

# **Report to the Overview and Scrutiny Committee**

**Date of meeting: 6 March 2012**

## **Report of: Constitution & Member Services Standing Scrutiny Panel**



**Chairman:** Councillor D. Stallan

**Subject:** Housing Appeals and Review Panel – Terms of Reference

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### **Recommendations:**

(1) That a report be submitted to the Council recommending that the existing order of proceedings at meetings of the Housings Appeals & Review Panel be retained but a new paragraph (to be numbered (7)) be added to the Panel's terms of reference as follows:

“(7) If requested by the appellant/applicant or their representative, the Chairman may agree to (6)(b)-(d) above taking place after (e)-(g) and to (h) and (i) being reversed”.

and the Constitution amended accordingly;

(2) That the arrangements set out in recommendation (1) above be reviewed after six months; and

(3) That paragraph 1(i) (relating to the banding of an applicant, in accordance with the Housing Allocations Scheme in being at the time of the decision) be removed from the terms of reference of the Housing Appeals and Review Panel and the Constitution amended accordingly.

### **Report:**

1. We were asked by the Housing Appeals & Review Panel to review two aspects of its terms of reference: the order of presentations at Panel meetings and the exclusion of appeals against banding decisions under the Housing Allocations Scheme. We discuss these two issues in turn below.

#### **(a) Order of Presentation of Cases to the Panel**

2. The current order of business for consideration of cases by the Housing Appeals and Review Panel provides for the applicant/appellant to present their case and answer questions first, followed by the appropriate Housing Officer presenting his/her case and answering questions. Whilst this follows the order of most appeal proceedings it is considered that it does not lend itself particularly well to meetings of the Housing Appeals and Review Panel.

3. An applicant/appellant normally attends meetings to present their case without being represented by a professional advocate. Despite being advised in advance of the meeting of the procedure to be adopted and the Chairman of the Panel, as part of his opening remarks, attempting to put an applicant/appellant at ease they appear frequently to be overwhelmed facing a Panel of normally five members in a fairly formal setting.

4. As a result, since an applicant/appellant has to present their case first, the Panel feels that many struggle to follow the procedure and present a reasonable case. The Panel has told us that often it is not until replies are given to questions from the Housing Officer and members of the Panel that the full extent of the applicant's/appellant's case becomes apparent.

5. The Panel therefore asked us to consider changing its terms of reference so as to change the order of proceedings, with the Housing Officer presenting his/her case first. The Panel felt that this would have the following benefits:

(a) the Panel will have the benefit of receiving the full facts of the case at the outset as these are set out in the officer's report; this will enable members to understand better the submissions made subsequently by the applicant/appellant;

(b) the applicant/appellant would have time to settle in the meeting before being expected to address the Panel; will have a better appreciation of the proceedings having witnessed the way in which the officer presents his/her case and answers questions on it; and, should be better prepared when it comes to their turn to present their case.

6. The Director of Corporate Support Services has been consulted on a change of order of business and has no objection. The only observation she makes is that some professional representatives (e.g. solicitors and barristers), who will be used to an appellant presenting their case first in an appeal environment, may object if this order is not followed. Accordingly, she suggested that if a change is made, if requested by the applicant/appellant or their representative, the Chairman can agree to the applicant/appellant continuing to present their case first.

7. In any event, the terms of reference of the Panel still give it discretion to reverse the order in which the case of the officer and the applicant/appellant are presented, provided that both parties agree.

### **Views of the Members and Substitutes of the Housing Appeals and Review Panel**

8. The Housing Appeals and Review Panel considered changing the order of its business at its meeting on 8 September 2011 and took account of views expressed previously by members and substitutes who were not present at the meeting.

9. There was not a consensus of view although the majority view expressed was in support of the proposed change and the proposal was referred to this Panel for consideration.

10. Members supporting the proposals accepted the benefits set out in paragraph 4 above. Members not in agreement with a change felt that at present in many cases when the officer puts his/her case the expression on the applicant's/appellant's face is recognition that their grounds for review/appeal are a lot weaker than they thought. They felt that for applicants/appellants to be given this realization before they have even started their case would be even more intimidating than coming in to the meeting and having their say first. Also, sometimes an applicant/appellant says something which causes a Panel member to want to question the officer about it and this opportunity could be missed under the new proposals.

11. After discussing this at our last meeting, we came to the view that there was no reason to change the current order of events because the Panel has also asked for an additional paragraph to be included which would allow an applicant/appellant to request a change in the order of presentation if they so wish. We consider that this would give sufficient flexibility to allow the Panel to change the order.

## **Constitution**

12. We recommend that the changes to the terms of reference of the Housing Appeals and Review Panel set out in recommendations (1) and (2) be approved.

### **(b) Appeals against the Banding of an Applicant**

13. Following concern about the cost and member and officer time involved with housing appeals (both before and at meetings) about some relatively minor issues, the Council in April 2010 agreed that from the commencement of the municipal year 2010/11 the terms of the Housing Appeals and Review Panel should be amended to allow appeals and reviews only in respect of specified issues.

14. One of the issues recommended by officers for removal from consideration by the Panel was appeals about the banding of an applicant in accordance with the Council's Housing Allocations Scheme. However, members did not accept that recommendation and the Panel continues to consider such appeals.

15. Since May 2010, the Panel has considered nine appeals about the banding of an applicant including seven appeals since August 2011. In all cases the Panel has upheld the officers' decisions and dismissed the appeals.

16. In such cases the role of the Panel is restricted to determining whether an appellant has been placed in the correct Band of the Allocations Scheme by officers having regard to the facts.

17. The majority of these appeals concern priority given for medical conditions and as the Scheme specifies that medical priority is determined by the Council's Medical Adviser, the Panel has little discretion.

18. Two members have recently supported appellants at meetings of the Panel in relation to appeals against their bandings and they have advised officers that they found it very difficult to formulate meaningful submissions in view of the restricted role of the Panel in relation to these appeals.

### **Views of the Members and Substitutes of the Housing Appeals and Review Panel**

19. In the light of the recent consideration of these appeals, members and substitutes of the Panel present at the meeting on 26 October 2011 discussed recommending to the Constitution and Members' Services Panel that such appeals should no longer come within the terms of reference of the Housing Appeals and Review Panel. The five members present were unanimous that banding appeals should not be dealt with by the Housing Appeals and Review Panel and that the right of appeal should end with one of the Assistant Directors of Housing. However, before referring this matter to the Constitution and Members' Services Scrutiny Panel they requested that the views of the other members and substitutes of the Housing Appeals and Review Panel should be sought.

20. Following an exchange of emails all 10 members and substitutes of the Housing Appeals and Review Panel have advised that in their view banding appeals should not be dealt with by the Housing Appeals and Review Panel and that the right of appeal should end

with one of the Assistant Directors of Housing.

20. We completely support the proposal of the Panel and recommend as set out in recommendation (3) at the commencement of this report.