

Taunton Deane Borough Council

Tenant Services Management Board – 24 October 2011.

CLG consultation – “A new mandatory power of possession for anti-social behaviour”

Report of Estate Officer – John Hart

(This matter is the responsibility of Executive Councillor Jean Adkins)

1.0 Executive Summary

The government department Communities and Local Government (CLG) has embarked on a consultation exercise exploring the practicalities and feasibility of introducing new powers to speed up the process for social landlords to repossess properties where tenants have breached conditions of tenancies through anti-social behaviour.

Consultation is aimed at front line practitioners who deal with anti-social behaviour and the public, particularly victims of anti-social behaviour or those who have provided evidence in court cases.

The consultation feedback takes the form of 6 questions. Closing date for feedback is 7th November 2011. The comments of the TSMB will inform the Council's formal response to the consultation.

2.0 Background

The focus of central and local government is to take a positive approach in dealing with perpetrators of anti-social behaviour. Prevention and early intervention should be at the heart of all landlords' approaches to tackling anti-social behaviour. The CLG estimates that over 75% of anti-social behaviour cases are resolved through early intervention without resorting to formal tools.

The CLG has analysed survey data from 61 landlords in England covering over 500 recent anti-social behaviour possession cases and highlighted that on average it takes over 7 months from the date of initial application to the court for a possession order to an outcome. The process is cumbersome and there are often adjournments for a variety of reasons such as defendants not turning up or because further evidence is required. The current process puts pressure on court resources and creates significant costs for landlords to meet out of their tenants' rents.

The CLG are not encouraging greater use of repossessing properties as a sanction because it recognises that eviction is the last resort. There is, however, a need to speed up the anti-social behaviour possession process in a way that properly and fairly considers both the rights of victims and witnesses and the rights of those at risk of losing their homes.

3.0 Key points in summary.

CLG are seeking views on 2 issues:

- Extending the scope of the existing discretionary ground for possession for anti-social behaviour so that serious anti-social behaviour and criminality beyond the immediate neighbourhood of the property can be taken into account. This proposal has been introduced following the recent serious inner city riots in order that tenants/ residents in social housing accommodation found guilty of offences anywhere in the country could be evicted.
- Introducing a mandatory power of possession where anti-social behaviour or criminality has already been proven by another court. A trigger mechanism is proposed, broadly along the lines of:
 - (1) Conviction for a serious housing related offence
 - (2) Breach of a housing related injunction for anti-social behaviour
 - (3) Closure or premises under a Closure order (e.g. crack house closure)

The term “mandatory” and “discretionary” relate to the Court processes and not the route that the landlord decides to take. At present the Court has the discretion to order possession for certain criminality or breaches of tenancy. The proposals still allow for the landlord to apply to the court to use its discretionary powers to order possession. The CLG are proposing that landlords can apply to the court for a mandatory possession order, thus if the conditions are fulfilled and the correct procedure followed the Court must give possession.

4.0 Consultation process within Taunton Deane

Consultation meetings have been held with the following interested parties;

- Tenants’ Forum
- Estate Officers
- Legal Services (Alison Taylor)
- Housing Briefing (comprised of Councillors, tenants and senior officers)

5.0 The next steps

It is proposed to obtain the views of the Tenants Service Management Board at the meeting on 24th October 2011.

Due to the time constraints set for the meeting, attached is a PowerPoint presentation (Appendix 1) which was used during the consultation meetings.

There is also a link to the full CLG consultation document -

<http://www.communities.gov.uk/documents/housing/pdf/1959275.pdf>

Views from all interested parties will be collated and the Council will make a formal response to the 6 questions posed to be received at the CLG by 7th November 2011.

6.0 Finance Comments

It should be noted that this is a consultation document. Any financial implications would have to be examined if and when the CLG decide to implement any of the proposed changes.

7.0 Legal Comments

It should be noted that this is a consultation document. Any legal implications would have to be examined if and when the CLG decide to implement any of the proposed changes.

8.0 Links to Corporate Aims

It should be noted that this is a consultation document. Any links to corporate aims would have to be examined if and when the CLG decide to implement any of the proposed changes.

9.0 Environmental Implications

It should be noted that this is a consultation document. Any environmental implications would have to be examined if and when the CLG decide to implement any of the proposed changes.

10.0 Community Safety Implications

It should be noted that this is a consultation document. Any community safety implications would have to be examined if and when the CLG decide to implement any of the proposed changes.

11.0 Equalities Impact

It should be noted that this is a consultation document. Any equalities impact would have to be examined if and when the CLG decide to implement any of the proposed changes.

12.0 Risk Management

It should be noted that this is a consultation document. Any risk management implications would have to be examined if and when the CLG decide to implement any of the proposed changes.

13.0 Partnership Implications

It should be noted that this is a consultation document. Any partnership implications would have to be examined if and when the CLG decide to implement any of the proposed changes.

14.0 Recommendations

The Tenant Services Management Board is asked to:

- Note this report and presentation document headed “Appendix 1 - New powers of possession for anti social behaviour”
- Give consideration to the 6 questions posed in the presentation document (page numbers 8 to 13) and be prepared to comment on these during the meeting on 24th October 2011.

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APPENDIX 1

New powers of possession for anti social behaviour

Facilitated by
John Hart

Introduction

- Aims of the meeting
- Current legislative framework
- New powers
- Procedure for new mandatory power
- Triggers for seeking possession orders
- Consultation questions 1 to 6
- Summary

Aims of the meeting

- Consultation exercise for proposed new powers for social landlords to repossess properties.
- Consider a new mandatory power for eviction
- Assess the potential impact of proposals on TDBC
- Answer 6 questions which will form TDBC corporate response

Current legislative framework

- Ground 2 of Schedule 2 to the Housing Act 1985 provides the Court may grant possession

Tenant or person residing or visiting dwelling:

- Causing ASB to another resident, visitor or someone lawfully in locality OR
 1. Convicted using dwelling for immoral or illegal purposes or
 2. Commits Indictable offence in or in locality of dwelling

New powers

- Extending existing powers so Court may grant possession where tenant/ member of household has been convicted of violent disorder / related thefts anywhere in the UK.

New mandatory power

New route for possession for serious housing related ASB which has been proved by another court.

Procedure for mandatory power

- Serve notice of proceedings
- Give reasons
- Date after which proceedings will commence
- Court would have to grant order of possession provided correct procedure followed
- Modelled on possession during “introductory tenancies”
- Statutory right to request a review.

Triggers for new power

- Conviction for a serious housing related offence, e.g. Violence against neighbours, drug dealing, drug cultivation.
- Breach of injunction for ASB – housing related so landlord has either obtained or is party to injunction.
- Closure of premises under a closure order.

Question1

Do you agree we should extend the scope of the current discretionary ground for ASB and criminality in this way?

Extend the scope of the ASB from within the locality/neighbourhood to anywhere in the country?

Key considerations

- Proportionality/ reasonableness

Question 2

Do you agree that we should construct a new mandatory power of possession in this way?

Considerations

- Is there a need for a new mandatory power or should it be left to the courts to exercise their discretionary powers?
- Practicalities of introducing a review mechanism

Question 3

Are these the right principles which should underpin a mandatory power of possession for ASB?

- Reduce length of possession proceedings
- Facts proved in one Court should not have to be proved a second time.

1. Landlord can demonstrate the criteria are met. Is there a clear test?

2. Is the ASB serious and housing related?

Question 4

Have we defined the basis for the new mandatory power correctly? If not how can we improve the definition?

Triggers

- Conviction for serious housing related offence
- Breach of injunction for ASB
- Closure of premises under a closure order.

Still expectation on re-housing vulnerable tenants
Landlord can still use discretionary grounds

Question 5

As a Landlord would you anticipate seeking possession using the mandatory power?

- Reduce pressure on Courts
- Lower Landlord costs
- Bring faster relief for communities

Increase profile of injunctions for ASB as threat of eviction is in “clear line of sight”

Question 6

Are there other issues relating to the introduction of a mandatory power for possession for ASB we should consider?

- Proportionality.
- “Two bites of the cherry”
- Managing media/ public expectations
- Displacing the problems

Summary

- **Government want to send a powerful message that it is tough on ASB by threatening eviction for perpetrators guilty of ASB anywhere in the country.**
- **New mandatory process of eviction for certain ASB offences.**
- **Speed up process/ Reduced costs**

Versus

- **Undermining County Court/ Increased expectations**



ANY QUESTIONS?

THANK YOU!