

EPPING FOREST DISTRICT COUNCIL COMMITTEE MINUTES

Committee: Housing Appeals and Review Panel **Date:** Thursday, 13 October 2011

Place: Committee Room 2, Civic Offices, High Street, Epping **Time:** 2.30 - 6.20 pm

Members Present: Councillors B Rolfe (Chairman), Mrs J Sutcliffe (Vice-Chairman), Mrs R Gadsby, Ms J Hart and Mrs J Lea

Other Councillors:

Apologies:

Officers Present: A Hall (Director of Housing), R Wallace (Housing Options Manager), J Hunt (Assistant Housing Options Manager (Homelessness)), J Manning (Area Housing Manager) and G Lunnun (Assistant Director Democratic Services)

29. SUBSTITUTE MEMBERS

It was noted that Councillor Mrs J Lea was substituting for Councillor Ms Y Knight.

30. DECLARATIONS OF INTEREST

Pursuant to the Council's Code of Member Conduct, Councillor Gadsby declared a personal interest in agenda item 5 (Application No 8/2011) by virtue of being a member of the ward within which the applicant resided. The Councillor advised that she had not been involved in the appeal before this meeting and had determined that her interest was not prejudicial and she would remain in the meeting for the consideration of voting on the matter.

31. EXCLUSION OF PUBLIC AND PRESS

RESOLVED:

That in accordance with Section 100A(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 I of Schedule 12A of the Act indicated and the exemption is considered to outweigh the potential public interest in disclosing the information.

Agenda Item Number	Subject	Exempt Information and Paragraph Number
5	Application No. 8/2011	1
6	Appeal No 7/2011	1

32. APPLICATION NO. 8/2011

Introduction

The Chairman requested that the applicant be provided with another copy of the agenda and documents before the Panel as it was apparent she had not brought to the meeting the copies previously sent to her. The applicant was provided with further copies and given time to read them.

The Panel considered a request for a review of a decision made by officers under delegated authority that the applicant was homeless intentionally when she had been evicted from her Council property for rent arrears. The applicant attended the meeting to present her case. Mr J Hunt, Assistant Housing Options Manager (Homelessness), attended the meeting to present his case supported by Mrs J Manning, Area Housing Manager. Mr A Hall, Director of Housing, attended the meeting to advise the Panel as required on relevant legislation and national and local housing policies relative to the application.

The Chairman introduced the members of the Panel and officers to the applicant.

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) her application to the Housing Appeals and Review Panel dated 14 September 2011;
- (b) a summary of the case including the facts of the case;
- (c) the case of the Assistant Housing Options Manager (Homelessness);
- (d) copies of documents submitted by the Assistant Housing Options Manager (Homelessness), namely:
 - (i) memorandum dated 15 February 2008 from the Head of Housing Services to Legal and Administration requesting an application to the Court for a Warrant for Possession of the applicant's property due to rent arrears.
 - (ii) hand written and typed copies of notes dated 2 August 2011 of an interview of the applicant by a Housing Officer;
 - (iii) schedule of applicant's address history;
 - (iv) copy of letter dated 25 June 2002 from the Waltham Abbey Citizens' Advice Bureau to the Council's Housing Benefits Department;
 - (v) copy of homelessness decision letter from the Assistant Housing Options Manager (Homelessness) to the applicant;
 - (vi) memorandum dated 26 September 2011 from a Housing Assistant (Management North) to the Assistant Housing Options Manager (Homelessness);

(vii) a schedule showing the applicant's payments and arrears from 17 September 2002 until date of eviction on 8 May 2008.

Presentation of Applicant's Case

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

(a) the applicant had not claimed Housing Benefit in 2001/02 as she had been working at that time;

(b) the applicant's daughter had been born in June 2006 after a difficult pregnancy and a caesarean section; after being discharged from hospital the applicant had moved back to her parents' property in order to get help looking after her daughter; the applicant had not informed the Council about staying at her parents' property at that time because she had planned to be there only for approximately three months and had been advised by the hospital not to inform the Council because this would have resulted in Housing Benefit being stopped after six weeks;

(c) on moving into her parents' property the applicant had occupied her brother's bedroom and he had taken occupation of the applicant's flat;

(d) the applicant's mother had become too attached to her granddaughter and to resolve the problem the applicant had attempted to move back to her flat; on trying to gain entry to her flat the applicant had established that her brother had changed the locks and was living in the flat with his girlfriend; the applicant also established that her brother had disposed of her furniture; the applicant had not hid this situation from the officers; she had mentioned it on several occasions and certainly before her interview with a Council officer on 2 August 2011;

(e) the applicant had no alternative but to return to her parents' property; the applicant's mother had grown attached to her granddaughter to the point of obsession and had reported the applicant to Social Services several times suggesting that the applicant could not cope with her daughter; these referrals had not been pursued by Social Services;

(f) in December 2007 the applicant had managed to get into her flat when her parents and her brother had gone on holiday; the flat had been completely empty and it appeared that her brother had not been living there for some time; all of the household bills were left unpaid;

(g) the Council had repossessed the applicant's flat due to unpaid rent;

(h) between 2007 and 2010 the applicant had stayed at an ex-partner's property, at an ex-partner's brother's property, and at her daughter's father's property;

(i) in 2010 the applicant had approached East Herts District Council with Social Services support as she had wanted to move out of the Epping Forest District away from her parents who had been stalking her; the applicant had been housed in an East Herts District Council Homeless Hostel but that Council had found the applicant homeless intentionally; Social Services had subsequently found different bed and breakfast establishments for the applicant;

(j) the applicant had left bed and breakfast accommodation as a man stalking her had approached her; she had spent a few days with an ex-partner's sister, with a friend and with her daughter's father; the applicant had slept in her car for

approximately three months off and on; Social Services had informed the applicant that they had no objection to her living in her car as she had not been neglecting her child; and

(k) due to the lack of help from East Herts District Council the applicant had approached Epping Forest District Council again.

Questions from the Assistant Housing Options Manager (Homelessness) to the Applicant

The applicant gave the following answers to questions from the Assistant Housing Options Manager (Homelessness):

(a) when she had allowed her brother to stay at her flat she had expected him to pay the weekly sum of £2.75 for the rent arrears and she had not been aware that he had not done so;

(b) her rent arrears had arisen in 2001 shortly after taking occupation of the flat because she had suffered a car crash and had been unable to work; she had received sick pay but had not been aware of all the benefits available; she had little money available and had to spread it out;

(c) she did not dispute the need to pay £2.75 weekly following the Court decision;

(d) she had been aware that she should not have vacated her flat and allowed her brother to live in it but she had not been aware of the law regarding this requirement;

(e) having said that she had been unaware of the arrears being accrued whilst her brother had been occupying her flat, she was unable to explain how the Citizens' Advice Bureau had contacted the Council on her behalf on 25 February 2008 regarding the proposed eviction warrant letter which had been sent to her property; and

(f) her situation would not get easier unless she was allowed to rectify her mistakes.

Questions from Members of the Panel to the Applicant

The applicant gave the following answers to questions from members of the Panel:

(a) she had managed to reduce her rent arrears from £1,458.66 in September 2002 to £740.24 in 2004/05 but the arrears had increased again following the birth of her daughter;

(b) she had not worked since giving birth to her daughter;

(c) the lump sum payment of backdated Income Support in August 2011 had not been as much as she had expected and she had not been able to pay off over £1,100 of her arrears as she had anticipated; Income Support had been stopped because she had not had an address and when living in her car it had been very expensive paying for petrol, parking tickets and takeaway meals;

(d) whilst in Epping Forest District Council's Homeless Hostel a man had been looking for her and the staff had moved her from a ground floor flat to a less accessible room upstairs; Housing Benefit had been stopped for occupying the

ground floor room and she had to reapply to receive it in respect of the upstairs room; she had received a letter stating that Housing Benefit had been overpaid by £5.00 and she could not understand why the Council had not charged her £5.00 less rather than seeking repayment of the £5.00;

(e) she had not been entitled to Income Support of £80.00 per week; only £36.00 per week;

(f) the arrangement with her brother had been informal;

(g) when her daughter had been born the applicant had no money to pay for rent; she had to wait 13 weeks for Income Support;

(h) when her brother had occupied her flat she had given him the rent payment swipe card and had expected him to pay the required £2.75 per week; she had been shocked when she had established that he had not made any payments;

(i) she had only been expected to pay £2.75 per week off the arrears; the rent had been paid by Housing Benefit;

(j) the Council rent payment swipe card was a plastic card and by producing it payments could be made at numerous places; her brother had worked in a bank so she had expected to him to know about such payments;

(k) her brother had removed all of her furniture and belongings from her flat;

(l) her mother was a "psychopath"; in recent years the applicant had only seen her mother in Court and from a distance;

(m) she could not recall if in 2002 the Benefits Agency had notified Broxbourne Borough Council instead of Epping Forest District Council; she had changed her daughter's name to protect her from her grandmother; her parents had not been allowed to visit her daughter in hospital; her car had been broken into four times while at the Council's Homeless Hostel; she had moved 33 times in the last three years in order to keep away from her family.

Presentation of the Case of the Assistant Housing Options Manager (Homelessness)

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

(a) in response to issues arising from questions to the applicant at the meeting;

(i) the applicant did not have any arrears in relation to the room she was currently occupying at the Council's Homeless Hostel;

(ii) it was understood that the man who had been trying to locate the applicant at the Council's Homeless Hostel had been a Court official attempting to serve papers in relation to the applicant's parents' attempts to seek access to their granddaughter;

(iii) the Citizens' Advice Bureau had written to the Council in June 2002 stating that the applicant had been involved in a serious road accident in August 2001 and that her employer had not paid her and that she had been unaware of the benefits she could claim; the Citizens' Advice Bureau had continued that in March 2002 the applicant had claimed benefits but the Benefits Agency had incorrectly notified

Broxbourne Borough Council instead of Epping Forest District Council and as a result there had been a delay in obtaining benefits;

(iv) the applicant had subsequently been asked by Epping Forest District Council's Housing Benefits Department if she had any relevant information to justify backdating of Housing Benefit; no reply had been received;

(b) the applicant had applied as homeless because she had been evicted from her Council property; the applicant had been eligible for assistance because she held a British passport, homeless because she had received a possession order and in priority need because she had a dependant child;

(c) the applicant had occupied an Epping Forest District Council property between 9 July 2001 and 8 May 2008; the property had been a one-bedroom flat and the applicant had held the tenancy for this property in her sole name; when the Council had applied to evict the applicant on 15 February 2008 the arrears had been £1,192.59; the applicant had broken the terms of a Suspended Possession Order which had required her to pay the current rent plus £2.75 per week;

(d) the substantive arrears had arisen from the commencement of the applicant's tenancy in July 2001 until June 2002 when Housing Benefit had first made a payment on to the rent account; by that time the arrears had been £1,658.66; the applicant had indicated in her note accompanying her Housing Appeals and Review Panel application that she had not claimed Housing Benefit because she had been working;

(e) the arrears having accrued to such a high level, the Council had obtained a Suspended Possession Order on 17 September 2002 which had required the applicant to pay the current rent plus £2.75 per week; had the applicant kept to the terms of this Order she would have been able to continue to occupy the property and the arrears would have eventually been cleared; the applicant had not maintained payments in accordance with the terms of the Suspended Possession Order and the Council had obtained possession of the property;

(f) other than to state that she had not claimed Housing Benefit in the early stages of her tenancy because she had been working, the applicant had not given officers any explanation for the rent arrears that had accrued; a letter from the Citizens' Advice Bureau held by the Council's Housing Benefits Department indicated that the applicant had been unable to work due to an accident and that when she had decided to claim Benefit there had been a problem with submitting her claim form;

(g) after being evicted from the Council property in 2008, the applicant had no settled accommodation; she had stayed with various friends and in bed and breakfast hotels; she had also claimed to have slept in her car; as there had been no settled accommodation since her eviction, the officers had considered the issue of intentionality with respect to the Council property from which she had been evicted, in accordance with the requirements of the Housing Act 1996;

(h) whilst the reason for the applicant being made homeless had been rent arrears, a further problem had emerged in the last period of her tenancy when she had moved out of the property and sublet it to her brother;

(i) it had been decided that the applicant was intentionally homeless;

(j) to date the applicant had made no payments to reduce her former rent arrears on the Council property;

(k) in making homelessness decisions the Council had regard to the Code of Guidance which was used by local authorities to assist with the interpretation of the homelessness legislation;

(l) the Code of Guidance (Paragraph 11.7) 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, the accommodation was available for his or her occupation, and it would have been reasonable for him or her to continue to occupy the accommodation;

(m) it was considered that the applicant's wilful and persistent refusal to pay her rent had been a deliberate act; in consequence of this the applicant had been evicted which had led to her ceasing to occupy her home; the substantive arrears on her rent account had been caused by the applicant's failure to pay her rent consistently or claim Housing Benefit in the first eleven months of her tenancy and her inability to adhere to the terms of the Suspended Court Order which had required her to pay a modest amount off of her arrears in return for keeping her home;

(n) the Council property from which she had been evicted would have continued to be available had she complied with the terms of her tenancy and not accrued rent arrears; that property would have been reasonable for the applicant to occupy as it had been a one-bedroom flat, both when the applicant had been a single person and when her child had been born;

(o) the applicant had been given an opportunity to address the arrears problem and keep her home if she had adhered to the Suspended Possession Order which required current rent to be paid plus a relatively small amount of money from her own income to reduce the arrears;

(p) at the time of her substantive arrears on her rent account, the applicant had been given an opportunity to seek backdating of her Housing Benefit but had not responded to the Council's approach; and

(q) in the event that the Panel supported the officers' decision, the applicant should be given reasonable notice to vacate the Council's Homeless Hostel and, subject to her agreement, a referral should be made to Essex County Council Children's and Families Service on account of her child being at risk of homelessness.

Questions from the Applicant on the Case of the Assistant Housing Options Manager (Homelessness)

At this stage of the proceedings the applicant became distressed and with her agreement the Panel asked the Assistant Housing Options Manager (Homelessness) questions whilst she composed herself.

Questions from Members of the Panel on the Case of the Assistant Housing Options Manager (Homelessness)

The Assistant Housing Options Manager (Homelessness) and the Area Housing Manager gave the following answers to questions from members of the Panel:

(a) (Area Housing Manager) arrears could grow quickly if no payments were made; eviction was always a last resort for Housing Management with all other

aspects being explored before taking that action; regular contact with the applicant had not been possible when she had moved out of her Council property; communications with neighbours had indicated that the applicant had ceased to live in the property and that her brother had been occupying it; the property had been visited and it had looked empty which was the catalyst for starting eviction proceedings; the applicant stated that she had not received any correspondence from the Council whilst not residing at the property but she must have done so because she had contacted the Citizens' Advice Bureau regarding a letter sent to that property and the Citizens' Advice Bureau had in turn contacted the Council on 25 February 2008; it had been the applicant's responsibility to pay the rent and any arrears; the applicant had put her trust in her brother who had let her down;

(b) (Area Housing Manager) if someone offered to pay more rent than they were expected this would be welcomed but it was not usual; what was not acceptable was to pay less than the required amount over a prolonged period;

(c) (Assistant Housing Options Manager (Homelessness)) when someone applied as homeless as the applicant had done so in 2011 it was necessary under homelessness legislation to establish their last settled accommodation; officers had established that the applicant's last settled accommodation had been the flat from which she had been evicted in 2008; since 2008 the applicant had been living with friends and in hostels and bed and breakfast establishments; and

(d) the applicant had stated when interviewed that Social Services had not objected to her living in her car with her daughter; a social worker connected to the applicant but not employed by the Authority had apparently made the statement had been asked to comment and had indicated that whilst living in a car for one or two nights might be acceptable it was most unlikely that it would be acceptable for any prolonged period.

Questions from the Applicant to the Assistant Housing Options Manager (Homelessness)

The applicant advised that she had no questions to ask but requested that the Panel telephone Social Services to seek confirmation of the statement which had been made about living in her car. The Director of Housing advised that if the Panel felt this would be helpful in coming to their decision the officers would contact the relevant Social Services on behalf of the Panel.

Closing Statements

At this stage of the proceedings the applicant again became distressed and the Chairman advised that the Panel would deliberate on the evidence and come to its decision without closing statements being made.

Deliberations

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, the Assistant Housing Options Manager (Homelessness) and the Area Housing Manager then left the meeting.

In coming to its decision, the Panel focused on the evidence regarding the circumstances which had led to the applicant's eviction from the Council property in 2008 including the reasons for her rent arrears, her failure to make payments in

accordance with the terms of the Suspended Possession Order granted by Edmonton County Court and the consequences of her subletting the property to her brother.

The Director of Housing explained that the "rent card" referred to in the evidence was a card which could be swiped to recognise a tenant's rent account but it was not a debit or a credit card and had to be presented with money in order for a payment to be made.

The Panel determined that the issue about living in a car was not relevant to the decision it had to make, since this had occurred at subsequent to homelessness, and officers were not asked, therefore, to contact the relevant Social Services.

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 information presented by the applicant and the Assistant Housing Options Manager (Homelessness) in writing and orally, the decision of the officers that the applicant was homeless intentionally from the Epping Forest District Council property she occupied between 2001 and 2008, be upheld for the following reasons:

(a) the applicant had held the tenancy of an Epping Forest District Council property in her sole name between 9 July 2001 and 8 May 2008;

(b) since being evicted from the Epping Forest District Council property in 2008 the applicant has stayed with friends, in a hostel, in bed and breakfast accommodation and in her car; accordingly the applicant's last settled address was the Epping Forest District Council property from which she was evicted in 2008 and it is that property in respect of which intentionality has to be considered;

(c) when commencing her tenancy in July 2001 the applicant was working; in August 2001 she had a road accident and assumed she would be paid by her employer; the applicant did not receive the payments she expected and did not claim state benefits; she tried to return to work but was unable to sustain employment; the applicant claimed benefits in March 2002 but due to an error by Benefits Agency there was a delay in Epping Forest District Council being notified of the applicant's entitlement to benefits; full Housing Benefit was paid from June 2002 at which time the Council's Housing Benefits Section wrote to the applicant seeking to establish if there was anything relevant to justify backdating of the Housing Benefit payment; no reply was received from the applicant;

(d) substantial arrears arose from the commencement of the applicant's tenancy until June 2002; the arrears amounted to £1458.66 when the Council applied for a Possession Order; a Possession Order was granted by Edmonton County Court on 17 September 2002 suspended on payment of the rent plus £2.75 per week towards the arrears; as at this time the applicant was in receipt of full Housing Benefit she only had to maintain payments of £2.75 per week from her own income in order to comply with the Court Order;

(e) in 2006 the applicant's daughter was born and the applicant went to stay with her mother in order to get help with the baby; the applicant stayed in her brother's bedroom at her mother's property and allowed her brother to

occupy the Epping Forest District Council property; the applicant did not inform the Council of this arrangement because she intended to stay with her mother for more than six weeks and did not want to lose her Housing Benefit; the applicant gave her rent card to her brother and expected him to pay the £2.75 per week required by the Suspended Possession Order while he occupied the Epping Forest District Council property;

(f) neither the applicant nor her brother maintained payments in accordance with the terms of the Suspended Possession Order and the Council obtained possession of the property in May 2008 at which time the applicant was £1131.25 in arrears and 173 weeks (£478.30) behind the Court Order;

(g) the applicant stated that she did not make rent payments during the first eleven months of her tenancy because she had limited income and had to prioritise her spending; the applicant did not explain why she did not respond to the invitation from the Council's Housing Benefits Section to provide anything relevant which might justify backdating of Housing Benefit; the applicant said she was fully aware of the requirements of the Suspended Possession Order to pay £2.75 per week to keep her home but did not give a full explanation as to why she did not maintain these payments; she said it was her decision to sublet the Epping Forest District Council property to her brother while she stayed with her mother and that she expected him to pay direct the £2.75 per week while he remained in occupation of the property;

(h) had it not been for the deliberate acts set out in (f) and (g) above, the Epping Forest District Council property the applicant rented would have been available and reasonable for her to occupy; the property was suitable for the applicant as it was a one bedroom flat, both when the applicant was a single person and when her child was born; when the applicant was evicted from the property her child was less than two years of age;

(2) That no deficiency or irregularity has been identified in the original decision made by the Council officers or the manner in which it was made;

(3) That provided the applicant complies with the terms of her licence the Council continues to provide interim accommodation for a period of two months from the date of the letter notifying the applicant of the Panel's decision in order to allow the applicant reasonable opportunity to secure alternative accommodation; and

(4) That the officers, with the applicant's consent, refer the applicant to the Children and Families Service to seek their assistance in helping her to find alternative accommodation.

33. APPEAL NO. 7/2011

Introduction

The Panel considered an appeal against a decision made by officers acting under delegated authority concerning a Housing Register banding review. The appellant attended the meeting to present her case accompanied by her mother and a representative of her solicitors. 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 relevant legislation and national and local housing policies relative to the appeal.

The Chairman introduced the members of the Panel and officers to the appellant. The Chairman outlined the procedure to be followed in order to ensure that proper consideration was given to the appeal.

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

- (a) copies of documents submitted by the appellant, namely:
 - (i) her application to the Housing Appeals and Review Panel dated 5 September 2011 including a letter from her solicitors dated 5 September 2011;
 - (ii) copy of letter dated 18 August 2011 from the Royal National Orthopaedic Hospital to "whom it may concern";
 - (iii) copy of letter dated 11 July 2011 from Key Health Medical Centre to "whom it may concern";
 - (iv) copy of an assessment of the appellant's son by Essex County Council;
 - (v) copy of letter dated 15 September 2011 from the appellant's solicitors to the Director of Housing;
 - (vi) copy of letter dated 6 October 2011 from the appellant's solicitors to the Council;
 - (vii) copy of letter dated 13 October 2011 from Essex Social Care Direct to the appellant's solicitors;
 - (viii) copy of letter dated 6 October 2011 from the appellant's solicitors to the Council enclosing a copy of a letter dated 30 October 2011 from the Royal National Orthopaedic Hospital to the appellant;
- (b) a summary of the case and 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) copy of letter dated 2 July 2009 from the Assistant Housing Options Officer to the appellant;
 - (ii) copy of letter dated 27 April 2010 from the Assistant Housing Options Officer to the appellant;
 - (iii) copy of letter dated 8 July 2011 from the Housing Options Manager to the appellant's solicitors;
 - (iv) copy of letter dated 11 August 2011 from the Housing Options Manager to the appellant's solicitors;
 - (v) extracts from the Council's adopted Housing Allocations Scheme showing the bandings and the sizes of properties to be allocated;

(vi) copy of medical opinion following assessment by the Council's Medical Adviser on 7 July 2011; and

(vii) copy of further medical opinion of the Council's Medical Adviser dated 6 October 2011.

Presentation of the Appellant's Case

The Panel considered the following submissions in support of the appellant's case made by her legal representative:

(a) the appellant should be placed in Band 1 of the Council's Allocations Scheme not Band 3 as she met criterion 1(b) (home seekers 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); the appellant suffered from Perthes Disease; her current accommodation was on the first floor only accessible via an external staircase;

(b) until the Council had produced evidence earlier today of a more recent assessment by the Council's Medical Adviser the appellant's solicitors had understood that the last assessment had been on 23 March 2011;

(c) no assessment appeared to have been carried out as to whether the appellant needed to move for reasons of disability; the Council had failed to apply the public sector equality duty in Section 149 of the Equality Act 2010;

(d) the appellant had never been properly assessed and never examined by the Council's Medical Adviser;

(e) the appellant had a severe dysfunction of the right hip with impingement which made it difficult for her to mobilise properly or climb stairs;

(f) the appellant was scheduled to have an operation on 27 October 2011 following which she would be mobilising on crutches, protected weight bearing, with a recovery time of between three and six months;

(g) the appellant would eventually require a total hip replacement;

(h) the appellant's son had been assessed by Essex County Council Social Services; the assessment had highlighted the need for the appellant to move to a new property before her ex-partner was released from prison in November 2011, but any property needed to remain close to the appellant's mother; the assessment had also stated that a move to a new property would help minimise the risk to the appellant's son and provide some stability and a sense of security;

(i) if the appellant had been correctly placed in Band 1 she would have had ample time within which to bid for two-bedroom accommodation in the exclusion zone imposed on her ex-partner on his release from prison;

(j) offers of accommodation made to the appellant had been extremely unsuitable;

(k) in accordance with the Council's Housing Allocation Scheme a home seeker with one child should be allocated two-bedroom accommodation; and

(l) the Council's treatment of the appellant's application indicated that the Council was unlawfully allocating accommodation not in accordance with its Housing Allocations Scheme.

Questions from the Housing Options Manager to the Appellant

The appellant gave the following answer to a question from the Housing Options Manager:

(a) offers of accommodation made by the Council to the appellant had been refused because one had been too close to her ex-partner's brother's property and the other had been outside of the exclusion zone to be applied to her ex-partner on his release from prison.

Question from the Assistant Director of Democratic Services to the Appellant's Legal Representative

The Chairman allowed the Assistant Director of Democratic Services to seek clarification of a statement made by the appellant's legal representative. In response she stated that although the Council's supplementary agenda containing recent assessments by the Council's Medical Adviser had been sent to her by DX on 7 October 2011 it had not been received until earlier on the day of the meeting.

Questions from Members of the Panel to the Appellant

The appellant gave the following answers to questions from members of the Panel:

(a) she would eventually need a total hip replacement but it was too early for that in view of her age; the operation she was due to have later in the month might be successful but it might not be;

(b) when her ex-partner was released from prison she needed to be housed within the exclusion zone applicable to him; she had not previously realised, until it had been explained at this meeting, that the Council's Women's Refuge which had been offered to her was outside of that zone;

(c) she was in employment and had an employer who was very understanding about her medical condition;

Presentation of the Case of the Housing Options Manager

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

(a) the appellant's legal representative was thanked for restricting her presentation to matters concerning the banding appeal as a lot of the documents submitted had related to the Council's homelessness function which was outside of this appeal;

(b) the appellant had submitted a housing application to the Council dated 29 June 2009; this application had been treated as an application for a housing transfer; within the application, the appellant had confirmed her residence since 27 April 2009 as being a Council dwelling and comprising of a first floor one-bedroom flat; the applicant had sought accommodation for herself and her son;

- (c) on 2 July 2009 the appellant had been informed that she was initially to be placed in Band 5 of the Council's Housing Allocations Scheme;
- (d) at the time of submitting the housing application, the appellant had submitted a self-assessment medical form; within that form, she had confirmed her medical condition as Perthes Disease of the right hip; supporting medical evidence at that time had been received from Key Health Medical Centre and the Princess Alexandra Hospital;
- (e) on 27 April 2010 the appellant had been placed in Band 3 taking account of the fact that she had a lack of a bedroom and she lived in a flat above the ground floor; at that time she had also been awarded additional medical preference;
- (f) further medical assessments had been undertaken by the Council's Medical Adviser on 3 February 2011, 22 March 2011 and 7 July 2011; in pursuing these assessments, the Medical Adviser would have paid particular attention as to how the appellant's medical condition was affected by continuing to reside in her property;
- (g) having undertaken these subsequent assessments, the Medical Adviser was not prepared to grant any additional medical preference;
- (h) the appellant had sought independent legal advice over her housing issues; in this advice she had sought a review of her banding level under the terms of the Council's Housing Allocations Scheme;
- (i) in considering all of the facts of the case, Band 3 was confirmed as the correct banding level; the reasons for that decision were that the applicant was a homeseeker living in the District for more than a year immediately prior to the application needing one or more bedrooms; she was also a homeseeker living in the District for than one year needing to move on moderate medical or welfare grounds; criteria Band 4 (a) and (b) were met and as a result Band 3 was applicable; the Panel should note that in responding to the appellant's solicitors, attention had been drawn to inaccuracies in the submissions they had made regarding the appellant's medical treatment;
- (j) on 2 August 2011 the appellant's solicitors had sought a request for a review of the decision; the review had been undertaken by the Assistant Director of Housing (Operations) and he had confirmed that Band 3 was the correct banding;
- (k) the appellant's solicitors had sought a further review to the Panel against the decision of the Assistant Director of Housing (Operations); it should be noted that the Council was currently still dealing with an active homelessness application and a priority transfer for the appellant which was outside of the scope of this banding review request;
- (l) at the time of considering the review, the Assistant Director of Housing (Operations) had ensured that the housing application made by the appellant had been dealt with in full accordance with this Council's Housing Allocations Scheme;
- (m) when undertaking an assessment on this case as well as considering the processing of the application, the medical views of the Council's Medical Adviser also needed to be taken into account; recent opinions from the Medical Adviser dated 7 July 2011 and 6 October 2011 were before the Panel;

- (n) the appellant had not been examined by the Council's Medical Adviser; there was a huge demand on the Council's Housing Register and it was not practical for the Medical Adviser to see all applicants in person that suffered medical conditions;
- (o) the housing conditions across the Epping Forest District had to be taken into account; the Council had a housing stock in the region of 6,500 properties and there were 5,730 applicants on the Housing Register;
- (p) taking account of the demand, the Council had a structured Housing Allocations Scheme in place that met the full demands of the Housing Act 1996, Part VI;
- (q) the housing application made by the appellant had been processed correctly in full accordance with the Housing Allocations Scheme and she should remain in Band 3;
- (r) the suggestion that the Council had failed to apply the provisions of the Equality Act were refuted; the Council had not looked at the appellant less favourably than someone else; any medical evidence submitted by or on behalf of the appellant had been assessed by the Council's Medical Adviser; attention was drawn to the frequency of the medical assessments undertaken in this case;
- (s) the Council's Medical Adviser was well aware of the medical issues not only of the appellant but in relation to all cases referred to her; accordingly, she was best placed to judge one case against another; the need to move on strong medical or welfare grounds was applied to applicants whose medical conditions were worse than those of the appellant at present, e.g. bedridden or wheelchair bound; the Council's Housing Allocations Scheme was reviewed by the Council on a regular basis and was last reviewed in December 2010.

Questions from the Appellant's Legal Representative on the Case of the Housing Options Manager

The Housing Options Manager gave the following answers to questions from the appellant's legal representative:

- (a) all of the medical assessments submitted had been forwarded to the Council's Medical Adviser; the appellant's medical practitioners whilst being fully aware of her medical conditions were not in a position to compare the appellant's situation with that of other applicants on the Council's Housing Register and thereby form a consistent approach as to what was determined strong medical grounds or moderate medical grounds;
- (b) the reason the Council's Assistant Housing Options Manager (Homelessness) had refused to nominate the appellant to a housing association for a particular property at a women's refuge was not relevant to this appeal; it related to the Council's homelessness duty;
- (c) it was accepted that had the appellant been nominated and obtained accommodation within the Women's Refuge she would have moved into Band 1 of the Allocations Scheme; however, the decision had been taken that the Council had to discharge its interim duty;
- (d) the views of the appellant's medical advisers were respected but as previously indicated the Council's Medical Adviser was the only one able to come to a balanced independent opinion having regard to the medical conditions of other applicants on the Council's Housing Register; the Council's Medical Adviser could

not be a specialist in relation to all medical conditions but she was able to apply a consistent approach to all applicants.

Questions from Members of the Panel to the Housing Options Manager

The Housing Options Manager gave the following answer to a question from a member of the Panel:

(a) the reason for the appellant not being nominated for a place at the Women's Refuge had already been explained but in any event, as accepted by the appellant at this hearing, it would not have been applicable as the property was outside of the exclusion zone to be applied to her ex-partner; the other property which the appellant had rejected had been close to a relative of her ex-partner.

Closing Statement on behalf of the Appellant

In addition to her other medical conditions the appellant's mother stated that the appellant's spine was also deteriorating and this had not been taken into account. Also, sufficient consideration had not been given to her mental state bearing in mind that her ex-partner was shortly to be released from prison. The appellant's forthcoming operation would not resolve her medical condition and a hip replacement would ultimately be required.

Closing Statement by the Housing Options Manager

The Housing Options Manager referred to the volume of correspondence on the appellant's file. He submitted that the Council's Housing Allocations Scheme had been applied properly in relation to the appellant and that accordingly Band 3 was the appropriate Band.

Deliberations

The Chairman indicated that the Panel would consider the matter in the absence of both parties and that the appellant, her legal representative and the Housing Options Manager would be advised in writing of the outcome. The appellant, her mother, her legal representative and the Housing Options Manager then left the meeting.

In coming to its decision the Panel focused on the assessment of the appellant's medical condition by the Council's Medical Adviser, the officers' application of the Council's Allocations Scheme and the legal submissions made by the appellant's solicitors.

RESOLVED:

(1) That, having regard to the provisions of the Housing Act 1996, as amended, and the Council's adopted Housing Allocations Scheme and having taken into consideration the information presented by and on behalf of the appellant and by the Housing Options Manager in writing and orally, the decision of the officers not to promote the appellant from Band 3 to Band 1 of the Allocations Scheme be upheld for the following reasons:

(a) the appellant is currently in Band 3 of the Council's Housing Allocations Scheme by virtue of meeting the criteria of Band 4(a) or (b), and one other criterion in Band 4, namely:

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

4(b) Homeseekers living in the District for more than a year immediately prior to the application, needing to move on moderate medical or welfare grounds or for reasons of disability, or needing to move to a particular locality in the District where failure to do so will result in them or others suffering hardship;

4(f) Households including a child under the age of 11 living in the District for more than a year immediately prior to application who have no access to a garden;

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

(b) to be promoted to a higher band due to medical reasons could only be to Band 1 under the Allocations Scheme; to be eligible for Band 1 the appellant needs to meet one of the criteria in that Band; she considers that she meets Criterion 1(b) of Band 1 (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); we have taken account of the fact that the appellant has submitted a number of medical self assessment forms for herself together with letters from medical practitioners; the appellant has mobility issues as she suffered from Perthes' Disease as a child and had surgery on her right hip; as a result of impingement from her previous surgery the appellant is awaiting an operation for a right hip mini arthrotomy ; in accordance with the Council's Allocations Scheme, medical priorities are assessed by the Council's Medical Adviser taking account of all known facts relating to the application; the Council's Medical Adviser also has the benefit of seeing all cases where a medical assessment is required and is in the best position therefore to be able to compare cases and decisions on which cases constitute strong and which ones constitute moderate medical needs; we note that the medical evidence submitted by and on behalf of the appellant has been assessed by the Council's Medical Adviser and that she has determined the need for the appellant to move is based on moderate medical grounds as required under Band 4 (Criterion (b)) but not strong medical grounds as required under Band 1 (Criterion (b)); we are therefore of the opinion that the appellant does not have a need to move on strong medical grounds; we note that overall the Council's Medical Adviser concluded that it is not unreasonable for the appellant to manage one flight of stairs as required in her current accommodation; in terms of the appellant's disability we note that she is able to drive a vehicle and walk with a stick; in determining priorities this has to be compared, for instance, with applicants who are wheelchair bound;

(c) having regard to (b) above we do not consider that the appellant satisfies the requirements of Criterion (b) of Band 1; the evidence submitted does not indicate that the appellant meets any of the other criteria in that Band;

(d) in coming to our decision we have taken account of the submissions made by and on behalf of the appellant that the medical evidence submitted in support of her appeal should be given greater weight than the opinion of the Council's Medical Adviser as some of the appellant's medical evidence was from medical practitioners better qualified than the Council's Medical Adviser in relation to orthopaedic issues; whilst we accept the expertise of the appellant's medical practitioners in relation to her condition they are not in a position to compare the appellant's situation with that of other applicants on the Council's Housing Register and thereby form a consistent approach as to what is determined strong medical grounds and moderate medical grounds;

(e) in coming to our decision we have also taken account of the criticism made by and on behalf of the appellant that the Council's Medical Adviser did not examine the appellant before making her determination that the need for the appellant to move is based on moderate medical grounds; we are aware that the Council's Medical Adviser does not examine any applicants and in this regard the appellant has been treated no differently from other applicants; we are mindful that the Council's Medical Adviser is independent of the Council, does not work full time for the Council and that there are 5730 applicants on the Council's Housing Register many of whom have medical conditions which need to be assessed by the Council's Medical Adviser; taking account of the fact that all of the medical evidence submitted by and on behalf of applicants is provided to the Council's Medical Adviser and that, if necessary, she can seek further information from an applicant's medical practitioner, we do not consider that it is necessary or indeed practical to expect every applicant having a medical condition to be examined by the Council's Medical Adviser;

(f) the appellant's solicitors submitted that officers had failed to apply the public sector equality duty in the Equality Act 2010 and that they were not allocating accommodation in accordance with the Council's Allocations Scheme; having regard to the evidence before us we can find no reason to accept either of these submissions;

(g) we have not given great weight to the appellant's stated need to move on welfare grounds in order to be protected when her former partner who abused her is released from prison shortly as she is already living within the exclusion zone specified by the Multi-Agency Public Protection Arrangements in relation to her abuser; similarly in relation to the assessment of the appellant's son by Essex County Council Social Care, the location of the appellant's existing property enables the appellant to receive support from the appellant's mother;

(h) in all the circumstances, therefore, we are satisfied the officers' decision to assess the appellant for Band 3 is correct;

(2) That having regard to the appellant's forthcoming operation on 27 October 2011 and the expected recovery time from that operation (3 – 6 months), the appellant be invited to submit a fresh medical assessment three months after that operation for consideration and

- (3) determination by the Council's Medical Adviser as to whether a higher priority can be given at that time.

CHAIRMAN