

## **EPPING FOREST DISTRICT COUNCIL COMMITTEE MINUTES**

**Committee:** Housing Appeals and Review Panel    **Date:** Thursday, 22 July 2010

**Place:** Committee Room 1, Civic Offices, High Street, Epping    **Time:** 2.30 - 6.40 pm

**Members Present:** Mrs R Gadsby (Chairman), R Barrett and Ms J Hart

**Other Councillors:**

**Apologies:** Mrs J Sutcliffe, Mrs C Pond, B Rolfe and Mrs J H Whitehouse (substitute)

**Officers Present:** A Hall (Director of Housing) and G Lunnun (Assistant Director (Democratic Services))

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### **6. SUBSTITUTE MEMBERS**

It was noted that Councillor Ms J Hart was substituting for Councillor Mrs C Pond.

### **7. DECLARATIONS OF INTEREST**

There were no declarations of interest by members of the Panel under this item.

### **8. EXCLUSION OF PUBLIC AND PRESS**

#### **RESOLVED:**

That in accordance with Section 100(A)(4) of the Local Government Act 1972, the public and press be excluded from the meeting for the items of business set out below as they would involve the likely disclosure of exempt information as defined in the paragraph of Part 1 of Schedule 12A of the Act indicated and the exemption is considered to outweigh the potential public interest in disclosing the information.

<b>Agenda Item No.</b>	<b>Subject</b>	<b>Exempt Information Paragraph No.</b>
5	Application No. 5/2010	1
6	Appeal No. 6/2010	1
7	Application No. 7/2010	1

### **9. APPLICATION NO. 5/2010**

Noted that determination of this application had been deferred until immediately prior to the September 2010 meeting.

**10. APPEAL NO. 6/2010**

The Panel considered an appeal against a decision made by officers under delegated authority in respect of the appellants' banding under the Council's Allocations Scheme. The appellants attended the meeting to present their case. Mr R Wallace, Housing Options Manager, attended the meeting to present his case. Mr A Hall, Director of Housing, 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 members of the Panel and officers present to the appellants and outlined the procedures 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 appellants, namely:
  - (i) their application to the Housing Appeals and Review Panel dated 7 June 2010 including a staff and parent communication sheet from Princess Alexandra Hospital Neo-Natal Unit dated 1 April 2010, a clinical report from Princess Alexandra Hospital in respect of the appellants' son, a letter dated 28 May 2010 from a general practitioner addressed to "to whom it may concern", a clinical report from Princess Alexandra Hospital in respect of one of the appellants, an e-mail sent on 25 May 2010 from the Council's Environment and Neighbourhood Officer to the appellants and photographs showing the interior of the appellants' property;
  - (ii) letter dated 9 July 2010 from a consultant paediatrician to the Council's Housing Directorate;
- (b) a summary of the case including the facts of the case;
- (c) the case of the Housing Options Manager;
- (d) copies of documents submitted by the Housing Options Manager, namely:
  - (i) letter dated 22 September 2009 from the Assistant Housing Options Officer to the appellants;
  - (ii) letter dated 13 April 2010 from the appellants to the Assistant Housing Options Officer;
  - (iii) letter dated 21 April 2010 from the Assistant Housing Options Officer to the appellants;
  - (iv) letter dated 25 April 2010 and the enclosures referred to therein from one of the appellants to the Assistant Head of Housing Services;
  - (v) letter dated 24 May 2010 from the Assistant Director of Housing (Operations) to the appellants;
  - (vi) memorandum dated 20 May 2010 from the Assistant Director of Housing (Operations) to the Council's Medical Adviser and her responses to the questions raised in that memorandum;

- (vii) letter typed on 15 July 2010 and received by the Council on 21 July 2010 from a consultant paediatrician regarding the appellants' son;
- (viii) exchange of e-mails dated 21 July 2010 between the Housing Options Manager and the Council's Medical Adviser in relation to the letter received from the consultant paediatrician on 21 July 2010;
- (ix) a copy of the Council's Housing Allocations Scheme.

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

- (a) the appellants were currently placed in Band 3 of the Council's Housing Allocations Scheme but considered that they should be placed in Band 1 since they felt that they met the criteria of being homeseekers living in the District for more than a year immediately prior to application needing to move on strong medical or welfare grounds or for reasons of disability;
- (b) the medical evidence provided to the Council stated that the appellants' son was likely to have problems or delays with his development and the areas being closely monitored were balance and movement;
- (c) at the most recent appointment with the appellants' son's consultant paediatrician and a child physiotherapist the appellants had been advised to help their son to practice rolling, which was likely to be his first mode of transport before crawling; a range of physiotherapy exercises had been recommended and these were difficult to undertake in the appellants' current flat due to the very limited floor space and with no outside space;
- (d) in view of the appellants' son's condition he required extra help, opportunities and plenty of space to practice and develop his gross motor skills; a baby started to develop gross motor control from birth, beginning with the control of the head and torso, continuing until they had mastered rolling, sitting, crawling, standing and eventually walking, running, jumping and the range of activities that an adult could do;
- (e) it was vital that the appellants' son was not restricted at this stage of his development;
- (f) the Council's Medical Adviser had recommended that the Banding decision be reviewed in six months time but it was considered by the appellants that the review should be undertaken now because, even in Band 1, they would have to wait a period of time for suitable accommodation and their son was already at an age where he needed more space to practice rolling and for physiotherapy exercises;
- (g) the Council had received letters from consultant paediatricians specialising in neuro-development and neuro-disability paediatrics and in neonatology and neuro-development; both of these medical professionals had looked after the appellants' son since birth and had detailed knowledge of his condition; both consultants had recommended that the appellants should be moved to a more suitable home; the appellants' current accommodation was completely unsuitable for a child;
- (h) the appellants had experienced anti-social behaviour from their neighbours for years which was still ongoing despite numerous attempts to resolve matters; Social Services, Emergency Services and the Council's Environmental Health had been involved with the appellants' neighbours on many occasions; unfortunately,

despite their involvement, the problems continued; the appellants had reached the point where they did not want to put their family at risk any more by attempting to resolve the issues themselves;

(i) the problems experienced with the appellants' neighbours included alcoholism, drug use, noise disturbances, psychosis, frightening and threatening behaviour and a dangerous dog;

(j) in recent weeks the appellants had been woken during the night on a number of occasions which had been upsetting for their son;

(k) some of the anti-social behaviour and problems had been witnessed by Council Officers, one of whom had advised the appellants that one of their neighbours was on the Council's list of no-lone visits; despite this, the Council had on various occasions suggested to the appellants that they should approach the individual and attempt to resolve the situation themselves;

(l) a Noise Abatement Notice had been issued to one of the appellants' neighbours;

(m) a diary kept by the appellants and submitted to the Council in January 2010 detailing the extremity of the disturbances had been lost by the Council;

(n) both of the appellants were suffering from post traumatic stress due to the events surrounding the birth of their son and the uncertainty as to the seriousness of his disabilities; the problems associated with the appellants' current living conditions were adding to the problems;

(o) in Band 3 the appellants were given the same priority as applicants simply needing an additional bedroom or a garden with no additional medical need; this was unfair as the appellants had a child with a serious medical condition and were living in a completely unsuitable and unsatisfactory environment which was likely to have an impact on their son's welfare and development;

(p) Section 8.3 of the Council's Housing Allocations Scheme stated that "where a homeseeker could arguably be placed in different bands, the most favourable Band to the homeseeker would be used"; the appellants felt that they had put forward a very strong argument that they should be placed in Band 1 under strong medical and welfare grounds and they believed their case was exceptional to other families based in Band 3 who were seeking housing for much less serious or urgent reasons.

The appellants answered the following questions of the Housing Options Manager and members of the Panel:-

(a) You were promoted to Band 3 of the Council's Housing Allocations Scheme in April 2010; since then you have had the opportunity to express interest in vacant properties; why have you only expressed an interest in six properties? The appellants advised that none of the advertised properties would have been suitable for their son and they had not had a lot of time available to look for properties due to the stress following the birth of their son and the ongoing action being taken against the hospital.

(b) The Council's Medical Adviser had suggested that your Banding be reviewed in six months when your son is crawling; can you clarify why you consider you should be placed in Band 1 immediately? The appellants stated they wished to give their son an opportunity to develop to the best of his ability.

(c) Did you experience anti-social behaviour from your neighbours before your son was born? The appellants advised that they had experienced problems since they had lived at the property but had become more aware of the issues since having their son; previously they had tried to deal with the issues themselves and be good neighbours but they did not wish to put their son at risk by continuing to confront their neighbours.

(d) Are there records of visits to your neighbours from Environmental Health Officers? The appellants advised that there were and those officers had stated that they would be willing to appear before the Panel to advise about their visits; the issues had included loud music which had been accentuated due to the close proximity of the flats.

(e) What does your current accommodation comprise? The appellants stated that they had a living room and a bedroom at first floor level.

(f) You have referred to dampness in your property; has the Council undertaken any improvements to alleviate this problem? The appellants stated that the Council had improved ventilation of the property by adjusting the windows to enable them to open and that the appellants scrubbed off dampness and decorated regularly; they also advised that there was dampness on the exterior wall which was to be inspected by Council officers later in the week.

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

(a) the appellants had been Council tenants at their current property since 28 November 2005;

(b) a Housing Application on transfer grounds had been received by the Council from the appellants on 21 September 2009; on 22 September 2009 the appellants had been advised that their application was being placed in Band 6 of the Council's Allocations Scheme;

(c) on 13 April 2010 the Council had received a supporting letter from the appellants requesting a priority transfer under strong medical or welfare grounds on account of their son's condition; on account of this change in circumstances with an additional family member, the appellants had been placed into Band 3 of the Allocations Scheme; they had been placed in Band 3 as they lacked a bedroom, had no access to a garden and lived above the ground floor;

(d) the Council's Medical Adviser had assessed the case on 20 April 2010 but had not felt on medical grounds that the case ought to be promoted higher than Band 3;

(e) on 25 April 2010 the appellants had appealed against this decision to the Assistant Director of Housing; the Assistant Director of Housing had considered this appeal and had dismissed the appeal on 24 May 2010 for the reasons set out in his letter of that date;

(f) the appellants in their letter dated 25 April 2010 had considered that they ought to be given additional preference on strong medical and welfare grounds; they had also stated that they should be given additional priority on account of overcrowding and for housing conditions; the Assistant Director of Housing had considered all of these points in detail and before making his decision he had sought a further medical opinion from the Council's Medical Adviser; the Medical Adviser had stated that she did not believe that strong medical preference was appropriate at

that stage; she had pointed out that the appellant's son at that time had been approximately six weeks old and she had stated she would be expecting him to be sleeping in his parents' bedroom; she had continued that the appellants' son was not yet at an age where he would be expected to start crawling or walking;

(g) in dealing with a case of this nature it was imperative that consideration was given to the housing conditions prevailing across the Epping Forest District; the Council currently had a housing stock of approximately 6,500 properties and there were currently 5,116 applicants on the Council's Housing Register;

(h) in view of this acute demand it was necessary for the Council to have a Housing Allocations Scheme that met the requirements of the legislation and also took into account the particular needs and priorities of applicants and of the local area;

(i) the circumstances of the appellants' case were not exceptional and they ought not therefore be promoted to Band 1 at this stage.

The Housing Options Manager answered the following questions of the appellants and members of the Panel:

(a) Why is it necessary to wait six months for a review of the medical evidence when the appellants' child is at such a vital stage of his development? The Housing Options Manager stated that the Council's Medical Adviser did not believe that strong medical preference should be given at this stage, having taken account of the appellants' son's condition and their current housing conditions;

(b) Is it fair that the appellants should be in the same Band as applicants having no medical or welfare issues? The Housing Options Manager advised that each case must be considered on its merits;

(c) The appellants are likely to be in Band 3 for many years before being moved; is this acceptable bearing in mind their needs and their current housing conditions? The Housing Options Manager stated that since April this year the appellants had the opportunity to make expressions of interest against 33 properties across the Epping Forest District; they had chosen to bid for only six.

(d) Why have you not taken into account the anti-social behaviour of the appellants' neighbours in deciding on their banding? The Housing Options Manager advised that anti-social behaviour was not taken into account, as this was a matter for Housing Management; the assessment was based on the condition of an applicant's current property and their family.

(e) Who decides if there is strong medical or welfare grounds for being in Band 1? The Housing Options Manager advised that Council Officers took the decisions, taking advice from the Council's Medical Adviser.

(f) Is it acceptable for the Council to allow a child to live in the conditions being experienced by the appellants? The Housing Options Manager stated that tenants were entitled to peace and quiet and mechanisms were in place through Housing Management to ensure that this took place.

(g) Can you advise of the Council's Medical Adviser's qualifications for advising on Banding issues? The Housing Options Manager stated that the Medical Adviser was a general practitioner, not a specialist; however she was in a good position to determine relative medical priority, being aware of all the known facts relating to an

application and how they compared with the medical conditions of all other applicants, whereas all of this comparative information was not available to an applicant's doctor or consultant.

(h) Can you clarify the Council's Medical Adviser's suggestion that the appellants' banding be reviewed again in 6 months? The Housing Options Manager advised that the Medical Adviser had stated that, at this time, the appellants did not meet the strong medical or welfare grounds required for being in Band 1; however, she had accepted that the situation might change and had suggested that the issue be reviewed in six months.

(i) Are there open spaces close to the appellant's current accommodation? The Housing Options Manager stated that there were.

The Chairman asked the appellants if they wished to raise any further issues in support of their appeal.

The appellants stated that their son required plenty of space to develop his motor skills and that there was a very limited floor space in their current flat. Whilst there was open space within the vicinity of their flat they lived at first floor level and it was difficult to negotiate the stairs unless both appellants were present. It was not yet known whether the appellants' son would have a normal life, but he needed to be given as much space as possible in order to give him the best opportunity.

The Chairman asked the Housing Options Manager if he wished to raise any further issues in support of his case. He advised that he did not wish to do so.

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

In coming to its decision the Panel focused on the Council's Housing Allocation Scheme, the evidence regarding the appellants' son's medical condition and his needs, the medical condition of one of the appellants and their current accommodation.

**RESOLVED:**

(1) That, having regard to the Council's Housing Allocations Scheme and having taken into consideration the information presented by and on behalf of the appellants and by the Housing Options Manager in writing and orally, the decision of the officers not to promote the appellants from Band 3 to Band 1 of the Allocations Scheme be upheld for the following reasons:

(a) the appellants are currently in Band 3 of the Council's Housing Allocations Scheme by virtue of meeting the criteria of:

(i) Band 4(a) (Homeseekers living in the District for more than a year immediately prior to application, needing one or more additional bedrooms)

(ii) Band 4(e) (Households including a child under the age of 15 living in the District for more than a year immediately prior to application who have no access to a garden); and

(iii) Band 4(f) (Households including a child under the age of 5 living in the District for more than a year, immediately prior to application being in a flat or maisonette above ground floor);

(b) in accordance with the Scheme, in order to be promoted to Band 1, the appellants need to meet one of the criteria of that Band; they consider that they meet criteria 1(b) (Homeseekers living in the District for more than a year immediately prior to application, needing to move on strong medical or welfare grounds or for reasons of disability) and 1(d) (Homeseekers living in the Epping Forest District for more than a year immediately prior to application, residing in insanitary, overcrowded or unsatisfactory conditions);

(c) account has been taken of the evidence submitted in relation to the appellants' son's medical condition including letters from Consultant Paediatricians and the opinion of the Council's Medical Adviser; the Panel have great sympathy for the family, however, at this time based on the opinion of the Council's Medical Adviser it is not considered there is sufficient medical evidence to meet the criterion in Band 1(b) of needing to move on strong medical or welfare grounds or for reasons of disability;

(d) account has been taken of the evidence submitted in relation to the medical condition of one of the appellants and again this is not considered to be sufficient to meet the criteria in Band 1(b) of needing to move on strong medical or welfare grounds or for reasons of disability;

(e) in order to satisfy the criterion of Band 1(d) in relation to overcrowded conditions it is necessary to apply the statutory definition of overcrowded conditions; applying this definition the appellants' current accommodation is regarded as being suitable for three persons, a child under one year does not count towards the calculation and a child between the ages of 1 and 10 years counts as "half a person"; accordingly the appellants' current household as defined by the Housing Act 1985, as amended, is two persons and the appellants are not therefore regarded as being in overcrowded conditions; in relation to unsatisfactory conditions account has been taken of the evidence submitted in relation to damp and mould growth in the appellants' flat and it is not considered the property is in a serious state of disrepair which is a requirement to meet the criteria of unsatisfactory conditions; similarly, the representations made by the appellants about access to the first floor flat have been taken into account and it is considered that the escape routes, exits and the condition of stairs are adequate;

(f) the appellants referred to the anti-social behaviour of other occupiers of the block of flats in which they are currently accommodated; no priority is given in the Council's Allocations Scheme to applicants suffering anti-social behaviour as it is considered this should be resolved through Housing Management rather than moving tenants since if the anti-social behaviour persists it will continue to be a problem for any future tenants; and

(2) That the Council's Medical Adviser be asked to re-assess the appellants' situation in November 2010 (six months from her report of 12 May 2010) taking account of the medical information available at that time and, in particular, medical information regarding the appellants' son.



**11. APPLICATION NO. 7/2010**

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 her case accompanied by the shadow chairman of the Ninefields Residents Association. Mr J Hunt, Assistant Housing Options Manager (Homelessness), attended the meeting to present his case accompanied by Mr P Dee, Deputy Hostel Manager. Mr A Hall, 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 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) her application to the Housing Appeals and Review Panel dated 14 June 2010 together with a copy of a letter dated 1 June 2010 which had been sent to the Council's Housing Directorate;
  - (ii) a letter dated 21 July 2010 from solicitors acting on behalf of the applicant;
- (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) a copy of the applicant's licence to occupy the Council's Homeless Hostel;
  - (ii) letter dated 7 December 2009 from the Deputy Hostel Manager to the applicant;
  - (iii) letter dated 10 December 2009 from the Deputy Hostel Manager to the applicant;
  - (iv) letter dated 18 February 2010 from the Deputy Hostel Manager to the applicant;
  - (v) letter dated 2 March 2010 from the Deputy Hostel Manager to the applicant;
  - (vi) statement of Deputy Hostel Managers in relation to an incident on 13 May 2010;
  - (vii) letter dated 17 May 2010 from the Assistant Housing Options Manager (Homelessness) to the applicant;
  - (viii) Housing Officer file note dated 19 May 2010 following an interview with the applicant;

- (ix) letter dated 25 May 2010 from the Assistant Housing Options Manager (Homelessness) to the applicant;
- (x) file note of the Assistant Housing Options Manager (Homelessness) dated 27 May 2010;
- (xi) letter dated 28 May 2010 from the Housing Options Manager to the applicant and her partner;
- (xii) letter dated 21 January 2010 from the Assistant Housing Options Manager (Homelessness) to the applicant;
- (xiii) letter dated 27 January 2010 from the Assistant Housing Options Officer to the applicant;
- (xiv) schedule of accommodation at the Homeless Hostel including numbers of occupants permitted in each room.

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

- (a) when admitted to the Council's Homeless Persons Hostel, the applicant had been pregnant, detached from her family and vulnerable;
- (b) the applicant's partner and father of her child had been keen to support her and had visited her at the Hostel;
- (c) on 5/6 December 2009 the applicant's partner had stayed at the Hostel later than the time specified for visitors of 10.30 p.m.; the applicant accepted that on this occasion she had breached the conditions of her licence;
- (d) in relation to the incident on 9 December 2009, the applicant felt that she had not driven her vehicle in a manner in breach of the condition of her licence regarding duty of care; it had been necessary for her to drive across a grass verge as her vehicle had been blocked in as a result of gates being closed and locked and she had needed to attend a doctor's appointment; the applicant did not understand the reference made by officers to a three point turn, driving at speed and reversing the car at speed along the entire length of the building; the Hostel staff had a record of the applicant's car registration number and could have contacted her before she had been locked in;
- (e) the applicant accepted that she had allowed some friends to stay at the Hostel after 10.30 p.m. on 17 February 2010 as they had lost track of time; however the visitors had left by 10.45 p.m.;
- (f) in relation to the allegation of being abusive to and intimidating the Hostel staff, the applicant accepted that she had argued her point of view in an attempt to get the staff to understand her position; there had been a very unpleasant smell in the Hostel which Hostel staff had initially said was due to a dead squirrel and subsequently stated it was a dead rat in the cavity which could not be retrieved; every time the applicant had gone from her room to the bathroom or kitchen she had encountered the smell and all the staff had done was to offer her an air freshener; she had been concerned about the effects of this smell on her six week old child and had become irritated about this issue; the applicant had spoken to a Housing Officer at the Civic Offices who had indicated that the Council did not wish the situation to become wider known; after being advised that she was to have her licence terminated, the applicant had attended the Council's Environmental Health Section to

complain about the smell at the Hostel and had been told that they would investigate the matter and get back to her; she had not received any further response from Environmental Health;

(g) Housing Officers were subjected to verbal abuse from time to time and this was not a sufficient reason for terminating the applicant's licence;

(h) the Panel should consider whether the Council had effectively discharged its responsibilities under Section 193 of the Housing Act 1996, as amended; regard should be had to case-law and in particular the cases of R -v- Lambeth ex-parte Ekpo-Wedderman (1999) 31HLR498, Birmingham -v- Ali and Others and Moran -v- Manchester City Council (2009) UKHL36, and R -v- Westminster City Council ex-parte Zaher.

The applicant and her supporter answered the following questions of the Assistant Housing Options Manager (Homelessness) and members of the Panel:

(a) You said that a member of staff of the Housing Directorate stated that the Council did not want the issue of the smell at the Hostel to become widely known; can you elaborate on that statement? The appellant stated that she had spoken to her caseworker at the Civic Offices and had been told that the Hostel staff did not want this matter to become widely known.

(b) As you are aware, the last alleged breach related to your confrontation with Hostel staff over the smell at the Hostel; when you raised this matter with the staff did they offer you an alternative room? The applicant stated that she had been offered an alternative room but only when she was having the dispute; when she had first been accommodated at the Hostel she had been given a single room and when her partner had moved in she should have been given a family room but one had not been offered.

(c) Before leaving the Council's Homeless Persons Hostel you were in Band 1 of the Council's Allocation Scheme; if the Hostel was as bad as you claim, why did you not express interest in vacant properties when they were advertised? The applicant said that there were only two properties advertised which appealed to her but they were in a part of the District where she did not want to live.

(d) Why were you so frightened about staying at the Hostel alone? The applicant stated that she had not known anyone else; it had been a strange environment; she had been pregnant and vulnerable;

(e) It is stated that you were verbally abusive and intimidating to Hostel staff; do you agree with this statement? The applicant refuted this statement.

(f) Was the issue of the smell resolved? The applicant advised that the smell had still been apparent when she had moved out of the Hostel.

(g) Why did you have to move out of your family home? The applicant said that her mother had moved out of the area into a one bedroom house.

(h) Were you working at the time you left the family home? The applicant advised that she had been working.

(i) When your partner moved into the Hostel with you did you ask for a family room? The applicant said that she was not aware that she could have a family room.

(j) Why did you find it necessary to store some of your belongings in the corridor outside of your room? The applicant explained that this was because of the lack of space in her room.

(k) Why did you not take up the offer of an alternative room when you complained about the smell at the Hostel? The applicant stated that the alternative room had only been offered in an attempt to stop her from complaining and it was apparent that the Hostel staff were not prepared to take any steps to try to get rid of the smell; it would have necessitated moving all of her belongings from one end of the corridor to the other.

(l) Would not this offer have given you more space? The applicant said it would not have done, because the offer had been for another single room not a family room.

(m) In relation to your first warning, did your partner breach the 10.30 p.m. deadline on only one occasion? The applicant confirmed that he had.

(n) In relation to your four friends missing the 10.30 p.m. deadline, what time did they leave? The applicant said that they were only 5 or 10 minutes late in leaving.

(o) When you found it necessary to drive your vehicle across the grass, why did you not go to the office and ask for a key to the locked gate? The applicant said that there had been no one in the office.

(p) How did your car get blocked in? The applicant said she had only been at the Hostel for a short time and had been six months' pregnant; she had parked her vehicle outside the front door to the building rather than in the car park; she had not realised that the gates would be locked and she would be unable to get her vehicle out without crossing the grass; she felt that the staff had been unreasonable in that they could have approached her and asked her to move her car before locking the gates; she had been given no choice but to drive over the grass in order to get to her doctor's appointment.

(q) Did you take note of the warnings you received? The applicant said she had, but had not thought of the consequences.

(r) Did you sign a licence which set out the conditions of your occupation at the Hostel? The applicant stated that she had, but there had been no mention of not driving over the grass verge.

(s) Are you still with your partner? The applicant confirmed that she was with her partner in the bed and breakfast accommodation being provided by the Council.

(t) Why did you not express an interest in the two properties which might have been acceptable to you? The applicant said they had been in a part of the District where her grandmother had lived and there had been a lot of crime in the area.

At this stage of the meeting it became apparent that the applicant had not brought to the meeting all of the documents which had been circulated about her case. Copies of the papers she did not have to hand were passed to her and the Chairman adjourned the meeting for five minutes in order to enable the applicant and her supporter to read those papers.

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

(a) the applicant was 20 years old and the other members of her household included her partner aged 22 and her son aged three months; prior to approaching the Council as homeless, the applicant had been living with her mother; the applicant had approached the Council as homeless on 1 December 2009 as she had been pregnant and could no longer live with her mother; she had been placed in the Council's Homeless Persons Hostel whilst enquiries had been carried out as a result of her homelessness application; the applicant had been duly accepted for the full housing duty on 21 January 2010 and in accordance with Section 193 of the Housing Act 1996, as amended, the applicant had been accommodated at the Homeless Persons Hostel between 1 December 2009 and 24 May 2010; when the applicant had made her homelessness application and moved to the Homeless Persons Hostel she had been a single person, but on 6 January 2010 she had completed a Change of Circumstances Form to include her partner in her household;

(b) had the applicant not breached the terms of her licence and been served with notice to vacate her room at the Hostel she would have been able to continue living at the Hostel until being re-housed in permanent Council or Housing Association accommodation; being in Band 1 of the Council's Housing Allocations Scheme, it was likely that the applicant would have obtained a property within a reasonable time; however the applicant had been served with notice to vacate her room at the Hostel on 17 May 2010 and the licence had been terminated on 24 May 2010;

(c) when the applicant had signed her licence to occupy a room at the Hostel she had agreed to abide by its terms and agreed that failure to do so might result in the licence being terminated; the applicant was considered to have breached Conditions 4.3, 4.5, 4.8 and 4.9 of the licence; the applicant had signed the licence and, immediately above the signature, the licence stated that any breach of the conditions could result in the licence being terminated;

(d) paragraph 4.3 (Occupation) of the licence stated that no visitors were allowed to stay overnight and all guests had to leave by 10.30 p.m.; the paragraph also required all members of the applicant's household aged 16 years of age to follow the signing-in process on a daily basis; Paragraph 4.5 (Nuisance) of the licence required all residents and members of their household and visitors to behave in a reasonable manner and not to cause or allow members of their household or visitors to cause a nuisance or annoyance to neighbours or tenants or Council employees; paragraph 4.8 (Behaviour) of the licence made it clear that licence holders had to ensure that at all times the licensee and members of the licensee's household or visitors acted in a reasonable and responsible manner and their conduct and behaviour did not cause any harassment, intimidation, annoyance or a nuisance or inconvenience to the licensee or licensees of neighbouring properties or any other residents or Council employees; paragraph 4.9 (Duty of Care) stated that residents should not cause a hazard to the health of the licensee or licensees or to any other residents or any person in the vicinity;

(e) on 7 December 2009 the applicant had received her first warning under paragraph 4.3 (Occupation) as she had allowed a visitor to stay overnight on Saturday 5 December 2009 and this person had only left on Sunday 6 December 2009; on 10 December 2009, the applicant had received a second warning under paragraph 4.9 (Duty of Care) due to careless driving within the grounds of the Hostel; on 18 February 2010 the applicant had received a third warning under paragraph 4.3 (Occupation) for permitting four visitors to stay at the Hostel after 10.30 pm; on 2 March 2010, the applicant had received a fourth and final warning under paragraph 4.3 (Occupation) for not following the signing-in procedure; the applicant's fifth and final breach of the licence under paragraph 4.5 (Nuisance) and 4.8 (Behaviour) had

taken place on 13 May 2010 when the applicant and her partner had been verbally abusive and intimidating to staff;

(f) the applicant had been interviewed by her Homelessness Case Officer in order to gather information and to give her an opportunity to comment on the information received from the Hostel Management Team so that a balanced decision could be made on whether the duty to accommodate her should be discharged; on 25 May 2010 the applicant had been advised that it had been decided to deem her intentionally homeless; as a result there had no longer been a duty to provide the applicant with temporary accommodation under Section 193 of the Housing Act, as amended; the applicant had been informed that she had to vacate the bed and breakfast accommodation she had been provided with; the applicant had then sought a review of this decision and the Council had exercised its discretion to accommodate her pending the outcome of this review;

(g) Section 202 of the Housing Act 1996, as amended, gave homeless applicants the right to request a review of a decision under the provisions of the Act; in this case it was the decision that the applicant had made herself homeless intentionally (and therefore the duty to accommodate her had been discharged) which had prompted the request for the review;

(h) after vacating the Hostel and having been placed in bed and breakfast accommodation, the applicant and her partner had returned to the Hostel on 27 May 2010 to remove their belongings and had been abusive and threatening to staff, which had led to the Police being called and a warning letter being issued by the Housing Options Manager that an injunction would be sought if the abusive behaviour towards staff continued;

(i) in making homelessness decisions the Council had to have regard to the Code of Guidance which was used by local authorities to assist with the interpretation of the homelessness legislation; the Code of Guidance (11.7) stated that a person became homeless or threatened with homelessness intentionally if they deliberately did or failed to do anything in consequence of which they ceased to occupy accommodation (or the likely result of which was that they would be forced to leave accommodation); the accommodation was available for their occupation and it would have been reasonable for them to continue to occupy the accommodation;

(j) it was considered that the breaches of her licence were deliberate acts by the applicant; the applicant had breached her licence by allowing an unauthorised visitor to stay overnight; the visitor had been the applicant's partner, but at the time he had not been part of her household; this condition was included in the licence as it was essential to ensure that only residents were in the Hostel after 10.30 p.m. as the accommodation did not comprise self contained flats; the applicant had driven her car in a fast and dangerous manner in the grounds of the Hostel; it had been dark at the time and an accident could easily have occurred; speed limit signs of 5mph were displayed within the grounds but the applicant had admitted to driving between 10 and 15 mph; on 17 February 2010, when the applicant had allowed four visitors to remain after 10.30 p.m., the CCTV showed that the visitors had left at 11.00 p.m. not 5 or 10 minutes after 10.30 p.m.; the applicant had admitted breaching the signing-in procedure which was necessary to ensure that a record was kept of who was present at any time and to ensure that residents were making use of the accommodation which had been provided for them; the incident on 13 May 2010 was considered the most serious; there had been a smell near to the stairs and it had not been known what was causing the smell; it had been assumed that there had been a dead animal in the stair void; however, although there are a number of other residents living in the vicinity, none of the others had complained about the smell; one other had

commented but had accepted that as the smell was coming from the cavity it could not be accessed; the applicant had been offered an alternative room and if she had been so concerned about the smell, one would have expected that she would have agreed to move; when returning to the Hostel on 27 May 2010 to remove her belongings the applicant had again failed to present herself in a reasonable manner;

(k) in relation to the legal representations made on behalf of the applicant, it was considered that the accommodation provided for the applicant at the Hostel had been reasonable; she had been given exclusive possession of a room which had included a self contained bathroom; visitors had been allowed, although they had to leave by 10.30 p.m.; the applicant had been housed in a similar way to others with a similar family make-up; the period during which the applicant had occupied a room at the Hostel was not considered excessive (five months and three weeks); the applicant had been promoted to Band 1 of the Council's Allocations Scheme on 21 April 2010 but she had made no expressions of interest for properties under the Council's Choice Based Letting Scheme; during the relevant period 16 two bedroom flats had been advertised; at no time had the applicant asked for a larger room at the Hostel; the applicant had been accepted as statutorily homeless but the Council's duty had been discharged and she had made herself intentionally homeless from temporary accommodation; the room in which the applicant had been housed at the Hostel was capable of accommodating up to five adults;

(l) in the event of the Panel agreeing with the officer decision, reasonable notice should be given to the applicant to vacate her bed and breakfast accommodation and, with her consent a referral should be made to Essex County Council Children's and Families Service 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, her supporter and members of the Panel:

(a) Why would I have driven my car across the grass if I could have arranged for the gates to be opened by someone in the office; there was not anyone in the office at the time was there? The Deputy Hostel Manager stated that he had been in the office at the time; he continued that the gates had been locked at 3.30 p.m. as the grounds of the Hostel needed to be secure when children returned from school; he said that when the applicant had left at 4.45 p.m. he had been in the office.

(b) The applicant said that she had left at 6.00 p.m. not 4.45 p.m. The Deputy Hostel Manager stated that he had seen the applicant leaving with her partner and he had made an entry in the log book; the log book showed that the applicant had left at 4.45 p.m. The applicant again said that she disputed that statement. The Assistant Housing Options Manager (Homelessness) stated it was not in an officer's interest to issue a warning for no reason.

(c) It was stated that I did a three point turn and reversed the length of the building at speed; how do you know, as such a manoeuvre could not been seen from the office or on the CCTV? The Assistant Housing Options Manager (Homelessness) stated that part of the incident had been witnessed by the Deputy Hostel Manager and part-captured by the CCTV.

(d) I asked to see the CCTV and was advised that I would need to pay £10. I offered the money but I was not allowed to see the CCTV; why not? The Assistant Housing Options Manager (Homelessness) stated that there were strict data protection issues associated with viewing CCTV.

(e) Who witnessed the alleged incident on 13 May 2010? The Deputy Hostel Manager stated that he had witnessed the whole incident together with the other Deputy Hostel Manager and, in addition, the Caretaker had witnessed part of the incident.

(f) You have said that my partner stuck up two fingers to one of the CCTV cameras after the incident on 13 May 2010 but he could not have done so as he was holding our son at the time? Why have you not produced CCTV evidence in support of your allegations? The Deputy Hostel Manager stated that the applicant and her son had not been present at the time; the applicant's partner had been at the top of the staircase having come out of the applicant's room to spray an air freshener.

(g) The incident on 13 May 2010 is my word against yours; why have you not made the CCTV footage available to the Panel? The Assistant Housing Options Manager (Homelessness) stated the issue in relation to the incident on 13 June 2010 was verbal abuse and the CCTV images would not have assisted.

(h) Were all of the warnings given to the applicant in writing? The Assistant Housing Options Manager (Homelessness) stated that they had been.

(i) When an applicant signs a licence, are they given an opportunity to read it? The Deputy Hostel Manager said that they were given time and advised that one of the Hostel Management talked through the conditions of the licence which took approximately 45 minutes.

(j) How many warnings are given before someone is evicted from the Hostel? The Assistant Housing Options Manager (Homelessness) stated that it depended on the seriousness of the breaches; as many as six could be given for minor breaches but on occasions one breach could be so serious that it necessitated cessation of the licence.

(k) Was there a smell at the Hostel? The Deputy Hostel Manager said there was certainly something which was not a pleasant smell in the corridor; however it appeared to emanate from an area which could not be accessed.

(l) Is there still a smell at the property? The Deputy Hostel Manager said it had now gone and it was never established what had caused it.

(m) Are residents made aware of where they should park their vehicles at the Hostel? The Deputy Hostel Manager said they were and the applicant had not parked in the car park but had parked close to the entrance door to the Hostel, presumably because it had been easier for her as she had been moving in some of her belongings; if the staff had realised that her car had been locked in they would have spoken to her.

(n) Would the CCTV footage confirm the officers' views about the time the applicant left for her doctor's appointment? The Deputy Hostel Manager said that it probably would.

(o) Do you accept that the applicant had been vulnerable? The Assistant Housing Options Manager (Homelessness) agreed that she had been, but pointed out that there were a lot of other vulnerable people in the Hostel.

(p) Did the applicant cause any damage when she drove across the grass? The Deputy Hostel Manager said she could have caused damage as there were drains within that area.



(q) Was the applicant's room close to the smell, making her more aware of it than other residents? The Deputy Hostel Manager said there had been a staircase and two fire doors with the applicant's room at the end of a corridor, over 15 feet from the second fire door; it was unlikely therefore that the smell would have reached the applicant's room.

(r) Was this an unusual smell? The Deputy Hostel Manager said that it had been, but he was not qualified to say what was causing it; he said that sometimes smells arose as a result of occupants leaving rubbish outside of their flats.

The Chairman asked the applicant and her supporter if they wished to raise any further issues in support of the application.

The applicant stated that there was no reason for residents to leave rubbish in the corridor outside of their flats as there were large wheelie bins provided in the car park for rubbish. There had been a most unpleasant smell which had affected the applicant. The applicant had accepted some of the alleged breaches of the conditions of her licence but these had not been deliberate. The applicant's partner had been an influence in some of the breaches. The applicant had only been given an opportunity to read her licence quickly at the time of signing it. She had subsequently read it in detail when in her room. If the applicant had received better support from the Hostel Management staff some of the issues would not have arisen.

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) re-stated his views that the applicant had breached her licence conditions on five occasions and that on the fifth occasion she had been abusive and had intimidated staff. It was the officers' responsibility to apply the homelessness legislation but they did not set out to make people homeless. They would prefer to secure permanent accommodation for applicants and in their discussions with applicants they expected applicants to behave reasonably at all times.

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, her supporter, the Assistant Housing Options Manager (Homelessness) and the Deputy Hostel Manager then left the meeting.

In coming to its decision the Panel focused on the evidence regarding alleged breaches of the applicant's licence in relation to occupation of temporary accommodation at the Council's Homeless Hostel which had led to her licence being terminated.

**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 made herself homeless intentionally from temporary accommodation provided by the Council and that the duty on the Council to provide her with temporary accommodation has been discharged be not upheld for the following reasons:

(a) in relation to the incident which led to the applicant receiving her first written warning on 7 December 2009; the allegation that the applicant allowed a visitor to stay overnight in breach of licence Condition 4.3 (Occupation of the Council's Homeless Hostel) was proven and admitted by the applicant; however we have taken account of the following mitigating circumstances:

(i) the applicant had only been in the Homeless Hostel for approximately one week;

(ii) the applicant at the time had been 19 years old, pregnant, alone and had felt vulnerable;

(iii) the visitor had been the applicant's partner and father of her unborn child;

(iv) within one month of this incident, the applicant had completed a change of circumstances form to include her partner in her household thereby enabling him to live with her in the Hostel;

(v) the applicant had acknowledged her mistake and had not allowed visitors to stay overnight throughout the remainder of her stay at the Hostel;

(b) in relation to the incident which led to the applicant receiving her second written warning on 10 December 2009; there was conflicting evidence presented about the time of day and the manoeuvres which had led to the allegation that the applicant had driven her car in the grounds of the Hostel in a manner contrary to Condition 4.9 of the licence (Duty of Care); this incident arose when the applicant who had been at the Hostel for less than two weeks; she had needed to get to a doctor's appointment but had found that gates had been shut and locked preventing her from driving her car out of the Hostel unless she drove across the grass; we are of the opinion that the parked car should have been seen by the staff when they had locked the gates and that they should have approached the applicant in order to give her an opportunity to move the car; taking account of the conflicting evidence, on balance we do not consider that this incident was a breach of condition 4.9 of the licence;

(c) in relation to the incident which led to the applicant receiving her third written warning on 18 February 2010; the allegation that the applicant allowed four visitors to stay later than 10.30 p.m. in breach of Condition 4.3 (Occupation) was proven and admitted by the applicant; however, there was conflicting evidence about the time when the visitors left; the applicant stated that it was 10.35/10.40 p.m. whereas the officer said it was 11.00 p.m.; whichever time is correct this was clearly a breach of Condition 4.3;

(d) in relation to the incident which led to the applicant receiving her fourth written warning on 2 March 2010; the allegation that the applicant failed to follow the signing-in procedure as required by Condition 4.3 (Occupation) was proven and admitted by the applicant and was a breach of this condition;

(e) in relation to the fifth incident which took place on 13 May 2010 and led to the applicant's licence being terminated it was alleged that this was contrary to Conditions 4.5 (Nuisance) and 4.8 (Behaviour); taking all the evidence into account the Panel concludes that the applicant was stressed and confrontational at the time; however, the Panel is uncertain as to whether

the actions of the applicant and her partner were in breach of Conditions 4.5 and 4.8;

(f) it is clear from (a), (c) and (d) above that the applicant breached the conditions of her licence relating to occupation of the Hostel; however, on balance, and in all the circumstances it is not considered that the proven breaches of the licence conditions were sufficiently deliberate actions to reach a conclusion that the applicant was intentionally homeless from temporary accommodation;

(g) accordingly, it is not considered that the applicant made herself homeless intentionally from the temporary accommodation provided by the Council; and it is therefore considered that the Council has not discharged its duty to provide the applicant with temporary accommodation; and

(2) That in the light of the above conclusions the other submissions made on behalf of the applicant do not need to be considered.

**CHAIRMAN**