

EAST AYRSHIRE COUNCIL

HOUSING COMMITTEE – 19 MAY 2004

AUTHORISED NON OCCUPATION POLICY

Report by Executive Director of Neighbourhood Services

1. PURPOSE OF REPORT

- 1.1 The purpose of this report is to recommend to members the proposed “Authorised Non Occupation Policy” in respect of Council house tenancies in East Ayrshire.

2. BACKGROUND INFORMATION

- 2.1 A recent report by the Ombudsman noted that there was no definitive policy on non occupation of Council tenancies and that this should be addressed.

3. PROPOSED AUTHORISED NON OCCUPATION POLICY

- 3.1 The main aims and objectives of the Authorised Non Occupation Policy which is appended are: -
- To ensure that properties are not lying empty without the knowledge of the Housing Service
 - To ensure that properties are not rendered vulnerable to damage and open to trespass as a result of being unoccupied
 - To ensure the property has not been abandoned
 - To ensure that tenants are aware of their responsibilities if leaving the property unoccupied for extended periods

4. FINANCIAL IMPLICATIONS

Nil

5. LEGAL AUTHORITY/IMPLICATIONS

- 5.1 The Housing (Scotland) Act 2001 enables the Council to recover possession of unoccupied properties. The Council’s Tenancy Agreements require tenants to occupy the house which they let.
- 5.2 Permission granted in terms of this policy will enable tenants to leave their house unoccupied without breaching their Tenancy Agreement.

6. POLICY IMPLICATIONS

- 6.1 The proposed policy formalises arrangements that are already in place.

7. CONCLUSION

- 7.1 The adoption of the aforementioned policy addresses the concerns raised by the Ombudsman and provides a framework against which tenants applications to leave their house unoccupied can be measured. Once approved a copy of the policy will be issued to the Ombudsman.

8 RECOMMENDATIONS

- 8.1 The Committee are recommended to: -
- (i) To recommend approval to the Council of the Authorised Non Occupancy Policy contained in Appendix 1
 - (ii) Otherwise note the contents of this report

William Stafford
Executive Director of Neighbourhood Services

CMCA/GD/WJ/LA

21st April 2004

LIST OF BACKGROUND PAPERS

1. Ombudsman Report 4th March 2004

Any person wishing to inspect background papers listed above should telephone 01563 554873 and ask for Gerry Darroch, Operations Manager.

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Appendix 1

AUTHORISED NON OCCUPATION POLICY

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1. Aims and Objectives

The aims and objectives of the Authorised Non Occupation Policy are as follows:-

- To ensure relevant legislation is observed
- To ensure that properties are not lying empty without the knowledge of the Housing Service
- To ensure that properties are not rendered vulnerable to damage and open to trespass as a result of being unoccupied
- To minimise the opportunity for illegal occupation
- To ensure that the property has not been abandoned
- To demonstrate prompt and effective action against breaches of Tenancy Agreement
- To ensure that the surrounding houses of unoccupied properties are best protected from fire, flood and gas calamities
- To minimise HB, Council Tax and DWP fraud
- To minimise rent loss
- That tenants are aware of their responsibilities if leaving the property unoccupied for extended periods

2. Legal Requirements

The legal framework for the Authorised Non Occupation Policy is provided by: -

- Housing (Scotland) Act 1987 as amended
- Housing (Scotland) Act 2001
- Human Rights Act 1998
- Data Protection Act 1998
- Equal Opportunities Legislation
- The Tenancy Agreement

3. Background

Tenants are allowed to leave their home unoccupied for up to 4 weeks without informing the Housing Service. If a tenant intends to leave their home unoccupied

for more than 4 weeks they must seek permission from the Housing Service using the appropriate application form. If other people who normally reside in the house will remain there during the tenant's absence, there is no requirement to make the application. Should a tenant leave the house unoccupied for more than 4 weeks without first obtaining permission the Council will be entitled to regard this as a breach of tenancy conditions, which may lead to court action for recovery of possession of the house. In addition the Council may regard the property as being abandoned in terms of Section 17 of the Housing (Scotland) Act 2001, and may instigate proceedings for repossession of the house in terms of Section 18 of the Housing (Scotland) Act 2001. The Council will have discretion to consider a tenant's retrospective application for consent, in which case the application will be considered in accordance with this policy as if it were lodged timeously.

4. Procedure

- The Council will respond to applications from tenants within 10 working days of receipt
- The Council will notify applicants of the outcome of their request in writing
- The Council will judge each request on its own merits. Decisions will be based upon established facts, and the reasons for the decision will be recorded
- The Council will advise the tenant of the responsibilities they hold during any period of authorised absence.
- If the tenant has not contacted the Council at the end of the agreed period the Council will attempt to contact the tenant at the contact address provided on the application form
- If contact is not established within a reasonable period at the end of the agreed period the council may commence proceedings for recovery of possession

5. Factors to be considered

5.1 Reasons which may be Acceptable for the Absence

- Working away from home
- Absence to care for a relative
- Absence whilst in hospital or nursing home

The above list is by no means exhaustive and other factors will be given consideration in line with the terms of this policy.

5.2 Duration of the Authorised Absence

The duration of the authorised absence will be based on what is considered to be reasonable given the reasons for the request, and the circumstances surrounding the application.

The Council may take into account any earlier periods of authorised absence when determining the application.

6. Grounds for Refusal of Application for Non Occupancy

The Council will not unreasonably refuse a request for non occupancy. Reasonable grounds for refusing a request include the following: -

- A Notice has been served and is currently in force warning the tenant that we may raise proceedings for recovery of possession
- A decree for the tenants eviction has been obtained
- The lack of a suitable reason for the absence

These examples are not the only grounds for refusing the request and do not in any way alter our general right to refuse permission on reasonable grounds.

Any decision shall be made on the basis of sound, well grounded and well documented reasons, which are reasonable and proportional in the circumstances. Furthermore these will be applied consistently and in a manner which treats comparable applicants equally. An appeal against any decision made, in this connection, can be made through the appeal procedure (see section 9).

If the application is refused the tenant must not leave the property unoccupied. Failure to occupy the property in these circumstances (subject to the right of appeal mentioned below) will be regarded as a breach of tenancy conditions and may lead to court action for recovery of possession. In addition the Council may regard the tenancy as being abandoned in terms of Section 17 of the Housing (Scotland) 2001, and may instigate proceedings for recovery of possession of the house in terms of Section 18 of the Housing (Scotland) Act 2001.

7. Tenants Responsibility during the Period of Agreed Absence

The tenant must adhere to the following conditions if permission is granted: -

- Tenants must provide a contact address and telephone number in case they require to be contacted during the period of agreed absence.
- Tenants must take all reasonable steps to avoid personal injury to any third party, and damage or danger to their house and property and that of any neighbouring tenant or owner occupier. These steps may include: -

- Securing the doors and windows of their home
 - Taking steps to minimise the risk of damage whilst the house is unoccupied, including ensuring where possible, that the water, gas and electricity supplies are turned off
 - If the house is going to be unoccupied for any length of time, and there is a risk of water pipes freezing whilst the house is unoccupied, including where possible draining down the water supply and/or heating the house.
 - Tenants must also make sure that the house is secure. The council will not accept responsibility for personal injury to the tenant or any other person or for loss or damage to furniture, fittings or decoration which results from the tenant's failure to comply with these conditions.
- Tenants must notify the Housing Service of any change in circumstances regarding their absence from the property.
 - Tenants must immediately notify the Housing Service of their return to the property.
 - Tenants must continue to pay rent.

The council reserves the right to recover all expenses incurred as a consequence of the tenant's failure to comply with the above conditions, including the cost of carrying out any emergency repairs.

8. Responsibility and Monitoring

The Area Housing Manager is responsible for ensuring that this Policy is being implemented and monitored in accordance with the Non Occupancy Procedure Guide. Monitoring of the policy allows for: -

- Adherence to the Policy
- Effective implementation
- Informing future Policy reviews

9. Right of Appeal

Applicants have a right to appeal against a refusal of their application. Such an appeal must be submitted within 4 weeks of the date of notification of the outcome of

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their request. The appeal must be made in writing and must state the reasons why the decision should be reviewed. The appeal will be considered by the Operations Manager or nominated officer. Applicants dissatisfied with the outcome of this initial appeal may appeal to the Head of Housing. Applicants have a further right to appeal to the Housing Appeals Sub-Committee. At every stage of the appeal procedure the person or persons appointed to consider the appeal must be able to demonstrate in a fair and open manner that their decision was sound, well-grounded, well documented and was reasonable and proportional in all the circumstances. Unsuccessful appellants will be provided with full written details as to why their appeal was refused and advice on how to proceed to the next stage of the appeal procedure. Should applicants be dissatisfied with any aspect of the council's handling of their application/appeal, they have a right to refer the matter to the Scottish Public Services Ombudsman who may investigate their complaint.

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