) Why did the Police not charge the applicant? – I understand that the applicant was arrested but was not charged due to the lack of evidence; the test for the Police was to determine the matter beyond reasonable doubt whereas the decision of officers and the Panel is to determine the matter on the balance of probabilities; the Police were looking at whether a crime had been committed whereas officers and the Panel are looking at the applicant's behaviour; the Police did speak to the other resident and took statements;

(g) (To the Hostel Manager) Are you aware of any other problems with the resident who confronted the applicant? – No;

(h) Have there been any incidents regarding the applicant whilst he has been accommodated in bed and breakfast accommodation? – No;

(i) It has been suggested that there was a racial element to the incident; is this correct? – Not as far as I am aware; No reports of racism have been brought to the Council's attention and there is no reason to believe that the other resident's actions were motivated by racism;

(j) You have said that residents felt threatened by this situation; do you mean the resident who confronted the applicant or other residents? – The resident who confronted the applicant felt threatened and following the incident other residents expressed concern about the applicant holding a knife in a threatening manner;

(k) Have you seen the knife in question? – No, the Police had the knife and I believe it was described as having a pointed edge rather than a round edge;

(l) Could you confirm, has anyone from the Council seen the knife in question? – No.

The Chairman asked the applicant if he wished to raise any further issues in support of his case. The applicant repeated that he was really sorry for the incident and felt that he had been punished enough. He felt it unfair that steps had been taken against him whilst no action had been taken against the other resident.

The Chairman asked the Assistant Housing Options Manager - Homelessness if he wished to raise any further issues in support of his case. The Assistant Housing Options Manager - Homelessness reiterated that it was not acceptable for a resident of the Homeless Hostel to pick up a knife in such a manner that other residents felt threatened. He advised that the applicant had initially walked away from the situation but had propped open the kitchen door picked up the knife and walked back to confront the other resident. Whatever the provocation it could not be acceptable for a resident to walk towards another resident with a knife in his hand. If the applicant had not been restrained by his wife the matter could have been much more serious.

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, his wife, his family friend/interpreter and the Assistant Housing Options Manager – Homelessness then left the meeting.

The Panel considered all of the evidence and the views which had been expressed by the applicant, his family friend/interpreter and, the Assistant Housing Options Manager – Homelessness and the Council's Hostel Manager. The Panel focused on the incident which took place at the Council's Homeless Hostel on 28 May 2008.

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 the Assistant Housing Options Manager – Homelessness in writing and orally, the decision of the Assistant Housing Options Manager – Homelessness that the applicant made himself homeless intentionally from temporary accommodation provided by the Council and as a result the Council has discharged its duty to the applicant, under Section 193 of the Act be upheld for the following reasons:

(a) the applicant signed a Licence to Occupy accommodation at the Council's Homeless Persons' Hostel; one of the conditions of the Licence was that no acts of anti-social behaviour would be tolerated in the Hostel;

(b) the applicant breached the conditions of the Licence by threatening another resident with a knife necessitating the applicant being restrained by his wife; the incident resulted in the Police being called and the applicant being arrested; account has been taken of the actions of the other resident towards the applicant but it is not considered that these actions can justify the applicant approaching the other resident with a knife in his hand; account has also been taken of the fact that the applicant initially walked away from the other resident after a verbal exchange but returned to confront the other resident with a knife in his hand;

(c) the act of picking up the knife and approaching the other resident is considered to have been a deliberate act; there is no evidence to support the submission of the applicant's solicitors that the applicant acted in response to threats or violence to force him to do something; the applicant has admitted that he felt it necessary to confront the other resident in order to prevent further possible incidents;

(d) had it not been for this deliberate act (threatening another resident of the Council's Hostel with a knife) the accommodation at the Hostel would have been available and reasonable for the applicant and his family to continue to occupy; the accommodation was suitable for the applicant and his family and was affordable as the applicant was eligible for Housing Benefit;

(e) the applicant's physical and health conditions have been taken into account but it is not considered that these justify the action which he took;

(2) That no deficiency or irregularity has been identified in the original decision made by the Council Officer or the manner in which it was made; it is considered that the decision to issue a notice on 29 May 2008 requiring the applicant to vacate the Homeless Hostel within two hours was appropriate in the circumstances;

(3) That the Council continues to provide interim accommodation for a period of 28 days from the date of the letter notifying the applicant of the Panel's decision in order to allow the applicant reasonable opportunity to secure alternative accommodation; and

(4) That the officers refer the applicant to Social Care to seek their assistance in helping him to find alternative accommodation.

CHAIRMAN