



AGENDA ITEM: 12

SUMMARY

Report for:	CABINET
Date of meeting:	26 November 2013
PART:	1
If Part II, reason:	

Title of report:	HOMELESS REVIEW PROCESS
Contact:	Cllr Margaret Griffiths, Portfolio Holder for Housing Julia Hedger – Strategic Housing Group Manager Isabel Connolly – Strategy, Policy and Private Sector Housing Team Leader
Purpose of report:	To bring to Cabinet a report on the homeless review process with a recommendation for process change that will require a change to the Constitution.
Recommendations	<ol style="list-style-type: none"> 1. That Cabinet recommend to Council that the Constitution be amended to adopt a homeless review process carried out by a senior officer not involved in the original decision, and that the current member review panel process is discontinued. 2. That Cabinet recommend to Council that Authority be delegated to the Assistant Director (Chief Executive's Unit) to make the required changes to the Constitution to reflect the decision in 1 above.
Corporate objectives:	Affordable Housing
Implications:	<p><u>Customer service</u> The process change being recommended aims to improve customer service and reflects feedback received from homeless applicants who have been through the current review process.</p> <p>The current oral hearing creates an environment that is</p>

considered (judging by feedback from applicants and their representatives) to place applicants at a disadvantage due its formal, somewhat intimidating, atmosphere at a time when the applicant is in a very stressful situation. This is inconsistent with principles of good customer service and care.

The senior officer review, which in most cases where appropriate will be paper-based, will use a transparent checklist, will not place the applicant in an intimidating environment, will be consistent with the requirements of legislation, and is consistent with the Council's ethos of customer service and care.

Value for money

The process change being recommended will improve value for money.

The oral hearing has both time and cost implications for the Council. Each hearing involves five elected members, a legal representative, a senior officer, and the investigating officer. Each hearing takes about two hours and the legal costs are about £240. Dates are scheduled to take place on a Monday, and with the recent increase in review requests (in line with increases in overall homeless presentations) we have dates booked up into December.

Legal

Homeless decisions are judged on the balance of probabilities and do not have to be beyond all reasonable doubt. Investigating officers are required to demonstrate that they have given reasonable consideration to the evidence in reaching their decision.

Section 202 of the Housing Act 1996 (as amended by the Localism Act 2011) provides the applicant with a statutory right of appeal to a homeless decision. Section 203 (a) states that *"the decision on review" is "to be made by a person of appropriate seniority who was not involved in the original decision"*

The Homeless Code of Guidance for Local Authorities 2012 (which Council's must have regard to by virtue of s.182 of the 1996 Act states, at paragraph 19.8 *"the officer must not have been involved in the original decision, and he or she must be senior to the officer (or officers) who took that decision. Seniority for these purposes means seniority in rank or grade within the housing authority's organisational structure."*

The applicant is entitled to make oral submissions to the reviewing officer (s.203 (b) of the Act) if they wish, but these can be made to the reviewing officer alone. In the matter of

	<p><i>Makisi v Birmingham City Council; Yosief v Birmingham City Council; Nagi v Birmingham City Council</i> [2011] EWCA Civ 355, the appellate court decided “that the limited right of making face-to-face representations to the reviewer was intended by the legislation” but that in addition the legislation did not intend “potentially elaborate and extensive hearing”</p> <p>The senior officer review, which in most cases where appropriate will be paper-based, will use a transparent checklist.</p> <p>The oral hearing process in practice puts applicants through intensive questioning that duplicates information they have already provided. It also produces an environment which interrogates officers and applicants in front of each other and which could be seen to undermine the overall decision making process. It is not clear to the applicant what information will be used in the decision making process:</p> <ul style="list-style-type: none"> - Applicants are excluded at the point of decision making - Minutes of the process are not taken so the Council does not have a record to evidence and justify the information used at the point of decision making - If questions have been asked that are not ultimately relevant then the applicant has no knowledge that this information has not been used to bias the decision making process. <p>Having the Council’s legal representatives involved at this stage prevents them being involved in the future were the case to go to county court on a point of law and would require more senior (and therefore expensive) legal representation.</p>
Risk Implications	<p>Risks presented to the Council from this change are very low.</p> <p>The proposed senior officer review:</p> <ul style="list-style-type: none"> • Would work to a published checklist; • Is consistent with the Council’s ethos of customer service and care; • Will prevent delays from waiting for an available day to hold hearings, and therefore reduce risks of falling outside the 56 days to hold reviews and inform applicants of the outcome; and • Will prevent the applicant having to go through any unnecessary questioning that includes irrelevancies to the case, and which could therefore potentially get challenged through the judicial review process.
Equalities Implications	<p>Council policy requires that all steps are taken to ensure that all homeless applicants are given access to the information</p>

	they require and in a format that they can use. No negative equality issues have been identified resulting from the proposed change.
Health And Safety Implications	There are no Health and Safety implications from this process change.
Monitoring Officer	Deputy Monitoring Officer: The review procedure is a matter of choice for the Council. The proposed change of procedure is permitted by the legislation and appears to have been adopted by the majority of local authorities as a matter of good practice. The proposed process allows the applicant an opportunity to present their appeal in a less adversarial forum which would promote good decision making.
S.151 Officer	Deputy Section 151 Officer There are no material budgetary implications arising from the recommendation in this report.
Consultees:	Cllr Margaret Griffiths – Portfolio Holder for Housing Dacorum Borough Council Housing and Communities Overview and Scrutiny Committee Mark Gaynor – Corporate Director Housing and Regeneration Elliott Brooks – Assistant Director Housing Natasha Brathwaite – Housing Advice and Homelessness Team Leader
Background papers:	Homelessness Strategy 2013 – 2018 Housing Allocations Policy Housing Strategy 2013 – 2018
Glossary of acronyms and any other abbreviations used in this report:	

1. Background

- 1.1 A local authority has a legal duty to offer housing assistance to help people about to be made homeless. Housing assistance must support people in their efforts to find secure accommodation. The local authority must assess a person's housing needs before providing this assistance. The service must be free. Persons subject to immigration control are not eligible for housing assistance.

- 1.2 People approaching the Council to be re-housed because they are homeless or threatened with homelessness will make a homeless application to the local authority.
- 1.3 If a homeless application is taken from an applicant who is homeless or threatened with homelessness within 28 days then the Council will need to consider whether the applicant is in priority need (for example, if the household contains a pregnant woman).
- 1.4 If the applicant loses their home and he or she is believed to be eligible for assistance, homeless, and in priority need the Council must provide temporary accommodation while the homeless application is investigated.
- 1.5 The Council will only have the full duty to re-house an applicant where the result of the investigation is a positive homeless decision that the applicant:
 - is eligible;
 - is homeless;
 - is in priority need;
 - is unintentionally homeless; and
 - has a local connection.
- 1.6 If the applicant has no local connection but the investigation finds that the applicant:
 - is eligible;
 - is homeless;
 - is in priority need; and
 - is unintentionally homeless;the Council will make a positive decision, but refer the applicant to the local authority where they do have a local connection.
- 1.7 A negative decision will be made for any application where:
 - the applicant is not eligible;
 - the applicant is not homeless;
 - the applicant does not meet any of the priority need criteria; or
 - there is evidence that the applicant made him or herself intentionally homeless.
- 1.8 Homeless decisions are judged on the balance of probabilities and do not have to be beyond all reasonable doubt. Investigating officers are required to demonstrate that they have given reasonable consideration to the evidence in reaching their decision.
- 1.9 Legislation provides the right to applicants not satisfied with the Council's decision on their homelessness application, to appeal against the decision by requesting a review.
- 1.10 The applicant has the right to request a review and, even if no further information or evidence is provided, the Council must review the decision. The applicant (or someone acting on their behalf) does, however, have the right to make further written representations to support the request.
- 1.11 A review must be requested within 21 days of the date on which the applicant is notified of the decision. When a review is requested, the Council has 56

days to review the decision and inform the applicant of the outcome. This deadline can be extended where agreed in writing by the applicant and the Council.

- 1.12 The review can be conducted by a person who was not involved in the original decision. This could be:
- Another council officer, in which case they must be senior to the person who made the original decision and not directly involved in the initial investigation,
 - A panel of councillors,
 - An independent person - some councils employ a private company to conduct reviews, some other councils have a mutual arrangement so that an officer from another Council will conduct reviews.

- 1.13 The use of a panel of councillors is now not common practice, and most appeals processes being conducted by local authorities use senior officers or independent specialists, and in most cases where appropriate these reviews are based on paper evidence. An oral review is not a statutory part of the process.

Note: Applicants are provided with an opportunity to make oral submissions at the pre-decision stage. These are heard by the investigating officer prior to the final decision.

- 1.14 The decision on review may:
- Uphold the original decision,
 - Find fault with the manner in which the original decision was made, but still uphold the original decision, or
 - Overturn the original decision and replace it with one that is in the applicant's interests.

- 1.15 The Council must inform the applicant of the decision on review in writing. If the decision is against the applicant's interests, the letter should give reasons for the decision.

2. The review process in Dacorum Borough Council

- 2.1 Dacorum Borough Council is currently operating a member review panel made up of:
- Five elected members (including the panel chair)
 - One legal representative
 - One senior officer
 - The officer who made the original decision

- 2.2 This panel holds an oral review hearing to which the applicant is invited to attend, and to which a legal representative may accompany them.

- 2.3 Dates are scheduled once a review request has been received. Dates are scheduled to take place on Mondays and each review takes approximately two hours of the day. The maximum number of reviews that could therefore reasonably be held on one day is three. There are currently seven reviews

pending and all available dates up to the end of December have been booked (some dates are unavailable due to employment hearings).

- 2.4 From April 2012 – March 2013 Dacorum Borough Council held 14 review hearings and all decisions were upheld. Nine of those reviews were between January and March 2013, and since April 2013 there have been 11 further reviews. All decisions since April 2013 have been upheld (one adjourned). This demonstrates a trend of increasing numbers of reviews, consistent with local increases in homeless presentations.
- 2.5 The costs for one legal representative for two hours are £240 and there are additional costs for:
- Senior officer time spent at the review hearing
 - Investigating officer time spent at the review hearing
 - Member Support time arranging and proving administrative support for the review hearing
 - Reprographic costs for printing
- This provides an estimated total cost of £300 per review.

3. Evaluation of current process

- 3.1 Other councils that have at some point operated similar panel hearings have nearly all now amended this process to operate senior officer reviews.
- 3.2 In addition to the costs and time consuming nature of the hearings, and the delays to applicants when a high number have to be booked into the available days, there are several disadvantages of councillor review panels that have been identified:
- The oral hearing creates an environment that is considered (judging by feedback from applicants and their representatives) to place applicants at a disadvantage due its formal, somewhat intimidating, atmosphere at a time when the applicant is in a very stressful situation. This is seems inconsistent with principles of good customer service and care.
 - The process puts applicants through intensive questioning occasionally straying into areas of no material relevance to the application, and it may be unclear to the applicant what information will be used in the decision making process.
 - Applicants are excluded at the point of decision making
 - Minutes of the process are not taken so the Council does not have a record to evidence and justify the information used at the point of decision making
 - If questions have been asked that are not ultimately relevant then the applicant has no knowledge that this information has not been used to bias the decision making process.
 - The hearing takes the form of a 'courtroom' process, which provides the opportunity for legal representatives of applicants to make an adversarial process out of a process that should be inquisitorial.

- Having the Council's legal representatives involved at this stage prevents them being involved in the future were the case to go to county court on a point of law (thus requiring more senior and expensive representation).
 - A perceived lack of transparency associated with this process is contradictory to the Council's own ethos to be open and respond to challenge.
- 3.3 The Council understands that having councillors involved in this process provides an insight into the situations of their constituents, however at a time of rising homelessness any benefits from this are outweighed by the disadvantages, costs and delays from continuing to operate this process.

4. Process change recommendation

4.1 The recommendation is that the Council should change the Constitution to adopt a review process that is carried out by a senior officer not involved in the original decision, which in most cases where appropriate would be paper-based.

4.2 The full process would then be:

Pre-decision by investigating officer → opportunity for oral submission to investigating officer → final decision letter → review request made within 21 days from the date of the decision → invitation to make further submissions (orally or in writing depending on the case) for review by senior officer → written outcome of the review with reasons for the decision provided within 56 days from the date of request.

4.3 This process will be fair and more transparent because:

- The senior officer would work to a published checklist;
- It does not place the applicant in an intimidating environment;
- It is consistent with the Council's ethos of customer service and care;
- There are no delays from waiting for an available day to hold the hearing, and therefore no risk of falling outside the 56 days unnecessarily;
- The applicant does not have to go through unnecessary questioning that could include irrelevancies to the case;
- Legal representatives of the applicant are not provided with the opportunity to make the process adversarial; and
- It is better value for money due to the time and costs associated with the member review panel.

4.4 The time and cost savings made by changing the process will benefit the service by:

- Freeing up resources and the time of highly trained staff; and
- Producing a cash saving to the Council.

Resources that would otherwise be spent on preparing and attending the reviews could be re-focused to areas of service delivery identified as priority areas.

4.5 In its Homelessness Strategy 2013 - 2018 the Council has identified a need to increase its focus on providing high quality prevention services in order to successfully support as many people as possible from experiencing homelessness.

5. Recommendation

5.1 That Cabinet recommend to Council that the Constitution be amended by the Assistant Director (Chief Executive's Unit) to adopt a homeless review process carried out by a senior officer not involved in the original decision, and that the current member review panel process is discontinued.