

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

**Date of meeting: 9 April 2013**



**Report of:** Constitution and Member Services Standing Scrutiny Panel

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

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## **Recommendations:**

### **Exclusion of Housing Applicants from the Housing Register**

**(1) That, subject to the Cabinet (i) adopting a revised Housing Allocations Scheme, and (ii) agreeing that the right of appeal to the Housing Appeals and Review Panel by housing applicants is excluded from the Housing Register be revoked, a report be submitted to the Council recommending:**

**(a) the removal of the following from the terms of reference of the Housing Appeals and Review Panel:**

**“(1)(c) – exclusion of housing applicants from the Housing Register”;** and

**(b) the consequential amendment of the Constitution;**

### **Order of Presentation of Cases**

**(2) That a report be submitted to the Council recommending:**

**(a) that the normal order of presentation of cases at meetings of the Housing Appeals and Review Panel be changed to provide for the case officer presenting their case before the applicant/appellant; and**

**(b) that paragraphs (6) and (7) of the Terms of Reference of the Panel be amended as follows:**

**“(6) In relation to appeals or reviews at which the applicant's case is presented in person or by a representative, the hearing shall be conducted in the following order:**

- (a) Chairman's introductory remarks;**
- (b) Presentation of the Officer's case;**
- (c) Questioning by the applicant (or representative);**
- (d) Questioning by members of the Panel;**

- (e) Presentation of the applicant's case;**
- (f) Questioning by the Officer;**
- (g) Questioning by members of the Panel;**
- (h) Summing up by the applicant;**
- (i) Summing up by the Officer;**
- (j) Panel considers its findings in the absence of the applicant and the Officer;**
- (k) The decision of the Panel will be conveyed to the applicant and Officer in writing.**
- (l) The Panel shall have discretion to reverse the order in which the cases of the applicant and the Council are presented, provided that both parties agree.**

**(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”.**

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## **(a) Exclusion of Housing Applicants from the Housing Register**

### **Introduction**

1. On 20 April 2010 the Council, amended the Terms of Reference of the Housing Appeals and Review Panel (HARP). Prior to this date, any client of the Housing Directorate could appeal against (or request a review of) any decision made by an officer from the Housing Directorate on any housing matter.

2. Under the amended Terms of Reference, housing clients could only appeal on specific issues from the 2010/2011 municipal year. One of the issues that continues to be considered by the HARP is an appeal by a housing applicant against exclusion from the Housing Register.

### **New Council Housing Allocations Policy**

3. The Council is currently reviewing its Housing Allocations Scheme and consulting on a new Scheme. Under the new Government guidance “The Allocation of Accommodation: Guidance for Local Housing Authorities in England” (DCLG June 2012) authorities are given powers to decide locally how accommodation should be allocated based upon local priorities. Authorities are therefore empowered to allocate their accommodation in any way they see fit, provided schemes are both legal and rational.

4. The new draft Scheme was considered by the Housing Scrutiny Panel at its meeting on 17 December 2012. Under Section 14 of the proposed new Scheme, if an applicant does not meet the following Local Eligibility Criteria they will not qualify to either remain on or join the Housing Register:

### **(i) Residency**

An applicant who has lived in the Epping Forest District for less than three continuous years immediately prior to their date of registration. It should be noted that applicants who were registered on the Housing Register on the day before the new Scheme comes into force, and who had lived in the District for at least 2 years and 6 months continuously immediately before this date will be allowed to remain on the Register.

### **(ii) Exceptions to the Residency Criteria – Armed Forces Regulations**

Any member or former member of the Armed Forces applying within five years of discharge, or a bereaved spouse or civil partner of a member of the Armed Forces leaving services' family accommodation following the death their spouse or civil partner.

Any spouse or child (including step-children) of existing or former Armed Forces Personnel; if one of their "qualifying" family members has lived in the District for more than three continuous years immediately prior to their date of registration.

Any serving or former member of the Reserve Forces who needs to move because of serious injury, medical condition or disability sustained as a result of their service where the application is made within 5 years of discharge.

### **(iii) Other Criteria**

An application must have a housing need as defined by at least one Banding criterion, must not have sufficient funds to enable them to meet their own housing costs under the limits set out under the Scheme, (amounts received as compensation for injury etc by members of the Armed Forces is discounted) and must not have been guilty of serious unacceptable behaviour as set out in the Scheme within the last three years.

## **Adoption of New Scheme**

5. The draft Housing Allocations Scheme will be considered by the Cabinet at its meeting on 15 April 2013. There are currently around 6,840 homeseekers on the Council's Housing Register. If the draft scheme is agreed by the Cabinet, it is estimated that around 3,000 homeseekers will no longer qualify for inclusion and therefore be removed from the Register.

6. In law, every applicant has the statutory right to request a review of certain decisions on allocations and to be informed of the decision on review and the grounds for it. This includes exclusions from the Housing Register.

7. If the Local Eligibility criterion is agreed by the Cabinet, it is expected that a high number of the estimated 3,000 homeseekers who will not qualify to remain on the register, and non-qualifying new applicants in the future are likely to request their statutory right to review. It is anticipated that, unless the Terms of Reference of HARP are changed, the HARP and officers will be unable to cope with the numbers of appeals which, apart from anything else, will be unfair on appellants. It is also felt that the proposed new Eligibility and Other criteria are very clear, with little or no officer judgement required and it is likely that the HARP will have little or no scope to change officer decisions.

## **Next Steps**

8. The Housing Scrutiny Panel is therefore recommending to the Cabinet on 15 April 2013 that the right of appeal to the Housing Appeals and Reviews Panel should be revoked in respect of applicants who have been excluded from the Housing Register with all statutory reviews being dealt with by senior officers who have not been involved with the original decision (in the same way other reviews are dealt with). This is planned to take effect from the Council meeting on 23 April 2013.

9. At a meeting on 13 February 2013 the Tenants and Leaseholders Federation supported the proposal.

10. If the Cabinet agree the recommendations of the Housing Scrutiny Panel, it will be necessary to revise the terms of reference of the HARP as set out at the commencement of this report.

### **(b) Order of Presentation of Cases**

#### **Background**

11. At the request of HARP last year we considered altering the order of presentation of cases at HARP meetings.

12. At that time we were advised that a change in the order of presentation, with the Housing Officer presenting his/her case first, would have the following benefits:

- (i) the HARP would have the benefit of receiving the full facts of the case at the outset as these would be set out in the officer's report, and this would enable members to understand better the submissions made subsequently by the applicant/appellant; and
- (ii) the applicant/appellant would have time to settle in the meeting before being expected to address the Panel, and would have a better appreciation of the proceedings having witnessed the way in which the officer presents his/her case and answers questions on it.

13. We were advised that there was not a consensus of view of members of HARP but that the majority view expressed was in support of the proposed change.

14. Members of HARP supporting the proposals accepted the benefits set out in paragraph 12 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. Those Members 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. They also commented that 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.

15. In the event, we decided that the existing order of proceedings with the applicant/appellant presenting their case first should be retained but that provision should be made for the Chairman of the HARP to reverse the order if requested by the appellant/applicant or their representative. This decision was subsequently adopted by the Council and appropriate changes were made to the Constitution.

16. We also decided to review the matter during this year in the light of the experience of members attending meetings of the HARP since that decision.

### **Review**

17. Since the matter was considered last year, the HARP has considered seven cases. In four of those cases the applicant/appellant presented their case first. Those applicants/appellants did not actively choose to go first but did not respond to the request to express their preference in relation to the order of presentation and went first in accordance with the default position. It is likely that some of those applicants/appellants did not express a view since they were unfamiliar with the process. In the other three cases the order of presentation was reversed at the request of the applicant/appellant.

18. In reviewing the matter we have taken account of the current views of the members and substitutes on HARP and also of two ward members who attended some of the meetings to support applicants/appellants. All of those members have now expressed a preference for the normal order of proceedings to be the Housing Officer presenting his/her case first.

19. We are recommending therefore that the normal order of presentation of cases be changed and the Terms of Reference of HARP be amended accordingly. Provision will remain for the order to be reversed if requested by the parties.