

23. APPEAL NO. 13/2005

The Panel was advised that consideration of this appeal had been deferred at the last meeting in order to give the appellant more time to find a representative to present his case and to obtain evidence from his medical advisor, which he wished to present to the Panel. The Panel were reminded that this appeal was against the decision of the Housing Resources Manager acting under delegated authority not to pursue the appellant's Right to Buy application. The appellant attended the meeting to present his case, accompanied by Councillor K Faulkner. Mr P Pledger, Assistant Head of Housing Services (Property and Resources), attended the meeting to present the Council's case which had been compiled by the Housing Resources Manager but who was unable to be present at this meeting. Mr A Hall, Head of Housing Services, attended the meeting to advise the Panel as required on legal issues and 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 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) a summary of the appeal together with the facts of the case, forming part of the agenda for the meeting;
- (b) a copy of the formal offer letter dated 11 December 2002 from the Housing Client Manager to the appellant;
- (c) a copy of a notice dated 30 January 2003 from the appellant to the Council requiring determination of the value of the property by the District Valuer;
- (d) a copy of a letter dated 12 June 2003 from the District Valuer to the appellant;
- (e) a copy of a letter dated 24 October 2003 from the Housing Officer (Sales and Leasehold Services) to the appellant;
- (f) a copy of a notice of intention to proceed at the full sale price dated 13 November 2003 from the appellant to the Council;
- (g) a copy of a letter dated 14 November 2003 from the Senior Housing Officer (Sales) to the appellant;
- (h) a copy of a letter dated 9 July 2004 from the Solicitor to the Council to the appellant;
- (i) a copy of a letter dated 4 August 2004 from the Solicitor to the Council to the appellant;
- (j) a copy of a letter dated 3 September 2004 from the Solicitor to the Council to the appellant;
- (k) a copy of a letter dated 3 September 2004 from the Solicitor to the Council to the appellant's solicitor;
- (l) a copy of a letter dated 27 October 2004 from the Solicitor to the Council to the appellant;

- (m) a copy of a letter dated 29 November 2004 from the Solicitor to the Council to the appellant;
- (n) a copy of a letter dated 25 January 2005 from the Solicitor to the Council to the appellant;
- (o) a copy of a memorandum dated 7 February 2005 from the Council's Managing Legal Executive to the Head of Housing Services together with a copy of a Suspended Possession Order dated 25 January 2005 in respect of non payment of arrears;
- (p) a copy of a letter dated 3 March 2005 from the Housing Officer (Management) to the appellant;
- (q) a copy of a letter dated 1 April 2005 from the Solicitor to the Council to the appellant;
- (r) a copy of a letter dated 28 April 2005 from the Assistant Head of Housing Services (Assets and Resources) to the appellant;
- (s) a copy of a letter dated 3 May 2005 from the Assistant Head of Housing Services (Property and Resources) to the appellant;
- (t) a copy of the application to the Housing Appeals Panel by the appellant dated 24 June 2005;
- (u) a copy of a letter dated 12 April 2005 from the appellant's general practitioner to "Whom it may concern";
- (v) a copy of a letter dated 2 September 2005 from the North Essex Mental Health Partnership to "Whom it may concern".

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

- (a) the appellant accepted that he had missed deadlines but there were good reasons which should be taken into account by the Panel;
- (b) initially the appellant's parents had intended to provide the money for the purchase of the property and they had applied for a mortgage; however, it had become apparent that this was not possible and that the mortgage application had to be made in the appellant's name; this had lead to a delay in the proceedings;
- (c) the appellant had suffered a mental breakdown and had been unable to make decisions and had put off dealing with matters; he was now recovering and had been in a steady job for three months;
- (d) attention was drawn to the appellant's general practitioner's letter which confirmed that in recent months the appellant had suffered with problems from depression and had been taking medication daily;
- (e) attention was also drawn to the letter from the North Essex Mental Health Partnership which stated that the appellant had been receiving outpatient treatment from a psychiatrist for a period of approximately seven years, as well as support from community workers and on-going psychotherapy via the local Adult Psychotherapy Services; during this period, the appellant had found it difficult to attend adequately to

his affairs and this would have had a bearing on his application to purchase the property; the letter continued that the appellant had been experiencing a lot of negative life events in Loughton and was hopeful that by buying his property he would be able eventually to move from the Loughton area, where there were certain individuals who had caused him a great deal of difficulty and harassment; the letter continued that the appellant had been caused a great deal of anxiety by the possibility of meeting his ex partner and his young daughter who lived in the locality as he had been prevented from having contact with his daughter and this had been very distressing; at times this distress had caused him to act irrationally and aggressively towards certain people when under provocation; the appellant felt that this had unjustly given him a bad reputation with the local Police and the purchase of his property would help him to make a fresh start;

(f) the appellant was now in receipt of a mortgage offer and would be able to proceed with the purchase of the property immediately if his appeal was allowed;

(g) if the appeal was not allowed and the appellant wished to proceed with the purchase of the property then the appellant would be unlikely to be able to afford to proceed; this would have detrimental effect on his health;

(h) the appellant had been misled by Council officers about the deadlines; he had contacted the Council's Legal Services just before the final 56 day period, and had been advised that he would be allowed an additional two weeks but no allowance had been given;

(i) the appellant had spent approximately £1,500 on legal fees to get to the current stage.

The appellant answered the following questions of the Assistant Head of Housing Services (Property and Resources) and the Panel:

(a) What is the deadline in respect of your current mortgage offer? - The end of September 2005;

(b) The letter from the North Essex Mental Health Partnership mentions your wish to move from Loughton; are you aware that you do not have to buy your property in order to move, as there are transfer schemes available? - I do not wish to move from Loughton; I may have mentioned in general conversation with my psychiatrist the possibility of doing so but it is not my intention; my former partner and my daughter have now moved to Spain;

(c) You have stated that you contacted the Council just before the last 56 day period and were advised that an additional two weeks would be allowed; are you sure it was the last 56 day period? - I cannot remember which 56 day period I was referring to;

(d) Did any specific event in your life lead to your depression? - It was pressure which made me ill;

(e) Where are you currently employed? - In London;

(f) Do you commute each day? - Yes;

(g) Can you give a breakdown of the £1,500 spent on fees? - Mortgage broker, surveyor, solicitor and search fee.

The Panel considered the following submissions in support of the case of the Housing Resources Manager:

(a) the appellant had been a tenant of his bed-sit bungalow since 1998; on 4 November 2002, the Council had received an application from the appellant to purchase his property under the Right to Buy Scheme;

(b) a formal letter had been sent on 11 December 2002 in which the Council had set out the full valuation of the property, the discount entitlement and the actual sale price of £64,680; the offer letter had clearly stated that the tenant should respond within three months from the date of the offer, i.e., no later than 11 March 2003; the letter had also advised the appellant of his right to have the value re-determined by the District Valuer within the same timescale;

(c) the appellant had requested a re-determination from the District Valuer on 3 February 2003; plans were drawn up and the Council submitted information to the District Valuer on 26 February 2003; a report had been received from the District Valuer on 24 October 2003 advising that there was no change in the valuation of the property; the delay was due to the fact that the District Valuer had to make three different appointments with the appellant before he could gain access to the property; the appellant had been advised of the District Valuer's valuation on 24 October 2003;

(d) the appellant had been informed that he should formally accept the offer by no later than 7 November 2003; the appellant had telephoned Housing Services on 7 November 2003 and had asked for an extension to this deadline due to a postal dispute; a revised deadline of 14 November 2003 had been agreed;

(e) the appellant had returned his acceptance letter on 13 November 2003; on 14 November 2003 the appellant had been informed that his sale would now be progressed by the Council's Legal Services and that all further communications should be dealt with through his chosen solicitor and the Council's Legal Services;

(f) the appellant had been served with the first 56 day notice under Section 140 of the Housing Act 1985 to complete the purchase by 9 July 2004; the appellant had telephoned the Council's Legal Services on 3 August 2004 and had been advised in a letter dated 4 August 2004 confirming that conversation, that a second 56 day notice would be served at the expiry of the first 56 day notice which should hopefully provide him with sufficient time to complete the purchase;

(g) the second 56 day notice had been served on 3 September 2004 under Section 141 of the Housing Act 1985; the appellant had been advised that failure to complete within this timescale would result in the notice claiming the right to buy being deemed withdrawn; the appellant's solicitor had been similarly advised on the same day;

(h) the appellant had telephoned the Council's Legal Services asking for an extension of two weeks on the final time limit and initially, he had been allowed another four weeks; however, as the appellant had applied for a revaluation of the property, it had been considered that he should have been allowed more time to comply with the regulations and, in recognition of that fact, he was served with a further 56 day notice under Section 140 of the Housing Act; another 56 day notice under Section 141 of the Housing Act 1985 had been served on the appellant on 25 January 2005;

(i) the appellant had been issued with a Suspended Possession Order on 25 January 2005 for non payment of arrears; on 17 March 2005, the Council's Legal

Services had advised Housing Services that they were seeking a Warrant for Possession as the Suspended Possession Order had been breached; the implications for breach of a Suspended Possession Order were that a tenant lost the right to buy their property as they are no longer a secure tenant and they become a "tolerated trespasser"; even if a tenant paid off the arrears they did not automatically have the same rights, as the Council could continue to treat the tenant as a tolerated trespasser and the tenant would have to apply to the court to be reinstated as a secure tenant; however, this authority did not take this approach with the appellant once he had cleared his account, and he had been allowed to enjoy the same rights and continue with the purchase of his property;

(j) the appellant had been advised by letter on 3 March 2005 that he had breached the terms of the Suspended Order by not paying the outstanding arrears of £358.56 at a rate of £2.85 per week; the appellant had been in receipt of full Housing Benefit and the arrears had accrued from past debts; the appellant had paid his arrears on 29 March 2005; however, once the fourth 56 day period had been allowed to run its course and expired, the appellant had been informed on 1 April 2005 that his notice period had ceased and he could no longer proceed with his application to purchase;

(k) the appellant had subsequently telephoned the Civic Offices a number of times after this notification, although he had failed to contact the Council officers hardly at all over the length of time he had to complete the sale since the application;

(l) the appellant had been informed on several occasions that he was entitled to reapply to purchase his property, but he had insisted that he wanted to pursue with this present application as the price of the property would increase and he had incurred legal fees of £1,500;

(m) normally purchases were completed in approximately one year and the appellant had been allowed over two years;

(n) on 31 August 2005, the Council's Valuation Officer had valued the property at between £135,000 and £140,000 which, after making allowance for the discount, represented a difference in purchase price of around £42,000 compared to the offer made in December 2002;

(o) the appellant had said that he had been unwell in a telephone conversation on 14 April 2005, that he could not get a mortgage and this had caused complications; this had been the first notification of any such problem; account should be taken of the fact that the appellant had engaged a solicitor to act for him in relation to the purchase of the property and that copies of all of the Council's correspondence had been copied to the appellant's solicitor;

(p) on 28 April 2005, the appellant had asked the Housing Resources Manager if she could "do a deal" to overcome the problems, and she had explained that this was not possible; on 19 May 2005 the appellant had spoken to the Assistant Head of Housing Services (Property and Resources) and again asked about "doing a deal", and had again been informed that this was not possible;

(q) the appellant had stated that he had been advised by the Council's Legal Services that going over time was not a problem; Legal Services would have been aware of the breach of tenancy and they had served four 56 day notices and would therefore have been fully aware of the length of time the appellant had already been allowed;

(r) based on the facts, the appellant had been given sufficient time to complete his sale and the Council should not lose the benefit of increased property prices since the initial application in 2002; the appellant was entitled to re-apply to purchase his property at any time based on a current valuation.

The Assistant Head of Housing Services (Property and Resources), answered the following questions of the appellant, his representative and the Panel:

(a) you have referred to the property being valued in 2002; would it not be fairer to acknowledge that the appropriate date should be October 2003 when the District Valuer had valued the property? - Both applications were based on the day of the application to purchase the property; the District Valuer had looked at the original valuation and had agreed that it had been correct at the time the application had been made;

(b) why did you not include the appellant's doctor's letter and mortgage offer letters in the papers submitted to the Panel? - These are not part of my case;

(c) will you look at the housing file to try and find these documents? - I have searched the file and can find no reference to these documents;

(d) are there any notes of telephone conversations with the appellant on the file? - The letters written to the appellant immediately after telephone conversations refer to those conversations, so a separate note was not considered necessary;

(e) are there any file notes about the appellant's telephone conversations after November 2003? - After acceptance of the offer on 13 November 2003, the matter was passed to the Solicitor to the Council and it was made clear to the appellant on 14 November 2003 that from that date all communications should be dealt with through his chosen solicitor and the Council's Legal Services;

(f) is the appellant currently up-to-date with his rent? - Yes;

(g) the copy of the letter included as Appendix 17 is not dated, what was the date of that letter? - 28 April 2005;

(h) please clarify whether Housing Services make file notes of telephone conversations? - File notes are kept and there are file notes on the appellant's file; copies have not been provided to the Panel as the letters sent following the telephone conversations summarise what was discussed and these letters are before the Panel;

(i) did you respond to the appellant's doctor's letter dated 12 April 2005 which was faxed to the Council on 20 April 2005? - I can find no reference to a response;

(j) do you not think that a response should have been sent in view of the last sentence of the doctor's letter? - I cannot comment on that;

(k) you have stated that the first notification received by the Council of the appellant's illness was on 14 April 2005; however, in the Council's letter dated 28 April 2005, reference is made under point (n) to the appellant being unwell on 27 October 2004; can you explain this apparent discrepancy? - I am not clear whether that was a reference to the same illness;

(l) how long are tenants normally regarded as tolerated trespassers? - Technically it is necessary for a tenant to go to Court to get a tenancy reverted,

however, this Council's approach is that when the arrears have been paid off the tenancy automatically reverts.

The Chairman obtained the agreement of the appellant to a member of the Panel asking him a further question. The appellant was asked why it had been necessary for the District Valuer to make three attempts to gain access to the property to value it. The appellant stated that, at that time, his illness had started and he had stayed with his mother for periods; he had good and bad days at that time. In response to a supplementary question, the appellant said that he could not recall whether he had advised the District Valuer of his problems.

The Chairman asked the appellant if he wished to raise any further issues in support of his case. Councillor Faulkner stated that the appellant had been a tenant since 1998 and that he had decided to purchase his property in 2002. The evidence showed the appellant had become unwell and this had contributed to his rent arrears. He had been under treatment for his depression and had been hospitalised for a period. The appellant was now getting better and was in full time employment. If he was able to complete the purchase of the property, he would be able to continue to improve his life. The appellant stated that when he had become ill, he had been suicidal and had been unable to manage any problem. As a result he had missed the deadlines which had been set.

The Chairman asked the Assistant Head of Housing Services (Property and Resources), if he wished to raise any further issues in support of the case of the Housing Resources Manager. He reiterated that many deadlines had been missed. He also emphasised that if the appeal was allowed, the Council would effectively be foregoing a capital receipt of around £42,000. Two and a half to three years was more than enough to complete the purchase of a property as the normal timescale was approximately one year. The valuation advice received on 31 August 2005 had been given by the same Valuer who had provided the original valuation in 2002.

The Chairman indicated that the Panel would consider the appeal in the absence of both parties and that the appellant and the Assistant Head of Housing Services (Property and Resources), would be advised, in writing, of the outcome. The appellant, Councillor Faulkner and the Assistant Head of Housing Services (Property and Resources), then left the meeting.

The Panel considered whether the reasons for failing to meet the numerous deadlines were sufficient to allow the appeal. Members concluded that the appellant's solicitor must have been aware of the appellant's illness and had been in receipt of copies of all of the relevant correspondence. However, the solicitor appeared to have failed to alert the Council to the difficulties or to provide the appellant with advice about the deadlines. The Panel noted that the appellant had been in rent arrears for approximately four months during the period of approximately two and a half years that the application had been progressed. This suggested that, during the rest of that period, the appellant had been able to manage some of his affairs adequately. The Panel concluded that Council officers had acted fairly throughout the process and had extended many of the deadlines which had been set. The Panel noted some inconsistencies in relation to the medical advice submitted on behalf of the appellant. Reference had been made at the hearing to the appellant being hospitalised, but the letter from the North Essex Mental Health Partnership had stated that the appellant had received outpatient treatment only. The appellant's general practitioner's letter had referred to the appellant suffering from problems with depression in recent months and not throughout the whole period of the processing of the application. The Panel also noted that during the period that the appellant had been suffering from depression, he had been able to telephone Council officers on

several occasions. On balance, the Panel concluded that the appeal should be dismissed.

RESOLVED:

(1) That, having taken into consideration the information presented by and on behalf of the appellant, and by the Housing Resources Manager and the Assistant Head of Housing Services (Property and Resources), in writing and orally, the appeal be dismissed and the decision of the Housing Resources Manager, not to pursue the application received from the appellant on 4 November 2002 to purchase his property under the Right to Buy Scheme, be upheld for the following reasons:

(a) that a period of over two years and three months elapsed between the date of the Council's formal offer letter (which included the valuation) to the time of the decision not to pursue the application; despite being given numerous extensions of time to complete various stages of the process, the appellant had failed to meet the majority of the deadlines set; the extensions of time included four, rather than the normal two 56 day notices, under Section 140 of the Housing Act 1985; during this period the appellant had also failed to meet the terms of a Suspended Possession Order;

(b) the Office of the Deputy Prime Minister Booklet, "Your Right to Buy Your Home" states that the earliest a landlord can require completion is at least twelve months after the offer letter; in practice, the vast majority of Right to Buy applications are completed within a period of approximately 12 months;

(c) the appellant had a solicitor to advise him about the terms and timescales of the proposed sale, who could and should have liaised with the Council on the appellant's behalf;

(d) there is no evidence to suggest that the actions or inactions of Council officers were in any way responsible for the failure of the appellant to meet the deadlines set;

(e) the delays in completing this matter have resulted in a difference in valuation of the appellant's property of approximately £42,000, according to the same Valuer who provided the formal valuation for the right to buy offer; it is unreasonable to expect the Council to lose a capital receipt of that amount, having regard to the fact that the appellant had been solely responsible for the delays;

(f) the medical evidence submitted by the appellant regarding his ongoing depression and anxiety have been taken into account, however, on balance, it is considered that this is insufficient to allow the appeal, having regard to the numerous extensions of time that were given to the appellant, the fact that he was in receipt of legal advice from his solicitor and to certain inconsistencies contained within the medical evidence;

(2) That the appellant be advised that he is entitled to reapply to purchase his property at any time whilst he continues to be a secure

tenant, for which, an up-to-date valuation of the property will be provided.

24. APPEAL NO. 15/2005

The Panel was advised that this was an appeal against the decision of the Assistant Housing Needs Manager (Homelessness) acting under delegated authority that the appellant had become homeless intentionally from accommodation made available to her under Section 193 of the Housing Act 1996, as amended. The Panel was advised that a letter of representations from the appellant's solicitors and copies of numerous supporting documents had been received by the Council on 21 September 2005. Copies of the letter and supporting documents were handed to members of the Panel. The Panel noted that letters had been sent to the appellant's solicitors on 12 August 2005 and 1 September 2005 seeking clarification of their client's appeal and the submission of any further supporting documents. In particular, the Panel noted that the solicitors had been asked to provide any further supporting documents by not later than 9 September 2005.

In the light of the deadlines set, the Panel discussed:

- (a) whether to ignore the letter dated 15 September 2005 and the enclosures in view of the lateness of the submissions;
- (b) to read the papers before them and then consider the appeal in the light of those papers; or
- (c) to adjourn the meeting in order to provide time to read the papers in order to give the matter proper consideration.

The Panel decided to pursue option (c) above and requested that a copy of the appellant's Assured Shorthold Tenancy Agreement, in relation to the flat which she had occupied at the women's refuge be made available before the matter was considered further.

RESOLVED:

- (1) That the appellant's solicitors be advised of the Panel's disappointment at their failure to meet the stated deadline for the submission of written material and the inconvenience which this has caused;
- (2) That the meeting be adjourned until Monday 3 October 2005 at which time the appeal will be considered; and
- (3) That a copy of the appellant's Assured Shorthold Tenancy Agreement in relation to the flat which she occupied at the women's refuge be sent to members of the Panel prior to 3 October 2005.

CHAIRMAN