

Report to the Overview and Scrutiny

Date of Meeting: 29th March 2010

Portfolio: Housing

Report: Constitution and Members' Services SSP

Subject: Review of the Scope of the Housing Appeals and Review Panel

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Recommendations:

- (1) That the following recommendations be made to the Council, after consideration by the Overview and Scrutiny Committee;**
- (2) That, with effect from the 2010/11 Municipal Year, the Terms of Reference for the Housing Appeals and Review Panel be amended as set out in Appendix 1 to only allow appeals and reviews in relation to the following issues:**
 - (a) all homelessness reviews, with the exception of the following types of reviews that are already only undertaken by officers;**
 - (i) whether or not single applicants are “homeless” or have a “priority need”;**
 - (ii) whether or not an allocation of either temporary or permanent accommodation is suitable for the applicant and his/her family; and**
 - (iii) whether or not a homeless applicant should be referred to another local authority, due to their local connection with that local authority;**
 - (b) housing succession cases, where the successor is under-occupying Council accommodation, and has been required to transfer to smaller accommodation;**
 - (c) exclusion of housing applicants from the Housing Register;**
 - (d) non-provision of discretionary home improvement grants;**
 - (e) refusal of requests for disabled adaptations to Council properties requested by the tenant;**
 - (f) refusal to sell Council owned-land under 50 square metres to occupiers for garden use;**
 - (g) refusal of requests from housing applicants for “priority moves” (i.e. those very urgent and rare cases, dealt with outside of the usual Allocations Scheme);**
 - (h) disagreements with tenants and former tenants on the level or liability for current or former rent arrears; and**
 - (i) The banding of an applicant, in accordance with the Housing Allocations Scheme in being at the time of the decision.**

(3) That the Terms of Reference of the Panel be amended to:

(a) require appeals to be determined (other than reviews of homelessness decisions); and

(b) authorise the Panel to decide whether or not the hearing shall proceed in the absence of the applicant, or shall be adjourned to another date;

in cases where the appellant or their representative fails to attend a hearing without prior notification to the Council.

(4) That all other appeals and reviews are determined by the relevant Assistant Director of Housing (or, in the case of some homelessness reviews listed at (2)(a)(i)-(iii), the Housing Options Manager), provided that the reviewing officer has had no material previous involvement with the case;

(5) That appeals and reviews eligible for determination by the Housing Appeals and Review Panel continue to be generally considered first by the relevant Assistant Director of Housing except (in accordance with current policy) all homelessness reviews that do not involve the types of homelessness reviews listed at (2)(a)(i)-(iii), with such cases being considered only by the Housing Appeals and Review Panel; and

(6) That revised Terms of Reference for the Housing Appeals and Review Panel, incorporating the changes in (2) above, be submitted to the Council for approval and that appropriate changes be made to the Council's Constitution and Scheme of Officer Delegation accordingly.

Introduction

1. Following the formal business of a meeting of the Housing Appeals and Review Panel (HARP) on 20 August 2009, members of the Panel had an informal discussion with the Director of Housing and the Assistant Director (Democratic Services) about whether the scope of the housing appeals and reviews undertaken by the Panel, in accordance with its Terms of Reference, were too wide. Concern was expressed about the cost and the member and officer time involved with housing appeals (both before and at meetings) about some relatively minor matters.

2. The point was made that no other Directorate has any appeals of officer decisions held in the same way as officers of the Housing Directorate. It was therefore agreed that the Director of Housing would produce a report on this issue.

3. The members and substitute members of the HARP, and the Tenants and Leaseholders Federation, were consulted on a draft version of this report; their views are set out later in the report and at Appendix 5, and a number of changes have been made to the final version of this report and recommendations as a result.

History of the Housing Appeals and Review Panel (HARP)

4. The HARP was established in 1991, following the demise of the former Housing Management Sub-Committee. The Sub-Committee was a member-level meeting that dealt with routine issues relating to housing management, including reviews of certain housing cases.

5. When a decision was made to disband the Sub-Committee, both officers and members were anxious to replace it with a body that not only allowed reviews being made of key decisions affecting housing clients, but also allowed clients to attend the meeting, explain their case to members, question officers and answer questions. This resulted in a quasi-judicial Housing Appeals Panel being established. At the time, such an approach was considered innovative, which continues to be the case. No similar arrangements by other councils are

known to officers.

6. Following one of the Council's homelessness cases being heard in the County Court on a point of law, and adverse comments being made by the Judge that the Council should **review** homelessness cases and not hear **appeals**, the name of the Panel was changed to the Housing Appeals and Review Panel during the mid-2000s.

7. Between 1991 and 31st December 2009:

- The HARP considered 249 cases, an average of around 13 each year;
- The lowest and highest number of cases were in 1994/5/6 (4 cases) and 2004/5 (27 cases) respectively; and
- Around 30% of all appeals/reviews were allowed; around 70% of all appeals/reviews were dismissed.

8. The HARP's Terms of Reference are set out at Appendix 1.

9. Appendix 2 provides a breakdown of:

- The number of appeals/reviews received each year; and
- The number of appeals/reviews allowed and dismissed by category.

Policy on Housing Appeals and Reviews

10. Generally, the policy since 1991 has been that **any** client of the Housing Directorate (and previously Housing Services) can appeal against (or request a review of) **any** decision made by an officer from the Housing Directorate on **any** housing matter.

11. Moreover, with the exception of those cases listed below, such clients first have the right of appeal to, or review by, an Assistant Director of Housing. If the decision of the Assistant Director is adverse, clients then have a further right of appeal/review to the HARP.

12. The only exceptions are as follows:

(a) To ensure that statutory timescales for homelessness reviews are met, except for those cases listed at (b) below, reviews of homelessness decisions are **not** first considered by an Assistant Director;

(b) Because of the potential number of cases, and the need to undertake some reviews very quickly, the following statutory homelessness reviews are only undertaken by an Assistant Director, and not by the HARP:

- Whether or not single applicants are "homeless" or have a "priority need";
- Whether or not an allocation of either temporary or permanent accommodation is suitable for the applicant and his/her family; and
- Whether or not a homeless applicant should be referred to another local authority, due to their local connection with that local authority

13. Homeless applicants also have a further right of appeal to the County Court on a point of law.

14. If the applicant/appellant feels that the Council has mal-administered, they also have the right to refer their case to the Local Government Ombudsman.

15. It should be noted that the appeals and review process is different from the complaints process. In simple terms, the difference is that:

(a) Appeals/reviews relate to a person being unhappy about a housing decision that has been made, that can be changed. If they appeal, the HARP reconsiders the decision, to see whether it should be changed;

(b) Complaints generally relate to a person being unhappy about the way that the Council has provided a service, or if the Council has failed to take action which it has been asked to do when it is has responsibility.

Types of Cases Heard by the HARP

16. Appendix 2 sets out the general categories of appeal/review, and the outcome by category. Appendix 3 lists more details about the appeals/reviews considered by the HARP over the past 2 years.

The Case for Restricting the Types of Appeal Considered by the HARP

17. Senior housing officers continue to be passionate and supportive about the merits of the HARP and the ability of clients to have their case heard in person by a panel of councillors and to ask questions of the case officer. They strongly support the principle that, other than for those types of homelessness cases listed in Recommendation (1)(a)(i)-(iii) above, all homelessness reviews should be considered by the HARP and not senior officers (the latter of which is the case in most local authorities), since it provides greater independence and transparency to the review process.

18. Officers also feel that all housing clients should have the right of appeal to an Assistant Director, to reconsider decisions made by their managers or their staff.

19. However, it is also felt that there have been a number of cases over the years that have either been too minor to warrant lengthy consideration by a panel of five members, or where the Panel has had little discretion, since the policy is quite clear. An example of the former would be the case of a tenant who felt that she should not pay £83.72 rent arrears. An example of the latter would be an applicant who is unhappy about their housing banding under the Housing Allocations Scheme, which is quite clear and does not allow any discretion on the banding.

20. It should be noted that each meeting of the HARP involves the following time and resources:

- The Director of Housing acknowledges and logs each HARP application, and undertakes the initial processing and referral to the Assistant Director (Democratic Services).
- The Assistant Director (Democratic Services) liaises with the applicant, and sometimes members, to arrange the meeting
- The case officer researches and writes a carefully-considered report, and identifies required appendices – This can take between a half and one full day.
- Members of the Panel, and the Director of Housing, have to thoroughly read and understand the reports and appendices, which can take up to 2 hours.
- Sometimes, members undertake site visits
- Panel meetings are attended by the following, and last an average of 1.5 hours for each appeal (usually 3 hours for each session in total):

- Up to 5 councillors;
- At least 3 officers, more if there are additional witnesses
- The Assistant Director (Democratic Services) has to draft the detailed minutes of the HARP meeting, and the HARP's decision letter
- The Chairman of the HARP and the Director of Housing have to check the draft minutes and provide any comments or amendments.

21. Therefore, **each** appeal can involve around 40 "man-hours", at a time when one of the Council's key drivers is efficiency and value for money.

22. It should also be noted that only officers of the Housing Directorate have their decisions reviewed in such detail by a panel of members (with the exception of Complaints and Staff Appeals Panels, both of which are relatively rare, and only amount to around one, possibly two, meetings each year). It could be argued that the concept of the HARP should be extended to decisions made by staff in **all** directorates, and heard by a Council Appeals Panel. However, the staff and member resources required would make such a proposition unviable.

Suggested Approach for the Future

23. In view of the above, it is suggested that, in future, the HARP should only consider housing appeals and homelessness reviews for specific types of cases, that it is felt merit the officer and member resources involved (based on the experience of past cases), and where the outcome of a decision has a significant effect on the applicant/appellant.

24. It is therefore suggested that only cases related to those types listed in the Recommendations of this report should be considered by the HARP from the 2010/11 Municipal Year.

25. It should be noted that the first draft of this report did not include those cases listed at Recommendations 2(g) and 1(h) of this final version. However, following consultation with HARP members and substitute members on the draft report, these types of cases have now been added to the recommended list.

26. It should also be noted that, since the list within the recommendations is a definitive list of cases, the following types of cases (that have occurred over the recent years) would no longer be heard by the HARP (Note – this is not a definitive list):

- Allocation of Council garages;
- Applications for vehicular crossovers;
- Housing repairs and maintenance issues;
- Write-off of former rent arrears;
- General housing management issues; and
- Covenants and leases of former Council or leasehold properties

27. Based on the 231 cases heard by the HARP since its inception, and the 29 cases heard by the HARP in the past 2 years, the approach suggested above should reduce the workload of officers and members by an estimated 35%, resulting in the average number of cases heard by the HARP each year being reduced from around 13 cases to around 8-9 cases, with an associated estimated reduction of 180 "man hours".

28. It is also suggested, however, that **all** other appeals and reviews are considered by the relevant Assistant Director of Housing, provided that the officer has had no material previous involvement with the case. A minor exception to this proposal is to continue with the current policy of allowing the Housing Options Manager to consider some of the homelessness reviews listed at Recommendation (2) (a) (i) - (iii). This is simply to share the workload of these reviews, which can be time consuming. It should be noted that allowing housing clients to appeal to an Assistant Director of Housing on any housing issue, will continue to provide housing clients with an important right, that is not provided by any other directorate within the Council, or known to be provided by any other Council.

Views of the Housing Appeals and Review Panel

29. Since the suggestion for this report originated from the members of the HARP, both the main and substitute members of the HARP were consulted on a draft version of this report. A copy of the questionnaire is attached as Appendix 4. Ten members were consulted in total, and 5 responses (50%) were received. Of the 5 members that responded:

- 2 members (40%) **fully supported** the proposals within the draft report;
- 3 members (60%) **generally supported** the proposals **except for** reasons given on their response form; and
- No members **did not support** the proposals

30. All members' individual comments are set out in the table at Appendix 5 (with the comments anonymised). The table also provides the comments of the Director of Housing in response. As can be seen, nearly all of the comments have been accepted and have resulted in changes to this final version of the report and recommendations. It is felt that, having made these changes, it is reasonable to assume that all members of the HARP that responded to the consultation would be supportive of the revised proposals.

Views of the Tenants and Leaseholders Federation

31. Since the constitution and approach of the HARP has an effect on tenants and leaseholders, the Epping Forest Tenants and Leaseholders Federation was also consulted on the draft report at its meeting held on 3rd February 2010. The Federation represents all of the recognised tenants associations within the Epping Forest District, as well as the Leaseholders Association, the Sheltered Housing Forum and the Rural Tenants Forum.

32. The Federation supported the proposals within this report, with one exception. The first draft of this report recommended that, to avoid duplication by officers and members, appeals that continue to be eligible for consideration by the Housing Appeals and Review Panel should no longer be considered in the first instance by the Assistant Director of Housing. However, the Federation felt that the continuation of the current approach, whereby all appeals are considered in the first instance by the relevant Director of Housing (except homelessness reviews), would have the benefit of filtering, and therefore reducing, the number of cases considered by the HARP, which is one of the objectives of this exercise. On reflection, officers agree with this point of view, and the final version of this report and recommendations have been amended accordingly.

Views of the Housing Scrutiny Panel

33. The Chairman of the HARP suggested that the members of the Housing Scrutiny Panel may also welcome the opportunity to be consulted on the proposals. At its meeting held on 21st January 2010, the Housing Scrutiny Panel agreed that it would like to be consulted.

34. Therefore, arrangements were made for this final version of the report to be considered by the Housing Scrutiny Panel at its meeting held on 25th March 2010. The views of the Housing Scrutiny Panel were that the Panel:

- (a) Supported the proposals; and
- (b) Asked for further detailed information to be provided to the Constitution and Member Services Scrutiny Panel on the five appeals relating to vehicular crossovers, and the three appeals relating to allocation bandings held in the previous two years..

Views of the Constitution and Member Services Scrutiny Panel

35. The Scrutiny Panel gave detailed consideration to the report of the Director of Housing. After discussion, the Scrutiny Panel agreed to add Recommendation 2(i) and Recommendation (3) to the recommendations to be submitted to the Overview and Scrutiny Committee.

Adoption of the Proposals

36. The Overview and Scrutiny Committee is asked to make its recommendations to the Council Meeting on the 20 April 2010. The Chairman of the Overview and Scrutiny Committee will report to the Council orally any changes that the Committee agrees to the recommendations of the Scrutiny Panel.

37. We recommend at the commencement of this report.