

Item 5

REPORT TO CABINET

11th January 2007

REPORT OF DIRECTOR OF HOUSING

Portfolio Housing

Implementation of changes to powers to tackle Anti Social Behaviour

1. SUMMARY

- 1.1 On the 21st September 2006 Cabinet considered a report on a number of changes to legislation around Right to Buys (RTBs) and the management of Anti Social Behaviour (ASB) set out in the Housing Act 2004 and the Anti Social Behaviour Act 2003 (the Acts).
- 1.2 The changes to the RTB scheme have been considered and a report on the implementation of these changes was considered by Cabinet on the 30th November 2006. The changes in relation to tackling ASB for the Council as a Landlord include powers to seek the demotion of a secure tenancy, to extend an introductory tenancy for a further 6 months, the ability to suspend the RTB and the option to seek an Anti Social Behaviour Injunction. This report sets out policy changes to allow the effective implementation of these new powers.

2. RECOMMENDATIONS

1. That the Director of Housing is given delegated power to seek an order to suspend the Right to Buy in appropriate cases.
2. That the Housing Department's Statement of Policy and Procedure on Anti Social Behaviour are updated to reflect the changes set out in this report.
3. That a separate report on the implications and implementation of the ***Respect Standard for Housing Management*** is presented to Cabinet in March 2007.

3. **The Management of Anti Social Behaviour by the Council as a Landlord**

- 3.1 The Housing Act 2004 and the Anti Social Behaviour Act 2003 introduced a number of key changes to the powers available to a local authority to manage ASB affecting the lives of its tenants. These new powers primarily apply to the Council's own tenants with the exception of the use of ASBI's which are tenure blind.
- 3.2 The Council has already adopted and implemented the use of Introductory Tenancies (IT) and these are effective tools in helping the Council tackle both ASB and rent arrears for new tenants. The new powers provide an additional degree of flexibility for the Council in tackling ASB over the current arrangements. The use of these powers needs to be set within a suitable policy framework and supported by

robust procedural arrangements. Staff responsible for implementing these powers and members who may be involved in appeal cases will require suitable training.

- 3.3 The Council is required under the provisions of the Anti Social Behaviour Act 2003 as a landlord to publish a statement of its policy and procedures for tackling ASB as a landlord. The Council is required to review these documents and publish any amendments. It is proposed to update the policy statement and procedures as a result of this report and make them available via our website and as documents for any resident or stakeholder who requests a copy.
- 3.4 The area of work in tackling ASB continues to be subject to rapid change and the Department of Communities and Local Government (DCLG) published in August 2005 "**The Respect Standard for Housing Management**". The standard is made up of 6 key commitments and a number of supporting actions, social landlords can sign up to this voluntary code to show their commitment to tackle ASB. Whilst signing up to the standard is voluntary it should be noted that Audit Commission have reviewed Key Line of Enquiry (KLOE) 6 "**Estate management**" to include the requirements of the Respect Standard. This new KLOE will be used for inspections carried out from February 2007. A high performing social landlord must not only have signed up to the standard but have in place suitable arrangements to ensure its effective implementation. The Housing Department will be reviewing revised KLOE 6 and the respect standard to determine the impact on the current Service Improvement Plan (SIP). A separate report will be prepared on the implementation and formal sign up to the Respect Standard for Housing Management.

4. IMPLEMENTING THE REVISED POWERS FOR TACKLING ASB

- 4.1 The new powers available tackle ASB under the provisions of the Acts focus on both secure and introductory tenants they include:-
- The power to demote a secure tenancy.
 - The power to extend an introductory tenancy by a further six months.
 - The power to remove the Right to Buy.
 - The power to apply for an Anti Social Behaviour Injunction.

The Council needs to have a clear policy as to when it would consider using these provisions possible in conjunction with other action to tackle ASB and or rent arrears.

4.2 Extension of Introductory Tenancies

- 4.3 New provisions have been introduced under the Housing Act 2004 for introductory tenancies. S.179 of the Act enables introductory tenancies to be extended for a further 6 months beyond the initial 12 months. The Local Authority must serve a notice of extension on the tenant at least 8 weeks prior to the original expiry date. A notice of extension is a notice stating that the Local Authority has decided that the period during which the tenancy is to be an introductory tenancy should be extended by 6 months and must set out the reasons for the decision, inform the tenant of their right to request a review and within the time which a request must be made. The reasons for service of such a notice can include any breach of the

tenancy agreement whether ASB or rent arrears related. The notice to extend the IT period can be served concurrently with a notice to seek possession.

4.4 Statutory Instrument 2006 No. 1077, The Introductory Tenancies (Review of Decisions to Extend a Trial Period) (England) Regulations 2006 provides that the tenant is entitled to request an oral hearing and sets out how this right is to be exercised. The Local Authority must give the tenant at least 10 clear day's notice of the date, time and place of review. The review must be carried out by a person who was not involved in the original decision.

4.5 After consultation with key stakeholders this power would be used in the following circumstances:-

- Where low level ASB has occurred at the tenancy and steps have been taken by the tenant to address the behaviour but insufficient time has elapsed to show that the change is permanent.
- The tenant has relatively low levels of rent arrears, a payment plan has been put in place to tackle the arrears but insufficient time has elapsed to show that the plan will be adhere too.

A notice to extend an IT can be served by either the Tenancy Enforcement Team (TET) for ASB or the Housing Management service (HM) for rent arrears, appropriate legal advice will be sought prior to the service of any notice. In a limited number of cases it may be appropriate to consider service of both a notice to extend an IT and to seek possession. The circumstances set out above relating to the service of a notice are not exhaustive, each case being treated on its own merits and on an individual basis.

4.6 **Demoted Tenancies**

4.7 A demoted tenancy is a one-year probationary tenancy, introduced by the Anti-Social Behaviour Act 2003. Demotion ends the tenant's existing tenancy and replaces it with a less secure one by removing a number of their tenancy rights, thereby acting as a positive incentive to the tenant to change their behaviour.

4.8 The demotion period, is initially 1 year, however, this may be extended if possession is sought during this time. Following the expiry of the demotion period (and assuming an order for possession has not been sought during this time) the demoted tenancy reverts back to the original tenancy. Demotion Orders can only be made by a Court following service of a Notice of Intent to do so and only in circumstances of allegations of anti-social behaviour (not for instance rent arrears).

4.9 During the period of demotion the Council has the power to seek possession of a property similarly to the power in Introductory Tenancies through a Notice procedure and a Court must make a possession order in such circumstances if the Council's review procedure has been exhausted.

4.10 The Council may consider using the demoted tenancy option in two circumstances

- As a stand alone remedy to tackle ASB where the Council does not wish to seek to evict outright.
- The Council could apply for both a demoted tenancy and possession of the property in effect letting the court determine the most appropriate course of action.

4.11 After consultation with key stakeholders this power would be used in all or some of the following circumstances:-

- Where the secure tenant has taken steps to address the ASB.
- Support for the tenant from a range of agencies is in place along with an action plan to sustain the changes in behaviour.
- Where children or vulnerable adults are part of the household.

A notice to seek a demoted tenancy can only be served by the Tenancy Enforcement Team (TET) for ASB, appropriate legal advice will be sought prior to the service of any notice. The Council would not normally serve a notice to demote a tenancy whilst seeking possession but it would not preclude this option. The circumstances set out above relating to the service of a notice are not exhaustive each case being treated on its merits and on an individual basis.

4.12 Anti-Social Behaviour Injunctions

4.13 Under the Anti-Social Behaviour Act 2003, injunctions are available where conduct is capable of causing nuisance or annoyance to any person, and directly or indirectly relates to or affects housing management functions. This is in addition to and an alternative to the powers which the Crime and Disorder Act provide for Police/Council's to apply for Anti-Social Behaviour Orders (ASBO's).

4.14 After consultation with key stakeholders this power would be used in all or some of the following circumstances:-

- Where a Council tenant faces serious prolonged harassment and/or intimidation from another person not necessarily a Council tenant.
- Where a member of the Council's staff involved in the delivery of the Housing management function serious prolonged harassment and/or intimidation from another person not necessarily a Council tenant.
- Where Housing Management vehicles or premises are targeted for vandalism or damage by a person not necessarily a Council tenant.

A decision to apply for an ASBI would only be considered if jointly agreed between Housing and Legal Services. The circumstances set out above relating to the use of an ASBI are not exhaustive.

4.15 Suspension of the Right to Buy

4.16 The Housing Act 2004 amends the provisions in relation to the RTB and allows it to

be suspended in certain circumstances; these powers came into force on the 6th June 2005. The powers were introduced to prevent a secure tenant facing possession procedures for ASB delaying these by making a RTB application. The Council can apply to Court to have the RTB suspended for a specified period; this option can be used on its own or along side a postponed order for possession.

- 4.17 If the Council wishes to apply for a suspension of the RTB then the conduct test must be satisfied i.e. the secure tenants behaviour is capable of :-
- a. causing nuisance or annoyance to any person and
 - b. directly or indirectly relates to or affects the Housing Management functions.

The Council will consider exercising this power where necessary to ensure the effective delivery of the housing management service.

5. RESOURCE IMPLICATIONS

- 5.1 There are no additional resource implications from implementing these new powers.

6. CONSULTATIONS

- 6.1 Consultation has been carried out with the staff and the Tenants Housing Services Group who support the proposals set out in this report.

7. OTHER MATERIAL CONSIDERATIONS

Links to Corporate Ambitions / Values

- 7.1 The Community Strategy for Sedgefield Borough has adopted 4 key outcomes for the Borough one of which is *"a Borough with strong communities where people can access the housing and services they want in attractive and safe neighbourhoods."* The Borough Councils ambitions mirror the Community Strategy's outcomes and the implementation of this policy in appropriate cases can contribute to the delivery of this ambition.

Health & Safety

"No additional implications have been identified".

Equality & Diversity

Full account will be taken of the Council's obligation to promote equality and diversity in the development of this project.

Legal & Constitutional

Consultation on the report has been undertaken with the Borough Solicitor.

8. OVERVIEW AND SCRUTINY IMPLICATIONS

- 8.1 There are no Overview and Scrutiny implications of this report.

9. LIST OF APPENDICES

- 9.1 None

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Wards: All

Key Decision Validation:

Not a key decision

Background Papers:

Cabinet Report 21st September 2006
Respect Standard for Housing Management DCLG August 2007

Examination by Statutory Officers

	Yes	Not Applicable
1. The report has been examined by the Councils Head of the Paid Service or his representative	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. The content has been examined by the Councils S.151 Officer or his representative	<input checked="" 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"/>