

65. APPEAL NO: 01/2006

The Panel was advised that this was an appeal against a decision of the Housing Assets Manager acting under delegated authority refusing to meet the cost of disabled adaptations over £30,000. The appellant attended the meeting to present her case. Mr P Pledger (Assistant Head of Housing Services) attended the meeting to present the Council's case accompanied by Mr H Thorpe (Housing Assets Manager).

The appellant advised that she had expected Ms B Wingrove, Occupational Therapist, to be present at the meeting in order to assist with the presentation of her case. The Chairman adjourned the meeting to enable the Democratic Services Manager to attempt to contact Ms Wingrove by telephone.

The meeting reconvened and the Democratic Services Manager reported that he had been advised by Ms Wingrove's office that she was on annual leave and not expected to be present at this meeting.

The Chairman sought the views of both parties on whether the appeal should proceed in the absence of Ms Wingrove. The appellant stated that she would prefer to have Ms Wingrove present. Mr Pledger advised that he felt the appellant would be disadvantaged if the matter proceeded in the absence of Ms Wingrove.

The Chairman asked the parties to leave the meeting whilst the Panel considered this issue in private session. The Panel agreed to defer consideration of this appeal but expressed disappointment at the lack of liaison between the appellant and the Occupational Therapist which had resulted in members and officers of the Council attending an abortive meeting. The parties were recalled to the meeting and advised of the Panel's decision.

RESOLVED:

- (1) That consideration of Appeal No: 01/2006 be deferred;
- (2) That the appeal be considered at 5.30 p.m. at the meeting of the Panel scheduled to take place on 16 February 2006; and
- (3) That the appeal be determined on 16 February 2006, whether or not Ms Wingrove is in attendance.

(The Panel considered the following items in public session).

66. HOUSING APPEALS PANEL - TITLE AND PROCEDURE

Members were informed that Counsel's advice in relation to an appeal against a decision of the Panel concerning a homelessness case had highlighted the need to distinguish between the different roles of the Panel.

When considering homelessness cases, the Panel was conducting a review of an officer's decision under Section 202 of the Housing Act 1996, as amended. Counsel had advised that the use of the word "appeal" in such cases, which had been the practice at this Council, was unfortunate. He had emphasised that the Section 202 review was part of an administrative process and that a case had to be considered

fresh with an open mind and on the basis of all the evidence. He had further advised that it was not the Panel's function to reach a narrow decision as to whether or not the officer's original decision was correct as a matter of law. Rather, the Panel had to decide the broad question of whether or not the decision was correct starting from scratch.

Members were advised that Counsel and Council officers were confident that the Panel had been considering these cases correctly but that the frequent use of the words "appeal" and "appellant" in the agenda/reports, minutes and procedure could lead to confusion if, and when, a matter was heard in the County Court. Accordingly, it was proposed that the title of the Panel be altered and that references in the agenda/reports, minutes and procedure to "appeal" and "appellant" in homelessness cases should be replaced with "review" and "applicant".

The Panel was also advised that the standard agenda would make it clear that the Panel must review the whole case. Furthermore, the Democratic Services Manager would invite applicants to request any additional documents held on file, not included in the agenda, to be included.

Members noted that in relation to other matters coming before the Panel, e.g. vehicular crossovers over Council-owned land, the Panel would continue to be considering an appeal.

RESOLVED:

That the Constitutional Affairs Overview and Scrutiny Standing Panel be asked to recommend the following changes to the Council:

- (a) the Panel to be renamed "Housing Appeals and Review Panel"; and
- (b) references in the Panel's Terms of Reference to "appeal" and "appellant" in homelessness cases being replaced with the words "review", "application" and "applicant", as appropriate.

67. DETERMINATION OF MATTERS BEFORE THE PANEL

The Head of Housing Services reported that the application form completed by persons wishing to have a matter considered by the Panel included a section asking the person to indicate if they wanted to appear before the Panel or wanted the matter decided by "written submissions" only. He advised that the matter was then determined in accordance with the person's wishes.

The Panel noted that in most other formal proceedings offering determination by written representations, the determining body or person decided whether such a process was appropriate, based on how straightforward the issues were and after taking account of the views of both parties.

The Panel were advised that if a matter was to be determined by written representations, a decision should be taken only on those representations before it. The Panel's practice of referring to the appropriate housing file to clarify issues, if necessary, did not comply, therefore, with the strict interpretation of written submissions. Members were informed that if they wished to continue the written representation procedure they would need to stop referring to the appropriate file as this could be open to challenge. The current procedure of not asking questions of the Head of Housing Services would also have to continue.

The Panel considered whether the written representation procedure was appropriate for matters coming before it, having regard to the need not to refer to other sources. Members concluded that the majority of cases coming before it were complex and were not suited to the written representation procedure. They also felt that not only did the case officer not have an opportunity to seek a full hearing, but also the written representation procedure was often not in the interests of persons applying to the Panel. Although, it might appear to a person to be a less stressful method of determination it was apparent that the best interests of a person was served if they were present in order to answer questions and clarify issues.

RESOLVED:

That the Constitutional Affairs Overview and Scrutiny Standing Panel be requested to review the ways in which matters are determined by the Housing Appeals Panel and be advised that this Panel supports the making of the following changes:

- (a) discontinuance of the written representation procedure;
- (b) persons being strongly encouraged to appear before the Panel in order to ensure that all the relevant facts are made known; and
- (c) the attendance of the appropriate officer(s) at all meetings to present their case, whether or not the person applying to the Panel is in attendance, so that the Panel is able to examine matters in detail by asking questions and seeking clarification of the issues.

CHAIRMAN