



Executive Director/Director Non-Key Executive Decision Report

Author/Lead Officer of Report: Ceri Ashton

Tel: 0114 2734771

Report to: Paul Billington, Director of Culture and Environment
Date of Decision: 24.02.17
Subject: Allotment Rent Notices to Quit

Which Cabinet Member Portfolio does this relate to? Environment
Which Scrutiny and Policy Development Committee does this relate to? Economic and Environmental Wellbeing

Has an Equality Impact Assessment (EIA) been undertaken? Yes No

If YES, what EIA reference number has it been given? 1200

Does the report contain confidential or exempt information? Yes No

If YES, give details as to whether the exemption applies to the full report / part of the report and/or appendices and complete below:-

*"The (**report/appendix**) is not for publication because it contains exempt information under Paragraph (**insert relevant paragraph number**) of Schedule 12A of the Local Government Act 1972 (as amended)."*

Purpose of Report:

To seek approval for a change in working practice around terminations of allotment tenancies following a Notice to Quit for non-payment of rent. Currently tenants are allowed to retain their plots if payment is made during the Notice period. The proposal is that if a tenant receives a Notice to Quit for non-payment for the third time in respect of the same plot, their tenancy will be terminated at the end of the notice period and they will be required to give up possession.

Recommendations:

It is recommended that, with effect from 1st April 2017 and subject to the right of appeal as described in the report, if an allotment tenant receives a Notice to Quit for non-payment for the third time in respect of the same plot, their tenancy will be terminated at the end of the notice period and they will be required to give up possession.

Background Papers:

n/a

Lead Officer to complete:-	
1	I have consulted the relevant departments in respect of any relevant implications indicated on the Statutory and Council Policy Checklist, and comments have been incorporated / additional forms completed / EIA completed, where required.
	Finance: Angela Eaton
	Legal: Andrea Simpson
	Equalities: Beth Storm
<i>Legal, financial/commercial and equalities implications must be included within the report and the name of the officer consulted must be included above.</i>	
2	Lead Officer Name: Ceri Ashton
	Job Title: Allotments Manager
Date: 13.01.17	

1. PROPOSAL

- 1.1 The Council's standard tenancy agreement for allotments includes a condition that the rent is due yearly in advance on 1st April each year. The tenancy continues until terminated as specified in the agreement. There is a provision that the tenancy may be terminated by the Council by re-entry after one month's previous Notice [to Quit] in writing if the rent is in arrears for 40 days.
- 1.2 Each year the Allotment Office issues around 250 Notices to Quit for non-payment of rent. Before a Notice to Quit is issued, a tenant is sent an invoice, a reminder and a final demand. If the invoice remains unpaid after 40 days (or partially unpaid and no payment plan has been agreed, or the tenant has not complied with the agreed payment plan), a Notice to Quit is issued.
- 1.3 Around two-thirds of those who receive a Notice to Quit for non-payment pay their rent arrears during the Notice period. There is no requirement in the tenancy agreement or in allotment law for a tenant to be able to retain their plot if they pay during the notice period but in practice tenants have been allowed to continue with their plot (by the effective grant of a new tenancy on the same terms) if they pay within the notice period.
- 1.4 Notices to Quit are sent by recorded delivery and a copy is also placed on the plot. Monitoring payment and issuing Notices to Quit takes up a substantial amount of officer time during the busy spring period. There is also a cost to pursuing late payments. Some tenants have received a number of Notices to Quit for non-payment in respect of the same plot.
- 1.5 It is proposed that if a tenant receives a Notice to Quit a plot for non-payment of rent for the third time in respect of the same plot, their tenancy will be terminated and they will be required to give up possession even if they clear their arrears during the notice period.
- 1.6 It is recognised that in certain cases personal circumstances may impact on a person's ability to pay promptly (such as serious illness, bereavement, caring responsibilities) and so there would be a right of appeal, to the Allotment Manager in the first instance, against the requirement to give up possession. In considering the appeal the Allotment Manager will take into account all relevant factors including the reasons for non-payment or late payment, the overall history of the tenancy, the frequency of issuing Notices to Quit (whether they were spread over a longer period of time, with some invoices having been paid promptly in between) and any other circumstances mentioned by the tenant in their appeal. The appeal decision would carry a further right of review by a more senior manager.
- 1.7 All tenants will be informed of this change in practice in writing before it is adopted. In addition, those who have already had two or more Notices

to Quit in respect of the same plot for non-payment would each be sent a letter to alert them to the fact that they would lose their tenancy if they receive another Notice to Quit for non-payment of rent. Tenants will be informed of the right of appeal including requirements, timescale and process, when they are issued with the third Notice to Quit.

2. HOW DOES THIS DECISION CONTRIBUTE ?

- 2.1 The proposal will reduce the amount of officer time and resources wasted on pursuing persistent late payers. This time and resources can then be used more constructively for the benefit of Sheffield's allotment holders. This supports the Corporate Plan priority of Thriving Neighbourhoods and communities by improving access to leisure facilities and green and open spaces.

3. HAS THERE BEEN ANY CONSULTATION?

- 3.1 The proposal has been taken to the Allotment Advisory Group. The Advisory Group were supportive of the proposal.

4. RISK ANALYSIS AND IMPLICATIONS OF THE DECISION

4.1 Equality of Opportunity Implications

- 4.1.1 Overall, there are no significant differential, positive or negative, equality impacts. The proportion of persistent late payers who claim a concession is comparable to the proportion of all tenants who claim a concession. There are already measures in place to help those on a low income to be able to pay for an allotment – concessions and payment plans – approved by the Cabinet Member for Environment, Recycling and Streetscene in April 2014.

4.2 Financial and Commercial Implications

- 4.2.1 The proposal will reduce the amount of officer time and resources wasted on pursuing persistent late payers.

4.3 Legal Implications

- 4.3.1 The allotment tenancy agreement is subject to the Allotments Acts 1908 – 1950 and to the Council's policies relating to allotments as approved by Cabinet in March 2010. The policy does not contain specific provision for non-payment of rent and so the proposal is governed by the legislation and the wording of the tenancy agreement.
- 4.3.2 Section 30 of the Small Holdings and Allotments Act 1908 provides that possession of an allotment in the case of any Notice to Quit may be recovered by the Council as landlords as in any other case of landlord and tenant, and that a tenancy may be determined by one month's Notice to Quit if the rent is in arrear for not less than forty days. The

allotment tenancy agreement makes provision for this.

5. ALTERNATIVE OPTIONS CONSIDERED

- 5.1 The option to do nothing and continue with the current practice has been ruled out for the reasons set out at paragraphs 1.4 and 2.1 above.
- 5.2 ALL rent Notices to Quit could be treated in the same way, but this may be too harsh since sometimes there can be good reasons why people pay late.
- 5.3 The proposal could be limited to three rent Notices to Quit issued to the same customer within a finite period (such as five years), but this would be less clear and straightforward.

6. REASONS FOR RECOMMENDATIONS

- 6.1 This proposal is clear and fair. The intended outcome is that more allotment tenants will pay their rent when it is due and before they are issued a Notice to Quit.