

EPPING FOREST DISTRICT COUNCIL COMMITTEE MINUTES

Committee: Housing Appeals and Review Panel **Date:** Thursday, 2 August 2012

Place: Committee Room 2, Civic Offices, High Street, Epping **Time:** 2.30 - 5.10 pm

Members Present: Councillors A Mitchell MBE (Chairman), B Rolfe (Vice-Chairman), Mrs R Gadsby, Ms J Hart and P Spencer

Other Councillors:

Apologies: Councillor Mrs J H Whitehouse

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

6. MINUTES

RESOLVED:

That the minutes of the meeting of the Panel held on 29 May 2012 be taken as read and signed by the Chairman as a correct record.

7. SUBSTITUTE MEMBERS

It was noted that Councillor P Spencer was substituting for Councillor Mrs J H Whitehouse.

8. DECLARATIONS OF INTEREST

There were no declarations of interest by members of the Panel under this item.

9. 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.

Agenda Item Number	Subject	Exempt Information Paragraph Number
6	Application No 2/2012	1

10. APPLICATION NO 2/2012**Introduction**

The Panel considered a request for a review of a decision made by officers under delegated authority that the applicant was homeless intentionally as a result of him ceasing to occupy a property rented from Harlow District Council due to being imprisoned. The applicant attended the meeting to present his case accompanied by Councillor T Church, Mr J Brunton, Probation Officer – Essex Probation and Mr J Reynolds, Housing Liaison Officer – Essex Probation. Mr J Hunt, Assistant Housing Options Manager (Homelessness), attended the meeting to present his case. Mr A Hall, Director of Housing, attended the meeting to advise the Panel as required on relevant legislation and national and local housing policies relative to the application.

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

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

- (a) copies of documents submitted by the applicant, namely:
 - (i) his application to the Housing Appeals and Review Panel dated 28 June 2012;
- (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) advice dated 18 April 2012 from the Council's Medical Adviser to the Council;
 - (ii) a copy of letter dated 27 April 2012 from Essex Probation to the Council's Housing Directorate;
 - (iii) a copy of e-mail dated 9 May 2012 from Harlow District Council to Epping Forest District Council;
 - (iv) a typed copy of notes of an interview of the applicant by a Housing Officer dated 16 March 2012;
 - (v) a typed copy of notes of an interview of the applicant by a Housing Officer dated 19 June 2012;
 - (vi) a copy of a letter dated 27 June 2012 from the Assistant Housing Options Manager (Homelessness) to the applicant.

Presentation of the Applicant's Case

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

- (a) errors had been made in the paperwork submitted by Harlow District Council and the Probation Service which should not have been made by professional officers;
- (b) at Chelmsford Crown Court, the applicant had pleaded not guilty to the offence of Grievous Bodily Harm; initially there had been a hung jury but subsequently he had been found guilty of the offence;
- (c) since the trial in May 2010 new facts had come to light; the matter was being reviewed by the applicant's solicitor with a view to an appeal being lodged as a result of which it was hoped the conviction would be overturned; it had been established that the injuries sustained by the applicant's victim were not conducive to the evidence given at the trial; if an appeal to the court had been heard before this Panel meeting the whole situation would be different;
- (d) the applicant had not been homeless intentionally; he had pleaded not guilty in court as he had acted in self defence;
- (e) the applicant's victim was known to the Probation Service and had a history of violent behaviour;
- (f) account should be taken of the applicant's medical condition; in addition to suffering from Hepatitis C and heart disease which had been referred to in the Council's Medical Adviser's advice, he was suffering from a liver condition, osteoarthritis in both shoulders, six worn discs and problems with his stomach; as there was no success guaranteed from an operation to his back he lived in constant pain as he had chosen not to take painkillers due to their effects;
- (g) the applicant had been unable to work since leaving prison due to his medical conditions;
- (h) the applicant had moved to Harlow in 1953; he had been married twice and had five children and 13 grandchildren and great grandchildren; the majority of his relations lived in Harlow but the licence conditions on his release from prison prevented him from living in Harlow or visiting his relations in Harlow; when the licence conditions expired the applicant did not wish to return to Harlow but needed to be as near as possible to Harlow so that he could easily visit his relations; the applicant had made friends since being accommodated in the Epping Forest District and as a result he was feeling better in himself and wished to remain in this district;
- (i) prior to the offence for which the applicant had been convicted he had been remanded for another offence which had been dropped; one of his former girlfriend's daughters had falsely accused him of an offence so that his former girlfriend, her new partner and others related to them could rob the applicant's flat whilst the applicant was held on remand; they had stolen antiques, jewellery and collectables;
- (j) the offence for which the applicant had been convicted in May 2010 had occurred after the applicant had allowed his former girlfriend's new partner into his flat; the applicant had only allowed him to enter the flat because it had been the fourth occasion he had attended the flat and it had become apparent that he would continue to do so until admitted to the flat; on being admitted to the flat the applicant's former girlfriend's new partner had pulled out a knife but had been persuaded to put it away; the applicant had left the living room to go to the toilet and

on returning the applicant's former girlfriend's new partner had left the property having taken the applicant's new mobile phone and some other items; the applicant had been unable to contact the Police because he had no phone and had decided to follow his former girlfriend's new partner out of the property collecting two bats on the way for defence; on catching up with him outside of the property the applicant had hit him on the head; the applicant had then left the scene; had he remained at the scene the Police, when they arrived, would have witnessed the knife but as he had not done so the Police had not seen the knife; when he had been held on remand for the offence the applicant's flat had again been broken into and left in an untidy state;

(k) the actions of the applicant had been taken on the spur of the moment and had not been pre-planned;

(l) the applicant had first been sent to prison before his 12th birthday and had spent a lot of his life in custody; as a result of socialising with other offenders for long periods the applicant's behaviour had been affected;

(m) since being released on licence the applicant had done everything asked of him by the Probation Service;

(n) if the applicant was not given accommodation by the Council he would be returned to prison (although this assertion was not supported in full by the Essex Probation representatives when questioned later in the Panel meeting).

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

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

(a) the applicant had been to prison on one other occasion for a violent offence when he had been 17 and he had received a six month sentence;

(b) in relation to the incident which had led to the applicant being imprisoned in 2010 he would not have thought that the incident would lead to him being imprisoned if he was acting in self defence.

Questions from Members of the Panel to the Applicant

The applicant and his supporters gave the following answers to questions from Members of the Panel:

(a) the evidence in chief at the applicant's trial in 2010 had been that the applicant's victim had received between 10 and 20 blows to the head; this was disputed although it was accepted that by hitting his victim the applicant had fractured his victim's skull and cheek bone; however, the choice facing the applicant had been to either defend himself or risk being stabbed; head injuries could occur as a result of taking action in self defence;

(b) the applicant had not been afraid when his victim had pulled out a knife whilst in the applicant's flat because his victim had put the knife away when asked to do so.

Adjournment

One of the members of the Panel asked the Chairman to consider adjourning the meeting so that the information that the applicant's solicitor intended to submit to the

Appeal Court against the Crown Court's conviction in relation to the incident which had led to the applicant being imprisoned in 2010 could be submitted to the Panel for their information.

The Panel agreed to adjourn the meeting to consider this suggestion and the parties left the meeting.

The Panel discussed the suggested deferment of consideration of the applicant's homelessness review pending the receipt of information from the applicant's solicitor on the applicant's proposed appeal against the Crown Court's conviction. In coming to its decision the Panel took account of the requirements of the Housing Act 1996, as amended, to complete a review and to notify an applicant of the decision on a review within 56 days of the original request for a review. The Panel also took account of the fact that an appeal had not yet been lodged and the outcome of any appeal could not be foreseen. The Panel concluded that the only additional evidence likely to be submitted by the applicant within the foreseeable future would be his solicitor's view as to why an appeal was likely to be successful.

The Panel decided not to defer consideration of the applicant's application because it was unlikely that the result of any appeal would be known within the foreseeable future.

The parties returned to the meeting and were informed that consideration of the applicant's application would continue.

Questions from Members of the Panel to the Applicant (continued)

The applicant and his supporters gave the following answers to further questions from members of the Panel:

(c) the policy of Harlow Council was to hold open a tenancy for 52 weeks whilst someone was on remand and for 12 weeks if someone was convicted; the applicant had terminated his tenancy with Harlow District Council after being convicted of Grievous Bodily Harm as at that time he had expected to serve another 19 months of his sentence and he thought it was the right thing to hand back the tenancy rather than build up a substantial debt in rent arrears; at that time he had paid approximately £12 which is what he thought he owed the Council in respect of an outstanding water rate but Harlow Council had informed him that he owed them considerably more and as a result he had paid them £265;

(d) the advice of the Home Office to offenders was that it was best to relinquish a tenancy rather than build up large debts; the choice was left with the offender but those who did not give up their tenancy had to face the problem of dealing with a substantial debt;

(e) the applicant had been wrongly accused of an offence in 2008 which had led to him being imprisoned before the case had been dropped; whilst in prison his solicitors had gone to his flat to obtain some evidence and they had found the flat had been robbed and vandalised; the applicant's accuser had subsequently told him that she had been persuaded to make the false allegation so that his flat could be robbed whilst he was held on remand;

(f) in relation to the incident which had led to the applicant being imprisoned in 2010 the applicant's former girlfriend's new partner had stolen a £100 mobile phone, some tobacco and a lighter from the applicant's flat whilst the applicant had been in the toilet;

(g) the applicant had been unable to telephone the Police about the theft because his mobile phone had been taken; he had been aware that the thief was in the possession of a knife and he had taken the bats for self defence; when he had caught up with the thief the applicant thought that he was going for a knife and had defended himself by hitting the thief with a bat;

(h) the only basis for determining the applicant intentionally homeless was because of the conviction for Grievous Bodily Harm; if that conviction was overturned - and the applicant's solicitor was of the opinion that there was a good chance of an appeal being successful - it would follow that the applicant had not been intentionally homeless;

(i) an appeal would probably take approximately six months from when it was submitted; it was to be submitted as soon as possible; currently the applicant's solicitor was awaiting court papers (transcripts etc) to enable an appeal to be made;

(j) Housing Benefit would be paid for up to 13 weeks after someone had been committed following which it was likely that rent arrears would arise if a tenancy was not given up; it was thought that the courts informed the Benefits Office when a person was in custody; the advice to an offender from the Probation Office Housing Liaison Officer would generally be to give up a tenancy if they were facing a sentence of over six months;

(k) the applicant had received four convictions for Actual Bodily Harm in 1964, 1966, 1970 and 1981; in total the applicant had served 17 custodial sentences which had culminated in approximately 27 years in prison; not all of the offences had been related to violent conduct;

(l) in the view of the applicant he would be returned to prison if the Panel found him intentionally homeless because the licence conditions of his release which ran until 30 June 2014 stated that he had to live in appropriate accommodation; one of the applicant's supporters from Essex Probation clarified this statement made by the applicant and stated that the only reason for the applicant returning to prison would be if there was a risk of him committing another offence but if he were held to be intentionally homeless this might increase the possibility of him reoffending; the applicant added that he had attempted to obtain private rented property but as he only received a pension he had been unsuccessful and as a result there was every possibility that if the Panel found him intentionally homeless he would have nowhere to reside;

(m) the applicant had only recently been advised by the Citizens Advice Bureau that it might be possible for the Council to assist him with a deposit for a privately rented property.

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 had been eligible for assistance because he had a British passport, homeless because he had no accommodation available to him and in priority need because of his ill health;

- (b) the applicant had been the sole secure tenant of a property rented from Harlow District Council;
- (c) on 25 May 2010 the applicant had received a five year custodial sentence at Chelmsford Crown Court for committing the offence of Grievous Bodily Harm; the applicant had used a piece of wood as a weapon against another man; the victim had been left with potentially life threatening injuries; whilst in prison the applicant had written to Harlow District Council relinquishing the tenancy of his property; the tenancy had ended on 27 June 2010;
- (d) on release from prison on 30 December 2011 under licence the applicant had been placed in an Approved Premises but had subsequently been required to move on from those premises; the applicant's licence conditions excluded him from living in the Harlow area;
- (e) with the support of Essex Probation, the applicant had made a homelessness application to Epping Forest District Council and he had been placed in bed and breakfast accommodation whilst enquiries were carried out to decide what duty was owed to him in accordance with the homelessness legislation;
- (f) the applicant had been interviewed when he had first presented himself as homeless and on a further occasion when he had been given the opportunity to comment on the information that the Council had obtained; the applicant had informed Council officers that he had given up his tenancy because he was going to be imprisoned for a long period of time and felt he had no other choice; the applicant had said that he beat a man with a baseball bat because he wished to retrieve the items stolen from his flat and he believed the man had a knife and that he was protecting himself; the applicant had also stated that he believed the man with the knife had been involved in getting him wrongly imprisoned previously and that the man had robbed his flat whilst the applicant had been in custody at that time;
- (g) Council officers had decided that the applicant had made himself intentionally homeless; the Code of Guidance on Homelessness (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;
- (h) it was considered that the applicant's offence of Grievous Bodily Harm was a deliberate act; in consequence of this the applicant had been imprisoned and had ceased to occupy the property he rented from Harlow District Council; it was believed that the Harlow District Council accommodation would have continued to be available for the applicant's occupation had he not committed the offence as he had been the sole secure tenant of the property; it was also considered that it would have been reasonable for the applicant to continue to occupy the Harlow District Council property had he not committed Grievous Bodily Harm as it was a one bedroom ground floor flat and suitable for his needs;
- (i) ceasing to occupy the Harlow District Council rented flat could reasonably be regarded at the time as the likely consequence of the deliberate act of Grievous Bodily Harm; it was considered that the act of harming another man with a piece of wood would most likely lead to imprisonment for a considerable period of time and that the property would be lost; it was clear that if the applicant had not committed the act of Grievous Bodily Harm he would not now be homeless;

(j) in the event that the officers' decision was upheld the applicant should be given a reasonable period of notice to leave the bed and breakfast accommodation currently being provided for him;

(k) in relation to the payment of Housing Benefit whilst the applicant was in prison it was correct that Housing Benefit could continue to be paid for a period of 52 weeks whilst someone was on remand and for a period of 13 weeks if someone was convicted; the applicant had been imprisoned between May 2010 and November 2011 and had he not relinquished the tenancy of the property it would have been likely that he would have lost it in any event as a result of rent arrears.

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

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

(a) the reference to life threatening injuries had been provided to the Council by the Probation Service; the decision of officers had been based on the information available to them;

(b) the applicant had been convicted of Grievous Bodily Harm and he had not been acquitted on the basis of self defence on the facts presented to the court;

(c) it was probable that if someone hits someone else with a bat on the head inflicting life threatening injuries they would expect to lose a rented property as a result of being imprisoned for a considerable time;

(d) since presenting himself to this Council the applicant had co-operated with Council officers and had paid all of the relevant charges whilst being accommodated in bed and breakfast accommodation.

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 answer to a question from a member of the Panel:

(a) it was likely that the applicant would have lost his Harlow District Council rented property had he not relinquished the tenancy because he would have accumulated substantial arrears whilst being in prison.

Further Statement made by the Appellant during the Questioning of the Assistant Housing Options Manager (Homelessness)

The applicant made a statement rather than asking a question. He stated that the reference to life threatening injuries had been made by a policeman who had no medical qualifications. He stated that the injuries suffered by his victim had not been as serious as had been made out and that his victim had been drunk at the time of the incident.

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 Chairman agreed

that a copy of the decision letter would be sent to Essex Probation. The applicant, Councillor Church, Mr Brunton, Mr Reynolds and the Assistant Housing Options Manager (Homelessness) then left the meeting.

In coming to its decision, the Panel focussed on the incident which had led to the applicant appearing at Chelmsford Crown Court on 25 May 2010, to the applicant receiving a custodial sentence for committing the offence of Grievous Bodily Harm, to the applicant's decision to relinquish the tenancy of the property rented from Harlow District Council, and the applicant's intention to lodge an appeal against the decision of the Crown Court.

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 property rented from Harlow District Council, be upheld for the following reasons:

(a) the applicant's last settled accommodation was the Harlow District Council property he held as a sole secure tenant immediately before commencing a custodial sentence in 2010;

(b) the applicant was found guilty at Chelmsford Crown Court of committing the offence of Grievous Bodily Harm and was sentenced to a five year custodial sentence;

(c) the offence occurred when the applicant's victim allegedly left the applicant's flat having taken without permission the applicant's mobile phone, some tobacco and a lighter; the applicant being aware that his victim was in possession of a knife decided to follow his victim out of the flat armed with a baseball bat and a rounders bat in an attempt to regain his possessions; on catching and confronting his victim the applicant hit his victim with a bat fracturing his victim's skull and cheekbone;

(d) account has been taken of the representations made by and on behalf of the applicant that the Crown Court conviction is being studied by the applicant's solicitor who may submit an appeal with fresh evidence about the incident as a result of which it is hoped that the conviction will be overturned; however, on balance the Panel has given greater weight to the conviction as an appeal has yet to be lodged or heard and the outcome of any appeal cannot be foreseen;

(e) account has also been taken of the representations made by and on behalf of the applicant that he hit his victim in self-defence; however, no evidence was submitted in support of those representations and in the view of the Panel had there been evidence to support that contention the applicant would not have been convicted in the Crown Court; the Panel noted that the applicant took a conscious decision to arm himself with two bats and to follow his victim out of the flat with the intention of regaining his possessions;

(f) having regard to the circumstances and the applicant's history of violent conduct, it is the opinion of the Panel that the applicant would have been

aware that by hitting his victim on the head with a bat with some force he might be sent to prison for a considerable period of time;

(g) had it not been for the deliberate act of hitting his victim on the head with a bat as a result of which he received a custodial sentence and found it necessary to relinquish the tenancy of the property rented from Harlow District Council, it is the Panel's view that the property would have continued to be available and reasonable for the applicant to occupy:

(h) it is also the Panel's view that (i) having regard to the length of sentence given to the applicant; (ii) the advice of the Home Office that in such circumstances it is better to relinquish a tenancy rather than build-up substantial debt for non-payment of rent whilst in prison: and (iii) the possibility that the rent arrears which would have accrued whilst the applicant was in prison could in any event have resulted in Harlow Council seeking possession of the property for rent arrears, the applicant had little option but to relinquish his tenancy;

(i) whilst evidence and representations were made about the applicant's medical condition, this did not influence the decision of the Panel in relation to the matter before it, namely, whether the applicant was homeless intentionally; that evidence was relevant and had been taken into account in the determination previously made by officers that the applicant was eligible for assistance because he was in priority need because of ill-health;

(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; and

(3) That provided the applicant complies with the terms of his occupation of the bed and breakfast accommodation provided for him, the Council continues to provide him 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.

11. 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 15/2011, 14/2011, 13/2011, 8/2011 and 3/2011 be deleted from the schedule.

CHAIRMAN