

Report to the Constitutional Affairs Standing Scrutiny Panel



**Epping Forest
District Council**

Date of meeting: 20 February 2006

Portfolio: Housing

Subject: Housing Appeals Panel - Title, Terms of Reference and Procedure

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Recommendations:

That a report be submitted to the Council recommending:

- (a) that the Panel be renamed "Housing Appeals and Review Panel";**
- (b) that references in the Panel's terms of reference to 'appeal' and 'appellant' in homelessness cases be replaced with the words 'application', 'review' and 'applicant', as appropriate;**
- (c) that the written representations procedure be discontinued;**
- (d) that persons be strongly advised to appear before the Panel in order to ensure that all the relevant facts are made known;**
- (e) that the appropriate officers be required to attend 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; and**
- (f) that appropriate changes be made to the Panel's Terms of Reference in the Constitution.**

Introduction

1. The Housing Appeals Panel is responsible for hearing appeals against the decisions of the Head of Housing Services acting under delegated authority, on housing matters. Appeals can be made by tenants, housing applicants, homeless applicants, owners of former Council properties or renovation grant applicants.
2. The Panel was established in 1991 and normally meets on a monthly basis considering one or two appeals at each meeting. Appellants either appear in person to present their case or opt for the matter to be determined by way of written representations.
3. Decisions of the Panel in relation to homelessness cases are subject to an appeal to the County Court. There is no appeal against other decisions of the Panel, although an application could be made for Judicial Review.

4. Counsel's advice in relation to a recent appeal against a decision of the Panel concerning a homelessness case has highlighted the need to distinguish between the different roles of the Panel.

Homelessness Cases

5. When considering homelessness cases, the Panel is conducting a review of an officer's decision under Section 202 of the Housing Act 1996, as amended. Counsel has advised that the use of the word 'appeal' in such cases, which has been the practice at this Council, is unfortunate. He has emphasised that the Section 202 review is part of an administration process and a case must be considered afresh with an open mind and on the basis of all the evidence. He has further advised that it is 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 must decide the broad question of whether or not the decision was correct starting from scratch.
6. Counsel and officers are confident that the Panel has been considering homelessness cases correctly but 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 is heard in the County Court.
7. The Housing Appeals Panel has considered Counsel's advice and is proposing that the Panel be re-named "Housing Appeals and Review Panel". The Panel is also proposing that references in its terms of reference to 'appeal' and 'appellant' in homelessness cases should be replaced with the words 'application', 'review' and 'applicant', as appropriate.
8. The standard agenda will in future make it clear that the Panel must review the whole case. Also, to ensure that all the relevant documents are taken into consideration, applicants will be invited to request any additional documents held on file, not included in the agenda, to be circulated to members of the Panel.

Other Matters Coming before the Panel

9. In relation to other matters, the Panel will continue to be considering an appeal against an officer's decision.

Procedure

10. The application form completed by persons wishing to have a matter considered by the Panel includes a section asking the person to indicate if they want to appear before the Panel or want the matter decided by written submissions only. The matter is then determined in accordance with the person's wishes.
11. In most other formal proceedings offering determination by written representations, the determining body or person decides whether this process is appropriate based on how straightforward the issues are, and after taking account of the views of both parties.
12. If a matter is to be determined by written representations, a decision should be taken only on the representations which have been made. However, it has been the

practice of the Housing Appeals Panel to refer to the appropriate housing file in order to clarify an issue, if necessary. This practice does not comply, therefore, with the strict interpretation of written representations. If the Panel is to continue with the written representations procedure it will need to stop referring to the housing 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.

13. The Panel has reviewed its procedures and considered whether written representations are appropriate for matters coming before it. The Panel has concluded that the majority of cases which it considers are complex and are not suited to the written representations procedure. Currently, the case officer does not have an opportunity to seek a full hearing. Also, members of the Panel consider that the written representations procedure is 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 is apparent that the best interests of the person are served if they are present in order to answer questions and clarify issues.
14. The Panel is proposing, therefore, that the written representation procedures should be discontinued and that persons should be strongly encouraged to appear before the Panel. It is further proposing that the appropriate officers should be present at all meetings, whether or not the person applying to the Panel is in attendance, so that matters can be examined in detail by asking questions and seeking clarification of the issues.