

# Item 5

## REPORT TO COUNCIL

28TH JULY 2006

## REPORT OF CHIEF EXECUTIVE

### ARRANGEMENTS FOR REVIEW OF THE CONSTITUTION

#### 1. SUMMARY

- 1.1 The Council's Constitution was adopted on the 24th May 2002 as part of the Council's approach to implementing the Local Government Act 2000. A number of reviews have taken place.
- 1.2 The Constitution itself must necessarily be kept under regular review so as to ensure that it reflects existing law and its operation continues to provide an efficient and effective framework for delivering the Council's aims and objectives. This report is a further review for the purposes of Article 16 of the Constitution.
- 1.3 The recommendations in this report, based on advice from the Council's Monitoring Officer, and following meetings of the Constitutional Review Group, reflect those areas where it is considered appropriate to make some further changes, viz:
  - (a) changes to the operation of the Appeals/Review Panels to improve organisational and meeting arrangements.
  - (b) modifications to the officer delegations at Part 3C : Officer Delegations, made at the request of relevant officers.

#### 2. RECOMMENDATIONS

- 2.1 That Council approves the amendments set out in the Appendix and directs the Council's Monitoring Officer:
  - (a) to amend the Constitution accordingly and make all necessary and consequential amendments; and
  - (b) to publish an amended version on the Council's website.

#### 3. BACKGROUND

- 3.1 Work has already begun in reviewing the Constitution. A number of officers have formed a Constitutional Review Group, headed by the Monitoring Officer, and its purpose is to consider proposals for change with a view to reflecting the law and improving the efficiency of decision taking within the authority.

3.2 Previous reviews are identified in the list of background papers accompanying this Report.

#### **4. LEGAL IMPLICATIONS**

4.1 It is intended that these changes shall have immediate effect.

4.2 The principal changes are referred to in paragraph 1.3 above.

#### **5. CONSULTATIONS**

5.1 Management Team and Standards Committee have been consulted on this report and their views taken into consideration.

5.2 All Departments of the Council have been consulted with regard to the amendments suggested in this report.

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**Ward(s)**

**Key Decision Validation**

#### **Background Papers**

*Reports:*

- Council - 16th May 2003
- Council - 26th June 2003
- Standards Committee - 4th November 2003
- Council - 26th November 2003
- Council - 21st May 2004
- Cabinet - 25th November 2004
- Council - 25th February 2005
- Standards Committee - 3rd November 2005
- Council - 25th November 2005
- Standards Committee - 9th February 2006
- Council - 24th February 2006
- Standards Committee - 6th April 2006
- Council - 21st April 2006
- Standards Committee – 5th May 2006
- Council – 19th May 2006
- Standards Committee – 6th July 2006

### Examination by Statutory Officers

	Yes	Not Applicable
1. The report has been examined by the Council's Head of the Paid Service or his representative	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. The content has been examined by the Council's S.151 Officer or his representative	<input type="checkbox"/>	<input type="checkbox"/>
3. The content has been examined by the Council's Monitoring Officer or his representative	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4. The report has been approved by Management Team	<input checked="" type="checkbox"/>	<input type="checkbox"/>

**PROPOSED CHANGES FOR COUNCIL APPROVAL – 28TH JULY 2006**

Page Reference and Proposed Amendment	Basis for Change
<p>Part 3 Responsibility for Functions A Council Functions Appeals/Review Panel:</p> <p>Page 47 - Amendments at request of Solicitor to the Council to take account of Section 129 of the Housing Act 1996 and Regulation SI 1997 No. 72 : see attached amendments.</p>	<p>Request of Solicitor to the Council to take account of regulations.</p>
<p>Part 3 Responsibility for Functions C Officer Delegations:</p> <p>Page 60 – CE49: to add Solicitor to the Council as authorised officer to institute proceedings.</p>	<p>Request of Solicitor to the Council to coincide with current best practice.</p>
<p>Part 3 Responsibility for Functions C Officer Delegations:</p> <p>Page 69 – NS1, paragraph 1: to be replaced and substituted by the following words:</p> <p>“Any member may, within 21 days of receipt, request that an application be referred to the Development Control Committee for determination, subject to the prior agreement of the Head of Planning Services, acting in consultation with the Chairman of the Development Control Committee, which agreement shall be given where there are grounds that the application may be, or is likely to raise, significant issues of public concern, exceptional or contentious issues or matters of planning precedent.”</p> <p>Page 83 – NS67</p> <p>Removal of Doctor A. Lowe and to be replaced by Doctors R. Gorton, K. Foster and Meng Khaw.</p> <p>Page 93 – new H26</p> <p>“Power to determine applications by owners under Right to Buy Scheme in connection with recovery of discount.”</p>	<p>Request of Solicitor to the Council to coincide with current practices.</p> <p>Request of the Head of Planning Services.</p> <p>Request of the Director of Neighbourhood Services (Environmental Health)</p> <p>Request of Director of Housing</p>



Page Reference and Proposed Amendment	Basis for Change
<p>Part 3 Responsibility for Functions C Officer Delegations:</p> <p>Page 91 - Amend H3</p> <p>“Authority to request the Solicitor to the Council issue Requests for Warrants seeking Possession.”</p> <p>Page 93</p> <p>New H27</p> <p>“Notice seeking demotion because of Anti-Social Behaviour.” – delegated to Director of Housing.</p> <p>New H28</p> <p>“Notice to extend the Introductory Tenancy period.” – delegated to Director of Housing.</p> <p>New H29</p> <p>“Authority to issue Notice seeking Possession.” – delegated to Director of Housing.</p> <p>New H30</p> <p>“Authority to issue Notice seeking Possession of a dwellinghouse let under a Demoted Tenancy.” – delegated to Director of Housing.</p>	<p>Allows warrants to be requested under 1996 Housing Act (in addition to 1985 Act)</p> <p>New legislation</p> <p>New legislation</p> <p>Power to issue Notice on Introductory Tenants</p> <p>New legislation</p>

**Proposed Amendments to Part 3 – Responsibility for Functions**  
**A. Council Functions : Appeals/Review Panel**

## **Appeals/Review Panel**

The Appeals/Review Panel provides a single framework for dealing with the different kinds of appeal that arise against decisions of Officers, particularly in relation to housing matters.

The Panel shall be drawn from a pool of 22 Members of the Council for individual hearings as and when required. Five Members will sit on each individual Panel. For the purposes ONLY of reviews under Section 129, Housing Act 1996, 7 members (from the 22 member pool) will be invited to attend on the day of the review, from which 5 members will form the Panel for such a Hearing.

Due to the confidential nature of the matters to be considered, meetings of the Appeals/Review Panel will not be open to the public. However, in the interests of Human Rights the appellants will be invited to attend the meeting to address the Panel.

The following matters will be dealt with by the Appeals/Review Panel:-

- (i) To consider appeals made in writing from applicants wishing to be declared homeless who are aggrieved at the decision on their application and to consider whether the decision has been made in accordance with the relevant legislation and has taken account of all of the facts available.
- (ii) To consider applications made in writing from introductory tenants for a review of a decision to seek to end the introductory tenancy following the service of a notice of proceedings.
- (iii) To consider applications made in writing from ~~secure~~ demoted tenants for a review of the decision to seek possession ~~demote the secure tenancy to introductory tenancy status~~ following the service of a notice to such effect.
- (iv) To consider applications made in writing from introductory tenants for a review of a decision to seek to extend the term of the introductory tenancy following the service of a notice to such effect.
- (v) To consider **written applications made within 14 days from a decision of an Officer under delegated powers made** by owners under the Right to Buy that the Council consider exercising its discretion to seek recovery of the Right to Buy discount. **This panel will determine the issue within 28 days of receipt of a written application and notify the applicant of the decision within 3 working-days thereafter.**

The following powers have been delegated to the Appeals/Review Panel by Council

- (a) To determine appeals dealt with in accordance with (i) above.
- (b) To determine whether the action to seek possession of an introductory tenancy continue or be suspended and to agree the terms of any such suspension of action, in respect of (ii) above.

- (c) To determine whether the action to seek a ~~demoted possession order~~ should continue or be suspended and agree the terms of any such suspension of action, in respect of (iii) above.
- (d) To determine whether the tenancy period should be extended by six months (without the need for a Court Order), in respect of (iv) above.
- (e) To determine, whether ~~clarification~~ of the Council ~~that its~~ should exercise ~~ising~~ its discretion not to recover the discount value under a Right to Buy purchase ~~be exercised~~ and if so to what extent, in respect of (iv) above.

The Appeals/Review Panel will be responsible for carrying out the following functions, which are identified in The Local Authorities (Functions and Responsibilities) (England) Regulations 2000. Functions marked with an asterisk (\*) are Local Choice Functions, which are identified in the same regulations. The table identifies in the right hand column where authority has been delegated to Officers.

	<b>Functions</b>	<b>Officer Delegation Reference No.</b>
<b>1 *</b>	The determination of an appeal against any decision made by or on behalf of the authority, other than statutory appeals made direct to the Courts.	
<b>2 *</b>	The appointment of review boards under regulations under sub-section (4) of section 34 (determination of claims and reviews) of the Social Security Act 1998.	