

Agenda Item No:

LONDON BOROUGH OF CAMDEN	WARD: All
REPORT TITLE: Tenancy Conditions for leaseholders and tenants	
Report of: Director of Housing and Adult Social Care	
FOR SUBMISSION TO: Housing and Adult Social Care Scrutiny Committee	DATE: 27 January 2009
SUMMARY OF REPORT: This report looks at the differences between the tenancy conditions and lease terms and at what would be involved in changing them to standardise terms across tenures. It also gives an outline of tenancy condition and lease term enforcement.	
Local Government Act 1972 – Access to Information: Contact Officer: David Padfield, Assistant Director HASC Bidborough House 20 Mabledon Place London WC1H 9BF Tel: 020 7974 5816 Fax: 020 7974 5558 Email: david.padfield@camden.gov.uk	
RECOMMENDATIONS: It is recommended that HASC Scrutiny Committee: 1) Note and comment upon the information set out in this report.	

Signed by Assistant Director of HASC:



Date: 15 January 2009

1. Purpose of the report

1.1 This report has been requested by HASC Scrutiny Committee. It covers:

- The extent to which it is possible to standardise tenancy conditions across all tenures
- The Council's ability to enforce its tenancy conditions
- The impact of leaseholder sub-tenants on enforcement issues

The term "tenancy conditions" will refer throughout this report to the Council's Conditions of Tenancy for introductory and secure tenants and the standard lease for Council leaseholders.

2. Background

2.1 There are over 9,000 leasehold properties in the Council's stock. These are occupied by former tenants who bought under the Right to Buy, owner occupiers who bought on the open market or by the family, friends or tenants of leaseholders.

2.2 The Council also has around 23,500 introductory, secure or demoted tenants (including approximately 1000 "tolerated trespassers" who will shortly have their tenancy status reinstated as a result of the provisions of the Housing and Regeneration Act 2008.)

2.3 Council tenants must "sign up" to the tenancy conditions. These are a contract between the Council and the tenant setting out the obligations of both parties. Both the rights and duties of tenants are set out.

2.4 Although introductory, demoted and secure tenants have different rights, their duties are the same.

2.5 Leaseholders also sign up to a contract with the Council when they buy their home ("the lease"). The lease sets out obligations for leaseholders in the same way the Conditions of Tenancy sets these out for council tenants.

2.6 Both tenants and leaseholders are responsible for the behaviour of members of their household and visitors. The lease includes a requirement for leaseholders to ensure that any sub-tenants also abide by its clauses.

3. The differences between the tenancy conditions and the lease

3.1 Differences between the tenancy conditions and lease are unavoidable because tenants and leaseholders have different legal rights. For example, leaseholders are free to sub let to tenants and live elsewhere but a secure tenant must use the property as their only or main home or their security of tenure is lost.

- 3.2 This report will focus on the regulations that the Council has decided to apply as a matter of policy. Attached at appendix 1 is a summary of the main differences between the tenancy conditions and lease.
- 3.3 There are a number of reasons why the tenancy conditions and lease terms differ. They include the following:
- *The different types of contract that tenants and leaseholders have.* Most Right to Buy leases are for 125 years. Entering into an agreement with the Council that will last that long, making a significant financial commitment to do so, is a very different type of relationship to a periodic weekly tenancy that can be ended by the tenant with 4 weeks notice.
 - *Tenants' conditions can be changed following the process laid down in Section 103 of the Housing Act 1985.* Changing regulations for existing leaseholders is much more difficult and may not be practicable.
 - *Tenants' conditions have been subject to greater political scrutiny with regular changes in the legislative and policy framework.* The tenancy conditions have needed to take these changes on board and this has provided opportunities to update them more generally.

4. Changing the tenancy conditions for secure, introductory and demoted tenants

- 4.1 As they are contracts, there are particular challenges attached to changing the tenancy condition terms for existing tenants especially as so many tenants are involved.
- 4.2 The formal process is as follows:
- A Notice of proposed changes must be served individually on every tenant (this can be done by 1st class post). The notice must set out the full detail of every proposed change (no matter how minor) and explain the reasons why the changes are proposed.
 - A reasonable period must be given for tenants to comment (the Council usually gives 28 days) The Notice must specify how to make comments and the deadline.
 - All comments must be considered before a decision is made about the changes
 - A Notice of Variation must be served on each tenant specifying the changes and the date they come into effect.
- 4.3 The formal variation process is preceded by an informal consultation period to identify and finalise the proposals for the preliminary Notice. After the preliminary Notice has been served there is likely to be a further process of consultation in response to tenants' comments

- 4.4 The tenancy conditions were last updated in November 2006. A number of quite controversial new clauses were introduced (including tenancy conditions requiring floor coverings to lessen noise nuisance, stipulating that tenants must not have other homes they could reasonably be expected to live in and clauses about keeping communal areas tidy and gardening communal areas). A lot of work was necessary to finalise the wording of these clauses to ensure they were fair and enforceable. The Council benefited from the input of DMCs, CASP and many individual residents in this process. Some of the new tenancy conditions were drafted by tenants.
- 4.5 The tenancy conditions tend to be reviewed and updated at 5 year intervals. After this period of time they need updating to accommodate legislative changes and for effective housing management. A prompt for the last update, for example, was the trend for replacing carpets with laminate flooring and the noise problems this causes.
- 4.6 The Audit Commission expects tenancy conditions to be updated in “a timely fashion” and it is good practice for them to be up to date and relevant. Set against this is the cost of the exercise and the fact that many vulnerable and elderly residents are alarmed or confused when they receive formal letters from the Council even when every effort is made to make them as clear as possible.

5. Changing the Council’s standard lease

- 5.1 Whilst changing the tenancy conditions for existing tenants is achievable although expensive, the main body of the lease cannot be changed for existing leaseholders as this would need to be done by individual process of variation. This would be prohibitively expensive and have uncertain prospects of success.
- 5.2 The standard lease contains a clause allowing the Council to add to, or change, the “rules and regulations” however this has never been done in Camden. Should Members wish to explore this further officers would need to work very closely with legal colleagues. The Head of Legal Services has provided his preliminary views in section 10 below.
- 5.3 When the lease is updated (it was last updated in 1998) it is updated for new leaseholders only so there are different generations of leaseholders with different leases. Despite this there has been very little change to the sections of the lease covering the regulations which remain substantially as they were when the Right to Buy began in 1980.
- 5.4 It would be possible to adopt a similar approach to the secure tenancy conditions. Changing the tenancy conditions for new tenants takes away the immediate need to vary existing tenancy conditions. There are, however, considerable logistical disadvantages in having different generation of tenants with different tenancy conditions especially as, from time to time; changing the tenancy conditions for existing tenants is both necessary and desirable.

5.5 In theory it is possible for the Council to have individual tenancy conditions tailored to individual tenants. In practice (even if it was desirable) it is difficult to see how this would be manageable with a large stock other than rarely in very exceptional cases.

5.6 The last tenancy condition review in 2006 took a look at the lease from the starting point that, as a matter of good practice, the tenancy conditions and lease should contain broadly similar terms. A number of lease clauses were incorporated into the tenancy conditions and they are now closer together than they were previously

6. How effectively can the tenancy conditions and lease be enforced?

6.1 The tenancy conditions and lease are written in very different styles. The tenancy conditions are written in plain English and give a lot of examples to help tenants understand behaviour that is unacceptable. The lease is written in more traditional style and tends to rely on far fewer, more general, clauses.

6.2 There is, perhaps, scope for debate about which style is most useful (especially given the increasing number of leaseholders' tenants amongst the council's stock) but it is difficult to think of an example of anti-social behaviour that cannot be addressed with reference either to the existing lease or tenancy conditions, particularly if the "tool box" of remedies for anti-social behaviour is taken into account.

6.3 A common reaction to concerns about anti-social behaviour is to conclude that the rules need tightening up or that new ones are needed.

6.4 Concerns about enforcement may indicate a problem with tenancy conditions but this is not a necessary link and officers do not consider that this is the case in Camden. If the problem lies elsewhere diverting resources to a tenancy condition review can exacerbate it.

6.5 The Council's antisocial behaviour review of January 2007 led to a detailed action plan to tackle ASB. Although the review recommended that the Council try introductory and demoted tenancies (now in use) no evidence was flagged up in the review that further changes to the tenancy conditions would help.

6.6 Similarly the housing management improvement plan (HMIP), has identified (and put in place) other measures to improve effectiveness. Some of these are referred to in section 8 below.

6.7 Effectiveness in preventing and addressing ASB can be difficult to measure. There can be a tendency to equate formal enforcement measures with effectiveness. The number of possession orders obtained, when other interventions are unsuccessful in sustaining tenancies, is far easier to quantify than the number of possession orders avoided through successful early intervention. Most ASB is relatively low level and addressed with a letter or visit from the local housing officer or an intervention from the caretaker. The

tenancy conditions are more often effective because they **can** be enforced rather than because they are.

- 6.8 When the Council seeks a possession order against a secure tenant for a tenancy condition breach it has to satisfy the court both that the tenancy condition has been broken and that possession is reasonable taking into account all the circumstances. Unless the court is satisfied on reasonableness, as well as the breach, a possession order will not be granted.
- 6.9 It is not always appropriate to enforce the tenancy conditions (or clauses in the lease) to the letter. Some, particular older, tenants who are frail or disabled may find it impossible to keep their garden neat and tidy especially if they live in a street property on a busy street where passersby drop litter into their front garden.
- 6.10 Even when formal enforcement action is not taken a tenancy condition can have a positive impact. It can encourage tenants to enter into a dialogue with housing officers about other ways of addressing problems. Tenants who might not otherwise accept help to keep their home or garden clean and tidy are more likely to do so if the possibility of formal enforcement action is there.
- 6.11 It is sometimes necessary for the council to take legal action when a tenant's home or garden is in very poor condition (especially if it is filthy or verminous or the tenant is an extreme hoarder) but the overwhelming majority of cases are resolved without legal action being necessary. Most tenancy condition enforcement action in cases like these is carried out by housing officers and officers in environmental health making personal contact with the tenant, setting out what is required, negotiating solutions, arranging practical help or support and by close monitoring to try and ensure that problems do not recur.
- 6.12 The main purpose of serving a formal Notice (whether it is a Notice of Seeking Possession or demotion or of action under the Public Health Act 1936) is almost always to encourage a tenant to resolve an issue so that legal action will not have to be taken. In the majority of cases a warning or a Notice is effective in encouraging tenants to address an issue or engage with services.
- 6.13 A successful warning or Notice about legal action avoids the necessity for further action as well as enabling it when it is necessary. Icaseworks, our new ASB case management system, will help us more effectively measure successful housing management and other interventions in addition to the numbers of injunctions, ASBOs, demotions or possession orders obtained. This will give a much clearer picture of the impact of our services.

7. Leaseholders' sub-tenants

- 7.1 Dealing with anti-social behaviour caused by the tenants of leaseholders was identified by the Leaseholders' Forum as an area that should be included within the current Leaseholder Improvement Plan. This can be complicated by

the fact that the leaseholder may not be to hand, there are more parties to deal with and different types of enforcement action may be taken against the tenant and the leaseholder (for example an anti-social behaviour injunction could be sought against a leaseholder's sub-tenant whilst forfeiture action is taken against the leaseholder.) The situation may also be helped or hindered by the involvement of managing agents or another landlord (for example where leaseholders have sub-let their property to a Housing Association who has let it to their own tenant.)

- 7.2 It is difficult to think of permissible new lease terms that could help address these very practical issues. Measures coming out of HMIP in encouraging more effective frontline services and greater consistency across the Districts; and the focus on this issue, and on exploring service options, in the leaseholder improvement plan, have scope both to improve services to leaseholders and more effectively address ASB to benefit the wider community.
- 7.3 More effective management of leasehold properties generally (including the way that ASB is addressed) is a priority of both the leasehold and housing management improvement plans. Work on new staff guidance and training and clearer internal processes is under way including a more stream lined protocol for referrals to the Leasehold Valuation Tribunal agreed between Home Ownership Services, housing management and Legal Services at the end of last year.

8. Moving forward – more effective tenancy condition enforcement

- 8.1 Whether it is a tenant, leaseholder or leaseholder's tenant involved, tenancy condition enforcement action tends to be about the same issues. These are:
- Non payment of rent or service charges
 - Nuisance (including the failure to have carpets or other noise reducing floor coverings)
 - Unauthorised alterations
 - Access for repairs or capital works or to address the condition of the property
 - Additionally (for tenants only) issues relating to non occupancy or unauthorised occupancy
- 8.2 The main legal remedies used by the Council to address these issues are also broadly the same across tenures. They are:
- Injunctions – to either abide by the tenancy condition terms or refrain from specified anti-social acts.
 - Possession proceedings for tenants or proceedings for forfeiture of the lease.
 - Anti-social behaviour orders (ASBOs)
 - Other legal remedies to address anti-social behaviour (eg “crack house” closure Orders or the new premises closure orders that can be

used across tenures to close premises where there is serious persistent nuisance).

- Environmental Health powers

- 8.3 The remedy that is used in any particular case depends on the particular circumstances, especially the seriousness or urgency of the issue, and whether or not the resident is a persistent offender. Other than in cases of very serious nuisance, non-occupancy by secure tenants or fraud, re-possession of a property is used as a last resort and remedies (like injunctions) tend to be used to try and deal with problems whilst allowing the resident to keep their home.
- 8.4 Improving the effectiveness of work to address anti-social behaviour has been a key part of the housing management improvement plan. This includes the creation of ASB co-ordinator posts in the district housing offices, ICaseworks case management IT system and the use of introductory and demoted tenancies. These initiatives have been explained in previous reports (including the HMIP update to December HASC Scrutiny Committee and the update on the ASB action plan in October) and will therefore not be covered in detail here. A visual summary of the Council's approach to ASB is contained in our "ladders of escalation". The neighbour nuisance ladder is attached as Appendix B.
- 8.5 Tenancy condition enforcement includes dealing with anti-social behaviour but it has a broader focus. It is also about (for example) ensuring that tenants pay their rent and service charges promptly, that they keep their homes and the environment around them in good condition, that unauthorised sub-letting is identified and dealt with and that successions and assignments and tenant improvements are appropriate and that timely access is given to carry out repairs and safety checks.
- 8.6 The housing management improvement plan has had this wider focus. It has put everything the housing management service does under the microscope to see if there are different or better or cheaper or more effective ways of doing things. This close scrutiny has reinforced good practice in many areas but also led to changes to increase efficiency. Some of the work, relating to tenancy condition enforcement, includes:
- *Reviewing the initial "sign up" interviews that housing officers have with new tenants and the visits that take place to new tenants in the first weeks of their tenancy to ensure that clear messages about what is expected are delivered. For example a new "sign up checklist" has been developed for estate officers and rent officers in the new rent team must make contact with new tenants in the first 3 weeks of their tenancy to ensure that they are clear about their obligation to pay rent promptly.*
 - *Reviewing the written information given to new tenants in the Tenants Guide. Updated leaflets for new tenants were considered by the "residents reading panel" over the Christmas holiday period and the feedback received is being*

considered currently. The new leaflets aim to focus on key messages written in plain English.

- *The profiling of introductory tenants to ensure that work with new tenants is effectively targeted.* All introductory tenancies are being closely monitored. This is partly to evaluate the impact of the introductory tenancies scheme which began in April 2008. It also enables us to have clear profile of new tenants and to target work accordingly. A significant proportion of new tenants, for example, are very young care leavers so housing staff have been working more closely with social workers in the Leaving Care Team to help support these young people get their tenancies off to a good start and nip any problems in the bud.
- *Reviewing our processes for highlighting tenants who are vulnerable and need extra help in an emergency or to maintain a successful tenancy.* Housing management staff were involved in the development of the Mental Health Accommodation Strategy 2008-11 that launched in October. HASC Scrutiny also received reports in May and September about joint work being done by housing and adult social care staff to more effectively manage tenancies where residents have severe and enduring mental health problems, especially through closer liaison and staff training.
- *Looking at how our different IT systems talk to each other* so that rent officers, estate officers, staff in home ownership services, the renewals division, housing options, the investigations teams and other sections within the council can share information effectively to provide residents with better services, identify tenancy conditions breaches promptly and co-ordinate enforcement action.

9. Moving forward – the next tenancy condition review

- 9.1 As a place shaper and in many of its different roles the Council is a promoter of good citizenship. For example we try and encourage residents to recycle their waste and take care of the environment, to take advantage of training, leisure and work opportunities, engage with our services and have consideration for others in the community. This is usually done through information and education and encouragement through rewards and penalties.
- 9.2 From time to time suggestions are made that the tenancy conditions can be a good vehicle for encouraging desirable behaviours. During the last tenancy condition review there was a lot of enthusiasm for requiring tenants to have household insurance as a condition of their tenancy. Although the tenancy conditions strongly advise tenants to do this we cannot require them to without risk of breaching the Unfair Terms in Consumer Contracts Regulations 1999 and the Office of Fair Trading guidance on unfair tenancy condition terms.
- 9.3 Currently it is topical to wonder whether there are new ways the tenancy conditions can assist the council's worklessness strategy and encourage

tenants into work or training (at the last review the restriction on tenants absences was relaxed to accommodate tenants who needed to be away from home temporarily to pursue training or job opportunities).

- 9.4 Members may wish to consider the extent to which the Council should seek to promote or discourage types of behaviour through the tenancy conditions when those regulations do not apply across tenures or to the general population.
- 9.5 If we had had a tenancy condition requiring tenants to have household insurance how would we have enforced it? What would we do if tenants did not comply? If tenants have this rule why not leaseholders? If it is not a rule that should be applied to all tenures (or that we would not want applied to ourselves) should it be applied to all tenants?
- 9.6 The approach taken in recent years has been to look at the lease when the tenancy conditions are reviewed (and vice versa) with a view to bringing the tenancy conditions and lease closer together gradually over time. Members may want to consider whether they agree this is the right approach.
- 9.7 On the basis that the tenancy conditions tend to be reviewed every 5 years the next review is not due until 2011. The 2006 tenancy conditions are still up to date and few suggestions for changes have emerged. Topics that have been raised are policy issues. They are:
- A review of the non statutory succession policy. These are additional successions the council allows under policy to carers or family members who are not eligible for a statutory succession because a succession has taken place before (usually adult sons and daughters who live with their parents). There were 13 of these agreed in the year Oct 2007-8.
 - A review of the tenancy conditions about dogs. A briefing paper on this was circulated to HASC Scrutiny members in August. For example suggestions have been put forward that tenants should not have dogs without permission. Leaseholders have this clause in the lease but it is not enforced.
 - A clause prohibiting smoking in enclosed communal areas (this is now prohibited by legislation).
- 9.8 Members may want to consider whether these, or any other issues, are reasons to bring forward a tenancy condition review. It is currently intended to consider these suggestions when the next review takes place.

10. Comments of Head of Legal Services

- 10.1 In considering changes to the tenancy conditions for council tenants consideration must be given to the Office of Fair Trading Guidance on unfair terms in tenancy agreements (September 2005) and the Unfair Terms in Consumer Contract Regulations 1999.

10.2 Leases granted under the Right to Buy scheme are governed by the provisions of the Housing Act 1985. Schedule 6 of the Act restricts the provisions that can be included in a Right to Buy lease. Paragraph 5 of that Schedule provides that the lease may include such covenants and conditions as are reasonable in the circumstances. The standard Regulations included at Schedule 6 of the Council's standard Right to Buy Leases were included on this basis. The standard Right to Buy Lease does give the Council the ability to change the Regulations in Schedule 6 of the Lease. However, given that Leases are documents of title and given that Paragraph 5 of Schedule 6 of the 1985 Act imposes a requirement that covenants and conditions must be reasonable the Council should consider very carefully any proposal to change any of the existing Regulations and even more carefully any proposal to add additional Regulations. As a matter of law, it may be simply inappropriate to try to impose new restrictions on leaseholders who have purchased leases for a capital premium for 125 years on the basis of the restrictions set out in the Regulations which were in the Lease they purchased. The mere fact that tenancy conditions are changed is not of itself a reason for changing the Regulations in the Right to Buy leases.

11. Comments of Director of Finance

The Director of Finance has been consulted and has no comments to add.