

## **EPHING FOREST DISTRICT COUNCIL COMMITTEE MINUTES**

**Committee:** Housing Appeals and Review Panel      **Date:** Thursday, 15 December 2011

**Place:** Committee Room 1, Civic Offices, High Street, Epping      **Time:** 2.30 - 4.10 pm

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

**Other Councillors:**

**Apologies:**

**Officers Present:** R Wilson (Assistant Director (Operations)), G Lunnun (Assistant Director (Democratic Services)) and J Hunt (Assistant Housing Options Manager (Homelessness))

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### **43. MINUTES**

#### **RESOLVED:**

That the minutes of the meetings of the Panel held on 13 and 26 October 2011 be taken as read and signed by the Chairman as a correct record.

### **44. SUBSTITUTE MEMBERS**

It was noted that there were no substitute members present.

### **45. DECLARATIONS OF INTEREST**

Pursuant to the Council's Code of Member Conduct, Councillor Rolfe declared a personal interest in agenda item 7 (Application No 13/2011) by virtue of having attended the public house at which the applicant had been a manager. The Councillor advised that he did not know the applicant and had determined that his interest was not prejudicial and that he would remain in the meeting for the consideration and voting on the matter.

### **46. 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 Number</b>	<b>Subject</b>	<b>Exempt Information and Paragraph Number</b>
6	Application No 12/2011	1
7	Application No 13/2011	1
8	Progress report on previous appeals/applications	1

#### **47. APPLICATION NO 12/2011**

The Panel noted that having received information from Harlow Welfare Rights and Advice, the Assistant Housing Options Manager (Homelessness) had set aside his decision to deem the applicant intentionally homeless. As a result there was no need for this case to be considered by the Panel.

#### **48. APPLICATION NO 13/2011**

##### **Introduction**

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 to vacate the tied accommodation provided by her former employer. The applicant attended the meeting to present her case accompanied by her husband. Mr J Hunt, Assistant Housing Options Manager (Homelessness), attended the meeting to present his case. Mr R Wilson (Assistant Director of Housing (Operations)) 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 thanked the applicant for agreeing at short notice the change in time of this hearing.

The Chairman outlined the procedure to be followed in order to ensure that proper consideration was given to the application. At the request of the applicant's husband the Chairman confirmed that the decision on this review would be taken by members of the Panel and not officers.

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 10 November 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) copy of letter dated 2 June 2011 from the applicant's former employers to the applicant;
- (ii) copy of letter dated 13 August 2010 from the applicant's former employers to the applicant's husband;
- (iii) a typed copy of notes of an interview of the applicant by a Council Housing officer;
- (iv) copy of letter dated 21 October 2011 from the Assistant Housing Options Manager (Homelessness) to the applicant;
- (v) extracts from the internet regarding epilepsy, classification of epilepsy, partial seizures and generalised seizures.

### **Presentation of Applicant's Case**

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

- (a) the applicant had not made herself intentionally homeless by being dismissed by her former employers;
- (b) the applicant had lost income of approximately £23,000 per annum and tied accommodation and now had an annual income of approximately £7,000 and was living in a hostel;
- (c) the Council officers had considered a version of the events from the applicant's former employers but not one from the applicant;
- (d) the Council had a duty to house the applicant and her husband as they had a 17 month old child;
- (e) since losing the tied accommodation the applicant had tried unsuccessfully to find a rented property;
- (f) the applicant had been advised that she would not be able to express an interest in a Council property for at least six months of being in the Council's Homeless Hostel;
- (g) the Council should let properties and not let them remain void;
- (h) the applicant had worked for six and a half years at a public house in Chestnut for her former employer; the applicant's baby daughter had passed away but her former employer had not allowed her time off work;
- (i) the applicant's former employers had moved her to another public house from which she had been dismissed as manager; the applicant had not taken this move out of choice; she had taken her former employers to a tribunal for sexual discrimination but had lost her case; as a result of taking this case the applicant's relationship with her former employers had deteriorated and the applicant's former employers had become vindictive against the applicant and her husband;
- (j) the applicant had been dismissed because the applicant's husband had been in the trading and operational areas of the public house; the applicant's husband

could not remember doing so as he suffered from epilepsy and “absences”; later on the night of the incident the applicant’s husband had suffered an epileptic fit;

(k) at the time the applicant’s husband entered the trading and operational areas of the public house, the applicant had been supervising a new chef in the kitchen and there had been only one member of staff in the trading and operational areas; the kitchen had been at the rear of the public house from where it had not been possible to be aware of activities in the trading and operational areas; the applicant had not deliberately allowed her husband to enter the trading and operational areas; in taking action against the applicant her former employers had not spoken to the member of staff for their account of what had happened.

### **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) the trading and operational areas of the public house included the area behind the bar and the area in which customers wined and dined;

(b) when the applicant had been working, her husband had been looking after their child; there had been a walkway from the tied accommodation directly to the outside; there had been a problem with the alarm on the door as a result of which the applicant’s husband had not been able to use that entrance and had to use the trading and operational areas in order to leave the premises; the locks had subsequently been changed;

(c) it was not known what caused the applicant’s husband’s epilepsy; it could be stress; he had suffered three seizures during the last year and a number of “absences”; when he was unwell he tended to do things out of habit;

(d) the conclusion reached by the applicant’s former employers that it was not unusual for the applicant’s husband to be in the trading and operational areas was refuted; they had not carried out any investigation and staff had not been questioned; before the locks had been changed on the back door it had been necessary for him to go through those areas and he had passed through unnoticed;

(e) the applicant’s husband’s illness made him appear drunk or on drugs; when in an “absence” he appeared to be aware of things from the past but was not in control of what he was doing; the applicant did not know whether her husband had been serving drinks when he had been in the trading and operational areas but when in a trance he could undertake things which he had routinely done in the past; he had been analysed by a psychiatrist at Chase Farm Hospital.

### **Questions from Members of the Panel to the Applicant**

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

(a) the applicant’s husband’s illness was not used in defence against the actions taken by the applicant’s former employers; the applicant’s former employers had been building a case against the applicant and her husband and had been looking for an excuse to dismiss the applicant; they had been aware of the applicant’s husband’s epilepsy but had dismissed this in coming to their decision;

(b) medical evidence had been mentioned during the applicant's disciplinary hearing but her former employers had not been interested in considering this evidence; there had been an issue of serving raw chicken to a vegetarian customer and the applicant had been disciplined but not the chef who had been responsible;

(c) food had been served at the public house between the hours of 6 pm and 9 pm and judging from what the customer complaining had said, the applicant's husband must have entered the trading and operational areas of the public house during that time; the customer had not complained to the applicant but had written directly to her employers; the applicant had not been aware of the complaint until she had been advised by her former employers;

(d) when the applicant had gone on maternity leave her husband had become sole manager; the applicant and her husband were aware of all the rules and regulations regarding their positions;

(e) staff at the public house had been advised to call the applicant immediately in the event of any trouble in the trading and operational areas of the public house; there was a need to consider what constituted "trouble";

(f) it was accepted that on the evening of the incident the premises had possibly been understaffed; most public houses were understaffed in the current economic climate;

(g) prior to attending the nearby public house to drink and watch football, the applicant's husband had been caring for their child in the tied accommodation; when the child had fallen asleep the applicant's husband had left to go to the nearby public house;

(h) the applicant had not been asked to produce any medical evidence; when the applicant had been interviewed by a Council Housing officer she had produced details of the drugs taken by her husband; the applicant's former employers had been aware of the applicant's husband's epilepsy as he had been hospitalised when in their previous public house;

(i) the applicant and her husband had looked into the possibility of renting alternative living accommodation following the imposition of the condition not to allow her husband into the trading and operational areas of the public house; however, financially this could not be achieved on a salary of approximately £23,000 per annum; take home pay had been approximately £1,600 per month and excessive amounts were required for childminding and renting property; in view of the other financial commitments of the applicant and her husband these options could not be afforded;

(j) the applicant had considered taking action against her former employer for unfair dismissal and had spoken to a barrister; however it had been decided to part company with the applicant's former employers on reasonable terms in order to get a reference from them; action against unfair dismissal would have been expensive with limited reward even if successful; the main concern of the applicant had been to be in a best position to get another job;

(k) neither the applicant nor her husband were working at the present time;

(l) the applicant and her husband were not in receipt of carer's allowance or incapacity benefit; the epileptic fits were not so frequent to justify the receipt of benefits; the applicant had received written instructions from her former employer not

to allow her husband into the trading and operational areas of the public house; the letter was currently in storage;

(m) despite her husband's medical condition the applicant considered it was safe for him to look after their child as she made constant checks to ensure that everything was alright;

(n) the applicant's husband's last epileptic fit had been approximately two years ago;

(o) the applicant had medical evidence of her husband's epilepsy in store;

(p) the applicant had been aware of her husband's presence in the trading and operational areas when the member of staff had entered the kitchen to get food;

(q) the applicant's husband had not stolen money from his former employer; it had been an error in the banking arrangements; the applicant had letters in support of this but they were in storage;

(r) the applicant, her husband and their child were still being housed in the Council's Homeless Hostel pending the outcome of this review;

(s) the applicant and her husband had explored all options of renting a property including estate agents and searching the local papers; they had an appointment with the Harlow Advice Centre in the near future; Epping was too expensive an area to consider renting; many landlords were not prepared to take tenants who were in receipt of benefits; Council officers had agreed to give further advice to the applicant in the event of the officers' decision being upheld.

### **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) the applicant was eligible for assistance because she was British, homeless because she was required to leave her tied accommodation and in priority need because she had a dependent child;

(b) the applicant had lived at a public house between June 2008 and June 2011; the applicant's tied accommodation had consisted of a two bedroom flat within the public house; the applicant and her husband had managed the public house; in August 2010, the applicant's husband had been dismissed from his job as manager of the public house on the grounds of gross misconduct; the reason for this had been the loss of £1,535.22 including cash of £355.22 and missing banking of £1,180; the applicant had kept her position as manager and her husband had been allowed to continue to live with her;

(c) in June 2011, the applicant had been dismissed by her former employer for gross misconduct; the applicant had been advised that her husband was not allowed into the trading and operational areas of the business; this had been an explicit term and condition of the applicant's employment contract; the applicant's former employers had terminated the applicant's employment contract because she had failed to follow this requirement and had allowed her husband into the operational and trading areas of the public house; the applicant's husband had been intoxicated and there had been a serious customer complaint due to his behaviour; the

applicant's former employers had stated that they no longer had "trust and confidence" in the applicant and had duly terminated her employment contract and had given her notice to vacate the management accommodation in June 2011;

(d) the applicant had stated that the incident that had led to her dismissal had been due to her husband not feeling well and later that night he had suffered an epileptic fit which had been building up all day;

(e) it had been decided that the applicant had made herself intentionally homeless; the applicant and her family had been provided with interim accommodation at the Council's Homeless Hostel pending the outcome of this review;

(f) 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;

(g) it was considered that the applicant's inability to follow the management instruction to ensure that her husband did not go into the trading and operational areas of the public house was a deliberate omission on her part; in consequence of this, her employment contract had been terminated and she had received notice to vacate the accommodation;

(h) it was considered that the accommodation would have continued to be available for the applicant's occupation had she adhered to the management instruction she had been given regarding her husband's access to the trading and operational areas of the public house; furthermore, it was considered that the accommodation would have been reasonable for the applicant to continue to occupy as the accommodation consisted of a two bedroom flat, suitable for her family's needs;

(i) it was believed that the applicant was aware that she would be at risk of losing her job and her tied accommodation if she did not ensure that her husband stayed out of the trading and operational areas of the public house; consideration had been given to the applicant's account of the situation and her declaration that her husband suffered from epilepsy; however, the information provided by the applicant's former employers showed that her husband's behaviour and language had been unacceptable and that there had been a serious complaint from a customer; no written evidence had been submitted to officers or to the Panel about the applicant's husband's medical condition; the Panel had before them some information about epilepsy and whilst this was generalised it was submitted that the applicant's husband's behaviour when entering the trading and operational areas of the public house could not be attributed to his medical condition;

(j) the Panel was invited to uphold the officers' decision; in the event that the officers' decision was upheld the applicant should be given reasonable notice to vacate the Council's Homeless Hostel and a referral should be made to the Children and Families Service in order to seek their assistance in helping the applicant to find alternative accommodation.

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

The applicant stated that she had no questions to ask of the Assistant Housing Options Manager (Homelessness).

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

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

(a) details of the medication prescribed to the applicant's husband had been placed on the applicant's housing file but no written medical information had been received from or on behalf of the applicant; there was an expectation that an applicant provided all the necessary documents in support of their case; officers did not doubt that the applicant's husband suffered from epilepsy in view of the medication which had been prescribed;

(b) the only documents received from the applicant's former employer were the letters before the Panel; officers had not received a copy of the applicant's contract of employment or the written notification that her husband was not allowed in the trading and operational areas of the public house.

**Additional Question from a Member of the Panel to the Applicant's Husband**

By leave of the Chairman, the applicant's husband gave the following answer to a question from a member of the Panel:

- he had attended another nearby public house in order to drink and watch football; he had not been intoxicated when he had returned to the applicant's public house; he had only been intoxicated about three times during the last six years.

**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, her husband and the Assistant Housing Options Manager (Homelessness) then left the meeting.

In coming to its decision, the Panel focussed on the evidence regarding the circumstances which had led to the loss of the applicant's job and tied accommodation provided by her former employer.

**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 was homeless intentionally from the tied accommodation provided by her former employer, be upheld for the following reasons:

- (a) the applicant managed a public house between June 2008 and June 2011 and was provided with tied accommodation at the public house for herself, her husband and their child;
- (b) as a result of her husband no longer being a manager at the public house, a term and condition of the applicant's employment contract was that her husband was not allowed into the trading and operational areas of the public house; the applicant's former employer stated that this requirement was detailed in a letter to the applicant dated 14 September 2010 and the applicant confirmed to us that she had received this requirement and had been fully aware of the requirement; the applicant advised us that the trading and operational areas included the area from which drinks were served and that part of the establishment where customers of the public house wine and dined;
- (c) in June 2011, the applicant was dismissed from her position of manager of the public house for gross misconduct because she failed to comply with the requirement not to allow her husband access to the trading and operational areas of the public house; the applicant and the applicant's husband admitted to us that after attending another public house nearby to drink and watch football he had entered the trading and operational areas of the public house managed by the applicant and that his behaviour at that time had led to a customer complaining to the applicant's employer following which the applicant had faced a disciplinary hearing which had resulted in her dismissal from the post of manager and the loss of her tied accommodation;
- (d) we have taken account of the conflicting evidence regarding the applicant's husband's condition when he entered the trading and operational areas; the applicant's former employers in a letter to the applicant dated 2 June 2011 stated that the applicant's husband had been intoxicated; the applicant's husband admitted to us that he had been drinking in a nearby public house but stated that he had not been intoxicated; the applicant and her husband stated that he suffered from epilepsy and "absences" and that this had been the reason for his behaviour; no evidence was presented to us from a qualified medical practitioner; the applicant advised us that she had documents in store but had not submitted them for consideration by us; we note that when being informed of the arrangements for this meeting the applicant had been advised to submit any documents in support of her case; from the evidence before us we have been unable to determine the reason for the applicant's husband's behaviour; however, it is clear from the evidence that the applicant's husband's behaviour was unacceptable to a customer and to the applicant's employer;
- (e) the applicant advised us that when her husband had entered the trading and operational areas she had been in the kitchen supervising a new chef and only one member of staff had been covering the trading and operational areas; as a result no immediate action had been taken;
- (f) the applicant and her husband referred to the applicant's former employers being intent on dismissing the applicant but no evidence was submitted to enable us to reach any conclusion on this suggestion;
- (g) on balance based on the evidence before us, we are of the opinion that the applicant failed to follow the explicit written condition of her employment contract of which she had been fully aware; as a consequence

she had been dismissed from her position of manager of the public house and had lost the tied accommodation provided by her former employer;

(h) had it not been for the deliberate act set out in (g) above, the tied accommodation at the public house would have been available and reasonable for the applicant and her family to occupy; the property was suitable for the applicant and her family as it was a two bedroom flat,

(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 her and her family with interim accommodation for a period of six weeks 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.

#### **49. PROGRESS REPORT ON PREVIOUS APPEALS/APPLICATIONS**

The Panel considered a progress report on previous appeals/applications.

##### **RESOLVED:**

(1) That the progress report on previous appeals and applications be noted; and

(2) That cases 9/2011, 7/2011, 4/2011 and 8/2010 be deleted from the schedule.

**CHAIRMAN**