

CANNOCK CHASE COUNCIL

CABINET

21 SEPTEMBER 2006

REPORT OF THE DEPUTY CHIEF EXECUTIVE

PORTFOLIO LEADER: SOCIAL INCLUSION AND HOUSING

DEMOTION ORDERS

1. Purpose of Report

- 1.1 To consider the use of Demotion Orders as introduced by the Anti-Social Behaviour Act 2003.

2. Recommendation

- 2.1 It is recommended that the Council adopt the use of Demotion Orders contained in the Anti-Social Behaviour Act 2003, to combat anti-social behaviour occurring in secure tenancies.

3. Key Issues

- 3.1 The majority (95%) of tenants of Cannock Chase Council hold a secure tenancy and of these the majority have held that tenancy for 5 years or more. Therefore should anti social behaviour occur from secure tenant the prospects of being evicted are much lower than if they were an Introductory tenant.
- 3.2 The potential that a secure tenant could be demoted to a Demoted Tenancy serves as both a deterrent to secure tenants whose behaviour comes into question as well as being another tool to combat anti social behaviour and neighbour nuisance.
- 3.2 This council can achieve vital targets in maintaining sustainable communities through the use of demoted orders, giving adequate time for those secure tenants who may potentially face eviction to mend their ways and change their behaviour, whilst retaining the ultimate sanction of a swifter eviction (on the same basis as an introductory tenant) should continuation of the nuisance occur.

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Section 1

1. Background

- 1.1 Local Authorities grant two types of tenancies Secure tenancies and Introductory tenancies. Since 1<sup>st</sup> October 1997 the Council has operated an Introductory Tenancy scheme which applies to all new tenants of the Council. The introductory tenancy is converted to a secure tenancy after 12 months providing the tenancy has been conducted satisfactorily and no Court proceedings have been commenced.
- 1.2 The Anti – Social Behaviour Act 2003 Section 14 (1) amends Section 82 of the Housing Act 1985 to allow a secure tenancy to brought to an end by a Demotion Order. The Section inserts a new Section 82A of the Housing Act 1985 and provides that a Local Authority, a Housing Action Trust or a Registered Social Landlord may apply for a demotion order.
- 1.3 A Demotion Order when granted by the county court will end the secure tenancy on a specified date and replace it with a Demoted Tenancy. If the tenant remains in occupation, a new demoted tenancy will begin on the same day. The Court may only make such an order if the tenant, another resident or visitor to the tenant’s home has behaved in a way which has caused nuisance or annoyance to others living or visiting the locality or if such a person has used the premises for illegal purposes. In addition the Court must also be satisfied that it is reasonable to make the Order.
- 1.4 The effects of a Demotion Order being granted is the tenant will lose a number of rights previously included as a secure tenant (See Annex A) comparison table. This includes removing their right to buy and their right to exchange their home with another tenant.
- 1.5 A demoted tenancy is initially for 12 months but may be extended if the Council as the landlord serves notice to seek possession of the property during this period. If at the end of the demotion period the Council as the landlord is satisfied with the conduct of the tenant and has not served notice to seek possession of the property then the demoted tenancy will automatically become a secure tenancy as happens currently with this Council's existing Introductory Tenancy scheme.
- 1.6 The Courts have also been given the power to make a Demotion Order as an alternative to granting a possession order. The decision of the Court will be binding on the Council.

Section 2

**2. Current Situation for dealing with Anti-Social Behaviour/Neighbour Nuisance caused by Secure Tenants**

- 2.1 Currently when a Secure tenant breaches the terms and conditions of their tenancy agreement a Notice of Proceedings for Possession can be served by the Council on the tenant. This Notice of Proceedings for Possession details the alleged breaches of the tenancy agreement and provides details of when the Council can apply to Court for a possession hearing.
- 2.2 If the breaches of the tenancy agreement continue or are of a serious nature the Council can apply to the County Court for a Possession Order against the property. The possession Order is granted by the Judge based on the evidence provided by the Council and the tenant. The Judge can grant the Council a Possession Order as long that the Court is satisfied that the tenancy agreement has been breached and also it is reasonable to make a possession order. The possession order can either be suspended on terms or granted forthwith. A suspended possession order is an order which requires the tenant to abide by a number of terms as directed by the judge. Failure to adhere to the terms could lead to their eviction from the property. Possession forthwith requires the tenant to leave the property after a set number of days as decided by the judge this period of time is typically 28 days. If the tenant fails to leave the property at the end of this period of time the Council can then apply for the tenant's eviction.

Section 3

**3. Proposed Situation Following Adoption of Demotion Orders**

- 3.1 The new powers will provide the Council with an additional remedy when dealing with Anti-Social Behaviour and Neighbour Nuisance to apply for a stand alone demotion order or a demotion order in conjunction with a possession order. The following cases are examples where the Council could apply for a demotion order either as a stand alone remedy or in conjunction with a possession order:-
- Illegal conduct such as harbouring stolen goods or personal drug misuse of a controlled substance.
  - When a visitor, family member or child and not the tenant is the main cause of anti-social behaviour.
  - Operation of a business from a Council property which causes anti-social behaviour.
  - Carrying out car repairs that cause anti-social behaviour.
  - Low level ongoing noise nuisance and any other situation where a demotion order may be the most appropriate response.
- 3.2 A stand alone demotion order may be sought where there has been anti-social behaviour, but the Council feels that it is more appropriate course of action than eviction. An example of this is where the Council has concerns that if not checked the anti-social behaviour may

- escalate however the issue may be resolved with the input of sustainable intervention from our partner care and support agencies.
- 3.3 Councils can apply for a demotion order at the same time as a possession order. The Court can consider the evidence presented by the Council in order to seek possession or demotion and to decide upon which option would present the best solution. When a possession order is not granted but the court decides a demotion order is applicable, this provides the tenant with a clear indication that should their behaviour continue they may lose their home.
- 3.4 Once the Demotion Order had been granted if any further incidents of anti-social behaviour/nuisance occur or if the tenant goes into rent arrears the Council could then bring the demoted tenancy to an end. The Council would serve a Notice of Proceedings for Possession in the same way as with the existing Introductory Tenancy policy. The tenant then has a 14 day period in which to make an appeal to review the decision to end the Introductory Tenancy. If an appeal is made this is then heard by the Head of Housing, who then makes a decision based on the evidence presented by the Tenancy Services Manager and the information provided by the tenant. If the Head of Housing decides against the appeal or an appeal is not made at the end of the notice period, the Council will apply to court to obtain mandatory possession of the property.

#### Section 4

#### 4. Contributions to CHASE

- 4.1 The use of these orders will contribute towards CHASE in the following ways;
- (a) **Health:** helping to develop a healthy community through the effective management of the Councils Housing stock.
  - (b) **Environment:** contribute to a cleaner and safer and sustainable environment through the effective management of council estates.

#### Section 5

#### 5. Section 17 (Crime Prevention) Implications

- 5.1 These orders assist the Housing Department to combat and address Anti social Behaviour and Neighbour Nuisance and would have positive implications for crime prevention.
- 5.2 The use of these orders also assists the Housing Department in working together with our partners to address and resolve crime issues on council estates.

Section 6

**6. Human Rights Act Implications**

Article 6 – Article 6 of the Act provides that where a person's civil rights and obligations are being determined he/she is entitled to a fair trial. The Council accords with this right by allowing the tenant to attend any review hearing, the opportunity to state their case and a decision to be made within a reasonable period of time with reasons for its decision.

The Council observes the rules of natural justice and its procedures are consistent with Article 6 of the Human Rights Act 1998.

Article 8 – The Right to respect for private and family life - this is a qualified right and therefore, subject to the observance of procedures set out in statute the possession of a persons home arising from the breach of the terms of a demoted tenancy would not result in breach of the tenant's human rights.

All decisions taken by the Council in relation to possession action should be proportionate and reasonable having regard to the rights of the tenant(s) balanced with the rights of the wider community.

Section 7

**7. Data Protection Act Implications**

7.1 There are no data protection Act implications directly arising out of this report.

Section 8

**8. Risk Management Implications**

8.1 These orders reduce the likelihood of the council failing to meet the Housing Service objective (No. 4) which states; that we aim to ensure that all tenants feel safe in their own homes by providing, through devolved management, efficient, caring and quality management services that are both accessible and accountable to and that contribute to, social inclusion and reducing crime and disorder.

8.2 The use of demotion orders significantly reduces the risks of properties or areas of estates becoming difficult to let. These are a tool to that when used dramatically reduces the security of tenure for offending tenants and gives them a clear understanding of the councils lack of tolerance towards nuisance and Anti Social behaviour and therefore reduces the risk of the Council being accused of not using the variety of tools it has at its disposal.

Section 9

## **9. Legal Implications**

By virtue of the Anti Social Behaviour Act 2003, the Council as landlord has been afforded additional powers to deal with anti social behaviour and neighbour nuisance which is linked to or arises from its properties.. The demoted tenancy is one of a range of measures designed at tackling anti social behaviour, however it is specific to behaviour which directly or indirectly relates to or affects the housing management functions of the landlord or in circumstances where housing accommodation owned or managed by the landlord is used for an unlawful purpose.

Any such use of these powers should be proportionate having regard to the degree of anti social behaviour being exhibited, the age and personal circumstances of those exhibiting such behaviour.

A demoted tenancy cannot be brought to an end without a Court Order. As with introductory tenancies the Court has no discretion but to make an outright order for possession unless there has been a failure to comply with the procedural requirements. The requirements to serve notice prior to commencing a possession action against a demoted tenant are in the same terms as for introductory tenants. Although reasons must be given for seeking possession there is no requirement that those reasons should be related to anti social behaviour as defined for the purposes of demotion. A key aim of the demotion is to give discretion to the landlord and may include other matters in relation to the conduct of the tenancy e.g. rent arrears.

S143C of the Housing Act 1996 governs what happens to a demoted tenancy if there is a change of landlord during the period of a demoted tenancy e.g. By way of stock transfer. Where the transfer is between local housing authorities and/or Housing Action Trusts the tenancy remains demoted for the remainder of the demotion period. If the transfer is to a registered social landlord the tenancy becomes an assured shorthold tenancy under the Housing Act 1988.

### **Section 10**

## **10. Financial Implications**

10.1 There are no financial implications as result of the proposed use of Demoted Orders.

### **Section 11**

## **11. Human Resource Implications**

11.1 There are no Human resource implications arising form this report.

### **Section 12**

## **12. Conclusions**

12.1 That the recommendations set out in section 2 of the report are agreed.

Background Papers

a) Anti-Social Behaviour Act 2003

## Annex 1

Comparison between secure tenancies and demoted tenancies

There a number of legal differences between the rights of secure and introductory tenants:

	<u>Secure Tenants</u>	Demoted Tenants
Right to Buy	Yes	No
Right to sub let	Yes	No
Right to mutually exchange/transfer	Yes	No
Right to compensation for improvements	Yes	No
Right to succeed	Yes	Yes
Right to assign	Yes	No
Right to have repairs	Yes	Only repairs which fall under the Landlords repairing obligations
Security	Yes	Limited
Right to Acquire	No	No