



Report of the Director of Neighbourhoods and Housing

Executive Board

Date: 5th July 2006

Subject: The use of Final and Initial Demolition Notices

Electoral Wards Affected:

All

Specific Implications For:

Ethnic minorities

Women

Disabled people

Narrowing the Gap

Eligible for Call In

Not Eligible for Call In
(Details contained in the report)

EXECUTIVE SUMMARY

The purpose of this report is to inform Executive Board about Initial and Final Demolition Notices introduced by the Housing Act 2004. The purpose of Initial and Final Demolition Notices is to deal with situations where tenants know that demolition is likely and are able to buy at a discount, knowing that when the property has to be re-purchased using compulsory purchase powers, they will be entitled to full market value, plus home loss compensation. This would adversely affect the financial viability of any regeneration scheme.

Executive Board is requested to delegate to the Director of Neighbourhoods and Housing, in consultation with the Director of Legal and Democratic Services authority to issue such notices where the legal criteria are met.

1.0 BACKGROUND

- 1.1 The Housing Act 2004 introduced Initial and Final Demolition Notices to assist local authorities in relation to the management of regeneration initiatives and development opportunities and to prevent abuses of the existing right to buy legislation. The purpose of such Notices is to deal with situations where tenants know that demolition is likely and are able to buy the property at a discount, knowing that when the property has to be re-purchased using compulsory powers, they will be entitled to full market value, plus home loss compensation. This would adversely affect the financial viability of any regeneration scheme.

2.0 THE USE AND APPLICATION OF INITIAL AND FINAL NOTICES

- 2.1 Initial and Final Demolition Notices can be used as a tool to support regeneration initiatives and development opportunities occurring across the city. The use of such notices has to be carefully considered at all stages and can only be served when the legal criteria are met, principally that the notices contain the required information referred to in Appendix 1, that the publicity requirements are met, and that human rights issues have been considered. Such Notices may be served when an authority identifies the need for demolition of properties for example, in order to support a development opportunity, regeneration initiative or alternative use of the land.
- 2.2 Clearly the use of such Notices may be relevant to existing regeneration initiatives such as EASEL
- 2.3 There are two types of notices that can be served on secure tenants, the Initial Demolition notice and the Final Demolition notice. Notices can be applied to designated areas across the city, subject to the appropriate statutory notification having taken place. Such notification requires publication of specified information in a local newspaper, the Council's paper and the Council's internet site

3.0 INITIAL DEMOLITION NOTICES

- 3.1 An Initial Demolition Notice suspends the authority's obligation to complete a right-to-buy sale. It does not prevent new right-to-buy applications being made but it provides a breathing space in which the authority can properly develop schemes and, where necessary, follow the statutory compulsory purchase procedure. The Council can continue with the steps of the right to buy process but the sale cannot be completed.
- 3.2 If an Initial Demolition Notice is served, a tenant who has made an application under the right to buy may be entitled to compensation in relation to expenses incurred in relation to an existing application.

Further details regarding such Notices are set out in Appendix 1.

4.0 FINAL DEMOLITION NOTICE

- 4.1 A Final Demolition Notice ends the authority's obligations to complete any existing and future right to buy applications within the designated area where the demolitions are planned. A Right to Buy does not arise if a final demolition notice is in force in respect of a property. Such notices are valid for 2 years from when they are served although this period can be extended by the Secretary of State.
- 4.2 As above, a tenant who has submitted a right to buy application may be entitled to compensation in relation to costs incurred in an existing application.

Further details regarding such Notices are set out in Appendix 1.

- 4.3 In the context of regeneration schemes where the Council needs to acquire properties in order to demolish them, in effect these Notices give the Council a period of just under 5 years

in which to conclude an acquisition by agreement, or make and get confirmed a CPO (and take certain further steps in relation to the CPO), and then a further 2 year period to demolish.

5.0 CONSULTATION

- 5.1 ALMO Boards will consider recommendations for use of such Notices prior to referral to the Director of Neighbourhoods and Housing for approval . ALMO's will consult Ward Members to ensure their views are reflected prior to any recommendations by an ALMO Board. Following discussions between Neighbourhoods and Housing and Legal and Democratic services, a protocol has been developed to ensure a clear understanding of the processes the ALMO need to follow at each stage to ensure proper consultation and consideration has taken place prior to a report being considered by an ALMO Board
- 5.2.1 Clearly the use of such Notices has a serious effect on the rights of individuals and it will be necessary to ensure that appropriate regard is had to human rights and the appropriate balancing exercise carried out. This will require consideration of other options available before any decision is taken as to whether such Notices should be used in any particular area. It is therefore proposed that before taking a decision to issue such Notices, the Director of Neighbourhoods and Housing consults the Director of Legal and Democratic Services to ensure relevant factors have been considered and the legal criteria are met.
- 5.3 Following the service of Notices, there will be a need to ensure that appropriate numbers of people are rehoused within set timescales. Monitoring arrangements are being developed to make sure this takes place in advance of the expiry of any Notices
- 5.4 ALMO Chief Officers have been consulted and support the arrangements being developed to support the service of such Notices.

6.0 RECOMMENDATIONS

Members are asked to:

- 6.1 Note the report
- 6.2 Delegate to the Director of Neighbourhoods and Housing, in consultation with the Director of Legal and Democratic Services, authority to issue Initial and Final Demolition Notices

APPENDIX 1

Initial Demolition Notice

The Notice must contain specified information including:

- The reasons why the authority intends to demolish those premises,
- The period within which the authority intends to demolish those premises
- The date the Initial Demolition Notice or Notices relating to those premises will cease to be in force
- Notice that, during the period of validity of any such Notice, the authority is not under any obligation to complete on a Right to Buy sale and
- That there may be a right to compensation under section 138C in respect of certain expenditure incurred in respect of any existing claim

Whilst the Initial Demolition Notice is in force, the authority will not be under any obligation to convey the freehold or grant the lease in respect of any claim made by the tenant to exercise the right to buy. However, this does not prevent the taking of steps to progress the matter so long as this stops short of completing the sale.

In most circumstances, if the Notice ceases to be in force (for whatever reason) then the right to buy application could continue to completion

However, if the authority subsequently serves a Final Notice in respect of the property, the Right to Buy will not arise while that Notice is in force and any existing claim will cease to be effective.

Where an Initial Demolition Notice has ceased to be in force (for whatever reason) in respect of a property without it being demolished, no further Initial Demolition Notice may be served in respect of that property for 5 years following the time when the relevant notice ceases to be in force, unless the new Notice is served with the consent of the Secretary of State and it states that it is so served. In addition, no Final Demolition Notice could then be served unless again with the same consent (as stated in the Notice).

Either an initial or final demolition notice can be revoked by the Secretary of State if he takes the view that the authority has no intention of demolishing the properties.

Final Demolition Notice

If at the time when the notice is served, there is an existing claim to exercise the right to buy in respect of a property, the notice must state that :

- The right to buy does not arise in respect of the property
- The claim ceases to be effective on the notice coming into force
- Details of the right to compensation and how it may be exercised.

A Final Demolition Notice can be served on the Tenant only where one of the following conditions applies:

A. The proposed demolition of the dwelling house does **not** form part of a scheme that involves the demolition of other premises.

B. The proposed demolition of the dwelling house **does** form part of a scheme that involves the demolition of other properties but none of the other premises need to be acquired by the authority in order for the authority to demolish them.

C. The proposed demolition of the dwelling house **does** form part of a scheme involving other premises and one or more of these premises do need to be acquired by the authority but in each case arrangements for their acquisition are in place.

“Arrangements for acquisition” are defined as:

- i) An agreement under which the authority is entitled to acquire the premises is in force.
- ii) A notice to treat has been given in respect of the premises under section 5 of the Compulsory Purchase Act 1965.
- ii) A vesting declaration has been made in respect of the premises under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981.

The Notice must be in a specified form and must:

- State that the landlord intends to demolish the dwelling house or the building containing it.
- Set out the reasons why the landlord intends to demolish the relevant premises,
- Specify the date by which he intends to demolish the premises (this must fall within **24 months** from the date of the notice)
- Specify the date when the notice will cease to be in force,
- State that one of the conditions A to C is satisfied (specifying the condition concerned)
- State that the right to buy does not arise in respect of the dwelling house while the notice is in force **OR**, if at the time when the notice is served, there is an existing claim to exercise the right to buy in respect of the dwelling house the notice must state that that claim ceases to be effective on the notice coming into force, but that section 138C confers a right to compensation in respect of certain expenditure and
- Give details of the right to compensation and of how it may be exercised. Where there is an existing Initial Notice in force, the Notice must state that it is replacing the existing Initial Notice.

The notice once served is valid for two years from the service date. The authority can apply to the Secretary of State to extend, or further extend, the two year period, which extension may be conditional. Any application for an extension must be lodged while the notice is in force, i.e. within the 2 year period. If no extension is applied for, the authority is prevented from serving a further notice for five years without the consent of the Secretary of State.

If while a Final Demolition Notice is in force, the authority decides not to demolish the property in question, it must, as soon as reasonably practicable, serve a notice (a revocation notice) on the tenant which informs him of that decision, and that the demolition notice is revoked as from the date of service of the revocation notice.

If within the designated area, for whatever reason, the property is not demolished, no further Final Demolition Notice may be served in respect of it during the period of 5 years following the time when the notice ceases to be in force (unless it is served by the Secretary of State).