

# HOUSING MANAGEMENT ADVISORY BOARD

## Report of the Head of Landlord Services

### ITEM 6

### DRAFT FENCING POLICY

#### 1. PURPOSE OF REPORT

To present the board with a draft policy that sets out the council's position as landlord in respect of its provision and maintenance of boundary structures such as fences, hedges and walls.

#### 2. ACTION REQUESTED

The board is requested to note, comment upon, and endorse the policy.

#### 3. BACKGROUND

3.1 As landlord of approximately five and a half thousand dwellings the council owns a variety of boundaries, including:

- boundaries between tenanted properties (e.g. a dividing fence);
- boundaries between a tenanted property and a public highway (e.g. a front garden wall or hedge);
- boundaries between tenanted properties and other council-owned land (e.g. a rear boundary backing on to a garage site);
- boundaries between tenanted properties and privately-owned property (e.g. with a property bought under the right to buy, be that freehold or leasehold).

3.2 While Land Registry records might (but are not guaranteed to) provide certainty over the ownership of a particular boundary they do not define the relationship between landlord and tenant in terms of provision and maintenance.

3.3 The existing tenancy agreement is silent on boundary provision and maintenance. That, together with the absence of a policy statement has always run the risk of creating inconsistency in making decisions on boundary matters and disputes and uncertainty over the council's position as landlord. This draft policy aims to set out a comprehensive and a clear position.

3.4 The new tenancy agreement states that maintenance of boundaries dividing the tenant's property with another will be governed by the council's fencing and boundary policy.

#### 4. POLICY SUMMARY

4.1 The draft policy is attached as appendix 1 to this report.

- 4.2 In summary, the policy sets out clearly in tabular form the landlord's position on a comprehensive range of situations involving boundaries and covers both the provision of a boundary where none exists and the maintenance of it once provided and the continuing maintenance of existing boundaries.
- 4.3 While it is preferable to be as clear and unambiguous as possible in policy statements it has to be conceded that there will always be situations where the individual's circumstances may require a different approach to be taken and a decision being made that is not in line with the policy. Section 4.3 of the policy statement sets out those circumstances where a different approach might be called for; it also states that each case will be considered on its own merits.
- 4.4 The remainder of section 4 of the policy statement sets out miscellaneous details over various aspects of boundary maintenance including permissions for tenants installing boundaries, circumstance where the council may remove boundaries and the tenant's obligations upon tenancy termination.

## 5. CONSULTATION

- 5.1 Consultation has taken place both internally and with Charnwood Housing Residents' Forum (CHRF). The policy as attached to this report has been amended as a result of the CHRF consultation comments and recommendations in respect of:
- disputes between tenants over boundary maintenance responsibilities; and
  - the maintenance of boundaries dividing tenants' properties with other council-owned land such as a garage site.
- 5.2 CHRF's comments led to a reconsideration of the policy generally in terms of the maintenance responsibilities between landlord and tenant. From this, several changes were made in the table in section 4 of the policy where responsibility has been changed from tenant to landlord.
- 5.3 A draft equality impact assessment has been carried out on this draft policy and has concluded that there are no adverse effects on protected groups but a positive effect on disabled people, people who are survivors of domestic abuse, and victims of anti-social behaviour by virtue of the provisions contained in section 4.3 of the draft policy.

## 6. RECOMMENDATION

HMAB members are requested to note, comment upon and endorse the report, subject to any agreed amendments being made

Landlord Services Manager/Repairs and Investment Manager

8 February 2022

Appendix 1: Draft fencing and boundary policy

**Charnwood Borough Council**

**Fencing and Boundary Policy**

**2022-2026**

## 1. Policy objectives

The objectives of this policy are as follows:

- To set out clearly the obligations of both Charnwood Borough Council and its tenants and leaseholders in respect of fencing and boundaries at tenanted properties and communal areas.
- To provide a framework by which a consistent application of the council's position on boundary responsibilities can be practised by staff.
- To provide a means by which disputes can be resolved through the application of this policy.

## 2. Scope of this policy

This policy will be applied to all rented dwellings owned by the council and tenants living in them.

## 3. Terms used in this policy

Throughout this document the term boundary structure is used to describe man-made and living structures that separate one property from another, including walls, timber fences, and hedges.

## 4. Policy statement

- 4.1 The installation and maintenance responsibilities of the council and its tenants are set out in the below table.

Boundary	Scenario	Boundary structure ownership/Maintenance responsibility
<b>Back garden - between two tenanted properties (front/back; side/side etc.)</b>	At void there is no boundary structure.	The council will mark the boundary using four-foot/1.2m chain-link fencing with concrete posts and, in respect of adjoining properties, a six-foot/1.8m-square timber privacy screen along the line of the party wall at the rear of the property. Thereafter the maintenance will fall to the tenants either side of the two properties' dividing fence.

	Original CBC-provided fence (including post and wire/chain-link)/hedge/wall / etc. and its maintenance.	The maintenance will fall to the tenants either side of the two properties' dividing boundary.
	Tenant-erected boundary structure.	Maintenance will fall to the tenant who has erected the boundary structure.
	No boundary structure present	The council will mark the boundary using four-foot/1.2m chain-link fencing with concrete posts and, in respect of adjoining properties, a six-foot/1.8m-square timber privacy screen along the line of the party wall at the rear of the property. Thereafter the maintenance will fall to the tenants either side of the two properties' dividing fence.
<b>Between tenanted property and public highway/footpath</b>	Front garden: no boundary structure.	Tenant's responsibility. The council will generally not install a front garden fence.
	Front garden: existing boundary structure.	Tenant's responsibility.
	Side and rear of property: no boundary structure.	A fence will be erected by the council, that is appropriate to the context and any planning restrictions in place. Thereafter the maintenance will fall to the tenant.
	Side and rear of property: existing boundary structure.	Tenant's responsibility.
<b>Between tenanted property and garage site / field / commercial</b>	Side and rear of property no	A fence will be erected by the council, that is appropriate to the context and any planning restrictions

<b>premises / open land etc.</b>	boundary structure	in place. The council will maintain this structure.
	Existing boundary structure.	The council will maintain the boundary structure.
<b>Between tenanted property and another privately-owned property: title not proven / or another privately-owned property: title belonging to CBC</b>	Side and rear of property no boundary structure.	The council will mark the boundary using four-foot/1.2m chain-link fencing with concrete posts and, in respect of adjoining properties, a six-foot/1.8m-square timber privacy screen along the line of the party wall at the rear of the property. Thereafter the maintenance will fall to the tenant.
	Side and rear of property - existing boundary structure.	Tenant's responsibility.
<b>Fencing and gates in communal areas</b>	N/A	The council will maintain this boundary structure.
<b>Gates at tenanted property</b>	Front, side, and back.	Tenant's responsibility. The council will generally not install or maintain gates.

4.2 Generally, where the council determines it is responsible for demarking a boundary a four-foot/1.2m chain-link fence with concrete posts will be installed. Where this is not appropriate (for example where the property adjoins a garage site or similar) an alternative type of fence that is suitable to the context will be installed. The council retains the exclusive right to determine the type of fence or nature of boundary structure installed.

4.3 The following considerations will be taken into account in the context of the table above:

- The council will consider each case involving a boundary on its merits;
- There may be instances where the council will consider installing a fence / gate outside the parameters set out in the above table, including where:

- a recommendation has been received from an occupational therapist;
  - recommended by the council's anti-social behaviour team to improve security where there is a risk of serious anti-social behaviour or harm (such as domestic abuse);
  - it is contractually bound to do so.
- Tenants are responsible for the safe enclosure of any pets to prevent escape onto neighbouring properties;
  - Where fencing works on communal areas will cost more than £250 per leasehold flat, CBC will consult leaseholders in line with its statutory obligations under section 20 of the Landlord and Tenant Act 1985 (as amended by the Commonhold and Leasehold Reform Act 2002).

#### 4.4 In respect of boundary alterations:

- Prior written permission, requested in writing, must be obtained from CBC before a tenant alters a boundary structure. This includes the taking down, alteration of, and installation of fences, hedges, and walls.
- It is the tenant's responsibility to ensure all other necessary approvals, for example, planning permission and/or Building Regulations are in place. The specification and standard for the works must be agreed with CBC prior to the work starting.

4.5 The council reserves the right to remove fencing or boundaries and recharge works to the tenant where the fencing or boundary is not deemed acceptable or is unsafe or where deliberate damage of the structure has taken place. Any new boundary or fencing to be erected must give due consideration to the setting, appearance and style of the surrounding environment. If any boundary or fencing that does not fit its surrounding CBC reserves the right to remove it and recharge the tenant for the costs of this work.

4.6 Boundary structures installed by the tenant will be maintained by the tenant with no obligation to the council to maintain, repair or replace.

#### 4.7 At the end of a tenancy:

- The council will be obliged to remove any fencing or other boundary structure that is found to be in a damaged, unsatisfactory, or unsafe condition. These works will be recharged to the former tenant(s) in line with CBC's recharge policy. A member of the repairs & maintenance team will discuss this with the tenant during the pre-void inspection visit;
- Any natural boundary hedging exceeding 5'3" (1.6m) at the front of the property and/or 6'6" (2m) at the rear of the property and /or dividing boundaries at the end of a tenancy will be cut by CBC and the cost of this work will be recharged to outgoing tenant(s). A member of the repairs & maintenance team will inform the tenant(s) of the recharge at the pre-void inspection visit. This applies to a tenanted property and not a void property.



## 5. Equalities and diversity

See attached equality impact assessment.

## 6. Other policies affected by and affecting this policy

This policy should be read and applied in conjunction with the following:

- Tenancy agreements, secure/introductory; non-secure and licences;
- Individual leases;
- Repairs policy;
- Charnwood fit-to-let standard;
- Commonhold & Leasehold Reform Act 2002 (as amended).

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