

57. APPEAL NO. 23/2005

The Panel gave consideration to an appeal against a decision of the Assistant Housing Needs Manager (Homelessness) acting under delegated authority regarding the appellant's homelessness application. The appellant attended the meeting to present his case, accompanied by Mr J Harding of Shelter. Mr R Wallace (Assistant Housing Needs Manager – Homelessness) attended the meeting to present the Council's case assisted by Mr J Lewis (Benefits Manager) and Ms L Spicer (Housing Management Officer). Mr A Hall (Head of Housing Services) attended the meeting to advise the Panel as required on details of the national and local housing policies relative to the appeal.

The Chairman introduced the members of the Panel and the officers present to the appellant and his adviser 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 a witness statement dated 19 April 2005, prepared by a Housing Management Officer in relation to Court Proceedings regarding the appellant;
- (c) a copy of a witness statement prepared by an Investigation Officer in the Council's Benefits Division;
- (d) a copy of a letter dated 15 September 2005 from the Assistant Housing Needs Manager (Homelessness) to the appellant;
- (e) a copy of the notes of an interview of the appellant by a Housing Officer dated 19 September 2005;
- (f) a copy of an Affordability Assessment signed by the appellant and dated 13 September 2005;
- (g) a copy of a Notice of Eviction of the appellant dated 8 September 2005;
- (h) a copy of a letter dated 21 October 2005 from the Assistant Housing Needs Manager (Homelessness) to the appellant;
- (i) a copy of the application to the Housing Appeals Panel by the appellant dated 3 November 2005 together with a copy of a photograph;
- (j) submissions made on behalf of the appellant by Shelter;
- (k) a copy of a Decision Notice of the Appeals Service dated 21 July 2005 in relation to the appellant's Housing Benefit claim.

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

(a) the appellant had made two homelessness applications to the Council - the first on 10 February 2004 and the second on 9 November 2005; the appellant's original application had resulted in the Council accepting full duty towards him under Section 193 of the Housing Act 1996, as amended; the Council had accepted that the appellant was in priority need for housing due to his vulnerability arising from his difficulties with his mental health and low level of literacy;

(b) as a result of the original application, the appellant had been awarded a non-secure tenancy of a Council property, after a period in bed and breakfast accommodation; rent arrears of £569.94 had arisen due to a break in the appellant's claim for Housing Benefit as a result of the Council's belief that the appellant was not residing at the property; the appellant had made the second, current application when he had become homeless as a result of being evicted from the property due to the rent arrears;

(c) on 21 October 2005, the Council had concluded that the appellant had become intentionally homeless as a result of being evicted from the property provided for him;

(d) before being granted a non-secure tenancy by the Council, the appellant had been provided with temporary accommodation, including all necessary furnishings; the appellant had made his original homelessness application to the Council after living in a caravan at a friend's business property; the caravan had built-in furniture and very little room for additional furniture; prior to occupying the caravan, the appellant had been living in an out-building at a car yard owned by the same friend; this accommodation had also been furnished and the appellant had lived at his friend's business premises for some five years in total;

(e) on moving to the property provided by the Council on a non-secure tenancy, the appellant had owned very little in the way of furniture and other personal effects; after some six months in the property, he had accumulated two two-seater sofas, a television, a music system, a "plug-in" radiator, a kitchen table, four chairs and a kettle;

(f) although the appellant's belongings were very limited, he had become accustomed to living with only the barest of essentials and, being dependent on welfare benefits, had little available income with which to purchase further furnishings;

(g) the appellant had limited life skills, particularly in the kitchen; he relied on convenience foods and takeaways and could not prepare a meal from fresh ingredients; this curtailed the appellant's ability to purchase kitchen items and limited his use for them;

(h) the Council's files demonstrated that its view that the appellant had not been living at the property was based on three factors:-

- a complaint from a neighbour that the property was not occupied and that there were "comings and goings" at the property;
- the lack of normal household furnishings;
- the appellant's inability to produce paperwork confirming he was resident; in the course of investigating the matter, the Council asked that the appellant produced the address of his grandmother, the address of his girlfriend, and utilities bills for the property;

(i) the appellant had been registered at the property for the supply of gas and electricity, for the supply of water, for his claims for Incapacity Benefit and Housing Benefit, for the purposes of the NHS, the Police, the Courts, and the Probation Service; he had not been registered at any other address for any purpose and all the other agencies involved with the appellant in any way appeared to have accepted that he lived at the property;

(j) the Council's file notes stated that the appellant had been unable to produce a current utility bill, or car registration, or household insurance for the property; however, the notes also indicated that the appellant had not received any utility bills at that time, nor did he own a car, nor were his possessions insured;

(k) the appellant had now provided the evidence originally requested of him: confirmation of his liability for utility bills, his grandmother's address, and the address of his girlfriend; both had provided written statements confirming that he had been resident at the property, not at their respective addresses; a statement had also been made by the appellant's girlfriend's neighbour stating that the appellant did not live with the appellant's girlfriend;

(l) the Citizens Advice Bureau had established from British Gas that the appellant had been on their system for gas and electricity at the property from 10 November 2004; they had also established that no utility bill had been sent to the appellant due to an investigation by the old supplier and the readings taken by the appellant on taking occupation; the Citizen's Advice Bureau had further stated that the appellant had believed that water rates were inclusive of the rent that he had paid but that this issue had now been resolved following receipt of the annual notification;

(m) the appellant tended not to store paperwork as he had difficulty in reading and writing; he kept some paperwork at his girlfriend's address as she could read and write to a better standard than the appellant;

(n) all the evidence now available indicated that the appellant had resided at the property throughout the duration of his tenancy; whilst the evidence was perhaps not as strong as it might have been had the appellant not had mental health difficulties, literacy difficulties and a history of homelessness, there was no evidence available from any source that the appellant had lived elsewhere; the appellant had now provided all the evidence that he had been asked to during the Council's investigations into his claim for Housing Benefit and his tenancy; it should be questioned whether his claim for Housing Benefit would have ceased, and whether or not his eviction would have proceeded, had this evidence been available at the relevant times;

(o) there had never been any suggestion by the Council as to where the appellant might have lived were it not in the property provided by the Council, or any investigation of this, other than requesting the addresses of the appellant's girlfriend and his grandmother;

(p) since the appellant's eviction and his subsequent homelessness application, he had been provided with temporary accommodation by the Council at a bed and breakfast establishment; he had stayed there every night and this suggested that he had nowhere else to go, which in turn seemed to suggest that he had never had alternative accommodation available to him;

(q) the review by the Panel should be treated completely separately from the Housing Benefit investigation; Housing Benefit had been cancelled but had been re-

commenced and nothing much had changed during the two month period between those decisions - only a carpet had been laid at the property;

(r) if the Panel was in any doubt about the matters before it, it should find in favour of the appellant.

The appellant answered the following question of the Assistant Housing Needs Manager (Homelessness):

(a) when you were interviewed on 19 September 2005 you stated that the Council's Investigation Officer's statement was of no relevance - would you elaborate on why you said this statement was of no relevance? - because Housing Benefit had been re-commenced.

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

(a) following a referral from the Homelessness Prevention Team, the appellant had made a homeless application to the Council on 23 August 2005; the application had been made in his sole name; at the time of the application the full provisions of the Housing Act 1996 Part VII as amended had been applied to the case;

(b) during the course of his first interview, the appellant had made the Housing Officer aware that, on account of rent arrears and of Housing Benefit being stopped, his accommodation provided by the Council was under threat;

(c) as a result of the application, a course of enquiry was undertaken to decide on homelessness, eligibility, priority need, intentionality and local connection;

(d) the appellant had been a non-secure tenant at the property provided by the Council since 20 September 2004, following a earlier homeless application to the Council when a full duty to secure temporary accommodation had been accepted; from the early stages of the tenancy, the Council's Housing Management had been concerned; a neighbouring leaseholder had complained that no-one was living at the property provided for the appellant; inspections of the property from the outside and through the windows had revealed a lack of furniture and no signs of day to day living; a visit to the property on 17 January 2005 by housing management officers, when the appellant and two of his friends were at the property had revealed that the bedroom had been devoid of all furniture, the kitchen had no fridge, washing machine, cooker, there had been no food, crockery, or cooking utensils in the cupboards, the living room had contained two two-seater sofas and a television and there had been black bin liners containing clothing; the appellant had been evasive about his housing situation and the housing management officers had formed the opinion that the appellant was not permanently living at the property and was in breach of his Tenancy Agreement; steps were commenced to repossess the property on the grounds of non-occupation but when rent arrears arose amounting to £569.64, this was added as a reason for seeking possession and a Possession Order was granted by the County Court on the grounds of rent arrears; the rent arrears arose because the appellant's Housing Benefit was stopped;

(e) the Benefits Manager explained that, for a person to be entitled to Housing Benefit, the Council had to be satisfied that use was being made of the accommodation provided for their occupation; the Council's Investigation Officer had also inspected the property from the outside and through the windows and had gained the impression that the property was not being lived in; the appellant had attended an interview with the Investigation Officer at the Civic Offices and had

stated that he was not normally at home during the day as he visited his 91 year old grandmother at her warden controlled property in Palmers Green; the appellant had also mentioned that he spent time with his girlfriend who lived in Bow but he had declined to give her full name and address stating that he would need to seek her permission first; the appellant had asserted that he had returned to the property provided by the Council every night to sleep but mentioned that he did not have a bed and slept on a sofa; the appellant had confirmed that he had retained his clothing, personal effects and toiletries at the property; the appellant had been unable to provide any utility bills or any post addressed to him at the property; the appellant had been met subsequently at the property and the Investigation Officer had been invited to inspect all of the rooms; the bedroom had been totally empty except for a "plug-in" radiator and car tyre and this room had been devoid of any floor covering; in the bathroom there had been men's toiletries on the windowsill such as a razor and shaving foam but there had been no signs of any towels; the living room had no floor covering and only contained two two-seater sofas, a television, an old hi-fi, a small kitchen table and four chairs - placed on one of the sofas was a black bin liner bag and several men's shirts; when asked about bed linen, the appellant had stated that he slept on the sofa under one sheet but had been unable to produce a sheet; the kitchen had contained no appliances and the appellant had confirmed that he did not keep any food at the property; the appellant had been evasive in response to questions as to why he had not approached the Department for Work and Pensions for a Social Fund Payment for a cooker, fridge, etc; the appellant had been in the process of making himself a cup a tea with milk that he had been keeping cool by means of placing it in cold water in the sink; the appellant had been unable to produce any post addressed to him at the property; the Investigation Officer had concluded that the appellant had not been normally resident at the property; as a result it was subsequently decided that Housing Benefit should no longer be paid to the appellant and his claim was cancelled on 20 March 2005;

(f) Housing Benefit had been paid from 20 September 2004 at the start of the tenancy; before paying Housing Benefit it was necessary for the Council to be satisfied that a person had a liability to pay rent and that the person was normally occupying the property; it was as a result of non-occupation that Housing Benefit had been stopped; Housing Benefit decisions by the Council were open to challenge, and in this case the appellant appealed to the Appeals Service which is an independent tribunal prescribed by law; the Appeals Service had determined that the appellant had not been entitled to Housing Benefit as he had not normally occupied the property as his home; decisions of the Appeals Service could only be challenged on points of law and were normally binding on the Council; the appellant had been present at the Appeals Service hearing and had been able to put his case; the Tribunal had also considered a statement made by the appellant's girlfriend; the decision of the Appeals Service could not be re-opened by this Panel or by the Council; the appellant had re-applied for Housing Benefit on 30 May 2005 and this fresh application had to be considered in its own right without recourse to the previous decision; a decision was made to pay Housing Benefit based on a further visit to the property, at which time, signs of occupation were noted - the appellant had been present although he had not been notified of this visit and personal effects at the property suggested that he was now occupying the property; the definition of normal occupation required signs of someone living in the property e.g. sufficient furniture, fittings, evidence of sleeping at the property, evidence of meals being prepared and taken at the property, provision of cutlery, crockery and condiments, the presence of toiletries and towels, the evidence of utility bills; when Housing Benefit had been stopped the appellant had been a tenant of the property for five months, but there had been no signs of normal occupation;

(g) on account of the concerns raised by Housing and Housing Benefits staff, a decision had been made to re-interview the appellant on his fresh homelessness application; the appellant had been interviewed again on 19 September 2005 at which time he had provided an Affordability Assessment; prior to completion of the homelessness enquiry, a Bailiff's Warrant had been served on the premises confirming that eviction was to take place on 4 October 2005; as a result of the eviction, the appellant had been placed in bed and breakfast accommodation;

(h) the appellant had been considered eligible for assistance and in priority need, being a vulnerable person having had a long history of depression; however, after considering all the facts of the case, a decision of intentionality had been made;

(i) when making decisions in relation to intentionality, the Council had regard to the Code of Guidance which was issued to local authorities to assist in the interpretation of the Housing Act; the Code of Guidance stated that a person became homeless intentionally if he ceased to occupy accommodation as a consequence of a deliberate action by him;

(j) in making this intentionality decision, the fact that Housing Benefit had ceased during a period of the tenancy contributed to the rent arrears occurring; had the appellant made full use of the accommodation, his Housing Benefit allowance would have continued to be paid; because Housing Benefit payments were stopped, rent arrears occurred which in turn led to the Council pursuing a successful possession action against the appellant; at the time of the Bailiff's Warrant being executed by the Court, the appellant had rent arrears of £569.94;

(k) although the appellant had a history of depression, it was not considered on the evidence available that this affected his ability in managing his affairs;

(l) the Panel was invited to uphold the Officer's decision and, in this event, to give the appellant reasonable notice to vacate the bed and breakfast accommodation that he was currently occupying and to give him further advice in an attempt to help him identify alternative accommodation.

The Assistant Housing Needs Manager (Homelessness), the Benefits Manager and the Housing Management Officer answered the following questions of the appellant and the Panel:-

(a) the Housing Management Officer was asked if she had been aware previously of the appellant's literacy difficulties - she advised that she had not been aware;

(b) The Housing Management Officer was asked if she felt it was possible the appellant had been unaware that he had been in arrears - she stated that she understood the appellant had spoken to one of her colleagues on the telephone; she advised that she had spoken to the appellant on the day of the eviction and advised him of the situation;

(c) do you agree that the fact that there was no bed or sheets at the property did not in itself prove that the appellant was not occupying the property as his home? - possibly;

(d) although there were no towels at the property do you accept there were toiletries such as a razor and shaving foam? - yes, but there were very few essentials and all of these issues were raised at the Appeal Service Hearing which found as a

matter of fact that the appellant had not been normally occupying the property as his home;

(e) the Benefits Manager was asked if he was aware that utility bills had now been provided - he advised that he could not answer this question as he had not seen them; he continued that if the evidence had been available at the time of the Appeals Service hearing it would have been considered at the hearing;

(f) the Benefits Manager was asked whether he accepted that this hearing was a separate process from the Appeals Service hearing - he agreed that the two hearings were separate and that this Panel was not bound by the decision of the Appeals Service;

(g) the Benefits Manager was asked to clarify what changes had been made at the property which resulted in Housing Benefit being re-introduced - he advised that the appellant had been at the property, although an appointment had not been made and there had been carpet on the floor; he said that there was an onus on the Council to show that a person was not normally occupying a property as their normal home; on 30 May 2005 it was felt that the Council could not prove that the appellant was not normally occupying the property as his home;

(h) the Benefits Manager was asked if he was aware that the appellant had made daily visits to his grandmother - he advised that he had been aware of this fact and this matter had been considered by the Appeals Service;

(i) the Benefits Manager was asked again to clarify why a different decision had been taken on the appellant's entitlement to Housing Benefit - he advised that it had been considered there was sufficient evidence when the original decision was made to show that the appellant was not normally occupying the property as his normal home and that decision had been confirmed by the Appeals Service; when the appellant had re-applied, the Council had not felt able to make the same decision; he confirmed that when making the decision, regard had been had to the fact that the appellant had been present at the property and there had been carpet on the floor but he was not aware what other evidence, if any, had been provided at that time to support occupation;

(j) the Benefits Manager was asked if he could suggest where the appellant had been living had he not been at the property provided by the Council - he advised that this had not been a consideration, the issue had been that the evidence showed that the property provided by the Council had not normally been occupied by the appellant as his home;

(k) the Benefits Manager was asked whether the existence of utility bills would be sufficient to show that the appellant had been in occupation - he advised that utility bills would have been in existence irrespective of whether the appellant had been in occupation;

(l) the Benefits Manager was asked whether there had been any evidence of the appellant's clothes at the property when the Investigation Officer had made his visit - he advised there had been no furniture in the bedroom but that there had been a black bin liner bag on one of the sofas and several men's shirts;

(m) the Benefits Manager was asked whether there had been any evidence of food when the Investigation Officer had made his visit - he advised there had been no evidence of any food and the only appliance in the kitchen had been a kettle;

(n) the Assistant Housing Needs Manager (Homelessness) was asked why there was no reference in the Affordability Statement to the appellant's bus fares in respect of his daily visits to his grandmother? - he advised that the purpose of the Affordability Statement was to assess income against expenditure in order to determine whether the rent was affordable; in this case there was no dispute about the affordability of the accommodation;

(o) the Housing Management Officer was asked if she was aware whether there had been any curtains at the property - she advised that she could not recall seeing curtains but had noted net curtains on one occasion;

(p) the Officers were asked whether the appellant had made any attempt to pay off the arrears which had arisen following withdrawal of his Housing Benefit - they advised that no payment had been made towards the arrears; when Housing Benefit payments had been re-commenced, the appellant had effectively not been charged any rent as the full amount (£57.68 per week) had been met by Housing Benefit;

(q) the Benefits Manager was asked to clarify when the Investigation Officer had visited the premises as reference had been made to the appellant sleeping on the sofa under just one sheet - he advised that the inspection had taken place in February 2005 and he emphasised that the appellant had been unable to show the Investigation Officer a sheet.

The Chairman apologised to both parties that she had inadvertently not given members of the Panel the opportunity to ask questions of the appellant. With the approval of both parties the appellant answered the following questions of the Panel:

(a) how were you able to sleep under just one sheet in February? - I sleep fully clothed;

(b) can you explain why there were no towels at the property? - there was a towel in the black bag;

(c) why were you not able to provide evidence of utility bills earlier? - the appellant's adviser advised that the appellant was not well equipped to enter into correspondence and that it had not been until the Citizens Advice Bureau became involved that a rather complicated situation with British Gas had been clarified; he advised that the appellant had not received any utility bill for the first six months of his tenancy;

(d) did you have a television licence? - I pay on a card;

(e) where were your clothes when the inspections were made? - in the black bag;

(f) how did you travel to visit your grandmother at Palmers Green? - by underground and overground trains;

(g) how did you travel to visit your girlfriend in Bow? - by underground train;

(h) did you stay with your grandmother overnight on occasions? - no this was not possible because she is in warden-controlled accommodation;

(i) did you stay overnight occasionally with your girlfriend? - yes

The Chairman asked the appellant and his representative if they wished to raise any further issues in support of the appellant's case.

In response, the Panel was advised that throughout the investigations by the Housing and Housing Benefit Officers, the appellant had been asked to provide a variety of evidence and that due to circumstances, his literacy problems and sheer bad luck he had been unable to do so. He had now provided everything that had been requested and this had taken a long time to achieve and had involved three different agencies. The Appeals Service decision on Housing Benefits stood, but this was not a matter for this Panel. The only body to have all the relevant evidence to make its decision was this Panel. The appellant's literacy problems and basic domestic problems had not helped the situation. The appellant did live in an unusual way that other people may find difficult to understand. If there was any doubt in the minds of the members of the Panel they should find in favour of the appellant.

The Chairman asked the Assistant Housing Needs Manager (Homelessness) if he wished to raise any further issues in support of his case. The Panel was advised that the crucial period had been when Housing Benefit payments had stopped. Housing Benefit Officers were experienced in inspecting properties which had little furniture or personal effects and in this case there had been no evidence of occupation.

The Chairman indicated that the Panel would consider the appeal in the absence of both parties and that the appellant and the Assistant Housing Needs Manager (Homelessness) would be advised in writing of the outcome. The appellant, his adviser, the Assistant Housing Needs Manager (Homelessness), the Benefits Manager and the Housing Management Officer then left the meeting.

The Panel considered all of the evidence which had been placed before it. In particular, account was taken of the additional evidence presented by the appellant since the Officers' decision of intentionally homeless. The Panel noted the conflict between the appellant's statement about his occupation and the officers' views, based on their findings. The Panel concluded on the balance of probabilities that the evidence was not sufficient to conclude that the appellant had been normally occupying the property as his home between September 2004 and May 2005. Moreover, the Panel noted that a detailed examination had been undertaken by the Appeals Service, which had reached the same conclusion and had had a direct bearing on the Housing Benefit entitlement. The Panel further concluded that had the appellant normally occupied the property as his home, his Housing Benefit would have continued to be paid, rent arrears would not have arisen and the Council would not have undertaken possession action. The Panel took into account the appellant's difficulties in reading and writing and the references to his history of depression. However, members did not consider on the evidence available that these affected his ability to manage his affairs. The Panel agreed that the Council should continue to provide the appellant with accommodation until the end of January 2006 in order to allow him reasonable opportunity to secure alternative accommodation.

RESOLVED:

(1) That, having regard to 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 appellant and by the Assistant Housing Needs Manager (Homelessness) in writing and orally, the appeal be dismissed and the decision of the Assistant Housing Needs Manager (Homelessness) that the appellant had become intentionally homeless be upheld for the following reasons:

- (a) the appellant was evicted from a Council property which he occupied as a non-secure tenant following the issue of a Warrant for Possession by the Bow County Court due to rent arrears of £569.94;
 - (b) the rent arrears arose as a result of Housing Benefit payments being stopped because the Council had decided that the appellant had not normally occupied the property as his home; the Council's decision to stop Housing Benefit payments had been confirmed following an appeal by the appellant to the independent Appeals Service;
 - (c) the conclusion that the appellant had not normally occupied the property as his home had been based on visits to the property by Council Housing and Housing Benefit Officers and account had been taken of the appearance of the property, the lack of household appliances, food, bed linen and floor coverings; in confirming the Council's Housing Benefit decision, the Appeals Service had taken account of evidence from both the appellant and the appellant's girlfriend;
 - (d) if the appellant had normally occupied the property as his home, his Housing Benefit would have continued to be paid, rent arrears would not have arisen and the Council would not have pursued a possession action;
 - (e) the property was affordable as the whole of the rent was being met by Housing Benefit;
 - (f) had it not been for the appellant's deliberate action of not normally occupying the property, the property would have been available and reasonable for him to continue to occupy;
 - (g) account has been taken of the additional evidence presented by the appellant since the officer's decision of intentional homelessness, including the reasons for the appellant's lack of furniture and personal effects, his lifestyle of living with only the barest of essentials and his limited life skills; confirmation of his liability for utility bills; and statements from his girlfriend, his grandmother and a neighbour of his girlfriend; however, it is not considered, on the balance of probabilities, that these are sufficient to conclude that the appellant was normally occupying the property as his home between September 2004 and May 2005;
 - (h) account has also been taken of the appellant's difficulties in reading and writing and the reference to his history of depression, but it is not considered on the evidence available that these affected his ability to manage his affairs;
- (2) That the Council continues to provide accommodation until 31 January 2006 in order to allow the appellant reasonable opportunity to secure alternative accommodation; and
 - (3) That no deficiency or irregularity has been identified in the original decision made by the Assistant Housing Needs Manager (Homelessness), or in the manner in which it was made.

58. APPEAL NO. 24/2005

The Panel was advised that this was an appeal against a decision of the Assistant Housing Needs Manager (Homelessness) acting under delegated authority concerning the appellant's homelessness application. The appellant attended the meeting to present her case, accompanied by Ms V Mitchell of the Waltham Abbey Community Mental Health Team. Mr R Wallace (Assistant Housing Needs Manager - Homelessness) attended the meeting to present the Council's case. Mr A Hall (Head of Housing Services) attended the meeting to advise the Panel as required on details of the national and local housing policies relative to the appeal.

On seeing the appellant the Chairman, Councillor Mrs J Davis, declared a personal interest in this matter by virtue of knowing the appellant. She determined that her interest was prejudicial and that she would have to leave the meeting for the duration of the consideration of this appeal.

The Panel was advised that its terms of reference provided that no matter could be considered in the absence of both the Chairman and the Vice-Chairman. Accordingly, it would be necessary to defer consideration of this appeal to a future meeting when the Vice-Chairman could be present.

The Chairman apologised for the inconvenience which had been caused but stated that it was not until she had seen the appellant that she had realised she had a prejudicial interest in this matter.

The appellant was asked, having regard to the forthcoming Christmas and New Year holiday period if she would agree to an extension of the time during which her application should be considered. The appellant agreed to the matter being decided outside of the 56 day statutory period.

RESOLVED:

- (1) That consideration of Appeal 24/2005 be deferred; and
- (2) That arrangements be made for the appeal to be considered at a future meeting of the Panel when the Vice-Chairman can be in attendance.

59. APPEAL NO. 26/2005

The Panel gave consideration to an appeal against the Assistant Head of Housing Services acting under delegated authority regarding the appellant's wish to be granted a Management Transfer. The appellant attended the meeting together with Councillor D Spinks. Mr R Wilson (Assistant Head of Housing Services) attended the meeting to present the Council's case. Mr A Hall (Head of Housing Services) attended the meeting to advise the Panel as required on details of the national and local housing policies relative to the appeal. Mr S G Hill (Senior Democratic Services Officer) was present to take the notes of the hearing.

The Chairman introduced the members of the Panel and officers present to the appellant and her representative and outlined the procedures which were to be followed in order to give proper consideration 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) an appendix showing work carried out to the property since July 1997;
- (c) a letter dated 28 September 2004 from the appellant to the Council;
- (d) a copy of a letter dated 3 February 2005 from the appellant to the Council;
- (e) a letter from Key Health Medical Centre dated 12 March 2005 from the appellant's doctor;
- (f) a letter dated 20 September 2005 from Mr R Wilson to the appellant;
- (g) a letter dated 24 October 2005 from Mrs Hudson (Housing Officer - Allocations) to the appellant;
- (h) the appellant's application to the Housing Appeals Panel dated 14 October 2005 together with supporting documentation and photographs;
- (i) a letter to the Democratic Services Manager from the appellant dated 8 November 2005;
- (j) a letter dated 2 November 2005 from Key Health Medical Centre from the appellant's doctor;
- (k) a letter from the appellant to the Democratic Services Manager dated 21 November 2005;
- (l) copy of an e-mail dated 2 November 2005 from Terry Wyatt (Assistant Repairs Manager, EFDC) to M Pearce (Housing Services, EFDC); and
- (m) an e-mail copy dated 3 November 2005 from Terry Wyatt (Assistant Repairs Manager, EFDC) to Marion Pearce (Housing Services, EFDC).

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

- (a) the appellant had lived in Springfields, Waltham Abbey for eight years. In 2003 the appellant had gone travelling for a period of eight months and had come back to the property and had experienced noise and water leaks from the walkways. The problem of the noise stemmed from the tenant above them who was a lady with young children. She had experienced noise from scraping of chairs. They had allowed this to continue for a few months and had then contacted Housing Services. In the summer of 2004 the neighbour had got a dog which had barked all night and this had continued all summer. In March 2004 they had also experienced water pouring in from the bedroom/bathroom from the above property;
- (b) noise nuisance continued night after night and in January 2005 the appellant's whole flat had been flooded as a child in the property above them had left the tap on. This was an instance when the Police had been called. The appellant had been three months pregnant at the time and it had cost a lot of money to get the flat back together again;
- (c) water was still leaking into the hallway and the Council had worked on this a number of times but it had not been fixed. These problems still existed. Noise continued, although Housing Services had issued the neighbour with a written letter. The tenant above had no carpet in the flat and the appellant suffered from hearing

swearing and shouting. The neighbour was well known to the Police and Social Services. In the week prior to the hearing she had been arrested in a Police raid;

(d) the appellant had previously been offered a Management Transfer but the problem was that this had come through two days before the birth of her first child; the property offered was at Neal Court and involved climbing more stairs to that dwelling and the appellant could not have done that. The appellant felt that she couldn't live in another flat;

(e) the appellant's representative, Councillor Spinks stated that he had visited the house and the main concern was for the baby. The conditions where the appellant lived were appalling. The house was constantly damp and if the appellant were to put up with it much longer she would become badly ill.

The appellant stated that the flat was damp, the bedroom was damp and there were endless leaks. She had now had air vents fitted to the flat which meant that the heating was on all day but the bedroom never got warm. The Council painter had painted over the vents and this had caused condensation every morning. In addition, the flat was cramped and there was no space for the baby's cot.

The appellant answered the following questions of the Assistant Head of Housing Services:

(a) What was the appellant's understanding of a Management Transfer? The appellant answered that she knew this was something that was offered in extreme circumstances. The previous offer had come at the wrong time as she had had her baby six days later. In addition to that consideration had been the cost of moving. It had not been at a suitable time and she was now asking if this offer could be made again.

(b) If the Panel were to uphold the appeal and set aside the Allocation Scheme and other applicants, what type of accommodation would you accept? The appellant stated that she would accept any area except Chigwell. She would like a house, preferably two bedroomed if possible. Alternatively, a ground floor flat because she had a baby;

(c) So you would accept a two bedroomed flat? The appellant stated that she would want it to be a two bedroomed flat;

(d) What was the current situation with repairs to the flat? The appellant stated there was still noise and leaks;

(e) The Housing Repairs Manager had stated that the leaks were now restricted to the hallway and that resin had been injected into the ceiling to stop this and that the dwelling was habitable, was this the case?. The appellant stated that the water had stopped and the Council had plastered the ceiling two weeks ago;

(f) In relation to the continuing problem with the dog, why you written to the Council in relation to this matter? The appellant stated that she was scared of her neighbour; she was a "nasty piece of work" but had wanted a record of the issue on the Council's file.

The Panel asked the following questions of the appellant:

(a) If the appellant was offered a one-bedroom ground floor flat with bigger rooms would she consider this? The appellant stated that the flat was acceptable but the

main problem was the neighbour above. She was worried about moving to another flat. Although it would be great to have more space it would not be ideal to have one bedroom;

(b) The appellant had stated that her husband had visited the flat and had witnessed that there were no carpets in that flat, was this correct?. The appellant stated the Council's officer, Rachel Smith, had visited and said that the flat had been decorated but she didn't believe her. The lady in the flat above was not the type of person to take any consideration of noise and she had tried talking to her about the issue;

(c) What age was the child in the flat above? The appellant thought the child was around five years of age.

The Panel considered the following submissions in support of the case of the Assistant Head of Housing Services:

(a) Mr Wilson stated that Management Transfers were previously called Priority Moves and were generally made following requests from other agencies. They had always been supported by conclusive evidence, for example, from the Police and these were now called Management Transfers. Tenants had now become aware of this process and were using it to seek to move to better accommodation. Requests were on the increase. The Council had never received a request for a Management Transfer from a tenant of a house. There were many requests. Mostly the requests stated estate problems and stated they were seeking a move to a house, but a Management Transfer was not for this purpose. It was designed for where lives were at risk and were normally on a like for like basis. This scheme was not designed to improve a tenant's situation;

(b) In terms of maintenance moves, these were only normally undertaken during periods of repair and this was also not to be seen as a way of queue jumping. In his experience there were only a couple of Management Transfers per year;

(c) The Council had made every effort to solve the water ingress problems although it had been difficult to find some of them. The cost to the Council had been almost £10,000 to date. In terms of the neighbour, it was accepted there were issues and the Council was working with that tenant to seek to resolve them.

(d) The appellant had turned down the offer of a Management Transfer and from that the Council could only assume that the appellant was appealing about attempting to get the accommodation she desired.

(e) It was noted that it was not unusual for tenants to have children in a one bedroom flat. There were 800 families waiting for a house, 94 of those were above the appellants on the waiting list. Mr Wilson drew the Panel's attention to the letter dated 20 September 2005 which set out the Council's position. He felt that the appellant was asking too much and would be effectively jumping 94 other families on the queue above her. The decision would set a precedent about relaxing rules about transfers and indeed neighbour disputes. If it was upheld, the decision would place members in a difficult position to explain why they had made it. Unless the appellant's circumstances changed she would remain in Band 4 on the waiting list. If the appellant was in Band 1 the wait would be approximately 1-4 years. The appellant was not a sufficient priority and the Panel should dismiss the appeal.

The Assistant Head of Housing Services answered the following questions of the appellant and the Panel:

(a) The appellant had not known about the Management Transfer process until a Housing Officer mentioned it. Why had she been granted one? R Wilson stated that the officer should not have mentioned the scheme and that he had discussed this with his managers subsequently;

(b) The appellant stated that the noise with the dog barking directly over the bedroom was of a high level, she could hear swearing, she was not queue jumping and was appealing over the timing of an offer that had been made to her. She could not have moved at that time as she had previously stated and wanted the Management Transfer reinstated, why was that not possible? R Wilson stated that the Management Transfer use was being looked at in the future. He had looked at why they had granted the transfer and it had been a borderline decision that had been initially refused. The appellant said that it was wrong timing. It was the officer's view that even if it were ideal timing the impression was that she wouldn't have accepted it. If offered now she wouldn't have moved.

(c) The Panel asked whether the Council had checked whether the appellant above had had carpeting installed. R Wilson stated he was not sure whether officers had gone back to check this installation;

(d) When the flat had been offered why had the appellant said that it was not convenient? R Wilson replied that it had been a split of 90% about the timing and 10% about the flat. The impression that he had gained from the letter in relation to this matter was that the appellant would not have accepted a flat;

(e) Why was a copy of the letter not in the pack? In reply Mr Wilson stated that he had the housing file with him for member to refer to if necessary;

(f) Would an offer be made after the birth of the child? R Wilson stated that the appellant was currently in Band 4 and as she insisted on a house there would be a considerable wait. If the appellant was more relaxed about the accommodation to be offered the wait would be shorter;

(g) In relation to the water in the hallway, why had it taken so long to repair the leaks? Mr Wilson stated that there had been a number of visits and there had been problems in finding the cause of the leaks. He admitted that this had taken a long period but the Council had expended a lot of effort to find the problem and ensured that, during that time, the property had remained habitable;

(h) What action had been taken by the Council over the tenant upstairs? Mr Wilson stated that action had been taken by officers.

The Chairman asked the appellant and her representative if they wished to raise any further issues in support of their case.

In response, the appellant stated that the appendix within the paperwork showed the amount of work that had been undertaken; nearly all of it related to water and these problems continued. She was now waiting for the next leak to appear. She was not holding out for a house and she was suffering constant noise and it was endless. She had nights of no sleep at all and this was causing argument within the home. She would accept a flat but not a one bed one. She was not queue jumping. There had been a recent Police raid in the flat upstairs and this showed what type of person the neighbour was and she was wondering what would be the next problem.

The Chairman asked the Assistant Head of Housing Services if he wished to raise any further issues in support of the Council's case. In response Mr Wilson reminded the members that there were other tenants in a similar situation on the Limes Farm Estate and Oakwood Hill and in making their decision they should bear this issue in mind.

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 would be advised in writing of the outcome. The appellant, her advisor, Councillor Spinks and the Assistant Head of Housing Services then left the meeting.

The Panel considered all of the evidence that had been placed before it. In particular they took account of the evidence provided by the appellant in relation to the continuing problems with water ingress into the flat and persistent noise from the neighbours. Members also considered the number of people currently on the waiting list for such properties but considered that these issues constituted exceptional circumstances and concluded that the appeal should be upheld.

RESOLVED:

- (1) That, having taken into consideration the information presented by and on behalf of the appellant and by the Assistant Head of Housing Services (Operations), in writing and orally, the appeal requesting a further Management Transfer be partially allowed for the following exceptional reasons:
 - (i) the apparent extent and continuous nature of the water ingress to the property; and
 - (ii) the apparent extent and continuing nature of the disturbance by the appellants neighbour;
- (2) That the appellant be offered one further Management Transfer opportunity to a one bed flat on the first or ground floor, dependent on availability;
- (3) That, should the appellant accept the offer of the property allocated for a Management Transfer, Housing Services resolve the water ingress problems at the Springfields property prior to its re-letting; and
- (4) That Officers take appropriate steps to resolve the apparent nuisance caused by the appellant's neighbour.

CHAIRMAN