

Appeal and Review Policy and Procedure



LODDON
HOMES



BERRY BROOK
HOMES

Reference:	Version 1	Author:	Sue Needham
Scope:	Loddon Home Berry Brook Homes	Approved by:	Holly Messenger
Legislation:	Housing Act 1988 Housing Act 1996 Localism Act 2011 Anti-social Behaviour Act 2003 Housing and Planning Act 2016	Date of approval:	November 2019
Regulatory/ Governance:	The Regulator of Social Housing Tenancy standard	Date of next review:	November 2022
Related Policies:	Tenancy policy (Starter tenancies and fixed term tenancies procedures) Demotion of tenancy policy Anti-social behaviour harassment and hate crime policy Unacceptable behaviour policy		

1. Policy Statement

- 1.1 This policy applies to Loddon Homes and Berry Brook Homes which collectively will be referred to as the Local Housing Companies (the LHC).
- 1.2 The LHC has delegated responsibility to Wokingham Borough Council (WBC) Tenancy Services for ensuring that this policy is implemented and delivered.
- 1.3 The LHC is committed to making the best possible use of its housing stock.
- 1.4 The LHC recognises that in delivering its policies and procedures, certain decisions may have to be made that affect a resident's tenancy or puts them at risk of losing their home. In these specific instances, the resident has the right to appeal or request a review.

2. Scope

- 2.1 This policy applies to the LHC's starter, fixed term (and assured) tenancies.
- 2.2 This policy applies to the LHC and Wokingham Borough Council Housing Services.

- 2.3 In relation to appeals under the Unacceptable Behaviour policy, this applies to all tenants irrespective of tenure.

3. Roles and Responsibilities

- 3.1 The relevant officers in Tenancy Services are responsible for managing starter, fixed term and assured tenancies on behalf of the LHC.
- 3.2 The managers will provide support and guidance to ensure that this policy is complied with and the organisation is not exposed to unlawful eviction claims.
- 3.3 The Senior Specialist Housing Manager has overall responsibility to ensure that this policy is complied with at all times.

4. Definitions

4.1 A starter tenancy is an assured shorthold periodic tenancy with limited security and rights.

4.2 The term “fixed-term” applies to tenancies offered for a specified period of time, as opposed to traditional “lifetime tenancies” (secure/assured). Regulation requires social landlords to offer a minimum fixed-term of 5 years (2 in exceptional circumstances).

4.3 An assured tenancy is a periodic non shorthold tenancy and can be either weekly or monthly. These are also referred to as lifetime tenancies. Under the provisions of the Localism Act, this type of tenancy must be offered to any successful starter resident who held a social tenancy dated on or before 1 April 2012 immediately prior becoming a resident of the LHC, unless an affordable rent is being charged

4.4 Appeal: social residents have the right to appeal (request a review) when the LHC makes decisions under its policies to

- obtain mandatory possession of the property,
- extend a starter tenancy,
- offer a fixed term for less than 5 years (typically 2 years)
- make an offer of alternative accommodation.¹

5. Legislation

- 5.1 The LHC must have due regard to the following legislation in applying this policy:
- Housing Act 1988
 - Housing Act 1996
 - Localism Act 2011
 - Housing and Planning Act 2016
 - Anti-social Behaviour Act 2003

6. Procedure

6.1 The circumstances when a resident can appeal can be summarised as follows:

¹ Refer to the toolkits and process maps for each relevant policy and procedure

Type of tenancy	Action taken by the LHC	Time period to submit appeal	Appeal hearing	Outcome advice sent
Starter tenancy	Service of S21 Notice Requiring possession (NRP)	14 calendar days	Within 14 calendar days of receipt	Within 5 calendar days of appeal
	Extension of starter tenancy period	14 calendar days	Within 14 calendar days of receipt	Within 5 calendar days of appeal
	Type of tenancy offered	14 calendar days	Within 14 calendar days of receipt	Within 5 calendar days of appeal
Fixed term tenancy	Service of minded to notice and S21 NRP	28 calendar days	Within 14 calendar days of receipt	Within 5 calendar days of appeal
	Length of fixed term on renewal	14 calendar days	Within 14 calendar days of receipt	Within 5 calendar days of appeal
	Offer of alternative accommodation	14 calendar days	Within 14 calendar days of receipt	Within 5 calendar days of appeal
Fixed term/assured	Service of a Notice Seeking Possession under ground 7A (ASB)	14 calendar days	Within 14 calendar days of receipt	Within 5 calendar days of appeal
	Notice before proceedings for a demotion order	14 calendar days	Within 14 calendar days of receipt	Within 5 calendar days of appeal
All tenancies, licensees and lessees	Communication protocol	14 calendar days	Within 14 calendar days of receipt	Within 5 calendar days of appeal

6.2 The appeal process

6.2.1 When any of the actions detailed in 6.1 have been taken by the LHC under the relevant policies, residents must request a review within 14 days. The exception is 28 days when a minded to notice and S21 NRP has been served on a fixed term resident.

6.2.2 Verbal and email requests for a review will be accepted as well as requests using the relevant appeal form.

6.2.3 Where a Notice before proceedings for a demotion order has been served and

- the request for a review has not been received one week after the service of Notice and
- the resident is vulnerable, a home visit will be made to remind the resident of the deadline and the consequences of not requesting a review. Any agency involved in providing care and support to the person concerned will be contacted.

If no request is made then the case will proceed to court upon expiry of the Notice.

6.2.4 The review will take place before the expiry date indicated on the Notice. Proceedings cannot commence if a review remains outstanding.

6.2.5 The review will be carried out by a manager not involved in the case and senior to the Housing Officer who made the decision to serve the Notice.

6.2.6 The review can either be by way of an oral hearing or in writing. If a resident would like an oral hearing then this must be requested at the time of the request for the review. See relevant Appeal Form in the toolkit(s).

6.2.7 When a request for a review is received, the Housing Officer will contact the Officer conducting the review (Review Officer) and provide a copy of the Appeal form.

6.2.8 The Housing Officer will then complete a report detailing the chronology and supporting documents including for example copies of any warning letters, proportionality assessment, Notice served, which will be presented to the Review Officer as evidence.

6.2.9. The Review Officer² will respond to the Housing Officer with the time, date and place of the review not more than 5 days after the receipt of the review request. Upon confirmation of this the Housing Officer will write to the resident with the date, time and place of the review including copies of any evidence that will be presented. The resident will receive no less than 5 days' notice of the date of the review and copies of the evidence.

6.2.10 The Appeal date set should be within 14 working days after 6.2.9 has been complied with.

6.2.11 A resident has the right to make written representations. However, these must be received by no less than 2 clear days of the review and the LHC will consider any such representations received by this date.

6.2.12. At an oral review hearing a resident has the right to be:

- Heard
- Accompanied or represented (whether professionally qualified or not)
- Call persons to give evidence

² The Review panel can be the WBC's Housing Panel

- Put questions to anyone who gives evidence

6.2.12. A resident can ask for the review to be postponed, however, it is up to the Review Officer as to whether to grant or refuse this request. If the hearing is postponed the LHC will give reasonable notice of the date, time and place of the postponed hearing.

6.2.13. The Review Officer has the power to adjourn the case to another date and will give reasonable notice of the date, time and place of the adjourned hearing.

6.3 Outcome of appeal

6.3.1 Once the appeal hearing has taken place, the Review Officer must take into account all the evidence provided by the Housing Officer and the resident and make a decision which can be summarised as follows:

Tenancy	Reason for appeal	Outcome of appeal
Starter tenancy	Service of S21 Notice Requiring possession (NRP)	1. Uphold the appeal and fixed term/assured tenancy granted 2. Reject the appeal and possession proceedings continue 3. Partially uphold the appeal and extend the starter tenancy for 6 months
	Extension of starter tenancy period	1. Uphold the appeal and fixed term/assured tenancy granted 2. Reject the appeal and extension effective
	Type of tenancy offered	1. Uphold appeal and offer assured tenancy (refer to Tenancy Policy) 2. Reject appeal and offer fixed term tenancy
Fixed term tenancy	Service of minded to notice and S21 NRP	1. Uphold the appeal and new fixed term tenancy offered (can be for 2 year period) 2. Reject the appeal and possession proceedings continue

	Length of fixed term on renewal	1. Uphold the appeal and offer 5 year fixed term tenancy 2. Reject the appeal and 2 year fixed term tenancy offered
	Offer of alternative accommodation	1. Uphold the appeal and agree that further offers of alternative accommodation will be made 2. Reject the appeal and resident must move
Fixed term/assured	Service of a Notice Seeking Possession under ground 7A (ASB)	1. Uphold the appeal and withdraw NOSP 2. Reject appeal and possession proceedings continue
	Notice before proceedings for a demotion order	1. Uphold the appeal and withdraw the notice 2. Reject the appeal and continue with application for a demotion order
All tenancies, licensees and lessees	Communication protocol	1. Uphold the appeal and withdraw protocol 2. Reject the appeal and the protocol remains in place. (review after 6 months)

6.3.2 The Review Officer must send the resident a written outcome of the appeal letter within 5 days of the Appeal hearing, detailing reasons for the decision made.

6.4 Action after Appeal

6.4.1 The Housing Officer will undertake the actions detailed in 6.3.1 depending upon the outcome. Refer to Starter and Fixed term tenancies procedures, Demoting tenancies policy and ASB, Hate Crime and Harassment policy/procedure.

7. Equality & Diversity

7.1 The LHC recognises the needs of a diverse population and always acts within the scope of its own Equality and Diversity Policy, the Human Rights Act 1998, and Equalities Act 2010. The LHC works closely with its partners to ensure it has a clear understanding of its resident community with clear regularly updated service user profiles. The LHC will

record, analyse and monitor information on ethnicity, vulnerability and disability.

8. Confidentiality

8.1 Under the Data Protection Act 2018, and the Human Rights Act 1998, all personal and sensitive organisational information, however received, is treated as confidential. This includes:

- anything of a personal nature that is not a matter of public record about a resident, client, applicant, staff or board member
- sensitive organisational information.

8.2 The LHC employees will ensure that they only involve other agencies and share information where there is a legal basis for processing the information.

9. Review

10.1 This policy will be reviewed on a three yearly basis or more frequently in response to changes in legislation, regulatory guidance, good practice or changes in other relevant LHC policies.

10. Performance

11.1 Performance in relation to the delivery of the services and activities set out in this policy will be monitored on an ongoing basis through our established reporting mechanisms to our associated boards.

11. Appendices

None