

REPORT TO:	HOUSING AND COMMUNITY SERVICES COMMITTEE	AGENDA ITEM: 11
DATE OF MEETING:	13th October 2011	CATEGORY: DELEGATED
REPORT FROM:	Mark Alflat – Director of Community Services	OPEN
MEMBERS' CONTACT POINT:	Bob Ledger – Head of Housing and Environmental Services	DOC:
SUBJECT:	Possession proceedings for anti-social behaviour	REF:
WARD(S) AFFECTED:	All	TERMS OF REFERENCE: HCS01

1. Recommendation

- 1.1 Members agree a response on whether to support the Government proposal to extend the discretionary ground for possession to include anti-social behaviour anywhere in the UK (as opposed to the current ground which is limited to the locality of the dwelling house).
- 1.2 Members support the proposal made by the government to introduce a new mandatory ground for possession for anti-social behaviour where that behaviour has already been ruled upon by the courts e.g. a criminal conviction has already been obtained.

2. Purpose of Report

- 2.1 To enable a response to be formulated to the government's consultation paper entitled: "A new mandatory power for anti-social behaviour".

3. Background

- 3.1 The Government launched its consultation paper: "A new mandatory power for anti-social behaviour" commencing 3rd August 2011. The consultation runs for the now standard 12 weeks and therefore closes on the 27th October 2011.
- 3.2 On the 15th August 2011 the Housing Minister, Grant Shapps, in direct response to the inner city riots of the preceding days, widened the scope of the consultation to include a proposal that the discretionary ground for possession relating to anti-social behaviour be extended to include behaviour anywhere in the UK as opposed to the current ground which is limited to the locality of the tenancy.
- 3.3 The Council last reviewed its own Housing policy on anti social behaviour earlier this year following extensive consultation. The new policy was agreed by the February 2011 meeting of this Committee.
- 3.4 There are 16 grounds for possession under the 1985 Housing Act (as amended). 8 of these come with a right to suitable alternative accommodation e.g. where it is intended to demolish the property and the tenant won't move willingly. The first 8

grounds in the act do not come with a right to suitable alternative accommodation and relate to where the tenant has acted in a way that is detrimental to the landlord and or neighbours. All of these grounds are said to be 'discretionary'. This means that to obtain possession the landlord must prove the case for possession to the court. Only 3 of the 16 grounds are currently mandatory i.e. as long as the current procedure has been followed in seeking possession the court must give the possession order.

- 3.5 In practice most cases for possession are heard in court under the first three grounds. Ground 1 relates to non-payment of rent, ground 2 to anti-social behaviour and domestic violence and ground 3 to the deterioration of the property due to the tenant's action or inaction.
- 3.6 Actions for possession are civil actions through the County Court and are entirely separate to any criminal proceedings
- 3.7 Currently if a tenant or a member of the tenant's household gets convicted, for example, of drug dealing from a property the Council if it wanted to evict that tenant would still need to bring a full separate action for possession through the County Court. This can often entail subjecting witnesses to ongoing stress and prolonged delays whilst the defence case is prepared and court dates are waited for. In these periods it's not unusual for witnesses to be the subject of reprisals.

4. A new mandatory ground for possession

- 4.1 The proposed change, giving a mandatory ground for possession where anti social has already been proven by another court, means that the Council would not have to prove the anti-social behaviour in court and the court would have to give the possession order as long as the laid down procedure had been followed. The proof from another court is proposed to be a criminal conviction, a closure order or an injunction (where the landlord has been party to that injunction).
- 4.2 The government is proposing that the evidence could be reconsidered under appeal from the tenant but this would not be by the court but by an officer of the landlord more senior to the one initiating the possession action. In this way the government is proposing to mimic the process for ending Introductory Tenancies. Appeals relating to the possession of Introductory Tenancies are heard in this authority by the Head of Housing and Environmental Services supported by the Council's Senior Legal Officer.
- 4.3 In terms of the Housing sector's response to the government's proposal for a new mandatory ground little has emerged yet but it is the view of your Head of Housing and Environmental Services that this mandatory ground should be welcomed as a way of potentially resolving serious anti social behaviour cases more quickly and thereby reducing nuisance to neighbours and communities.

5. Extension of the current discretionary possession ground

- 5.1 Extension of the current discretionary possession ground to include anti social behaviour anywhere in the UK is possibly a more contentious issue and members are asked to give direction on the Council's response to this proposal.

- 5.2 As stated above under the current discretionary ground where there is anti-social behaviour proven in the locality of the tenancy the Council can take possession action. As it's a discretionary ground the Council would need to prove with appropriate evidence the severity of the case that warrants the removal of the tenant's home. The government are proposing that the ground be widened to anti social behaviour anywhere in the UK rather than just the locality.
- 5.3 There were a number of high profile newspaper headlines in the days and weeks following the riots supporting such a principle. Less visible have been more considered responses discussing whether the proposal is ethical and morally justifiable.
- 5.4 The arguments on either side boil down to the following:

The case for widening the ground is that the housing is a public or state resource which the perpetrator of anti-social behaviour is benefiting from. Why should the perpetrator benefit from a state asset when he/she has committed anti-social behaviour against the state?

The case against widening the ground is centred around the moral issues thrown up by the possible widening. These relate to why should other members of the household suffer eviction for the action of say a teenage son many miles away from the home? With a sanction as severe as eviction there are often many additional repercussions such as a breakdown in relationships, schooling, health, etc.

There is also the double jeopardy argument of basically 'convicting' someone twice for the same offence and although it may be possible to support this double action where the asb is in the vicinity of the tenancy it is difficult to do so where it is removed from the tenancy and does not directly affect the immediate neighbours or community. The point is made that those living in private sector accommodation whether owned or rented do not have this double jeopardy and therefore there is a question of equity to be answered.

6. Proposed response to the consultation

- 6.1 In the initial consultation paper and the Minister's additional letter the following questions have been asked. It is proposed that the statements in italics be this Council's response with members requested to provide direction on the specific issue of widening the current discretionary possession ground:

Question 1: Do you agree that we should extend the scope of the current discretionary ground for possession for anti-social behaviour and criminality in this way?

SDDC response: Direction sought from members.

Question 2: Do you agree that we should construct a new mandatory power of possession in this way?

SDDC response: *Yes. South Derbyshire District Council welcomes this initiative to minimise the effect of anti-social behaviour on our communities.*

Question 3: Are these the right principles which should underpin a mandatory power of possession for anti-social behaviour?

SDDC response: *Yes. Given that an injunction under these proposals will potentially carry more weight the Government need to ensure that the legal system does not then make the obtaining of an injunction a more onerous task.*

Question 4: Have we defined the basis for new mandatory power correctly? If not, how could we improve the definition?

SDDC response: *Yes although see our response to question 3.*

Question 5: As a landlord, would you anticipate seeking possession using the mandatory power in some or all of the instances where this would be available?

SDDC response: *Yes in some cases, although the number of severe case of anti-social behaviour in this District are few.*

Question 6: Are there other issues related the introduction of a mandatory power for possession for anti-social behaviour that we should consider?

SDDC response: *No.*

7. Corporate Implications

7.1 The Council's vision is being delivered through actions grouped into 4 themes within the Corporate Plan 2009-2014. This policy contributes to Theme 2 - Safe & Secure. This theme covers quality decent homes to promote independent living in neighbourhoods that feel safe and secure.

7.2 This policy also contributes to Housing Services' mission statement that:

"Through high quality services, delivered in partnership with customers, the provision of well maintained affordable homes that meet the requirements and aspirations of the people of South Derbyshire."

8. Financial Implications

8.1 There are no additional financial implications associated with this policy.

9. Community Implications

9.1 This policy contributes to the Safer Communities theme of the Sustainable Community Strategy, where we strive for communities that people feel are safer places in which to live, work and visit.

10. Background papers

10.1 Government consultation paper:
<http://www.communities.gov.uk/publications/housing/antisocialbehaviourconsult>