

EPPING FOREST DISTRICT COUNCIL COMMITTEE MINUTES

Committee: Housing Appeals and Review Panel **Date:** Thursday, 2 July 2009

Place: Committee Room 2, Civic Offices, High Street, Epping **Time:** 2.30 - 4.40 pm

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

Other Councillors:

Apologies:

Officers Present: R Wilson (Assistant Director Operations (Housing)), G Lunnun (Assistant Director Democratic Services) and R Smith (Area Housing Manager North)

7. MINUTES

RESOLVED:

That the minutes of the meeting of the Panel held on 23 April 2009 be taken as read and signed by the Chairman as a correct record.

8. SUBSTITUTE MEMBERS

It was noted that there were no substitute members present at this meeting.

9. DECLARATIONS OF INTEREST

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

10. 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 Number
6	Application No: 4/2009	1

11. APPLICATION NO: 4/2009

The Panel was informed that a letter dated 25 June 2009 had been received from solicitors instructed by the applicant. The solicitors had stated that they were in the process of obtaining further instructions from their client and had requested deferment of the review so that they could properly advise their client.

RESOLVED:

That consideration of Application 4/2009 be deferred until the next meeting of the Panel.

12. APPLICATION NO: 3/2009

The Panel was reminded that the applicant had attended the last meeting of the Panel and had sought deferment of the review as his solicitor had been unable to attend the meeting and had not had enough time to provide advice. In the circumstances the Panel had deferred consideration of the review and had informed the applicant that the case would be considered at this meeting with or without his legal representative present.

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 to present his case accompanied by his partner. Mr J Hunt, Assistant Housing Options Manager (Homelessness), attended the meeting to present his case. Mr R Wilson, Assistant Director of Housing, attended the meeting to advise the Panel as required on details of the national and local housing policies relative to the application. The Chairman introduced members of the Panel and officers present to the applicant and sought the consent of the applicant and the Assistant Housing Options Manager (Homelessness) to Ms R Smith attending the meeting as an observer. Both parties agreed to Ms Smith being present. The Chairman outlined the procedure to be followed in order to ensure that proper consideration was given to the application.

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 28 April 2009;
 - (ii) letter dated 24 April 2009 from the applicant's solicitors;
 - (iii) letter dated 24 June 2009 from the applicant's solicitors together with a further copy of their letter dated 24 April 2009 with paragraph numbers added;
 - (iv) letter dated 27 May 2009 from Colchester Borough Council to the applicant's solicitors;

- (v) letter dated 5 March 2008 from the applicant's former landlord to the applicant;
- (vi) letters dated 3 November 2008 from Colchester Borough Council to the applicant's partner concerning Housing Benefit, Council Tax Benefit, Discretionary Housing Payment Award and Housing Benefit Overpayment Final Notice;
- (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) copy of the rental agreement signed by the applicant and his partner on 10 August 2007 relating to their former privately rented property;
 - (ii) copy of Eviction Notice dated 30 September 2008;
 - (iii) schedule from the applicant's former landlord setting out rent due and rent paid on the property privately rented by the applicant;
 - (iv) Housing Officer file note dated 18 March 2009 following a telephone conversation with a Colchester Borough Council Housing Benefit Officer;
 - (v) Housing Officer file note following an interview with the applicant;
 - (vi) letter dated 1 April 2009 from the Assistant Housing Options Manager (Homelessness) to the applicant;
 - (vii) file note of the Assistant Housing Options Manager (Homelessness) following a further telephone conversation with a Colchester Borough Council Housing Benefit Officer;
 - (viii) copy of e-mail from the Housing Options Manager to the applicant's solicitor together with e-mails and correspondence exchanged between the District Council and Colchester Borough Council between 17 and 18 June 2009.

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

- (a) failure to pay rent on the privately rented property he had occupied had not been deliberate and in the absence of a deliberate act he could not be regarded as intentionally homeless;
- (b) when the applicant had moved with his partner to the privately rented property in Colchester they had both been working and they had paid the rent from their earnings;
- (c) at the end of October 2007, the applicant had ceased working as he had struggled to afford the travel costs between his accommodation and his workplace; a suggestion from his employer that he had the opportunity of working closer to the accommodation had not materialised;

(d) the applicant had claimed Job Seekers Allowance at the Job Centre in October 2007 and at the same time the applicant's partner had completed a claim for Housing Benefit; in November 2007 the applicant's partner had established that her benefit claim had not been received by Colchester Borough Council and a new claim form had been submitted to that authority; in March 2008 the applicant's partner had established that Colchester Borough Council had not received the second claim and she had submitted a third claim; the third claim had been processed and Housing Benefit awarded; the third claim had been backdated to January 2008 but not to 2 October 2007;

(e) the applicant and his partner could not be held to account for the Housing Benefit claim going astray between the Job Centre and Colchester Borough Council; the failure of the applicant to pay rent from October 2007 to January 2008 could not be regarded as a deliberate act or omission;

(f) in May 2008 the applicant's partner who had ceased to work some months earlier had found new employment; she had submitted a Change of Circumstance form to Colchester Borough Council; her Housing Benefit payments had continued at the same rate and she had assumed that despite her change of circumstances she had still been entitled to full Housing Benefit; in the belief the rent payments were being covered by Housing Benefit, the applicant and his partner had not made rent payments to their landlord;

(g) in November 2008 after being evicted from the privately rented accommodation the applicant's partner had been advised by Colchester Borough Council that housing payments had ceased in July 2008 and that there had been overpayment of Housing Benefit between May and July 2008; the applicant had assumed that his landlord had issued a claim for possession due to the rent arrears between October 2007 and January 2008 rather than any arrears from July 2008; the applicant's failure to pay rent between July and October 2008 had not been deliberate as he had been unaware that his partner's Housing Benefit had ceased;

(h) the amount of the applicant's rent arrears were disputed; the officer's decision letter quoted arrears in the region of £4,500 but the arrears had not exceeded £2,770; the information provided by the applicant's former landlord about rent arrears had been inconsistent;

(i) the applicant's partner had not received letters dated 6 August 2008 and 22 September 2008 from Colchester Borough Council; the only letters she had received from Colchester Borough Council were those dated 3 November 2008 when she had been housed with the applicant in Epping Forest District Council's hostel accommodation;

(j) Colchester Borough Council had stated that they had received the applicant's partner's initial claim for Housing Benefit in October 2007 and that the applicant's partner had failed to provide information to support that claim; the applicant's partner had not received any request from Colchester Borough Council for additional information;

(k) the applicant and his partner had often not received mail whilst in the private rented property as Royal Mail had delivered some of their letters to a vacant property in close proximity which had a similar postal address;

(l) Colchester Borough Council had stated that they had received the applicant's partner's second claim for Housing Benefit in January 2008 and that there had been

a problem with it; the problem could not have been significant because the third claim in March 2008 had been backdated to January 2008;

(m) numerous references had been made in the submitted documents to the applicant's claim for Housing Benefit; the applicant had not made any such claim; Housing Benefit Claims had been made by his partner only;

(n) at the first eviction hearing in March 2008 the judge had dismissed the applicant's former landlord's application for possession; possession had been granted as a second hearing in October 2008.

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

(a) When you first approached Epping Forest District Council you stated that Housing Benefit claims had not been received by Colchester Borough Council; it has subsequently been established that the claims had been received but that you had not responded to Colchester Borough Council's request for further information; can you clarify this inconsistency - the first claim was handed in at the Job Centre; we were advised that the second one had not been received; the third one we handed in to Colchester Borough Council;

(b) Your Solicitor's representations mentioned that you had a problem receiving post at the privately rented property – is this correct ? Yes, there was another property in close proximity to our rented property which had a similar postal address including the same number and Royal Mail often delivered some of our post to that other property;

(c) Did you pursue this with Royal Mail? Yes, we complained three or four times;

(d) Did you not approach the occupiers of that other property for your mail? It was a vacant property;

(e) Was Housing Benefit paid to you direct? No to the landlord; it could not be paid to us as we were in arrears with the rent;

(f) How were the arrears of rent caused? Due to Housing Benefit not being backdated to October 2007;

(g) Why were you evicted from the privately rented property? We were evicted because the landlord did not want tenants whose rent was met by Housing Benefit;

(h) Why did you move to Colchester when you had a job some distance away? Colchester is a nice area; I was told by my employer I could get a transfer closer to Colchester but this did not materialise;

(i) The letter to your former landlord dated 5 March 2008 states that your rent had been unpaid since November 2007 and the arrears amounted to £3,465 – is that correct? The information provided by the landlord is contradictory; in one place reference is made to arrears from November 2007 and in another place to arrears from September/October 2007;

(j) Why did you approach Epping Forest District Council for housing? My parents live in the area and I previously lived in the area;

(k) If your arrears were not as stated by your landlord why were you evicted from the property? We were evicted at the second hearing because our tenancy had expired and we were advised not to leave the property in advance of the eviction;

(l) Were you required to pay any rent in addition to that met by Housing Benefit? All of the rent was met by Housing Benefit as we were awarded a discretionary housing payment.

With the consent of the Panel and the applicant, the Assistant Housing Options Manager (Homelessness) attempted to clarify what appeared to be conflicting evidence about the rent arrears. He suggested that a letter from the applicant's former landlord dated 5 March 2008 which quoted arrears of £3,465 had been sent before the applicant's partner's third (successful) Housing Benefit claim had been received by Colchester Borough Council on 10 March 2008. He pointed out that that claim had been backdated to January 2008 meeting three months' rent at £595 per month. He also drew attention to the applicant's landlord's schedule of rent payments which showed that rent payments had not been made in September and October 2007.

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

(a) the applicant and his partner had moved to a property in Colchester on 11 August 2007; that property had been a two-bedroom house which they had rented from a private company; the applicant and his partner had been contractually liable to pay the rent of £595 per month; the rent of £595 had been fully eligible for Housing Benefit; the applicant and his partner had accrued rent arrears and when they had been evicted on 17 October 2008 it was understood from their then landlord that the arrears had amounted to £4,137;

(b) when commencing the tenancy the applicant had been employed and had initially paid the rent; however he had become unemployed in October 2007 and without any income would have needed to claim Housing Benefit in order to meet the rent liability; the applicant had advised officers that Colchester Borough Council had not received his partner's claims for Housing Benefit until March 2008 when benefit had been awarded; the applicant had stated that an initial Housing Benefit claim form had been completed at a Job Centre in October 2008 but that the Job Centre had lost the form; it had subsequently been established that the applicant's partner's initial and second claims for Housing Benefit had been received by Colchester Borough Council;

(c) the first application had been received via the Job Centre on 15 October 2007 and Colchester Borough Council had sent a letter to the claimant on 16 October 2007 asking for evidence of rental liability; on 16 November 2007 a letter had been sent to the claimant as the required evidence had not been submitted; the claimant had been advised that she was not eligible for benefit because she had not provided all the required evidence in support of her application; Job Seekers Allowance had been awarded for the period 18 September 2007 to 6 November 2007;

(d) on 17 January 2008 Colchester Borough Council had received a rapid re-claim via the Department for Work and Pensions which was shortened form that could only be used if there had been a previous award of Housing Benefit which had ceased within 12 weeks and the claimant was and had been in receipt of either Income Support or Job Seekers Allowance; as the previous claim had not been put into payment the rapid re-claim had not been valid;

(e) the third (successful) claim had been made in March 2008 and had been put into payment from 25 February 2008, the Monday following the new award of Job Seekers Allowance; as Job Seekers Allowance had not been awarded until 20 February 2008, Housing Benefit could not have been awarded earlier based on the rapid re-claim even if the previous application had been successful;

(f) the claim for Housing Benefit had been cancelled because the application's Job Seekers Allowance had ceased when he began working in May 2008; Colchester Borough Council had advised that an overpayment of Housing Benefit had taken place because the applicant had failed to notify them that he began working and as a result Housing Benefit had continued to be paid; after the applicant had begun working in May 2008 he had not paid the rent for the remainder of the tenancy;

(g) the applicant and his partner had an obligation to check on the progress of the Housing Benefit application and as they had been aware of problems with the receipt of their post they should have made greater efforts in this respect;

(h) regard must be had to the Code of Guidance which was used by local authorities to assist with the interpretation of a homelessness legislation; the Code of Guidance stated that a person became homeless or threatened with homelessness, intentionally if he or she deliberately did or failed to do anything in consequence of which he or she ceased to occupy accommodation which was available for his or her occupation and would have been reasonable for him or her to continue to occupy;

(i) the applicant's wilful and persistent refusal to pay the rent on the privately rented property had been a deliberate act; in consequence of this the appellant had been served notice which had led to him ceasing to occupy that property; the rent arrears had been caused by the applicant's and his partner's failure to claim Housing Benefit for the period when they were not working and the applicant's refusal to consistently pay the rent when he was working;

(j) the privately rented accommodation would have continued to be available had the applicant complied with the terms of the tenancy and not accrued rent arrears; the property being a two-bedroom house with an affordable rent would have been reasonable for the applicant to have continued to occupy;

(k) the applicant and his partner were capable of managing their affairs and if they had paid the rent they would not have become homeless;

(l) in the event of the officer's decision being upheld the applicant should be given reasonable notice to vacate the Council's Homeless Hostel and a referral should be made to Social Care on account of the applicant's child being at risk of homelessness.

The Assistant Housing Options Manager (Homelessness) answered the following questions of the applicant, his partner and the Panel:

(a) Do you accept that I did not make a claim for Housing Benefit; it was my partner who made the claims? This is accepted from the evidence now submitted; the tenancy of your privately rented property was in joint names and throughout together with your partner you have described yourselves as a household; you are therefore jointly responsible;

(b) Colchester Borough Council has provided Epping Forest District Council information but has failed to provide the applicant's solicitor with information; why has

this happened? I do not know; we had your consent to approach another agency and we did so and they provided us with information; copies of the letters received were sent to your solicitors;

(c) Do you agree that the statements made by the applicant's former landlord about rent arrears are inconsistent? I have tried to explain the reason why the amount quoted in their letter dated 5 March 2008 appears to be inconsistent;

(d) In the decision letter you stated that Colchester Borough Council had not received the Housing Benefit claims, why have you changed your mind? That statement was based on the information you provided; it was only when your solicitor wrote to us that we approached Colchester Borough Council and when mentioning to them the apparent loss of forms they stated that all of the forms had been received but that they had not received replies to their letters for further information;

(e) Do you accept therefore that you did not thoroughly investigate our homelessness situation? Your word was taken for the loss of forms;

(f) When an applicant seeks Housing Benefit and the authority asks for further information is a reminder letter sent if no reply is received within a certain time? I do not know and there may be different practices adopted by different Housing Benefit Sections; it is clear from the evidence that Colchester Borough Council did send letters to the applicant's partner;

(g) What grounds other than arrears are there for a landlord seeking an eviction? Damage, anti-social behaviour; in relation to an assured shorthold tenancy it is possible for a landlord to give two months' notice and in such a case the landlord does not have to give any reasons.

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

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) 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 applicant and the Assistant Housing Options Manager (Homelessness) would be advised in writing of the outcome. The applicant, his partner and the Assistant Housing Options Manager (Homelessness) then left the meeting.

The Panel considered all of the evidence and the submissions which had been made by and on behalf of the applicant and his partner and by the Assistant Housing Options Manager (Homelessness).

In coming to its decision the Panel focused on the legislation and the Code of Guidance on homelessness, the evidence regarding the applicant's occupation of a privately rented property in Colchester and the evidence regarding applications for and payment of Housing Benefit whilst the applicant had resided in that property.

RESOLVED:

(1) That, having regard to the provisions of the Housing Act 1996, as amended, and the Code of Guidance on Homelessness and having taken into consideration the information presented by and on behalf of the applicant

and by the Assistant Housing Options Manager (Homelessness) in writing and orally, the decision of the officers that the applicant had been intentionally homeless be upheld for the following reasons:

(a) the applicant and his partner failed to pay the rent due on the privately rented property they occupied and as a result of arrears they were evicted from the property; the arrears arose due to (i) the failure of the applicant's partner to respond to Colchester Borough Council's demand for evidence to support her Housing Benefit claim; and (ii) by not paying rent at a time when the applicant's and his partner's income from work did not entitle them to Housing Benefit; whilst there is conflicting evidence about the amount of arrears, the evidence including the submissions of the applicant's solicitor clearly shows that there were arrears;

(b) no evidence was submitted to support the applicant's submissions that the eviction arose from other circumstances;

(c) account has been taken of the applicant's partner's claim that she did not receive letters from Colchester Borough Council regarding her application for Housing Benefit and the claims of the applicant and his partner that they often did not receive mail whilst in the privately rented property as Royal Mail delivered some of their letters to a vacant property in close proximity which had a similar postal address; no evidence was submitted to show that any approach was made to Royal Mail to resolve this problem; the evidence shows that Colchester Borough Council did send letters to the applicant's partner and in our view, having made a claim for Housing Benefit, the applicant's partner neglected her affairs by not following up her application sooner knowing of the alleged problems with the delivery of her mail;

(d) in relation to the non-payment of Housing Benefit from May 2008 we are of the opinion the applicant and his partner would have been aware that they were no longer entitled to Housing Benefit as it was clear they had knowledge of the payment of Job Seekers Allowance and Housing Benefit payments; it is noted that they did notify Colchester Borough Council of changed circumstances which they stated commenced 11 August 2008 whereas they were fully aware that the change of circumstances had actually commenced on 5 May 2008;

(e) the applicant attempted to distinguish between actions taken by himself and those of his partner; we have placed no weight on those submissions since it is clear they were joint tenants at the privately rented property and have described themselves as a household throughout;

(f) no evidence has been submitted indicating that the applicant or his partner were incapable of managing their affairs;

(g) that had it not been for the deliberate act set out in (a) above, the privately rented property would have continued to be available and reasonable for the applicant to occupy as it was a two-bedroom house with an affordable rent;

(2) That based on the evidence submitted, no deficiency or irregularity had been identified in the original homelessness decision made by officers and the manner in which it was made; at the meeting the applicant criticised officers for taking account of the alleged loss by the Job Centre of his partner's Housing Benefit application form which they subsequently

acknowledged not to be the case; however it is clear from the evidence that this reference was based on what the applicant himself had advised the officers; it is also clear that the officers in their decision letter referred to the failure of the applicant to substantiate this claim; accordingly, in our view the applicant cannot seek to criticise the officer's decision for referring to information which he provided;

(3) That the Council continues to provide interim accommodation for the applicant for a period of 28 days from the receipt of the decision letter in order to allow the applicant and his partner to secure alternative accommodation;

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

CHAIRMAN