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| Council/ Committee: | Safe & Inclusive Scrutiny | Agenda Item No.: | 8 |
| Date: | 22nd November 2011 | Category | |
| Subject: | Patch Management Policies – Working from Home Illegal Occupiers. | Status | Open |
| Report by: | Head of Housing | | |
| Other Officers involved: | Patch Management Group | | |
| Director | Director of Neighbourhoods | | |
| Relevant Portfolio Holder | N/A | | |

RELEVANT CORPORATE AIMS

COMMUNITY SAFETY – Ensuring that communities are safe and secure

The Illegal Occupier policy lays out how the Council will take action against squatters.

REGENERATION – Developing healthy, prosperous and sustainable communities

The Working from Home policy describes how the Council will make it easier for people to work from home.

STRATEGIC ORGANISATIONAL DEVELOPMENT – Continually improving our organisation.

Both policies have been developed proactively ahead of any real problems within the District.

TARGETS

Not directly

VALUE FOR MONEY

Not directly

THE REPORT

This report considers two policies that have been developed through the patch management route and are applicable to Council tenants.

a. Illegal Occupiers

The first report is a policy on how to deal with illegal occupiers and squatters in Council properties. There is no current policy, and as there is national concern about tenancy fraud it is important to introduce a policy.

This policy is designed to provide clarity on how we will deal with illegal occupiers and squatters in Council properties.

b. Working From Home.

There is a perception from government that some local authorities are unreasonably restrictive and prevent people living in council accommodation from working from home. There is no current policy.

This policy is designed to provide clarity when we will withhold permission to work from home, but in most cases permission will be granted.

ISSUES FOR CONSIDERATION

Whether to accept the policies on Illegal Occupier and Working From Home and recommend them to the Executive.

IMPLICATIONS

Financial : Not directly

Legal : Not directly

Human Resources : Not directly

RECOMMENDED that

(1) the Safe and Inclusive Scrutiny Committee recommend to the Executive that the Illegal Occupiers policy is adopted.

(2) the Safe and Inclusive Scrutiny Committee recommend to the Executive that the Working From Home policy is adopted

ATTACHMENT: Y

FILE REFERENCE:

SOURCE DOCUMENT:

BOLSOVER DISTRICT COUNCIL

Squatters / Illegal Occupiers

September 2011



This Policy addresses the following Corporate Aims (show those which are appropriate to the policy only):



COMMUNITY
SAFETY



COUNCIL &
ENGAGED SERVICES



ENVIRONMENT



REGENERATION



SOCIAL INCLUSION



STRATEGIC ORGANISATIONAL
DEVELOPMENT

Bolsover District Council Equalities Statement

Bolsover District Council is committed to equalities as an employer and in all the services provided to all sections of the community.

- The Council believes that no person should be treated unfairly and is committed to eliminate all forms of discrimination in compliance with the Equality Strategy.
- The Council also has due regard to eliminate racial discrimination and to proactively promote equality of opportunity and good relations between persons of different racial groups when performing its functions.

This document is available in large print and other formats from any of the Council offices or by contacting the Chief Executives Directorate on 01246 242323. Please bear in mind we will need a few days to arrange this facility.

If you need help to read this document please do not hesitate to contact us.

Our Equality and Improvement Officer can be contacted via [Email](#) or by telephoning 01246 242407.

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CONTROL SHEET

| Details of Document | Comments / Confirmation |
|--|--|
| Title | Illegal Occupiers |
| Document type – i.e. draft or final version | Draft – see version number below |
| Location of Policy | Neighbourhoods/Housing/dmt/pc/policies/illegal occupiers |
| Author of Policy | Peter Campbell |
| Member route for Approval & Cabinet Member concerned | Patch Management Keith Bowman, Portfolio Holder for Housing |
| Date Risk Assessment completed | January 2011 |
| Date Equality Impact Assessment approved | February 2011 |
| Partnership Involvement (if applicable) | None |
| Date added to the Forward Plan | n/a |
| Policy Approved by | |
| Date Approved | |
| Policy Review Date | |
| Date forwarded to CSPD (to include on Intranet and Internet if applicable to the public) | |

Version History

- 1.0 Draft
 - 1.1 PMWG comments
 - 1.2 – EIA comments
 - 1.3 – PMWG comments
- 2.0 - SMT

CONTENTS

- 1.** The Introduction – including the background or rationale of the policy
- 2.** The Scope of the Policy – including to whom it will apply and any requirements of compliance.
- 3.** The Principles of the Policy – to link in with the Corporate Aims and Vision.
- 4.** The Policy Statement this may need to be divided down into subsections if the policy is lengthy
- 5.** Responsibility for implementing the Policy (and implementation plans where necessary).
- 6.** Any Target Groups and Key Areas, if applicable
- 7.** More information, if applicable
- 8.** Glossary of Terms, if applicable

Introduction

Scope

This policy applies to residential accommodation owned by Bolsover District Council and managed by the Housing Department.

This policy applies in cases where:

- A vacant property is squatted, or
- Someone has been allowed into the property with the consent of the tenant and remains in the property after the tenant has left or died, or
- An assignment or mutual exchange has taken place without the consent of the Council, or
- A property is otherwise occupied by someone other than the legal tenants, and the tenant has ceased to occupy the property.

Principles

Bolsover District Council aim to let homes to those in housing need. The council aims to ensure that homes are let through fair process and have not been obtained through other means.

Any actions against illegal occupiers or squatters are guided by legislation. The policy includes substantial guidance, however this cannot cover every eventuality, and officers following this policy should ensure the spirit of this policy is followed in each case

The Policy

This policy is made up of three parts;

- a. Squatting
- b. Illegal Occupation
- c. Prevention

A. SQUATTERS

A squatter is someone who has entered or remained in a property without permission to be there. They might also be known as trespassers.

Whilst a tenancy still exists, it does not matter that the squatter has not obtained permission from the Council, as the Council does not have a right to possession of the property. It is only after the tenancy has been terminated that the Council can get a possession order against the squatter.

Possession proceedings against squatters should be dealt with in conjunction with the legal department.

2.1 Squatter's rights

Squatters are not protected by the Housing Acts but:

- Are protected by Section 6 of the Criminal Law Act 1977; and
- Can be protected by the Protection from Eviction Act 1977.

Section 6 of the Criminal Law Act 1977 makes it a criminal offence to use violence to secure entry to residential premises where there is someone in occupation who is opposed to the entry. Violence includes violence to property (for example, forcing a lock) as well as physical violence to the occupier.

Section 1 of the Protection from Eviction Act 1977 makes it a criminal offence to unlawfully deprive or attempt to deprive a residential occupier of his/her occupation of any premises. This applies to a former tenant (against whom a possession order has been made) and to anyone allowed into occupation by the former tenant who has remained in occupation. This does not apply to an outright squatter (that is, someone who breaks into a vacant property), nor does this apply to former tenants who have been evicted by court bailiffs.

2.2 The Council's Right to Possession

The tenancy must be terminated before the Council has a right to possession of the property. Otherwise the occupier will be a trespasser against the tenant and not against the Council. If any tenancy still exists, a Notice to Quit must be served on the tenant (or, if the tenant has died, on the personal representatives – see the Succession Policy). It is also necessary to serve a separate Notice to Quit on anyone who has been allowed into occupation by the tenant (SEE ABOVE). Once the Notice(s) to Quit expire, possession proceedings can be started. The Notice(s) to Quit must be for a minimum of 28 days.

An outright squatter is someone who has moved into an empty property, where the tenancy has already been terminated. In this type of case, there is no need to serve a Notice to Quit on the occupier. Proceedings can be started immediately.

2.3 Investigating Squatters / Trespassers

Following a report of squatters the Council will identify whether there is a Displaced Residential Occupier (DRO) or Protected Intended Occupier (PIO) as defined by Section 12A of the Criminal Law Act 1977 as amended by Section 74 of the Criminal Justice and Public Order Act 1994. Where there is a Protected Intended Occupier the Housing Officer will contact the Police with a copy of the signed tenancy agreement as proof and the police will deal with the squatters.

Note: See glossary for further details

2.4 Visiting Squatters / Trespassers

Where squatters are reported the officer should always visit with another member of staff. This is for both safety reasons and to act as a witness.

The purpose of the first visit is to attempt to speak to the occupants and attempt to obtain the names of the people occupying including any children.

Anyone in occupation should be advised of the following:

- That the officer is a representative of Bolsover District Council
- The property is owned by the Council and they are occupying the property without the consent of the Council.
- The occupants should leave within 7 days otherwise we will be taking legal action to evict them
- That they may need to seek independent legal advice.

A letter should also be left confirming the visit (or attempted visit). The letter should only be addressed to "The Illegal Occupiers". This is to avoid the potential for the creation or implication of a tenancy. This letter should also advise that the any payment made will be viewed as mesne profits and not payment of rent, and that no tenancy should be implied through the acceptance of any payment (Note: that is it is believed that the occupier does not have English as their first language, then the letter should be translated into the appropriate language – both the English and the Translated letters should be delivered)

2.4 Squatters / Trespassers who refuse to leave

Section 7 of the Criminal Law Act 1977, as amended by the Criminal Justice and Public Order Act, makes it an offence for a person who is on any premises after having entered as a trespasser, if they fail to leave when required to do so by a displaced residential occupier or a protected intending occupier.

In proceedings the trespasser must prove that he or she believed that the person requiring him or her to leave was not:

- a displaced residential occupier or a protected intended occupier,
or
- a person acting for them, or
- that the premises were not residential.

A Police Officer may arrest without warrant anyone who is, or whom he suspects to be, guilty of an offence under this section.

A person convicted of such an offence is liable to imprisonment for a term not exceeding six months and/or a fine.

2.5 Fast track civil procedures - Interim possession orders

The Criminal Justice and Public Order Act 1994 introduced criminal sanctions to back up new fast-track civil procedures to evict squatters. The procedure is set out in Part 55 of the Civil Procedure Rules.

2.6 Application for interim possession order

The rules enable a person entitled to immediate possession of a building to apply to a county court for an Interim Possession Order. The application must be made within 28 days of when the applicant becomes or ought reasonably to have become aware of the occupation. Once an application for an order is made, the court must fix a date for a hearing, which should be as soon as possible after the documents have been filed, but not less than 3 days after the date of application.

Within 24 hours of issuing the application, the applicant must serve a copy of the application and a witness statement in support. It must be served by fixing a copy to the main door of the premises and if practicable inserting a copy through the letter box addressed to the occupiers.

2.7 Attendance at the hearing

An occupier only has the right to attend the hearing if he or she has filed a witness statement but no oral evidence will be considered by the court except in response to questions by the judge.

No cross examination will be allowed. The landlord will be expected to give undertakings to the court:

- To reinstate the occupants if it turns out that an Interim Possession Order should not have been made
- To pay damages if it turned out that an Interim Possession Order should not have been made
- Not to damage the premises pending the final decision of the court
- Not to grant a right of occupation to any other person pending a final decision of the court
- Not to damage or dispose of any of the occupier's possessions

2.8 After an Interim Possession Order is made

A final hearing date will be fixed not less than 7 days later.

Section 76 of the Criminal Justice and Public Order Act provides that where a lawful occupier obtains an interim possession order any trespasser who is on the premises at any time commits an offence unless:

- He or she leaves within 24 hours of the notice being served
- A copy of the order was not fixed to premises in accordance with the county court rules

This means that:

- Anyone in occupation of the premises when the Interim Possession Order is served is deemed to be a trespasser
- The Interim Possession Order covers trespassers who arrive after the order has been made
- A squatter who leaves after an Interim Possession Order is obtained and who returns as a trespasser within twelve months commits a further offence

Offenders can be arrested by a uniformed Police officer without a warrant. The maximum prison sentence is six months and/or a fine. It is also an offence for a person to make a false or misleading statement to either obtain or to resist an Interim Possession Order.

B. ILLEGAL OCCUPIERS

Illegal Occupation cases can arrive in the following situations:

- A person who has lived at the property with the tenant and has remained in the property after the tenant has moved out.
- A person has lived in the property with the tenant and the tenant has now died and the person remaining at the property is not eligible to succeed to the tenancy (or to be granted a new tenancy under the Succession Policy)
- Unauthorised assignment (including an unauthorised Mutual exchange)
- Illegal subletting
- Remaining joint tenant when one ends the tenancy

NOTE: Decisions regarding Illegal Occupation cases are open to challenge by occupiers by judicial review in the High Court. It is therefore essential that anyone involved in dealing with such cases record all evidence, their decisions and the reasons for those decisions, on the file. All decisions must be confirmed in writing to the occupier.

Occupants who are dissatisfied with decisions can use the Council's complaints procedure. However, the fact that an occupier is pursuing a complaint will not usually result in possession proceedings being delayed.

a. Visiting illegal occupants

Where illegal occupants are reported or are suspected an officer will visit with another member of staff within 2 working days. (This is for both safety reasons and to act as a witness). The purpose of this visit is to speak to the occupants and obtain details of all occupants including their names and how they gained access.

Where the first visit was unsuccessful continued attempts will be made to speak to the occupants.

b. Investigating illegal occupants

The person who has been left in occupation should be interviewed. The purpose of the initial interview is to gain an understanding their background, and why they have remained in the property.

Further enquiries may be needed, these could include:

- Length of tenant's absence.
- Check out contact for tenant.
- Contact the neighbours to see what they know.
- Check next of kin.
- Check whether the rent is being paid.
- Check electoral roll.
- Check Housing Benefit, DWP etc. where appropriate.
- Check the names on utility bills etc.

The occupier should be sent a letter as soon as possible. The letter should only be addressed to "The Illegal Occupiers". This is to avoid the potential for the creation or implication of a tenancy. This letter should also advise that the any payment made will be viewed as menses profit and not payment of rent, and that no tenancy should be implied through the acceptance of any payment (Note: that is it is believed that the occupier does not have English as their first language, then the letter should be translated into the appropriate language – both the English and the Translated letters should be delivered)

It is also important to understand why the tenant is not living in the property and if they intend to return to the property. If there is a realistic intention to return, and the conditions of tenancy are not being broken no further action is needed.

c. Terminating the Tenancy

If there is a current tenancy at the property, and there is no realistic intention to return, it is important to terminate the tenancy properly by using the following steps:

- Where a tenant has left, by serving a 28 day Notice to Quit addressed to the tenant by hand delivering it to the property. A copy can also be sent to other possible addresses known to the tenant i.e. next of kin, parents or other relatives.
- Where the tenant has died, by serving a 28 day Notice to Quit addressed to the personal representatives of the tenant by hand delivering it to the property and registering it with the Public Trustee

d. Granting a new tenancy

The occupier can apply to the council for accommodation. However, they will be given no additional priority for accommodation.

2.7 Possession action

When the Notice to Quit is served, the illegal occupants should also be sent a letter requiring them to leave by the time the Notice served on the tenant has expired. The letter will state that any money accepted from them will be treated as damages for use and occupation of the property (trespass) and is not intended to create a tenancy, and that the council will attempt to recover any costs from the occupants. If they fail to leave then action to evict them will be started.

3 days prior to the end of the Notice period an officer will check whether the occupants are still there. If so, they will be reminded that they are illegally occupying the property and that steps will be taken to evict them if they are still in the property at the end of the Notice period. A confirmation letter will be sent to the occupiers.

Where the illegal occupants fail to leave a letter will be sent to the tenant and occupant advising them of action that will be taken and solicitors will be instructed. The solicitor's instruction letter will include dates, names, descriptions, and details of conversations and copies of Notices. The Council can also try to obtain an order for the tenant to pay the Council damages for use and occupation of the property, which could cover the loss of rent. Once a court date is received a further letter will be sent to the tenant and occupants.

Where an eviction takes place then the Tenancy Officer will inform all relevant parties within 1 working day of the notification date e.g. Housing Needs and

Social Services and make arrangements for securing the property as with any other eviction.

2.8 Rent arrears

Rent accepted from either the tenant, who is no longer using the property, or the illegal occupier could be seen as creating a tenancy. Where the council does not want to create a tenancy then payments should only be accepted as damages for use and occupation of the property (trespass) from the illegal occupier as set out above. In all cases advice must be taken from the legal section.

2.9 Support to Illegal Occupiers.

In some cases the illegal occupier may be vulnerable and entitled to assistance to find alternative housing and support (for example a person sub-letting a property may be under the impression that they have entered into a legal tenancy) in all cases the details of the occupiers must be passed to the Housing Needs Team who will contact the occupiers and invite them to discuss their housing options.

c. PREVENTION

To avoid potential problems of identification later in the tenancy all tenants will be asked to prove identity at the start of their tenancy, this includes details of their current address, photographic identification, their national insurance number and to provide a passport photograph.

In order to apply for council housing a person will be required to provide proof of identity before their application is accepted. These are listed in the Allocations Policy.

GLOSSARY

Displaced Residential Occupier

A person who

- Was occupying the premises as a residence immediately before being excluded, and who
- Was excluded by a person who entered as a trespasser

Protected Intended Occupier

A person who

- Has a freehold or leasehold interest in the property with not less than two years still to run, or
- Has a tenancy or licence to occupy granted by a person with a freehold or leasehold interest with not less than two years to run, or
- Has a tenancy or licence to occupy granted by a local authority or a registered housing association

And:

- Requires the premises for his own occupation
- Is excluded from occupation by a trespasser
- Is in possession of a signed statement to that effect witnessed by a justice of the peace or a commissioner for oaths
- Or in the case of a local authority and housing association tenant, has a certificate (*usually a copy of the tenancy agreement is sufficient*) stating that he or she has been granted a tenancy or licence of the property and the landlord falls within Section 12A of the Criminal Law Act 1977.

Squatter

A person who has entered or remained in a property without permission to be there. They might also be known as trespassers.

BOLSOVER DISTRICT COUNCIL

Running a Business at a Council

Property

Date July 2011



This Policy addresses the following Corporate Aims (show those which are appropriate to the policy only):



COMMUNITY
SAFETY



CUSTOMER
SERVICES



ENVIRONMENT



REGENERATION



SOCIAL INCLUSION



STRATEGIC ORGANISATIONAL
DEVELOPMENT

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Minicom: 01246 242450

Fax: 01246 242423

CONTROL SHEET

| Details of Document | Comments / Confirmation |
|--|--|
| Title | Running a business from a council property. |
| Document type – i.e. draft or final version | Final |
| Location of Policy | Neighbourhoods/Housing/dmt/pc/policies/workingfromhome |
| Author of Policy | Peter Campbell |
| Member route for Approval & Cabinet Member concerned | Patch Management Keith Bowman, Portfolio Holder for Housing |
| Date Risk Assessment completed | January 2011 |
| Date Equality Impact Assessment approved | February 2011 |
| Partnership Involvement (if applicable) | Checked by HR for compatibility with existing HR policies Checked with Economic Development for support |
| Date added to the Forward Plan | n/a |
| Policy Approved by | |
| Date Approved | |
| Policy Review Date | |
| Date forwarded to CSPD (to include on Intranet and Internet if applicable to the public) | |

Version History

- 2.0 Draft
- 2.1 PMWG comments
- 2.2 Comments from HR and Economic Development
- 2.3 Comments from Director of Neighbourhoods and PMWG
- 2.0 - SMT

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2. The Scope of the Policy – including to whom it will apply and any requirements of compliance.
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4. The Policy Statement this may need to be divided down into subsections if the policy is lengthy
5. Responsibility for implementing the Policy (and implementation plans where necessary).
6. Any Target Groups and Key Areas, if applicable
7. More information, if applicable
8. Glossary of Terms, if applicable

1. Introduction

This policy provides guidance on how the Council will deal with tenants who want to run a business from their council tenancy.

2. Scope of the Policy.

The policy covers housing stock owned or managed by Bolsover District Council.

The policy refers to the tenant of the property. For clarity, permission for running a business must be sought by the tenant (or joint tenant) even if the business is run by any member of the household.

3. Principles of the policy.

Historically, some social landlords have tended not to allow tenants to run a business from their home. Often this has been based on a concern that the kind of businesses that could be run from home, such as vehicle repair and maintenance, might cause a nuisance to neighbours.

However, as technology has become more accessible, opportunities for other forms of remote working have become more common and the nature of home working has changed.

There are many types of business that a tenant could run from home without causing any difficulties. For example, there would rarely be a good reason to prevent a tenant from using their home as an office for an internet or phone based business (except, of course, for any illegal activities).

The Council understand that for many tenants, such as single-parent families, people with a disability or those in rural areas – having the opportunity to run a business from home can make a significant difference to their employment prospects. The government has expressed a strong commitment to supporting tenants to set up and run businesses from home.

Within Bolsover it is a condition of tenancy that any council tenants who want to run a business from home must have permission from the council to run that business. The Council will not unreasonably withhold permission. The Council will normally only refuse or withdraw permission if the business breaches the tenancy (a copy of the tenancy conditions are reproduced in the appendix).

4. Policy Statement

Council tenants must have written permission from their landlord to run a business from home. The Council will not refuse permission unless they feel the business is likely to cause a nuisance to other people or damage the property.

For this purpose a business is defined as :

- An activity that produces something or provides a service which is not only for the members of that household. Or:
- The household member receives some kind of payment in exchange for the product, produce or service

In addition to the permission from the Housing Department tenants may be required to obtain additional permission, including planning permission. Gaining any additional permission is the responsibility of the tenant and the granting of permission by the Housing department does not imply that other permissions will also be granted. Similarly the tenant is responsible for ensuring that they inform Revenues of any change which may impact on their liability to pay business rates.

The Council may make the permission conditional on the tenant meeting certain conditions. These may vary between cases, but may include conditions such as ensuring the business has appropriate insurance or restricting hours of operation.

The Council will withdraw their permission if:

- the relevant permissions are not granted, or
- after permission is granted, the business causes a nuisance
- the tenant fails to meet any of the conditions imposed by the Council.

The tenant must put make a request in writing for permission to run a business. This must include details on:

- full details of planned business use
- any planned changes / alterations to the property
- any planned sheds / outbuildings
- any advertisements or signs which to be fixed to the property or in the garden (this will not normally be agreed)
- any vehicles (commercial vehicles and cars which will be used)
- the hours, level of any noise, and number of additional visitors and how much this will inconvenience neighbours.

The Council will consider each application on its own merits, however, the Council will not grant permission when the proposed use damages the property, or causes nuisance to neighbours (for example excessive noise, or business that run outside normal office hours) or breaches any condition of tenancy. It will be more difficult for some types of business such as car repairs, taxi companies or dealing in scrap materials to be granted permission.

When making the decision the Council will take into account the property type, the type of tenancy, location, and any tenancy breaches as well as the business proposal.

If a tenant is running a business from a council property without permission, and the Council become aware of this the tenant will be able to seek retrospective permission for the business. Such applications will not be granted any additional priority. This does not preclude the council from taking any recovery action if there have been associated breaches of tenancy.

If the Council refuses or withdraws permission, the council's Economic Development team will offer assistance in finding alternative commercial premises.

Once the Council have determined if permission should be granted the tenant will always be informed in writing.

If the tenant is unhappy with the decision of the Council they have a right of appeal. Any appeal must be in writing and will be considered by an officer who is more senior than the officer who made the original decision.

It is a breach of tenancy if the tenant does not gain permission to run a business from home, or if permission is withdrawn, and the tenant continues to run the business. The Council will consider appropriate enforcement action to ensure the breach is rectified.

5. Responsibility for Implementing the Policy

The responsibility for implementation lies within the Housing Department.

The Housing Department may need to seek advice from other services, including Planning or Environmental Health. The Housing Department will take the lead role and ensure that feedback is provided to the tenants

Economic Development offers access to a range of support for businesses located in the District. The support available includes grant funding, commercial premises, business advice, start-up advice and much more. Full details can be accessed through the Business Bolsover website (<http://www.businessbolsover.com/>) or by contacting the Economic Development Team on 01246 242512.