

LHC Demotion of tenancy Policy



Reference:	Version 1	Author:	Sue Needham
Scope:	Loddon Homes Berry Brook Homes	Approved by:	Holly Messenger
Legislation:	Housing Act 1985 S 82A Housing Act 1988 Housing Act 1996 SS143A-P Anti-social Behaviour Act 2003 (Sections 14 & 15)	Date of approval:	November 2019
Regulatory/ Governance:	The Social Housing regulator's Neighbourhood Standard and Tenancy Standard	Date of next review:	November 2022
Related Policies:	Anti-social behaviour hate crime and harassment policy Unacceptable behaviour policy Domestic Abuse policy Tenancy policy Succession 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 Although WBC has been delegated responsibility, the LHC will be consulted and to sign off the following proposed actions in delivering this policy:
 - Making an application for a demotion order.
- 1.4 The LHC are committed to creating an environment where anti-social behaviour and race and hate crime is not tolerated and where customers can live free from violence, disturbance and nuisance.
- 1.5 The LHC are committed to using all the various tool and powers that are available to prevent and where possible stop acts of anti-social behaviour (ASB).

- 1.6 The LHC will ensure that the ASB policy is implemented (see in particular clause 10.2).
- 1.7 To encourage and support customers to be aware of their obligations and responsibilities relating to their assured or fixed term tenancy and that causing ASB may result in a demotion order being sought by the LHC.
- 1.8 For lower level incidents of ASB, LHC will consider demoting tenancies instead of seeking possession.
- 1.9 To manage the use of demotion orders in a fair and consistent manner.

2. Scope

- 2.1 This Policy sets out how the LHC will approach the prevention, management and tackling of ASB in the communities in which it operates, using the specific tool of demotion of tenancy.
- 2.2 This policy relates to those LHC residents who hold an assured or fixed term tenancy only.
- 2.3 This policy is for all LHC and WBC staff who are involved in tenancy management and the development and implementation of customer services.
- 2.4 The LHC will promote this policy and its approach with key partners and stakeholders.

3. Roles and Responsibilities

- Housing officers will undertake interviews and investigations as necessary and in line with this policy and the ASB procedure.
- Housing Managers will support the Housing officers as necessary in the case management of ASB.
- Interventions will be put in place as appropriate before enforcement action is considered.
- Where enforcement action is necessary, then appropriate legal advice and support will be used by the Housing officers and Housing Manager and an assessment will be undertaken to ensure that this action is proportionate.
- The decision to use a demotion order to tackle ASB will be taken on a case by case basis by the Housing Manager.

4. Legislation

- 4.1 A social landlord can apply for a demotion order where a tenant has engaged in anti-social behaviour or used the premises for unlawful purposes under and section 6A,

Housing Act 1996.

A tenant remaining in the property following a demotion order, occupies under a demoted tenancy (section 20B, Housing Act 1988; section 143A, Housing Act 1996).

The use of demoted tenancies is detailed in Section 14 and 15 of the Anti-social Behaviour Act 2003.

5. Overview of demoted tenancies

- 5.1 The LHC can apply for a demotion order under Sections 14 and 15 of the Anti-social Behaviour Act 2003.
- 5.2 A demoted tenancy does not have the same security of tenure as an assured or fixed term tenancy.
- 5.3 The rights of a demoted tenancy holds is similar to those of starter tenancies (assured shorthold tenancy) If the demoted tenant does not regularise their behaviour then the LHC can serve a S21 and the county court has a duty to grant mandatory possession. The LHC would not have to prove its case in these circumstances.
- 5.4 Any arrears of rent payable at the termination of the assured or fixed term tenancy become payable under the demoted tenancy. Once the tenancy is demoted it can be ended for reasons other than further incidences of ASB, for example rent arrears or any other breach of the Tenancy Agreement.
- 5.5 Demotion is an alternative option to requests for possession orders. It is considered proportionate for more low-level forms of ASB where possession proceedings are not deemed appropriate. Demotion orders therefore serve as a last chance incentive for the perpetrator to improve his/her behaviour before possession proceedings are taken.
Once a demotion order is granted, the tenancy will last for a period of 12 months (demotion period) unless possession proceedings are started. If the behaviour of a demoted tenant has noticeably improved and is considered satisfactory after the 12 month period, then the demoted tenancy ends and is replaced by an assured to fixed term tenancy depending upon the type of tenancy the customer held prior to the demotion order.

6. Rights of a demoted tenant

- 6.1 Demoted tenants have fewer rights than assured or fixed term tenants.

Tenancy right	Demoted tenancy
Right to succession	Succession rights are limited in that the spouse or partner who have to satisfy a 12 months' requirement.

Right to assign	Assignment rights are limited to circumstances that arise from family proceedings
Right buy (protected)	No
Right to mutual exchange	No
Right to repair	Yes
Right to take in lodgers	No
Right to be consulted	Yes

Under a demoted tenancy, the following terms will remain the same as an assured or fixed term a secure tenancy:

- The parties to the tenancy agreement
- The period of the tenancy (weekly)
- The amount of rent
- The date the rent is payable (Monday in advance)
- Any arrears of rent payable
- Any rent paid in advance is carried over
- Any other terms that are notified to the tenant

7.0 Obtaining a demotion order

7.1 The LHC may seek a demotion order if instances of ASB occur.

7.2 The ASB policy and procedure will be followed after incidents of ASB have been reported. (See Section 6.3.1 – 6.3.3 of the ASB procedure).

7.3 In accordance with Section 6.3.4 of the ASB procedure enforcement action should be used where it is proportionate and intervention tools have not been successful in tackling the incidents of ASB.

7.4 Careful assessment will be made to the suitability of demotion and the proportionality statement completed and authorised by the Housing Manager to ensure that this is the appropriate course of action to manage the ASB being reported.

7.5 Prior written warning (perpetrator demotion warning letter) of this action that is being considered will be given to the perpetrator of the ASB with a full explanation of the consequences of this, if their behaviour is not regularised within a stated period of time. Should the ASB continue then, a Notice before a demotion of tenancy with the cover letter will be served. If the ASB is not regularised, then application will be made of the court for a demotion order to be awarded.

7.5 In certain circumstances when the type of ASB being caused is of a more serious nature, the LHC will consider applying for a demotion order at the same time as a possession order. It

will then be the county court's decision which solution is the most suitable in the circumstances, based upon the evidence provided.

8.0 Ending demoted tenancies

8.1 Once a demotion order has been granted, the tenancy will be monitored regularly in line with the ASB policy and arrears recovery policy.

8.2 A demoted tenancy can be ended for any of the following reasons:

- When the 12 months demotion period has lapsed as there has been no further incidents of ASB and this has been authorised by the Housing Manager.
- Applying for possession for the property as there has been a breach of the demotion order and it is proportionate to do so (see section 10.2. Where a S21 is served then the demoted tenant has the right to appeal against this decision. (see Starter tenancy procedure).
- If the tenant or joint tenants no longer occupy the property as their only or principal home.
- If the tenant dies and no one is entitled to succeed the tenancy.

7.0 Equality & Diversity

7.1 The LHC recognise 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 work 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.

8.0. 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

9.1 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

10.1 Our 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

APPROVED