

EPPING FOREST DISTRICT COUNCIL COMMITTEE MINUTES

Committee: Housing Appeals and Review Panel **Date:** Monday, 10 February 2014

Place: Committee Room 1, Civic Offices, High Street, Epping **Time:** 2.30 - 4.05 pm

Members Present: Councillors B Rolfe (Chairman), Mrs J Lea (Vice-Chairman), Ms J Hart and Mrs J H Whitehouse

Other Councillors:

Apologies:

Officers Present: A Hall (Director of Housing), H Thorpe (Housing Assets Manager) and G Lunnun (Assistant Director (Democratic Services))

19. MINUTES

RESOLVED:

That the minutes of the meeting of the Panel held on 2 October 2013 be taken as read and signed by the Chairman as a correct record.

20. SUBSTITUTE MEMBERS

The Panel was advised that there were no substitute members present.

21. DECLARATIONS OF INTEREST

Councillors Mrs J Lea and Mrs J H Whitehouse advised that they were members of the Council's Housing Scrutiny Panel which undertook reviews of housing policies and made recommendations on such reviews to the Housing Portfolio Holder or the Cabinet as appropriate. The Councillors pointed out that the Scrutiny Panel had not reviewed the Disabled Adaptation Policy and the issue before the Housing Appeals and Review Panel was not to change the policy but to determine whether there were exceptional reasons for setting aside the policy. Accordingly, both Councillors stated that they proposed to remain in the meeting and take part in the discussions and voting thereon.

22. 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 item of business set out below as it would involve the likely disclosure of exempt information as defined in the Paragraph of Part 1 of Schedule 12(a) 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 Paragraph Number
6	Appeal No 1/2014	1

23. APPEAL NO 1/2014

Introduction

The Panel considered an appeal against a decision made by officers under delegated authority to refuse the installation of a stair lift as a disabled adaptation at the appellants' property.

The appellants attended the meeting to present their case. Mr H Thorpe, Housing Assets 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 relevant to the appeal.

The Chairman introduced the members of the Panel and the officers present to the appellants.

The Chairman explained the procedure for the meeting in order to ensure that proper consideration was given to the appeal.

The appellants requested that the Panel's normal order of presentation of cases be changed so that they could present their case first followed by the presentation of the Housing Assets Manager. The Chairman agreed to this request.

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

- (a) a summary of the case including the background, details of the Council's Disabled Adaptation Policy, details of the Council's Housing Waiting list, and details of the Council's Disabled Adaptation Budget;
- (b) the case of the Housing Assets Manager;
- (c) copies of documents submitted by the Housing Assets Manager, namely:
 - (i) copy of a letter dated 23 July 2013 from the Council's Housing Officer (Tenant Liaison) to one of the appellants;
 - (ii) an extract from the minutes of the Council's Housing Committee meeting held on 17 November 1998 regarding the Council's Disabled Adaptation Policy;
 - (iii) a copy of a letter dated 19 July 2013 from one of the appellants to the Housing Assets Manager;
 - (iv) a copy of a letter dated 12 August 2013 from the Housing Assets Manager to one of the appellants;
- (d) copies of documents submitted by the appellants, namely:

(i) their completed application form to the Housing Appeals and Review Panel dated 2 January 2014 including a statement made by the daughter/stepdaughter of the appellants;

(ii) a copy of a letter dated 9 July 2013 from an Essex County Council Occupational Therapist to the Council's Housing Officer (Tenant Liaison).

Presentation of the Case of the Appellants

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

(a) one of the appellants had resided in the property since December 1992; the other appellant had been added to the tenancy in May 2002 when the appellants had been married;

(b) the appellants were registered/registrable as physically impaired with Essex County Council; one of the appellants suffered with severe osteoarthritis in his back, legs and wrists; he also had type 2 diabetes and only 10% vision in one of his eyes; he had had a double knee replacement operation and an operation for spinal stenosis; he was also deaf in both ears; he was unable to prepare food or make a cup of tea; he had difficulty in walking and used a stick;

(c) the other appellant suffered from osteoarthritis in her hips and knees, had high blood pressure and suffered from diverticulitis; she also had difficulty walking and could not do so without assistance;

(d) as both of the appellants had difficulty using the stairs, especially at night when needing to use the bathroom and toilet which were located downstairs, an Essex County Council Occupational Therapist had recommended the provision of a stair lift;

(e) the decision taken by the Council's officers to refuse the installation of a stair lift was detrimental to the disabled; the officers had placed money before safety in making their decision; the officers' aim was to get the appellants to move to a smaller Council property;

(f) the appellants had sent a doctor's letter to the Council stating that the appellants should be sleeping in separate bedrooms;

(g) the Panel should take account of Section 23(1) of the Housing Grants, Construction and Regeneration Act 1996; Article 3 of the Regulatory Reform (Housing Assistance) (England and Wales) Order 2002 and the fact that an Occupational Therapist had recommended the provision of a curved stair lift as she had prioritised, based on current eligibility criteria, the difficulties suffered by the appellants as "substantial";

(h) although the appellants were in arrears with their rent to the Council, they had an agreement in place to pay back the arrears;

(i) the appellants had spent approximately £20,000 undertaking improvements to their property in 2010/11, including redecoration, the provision of new kitchen units and landscaping of the garden to provide easier access in and around the property;

(j) both of the appellants were in receipt of State Pensions; in addition one received an Army pension and the other a Disability Living Allowance; they had no other income and no savings and could not therefore afford to purchase a stair lift themselves;

(k) the appellants had suggested the removal of the bottom two stair treads and replacement with straight treads whereby a straight run stair lift could be fitted at much less cost; however, this suggestion had not been acceptable to the Occupational Therapist;

(l) the appellants' daughter/stepdaughter who was a trained carer looked after the day to day needs of one of the appellants due to his illnesses and disabilities; the daughter/stepdaughter also looked after the other appellant as she also had disabilities that restricted her lifestyle; the appellants' daughter was also the full time carer for one of her children; as a result a large part of the appellants' daughter's typical day was taken up looking after the appellants and her children.

Questions from the Housing Assets Manager to the Appellants

The Housing Assets Manager advised that he had no questions to ask of the appellants. He pointed out, though, that the reason the stair treads could not be modified and a straight stair lift provided was that such works would not comply with Document K of the Building Regulations.

Questions from Members of the Panel to the Appellants

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

(a) one of the appellants had been married previously for 26 years with two children; that appellant and her family had moved into the appellants' current property after initially living in Loughton; the marriage had ended in divorce and the appellants had married in 2002; the appellants were now the only occupants of the property;

(b) although the appellants' property was described as a three bedroom house it was not large; the only access to the rear garden was through the house; the property had only one living room; a medium size kitchen; and a bathroom/toilet downstairs;

(c) one of the appellants had inherited money from his mother's estate and had delayed advising the Council about this inheritance until he had been certain of the amount to be received; the appellants had been in receipt of Housing Benefit at the time and as they had failed to notify the Council about the inheritance the Housing Benefit had been stopped; the Council had assumed that the amount of the inheritance was greater than it had been; the appellants had spent some of the money received from the inheritance buying a caravan and some had been given to their children;

(d) the appellants now accepted that grants payable under the Housing Grants, Construction and Regeneration Act 1996 were available to private property owners and private tenants and were not applicable to Council tenants; the appellants also now accepted that the powers under the Regulatory Reform (Housing Assistance) Order 2002 were discretionary for the purpose of improving run down or dilapidated areas and were not intended for individual properties;

(e) the appellants' daughter/step daughter lived fairly close to the appellants;

- (f) the appellant who suffered from 10% vision in one eye had good vision in the other eye;
- (g) the rent arrears had only arisen during the last two years and were a direct result of the loss of Housing Benefit;
- (h) the appellants had been unaware of the Council's policy regarding under occupation in relation to disabled adaptations until they had spoken to the Council's Housing Officer (Tenant Liaison Officer) in 2013; if the appellants had known about the policy earlier they would have considered moving to a more suitable property but, having spent approximately £20,000 on their current property, they were not now prepared to move unless the Council compensated them for the money they had spent on the property;
- (i) the appellants' property was in good condition and no further works were currently required to the property.

Presentation of the Case of the Housing Assets Manager

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

- (a) in July 2013, the Housing Assets Team had received a request from an Essex County Council Social Care Occupational Therapist recommending the installation of a stair lift disabled adaptation at the appellants' property; the appellants had been advised that in line with the Council's Disabled Adaptation Policy, disabled adaptations costing in excess of £2,000 would not be undertaken where a property was under occupied by two or more bedrooms; the limit of £2,000 had been reviewed recently by the Housing Portfolio Holder and it had been agreed that it be increased to £3,000 to reflect the rises in the Retail Price Index since the policy had last been reviewed;
- (b) the average cost of installing a curved stair lift was £4,860; the average cost of installing a straight stair lift was £1,500 but it was not possible to install a straight stair lift in the appellants' property as the works required for this would not comply with Document K of the Building Regulations;
- (c) the appellants had been given the opportunity to provide additional information to enable officers to consider whether there were grounds for an exception being made to the under occupancy requirement contained in the Council's Disabled Adaptation Policy; additional information had not been provided to the Housing Assets Manager;
- (d) the Council's Disabled Adaptation Policy was intended to contain expenditure within the Disabled Adaptation budget; where tenants who were currently living in accommodation which was considered too large for their needs, the policy provided an incentive of up to £2,000 for tenants to move to more suitably sized accommodation;
- (e) the policy and the incentive payment were intended to free-up under-occupied larger family accommodation and make it available for households who were currently living in overcrowded accommodation, or to enable accommodation to be offered to other people on the Housing Register for social housing;

(f) the Disabled Adaptation Policy also stated that disabled adaptations would not be approved if tenants had outstanding rent arrears; the appellants were currently subject to a Court Order awarded to the Council on 6 July 2012 to pay their current rent plus £30 per week to clear the rent arrears; as at 21 January 2014 the rent arrears stood at £2,276.28 and the Court Order had been broken on four occasions since it had been served; the appellants were currently behind on Court Order repayments;

(g) the Council's Housing Register at the end of January 2014 highlighted the need for larger family accommodation, with 518 applicants waiting for two bedroom accommodation, and 159 applicants waiting for three bedroom accommodation;

(h) since 1 June 2013, the Council had received 91 one-bedroom vacancies across the District which included bungalows and sheltered accommodation suitable for residents over 60 years of age; as the appellants currently under-occupied a family size property, they would have reasonably good prospects for a move to a property more suitable for their needs, depending on the area and type of accommodation they would prefer;

(i) a large percentage of bungalows and sheltered accommodation suitable for residents over 60 years of age had already benefitted from disabled adaptations; the need to make the most of these suitably adapted properties was essential in terms of making the best use of the social housing stock and the Disabled Adaptation budget;

(j) Essex County Council Social Care Occupational Therapists referred disabled adaptations to the Council based solely on the long-term needs of the tenant; the vast majority of referrals from Occupational Therapists classified tenants' difficulties as "substantial" and as Council officers did not have the medical expertise to assess the long-term needs of tenants, works were prioritised in date order;

(k) in the financial year 2013/14 to date, there had been a significant increase in the number of disabled adaptation requests received by the Council from Essex County Council Social Care Occupational Therapists, including a large increase in the number of requests for stair lifts;

(l) the Council's annual Disabled Adaptation budget had been increased to £475,000 in 2012/13 for that year only but there had still been a total of 38 disabled adaptations held over for completion in 2013/14;

(m) the average cost of each disabled adaptation carried out in 2013/14 was approximately £2,551 per installation; with the increased demand for disabled adaptations and a number of disabled adaptations outstanding at the beginning of the financial year, expenditure levels at the end of Quarter 3 for 2013/14 totalled £390,303, almost 90% of the available current annual budget of £400,000;

(n) the projected total cost of disabled adaptation expenditure for 2013/14 was £461,731 which would be an overspend of approximately £61,731; as a result for every disabled adaptation request received since 1 January 2014 the request would need to be held over until the next financial year and would not be considered until April 2014;

(o) the need and requirement to ensure accommodation was suitably adapted for disabled and elderly tenants was given the highest possible priority by the Council; however, properties had to be suitable for the occupants; the appellants' property was a three bedroom house and if the Panel agreed to a stair lift disabled adaptation, the next disabled adaptation that would be required by the appellants for the

property, in all probability, would be the installation of a wet room; the property had already been fitted with a shower tray in 2004, the cost of which had been under the £2,000 limit;

(p) in assessing the long-term needs of a tenant, additional disabled adaptations could also include access ramps to the front and rear entrance doors, a warden alarm system and even the widening of the entrance and the internal doors to facilitate wheelchair access;

(q) during 2012/13 there had been six disabled adaptation requests refused as a result of tenants not meeting the requirements of the Disabled Adaptation Policy;

(r) the appellants currently had a suspended Possession Order against them and needed to pay current rent plus £30 per month to clear rent arrears; the appellants had breached current repayments on several occasions and were facing a possible eviction should repayments not be made;

(s) the Panel was asked to dismiss the appeal as it was not considered there were exceptional circumstances in this case to set aside the adopted policy.

Questions from the Appellants on the case of the Housing Assets Manager

The appellants advised that they had no questions to ask of the Housing Assets Manager.

Questions from Members of the Panel on the Case of the Housing Assets Manager

The Housing Assets Manager gave the following answers to questions from members of the Panel:

(a) the appellants would have priority in bidding for a suitable alternative property;

(b) in the event of the appellants moving, compensation to them in respect of the improvements they had undertaken to their property might be available but in respect of qualifying improvements only;

(c) discussions had been held with the Occupational Therapists in the past about them categorising referrals in a more meaningful way rather than simply referring to "substantial" in all referrals; the Occupational Therapists had not been prepared in the past to make any change in this respect;

(d) referrals were prioritised in date order except, occasionally, greater priority would be given if the works resulted in the freeing up of a hospital bed;

(e) the situation of a tenant offering to pay the difference between the Council's maximum of £2,000 (to be increased to £3,000) and the cost of the works had not arisen in the past and was not covered in the Council's Disabled Adaptation Policy; if such an approach were made consideration would need to be given to a change in the Policy;

(f) the limit of £2,000 (proposed to be increased to £3,000) only applied where a property was under-occupied by two or more bedrooms.

Summing Up

The appellants and the Housing Assets Manager stated that they had nothing to add to their cases.

Deliberations

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

The Panel expressed sympathy about the appellants' situation and appreciated their reasons for wishing to remain in what had been their home for over 11 years. However, in coming to its decision, the Panel focussed on the appellants' circumstances and whether in the light of those circumstances there were exceptional reasons for setting aside the Council's adopted Disabled Adaptation Policy.

RESOLVED:

(1) That, having taken into consideration the information presented by and on behalf of the appellants and by the Council's Housing Assets Manager in writing and orally, the appeal be dismissed and the decision of officers to refuse the installation of a stair lift as a disabled adaptation at the appellants' property be upheld for the following reasons:

(a) the Panel cannot change adopted Council policy but can determine whether there are exceptional reasons for setting it aside;

(b) the Council's adopted Disabled Adaptation Policy currently states that disabled adaptations costing in excess of £2,000 will not be undertaken where a property is under-occupied by two or more bedrooms; this Policy has recently been reviewed and it is proposed that the amount of £2,000 be increased to £3,000 to reflect the rises in the Retail Price Index since the Policy was last reviewed;

(c) the under-occupation provision of the Policy is included to encourage tenants who occupy larger family properties to move into smaller and more suitable accommodation, thereby freeing up properties for larger families in need;

(d) the Disabled Adaptation Policy aims to contain expenditure within the approved budget; the Council's overall approach to discouraging under-occupancy also provides an incentive for tenants to move to more suitably sized accommodation with up to £2,000 paid to tenants who move to smaller accommodation;

(e) the Council's adopted Disabled Adaptation Policy also states that disabled adaptations will not be approved or undertaken if tenants have outstanding arrears of rent;

(f) there is a great demand in the District for larger family accommodation; as at January 2014, the Council's Housing Waiting List included 518 applicants seeking two-bedroom accommodation and 159 applicants seeking three-bedroom accommodation;

(g) the appellants occupy a three-bedroom house, and are therefore under-occupying the property by two bedrooms;

(h) the average cost of installing a curved stair lift is £4,860 and the proposal therefore exceeds the limit of £2,000 (proposed for increase to £3,000) in the Council's Disabled Adaptation Policy for undertaking adaptations where a property is under-occupied by two or more bedrooms; it is not possible to install a straight stair lift in the property, the cost of which would not exceed the limit, as the necessary works would not comply with Document K of the Building Regulations;

(i) the appellants are subject to a Court Order awarded to the Council in 2012 to pay £30 per month in addition to the current rent to clear rent arrears; as at 21 January 2014 the arrears amounted to £2,276.28; the Court Order has been broken on four occasions and the appellants are currently behind on Court Order payments;

(j) in the light of (g) – (i) above, the appellants' application is contrary to the Council's Disabled Adaptation Policy; accordingly, the Panel has considered whether there are any exceptional reasons for setting aside that Policy; in coming to its conclusion the Panel has taken account of the following:

(i) the appellants have occupied the property since 2002 and do not wish to move, having regard to the work they have undertaken to their property including home decorations, new kitchen units and landscaping the garden;

(ii) the appellants have difficulty using the stairs; the bathroom/toilet are situated downstairs in the property and the bedrooms are situated upstairs;

(iii) the requirements of the Equalities Act and other legislation quoted by the appellants, some of which are not considered applicable in this case;

(iv) the day-to-day needs of the appellants which are met by the daughter/step daughter of the appellants;

(k) the Panel, whilst being extremely sympathetic with the appellants' circumstances, is of the opinion that these are not exceptional in that with an ageing population there have been similar cases in the past and there is likely to be an increase in such cases in the future; during 2012/13 there were six disabled adaptation applications refused as a result of tenants not meeting the requirements of the Disabled Adaptation Policy;

(2) That, whilst appreciating the appellants' reluctance to move from their property, given their needs, they be encouraged to give further consideration to moving to a smaller property and that, if necessary, they request the assistance of the Council's Under-Occupation Officer in pursuing this suggestion, who can provide practical support and assistance; and

(3) That, having regard to the increasing number of referrals, the limited amount of the Council's Disabled Adaptation budget, and the Council's lack of medical expertise to assess the long-term needs of tenants, the Essex County Council Social Care Occupational Therapists be asked again to

consider categorising their referrals in a more meaningful way rather than simply always referring to the difficulty for the tenant as being “substantial”.

CHAIRMAN