

CABINET

Empty Homes Enforced Sale Procedure 24 July 2012

Report of Head of Regeneration and Planning Service

PURPOSE OF REPORT			
To seek approval for the adoption of an Enforced Sale Procedure as a mechanism to bring problematical long-term empty dwellings in the private sector back into habitable use in cases where Council debts have been registered as a local land charge against the property and not discharged.			
Key Decision	<input checked="" type="checkbox"/>	Non-Key Decision	Referral from Cabinet Member
Date Included in Forward Plan	JULY 2012		
This report is public			

RECOMMENDATIONS OF COUNCILLOR HANSON

- 1) That Cabinet agrees to adopt the Enforced Sales Procedure which is appended to this report.
- 2) That Cabinet authorises Officers to implement the adopted Enforced Sale procedure in appropriate cases.

1. Introduction

- 1.1 A long-term problematic property is defined as being empty for 6 months or more and derelict, severely neglected and/or in need of substantial repairs.
- 1.2 Long term problematic empty homes are a major cause for concern. They represent waste, financial expense and missed opportunities. They can blight communities, attract vandals and squatters and tie up resources of local authorities and the emergency services. This is an unacceptable situation, especially considering the shortage of supply of affordable housing.

The City Council has an approach to tackling empty properties using a combination of advice, guidance, persuasion and enforcement. The document as Appendix B is a draft enforced sale procedure.

- 1.3 Many Local Authorities are now using an enforced sale procedure as a tool to recoup outstanding charges registered as a Local Land Charge against

properties. This report explains the procedure and the benefits it could bring to the community.

2.0 Proposal Details

Benefits

2.1 Whilst there are many actions a Local Authority can take in respect of empty properties. The enforced sale procedure, now adopted by many Local Authorities, would allow the Council to achieve a number of benefits, including:

- Social Benefits

By selling a property that is in a derelict condition to a new owner, there is a likelihood that the new owner will refurbish the property and this increases the chance it will become inhabited again.

- Financial Benefits

Financial charges which could otherwise prove impossible to recover, can be discharged out of the proceeds of the sale.

- Good Housekeeping Benefits

Owners of properties may become aware of the Local Authority's initiative and in future may discharge their debts more readily, carry out works pursuant to statutory notices served and keep their properties in a reasonable state and condition. This results in less time spent by the Local Authority in having to deal with this problem.

- More Expedient than a Compulsory Purchase Order

Enforced sale procedures are presently more expedient and involve less bureaucracy than making a Compulsory Purchase Order.

Process

2.2 When enforcement action is taken under legislation administered by the local authority, owners are given a specified period of time to complete the works. Where notices are not complied with, the council has the option to carry out works in default and recover costs. All such works carried out are invoiced to the owner, but these may not be paid if, for example, the owner cannot be traced or does not have the means to pay. There remains, therefore, a debt on the property and a continuing empty home.

2.3 If the property has a charge or charges registered against it by the council for carrying out works in default, this gives the council all the powers of a mortgagee under the Law of Property Act 1925, Section 101, to discharge the charge, together with any interest and reasonable expenses. In order for the council to recover their costs from the owner, the only asset available is the property itself, which under the procedure would be sold by the council.

- 2.4 Whilst Compulsory Purchase powers are available under the Housing Act 1985, it has drawbacks, not least of which is the considerable length of time the process takes and the burden on staff resources. Also, such a course of action is dependant on financial resources being made available from the single capital pot. The enforced sale procedure is a relatively straightforward legal process.
- 2.5 Many Local Authorities are now using the enforced sale procedures as a tool to recoup outstanding charges registered as a Local Land Charge against properties. All costs incurred with interest accrued are recoverable using this procedure, which experience from other Local Authorities indicates takes an average 9 months to complete.
- 2.6 Using the Law of Property Act 1925, Section 101, and the Land Charges Act 1975, Section 7, a financial charge takes effect as if it has been created by way of a deed charged by way of a legal mortgage. Section 36 of the Local Government Act 1974 further provides that where a Local Authority is empowered by statute to carry out works etc. they can recover their reasonable expenses from any relevant person.
- 2.7 Where an owner is known and substantially makes full payment, the charge is extinguished. Whilst this stops the enforced sale procedure, it does not prevent further action being commenced for non-payment of new charges.
- 2.8 It is proposed that properties are identified, processed and then auctioned to achieve best price. Once sold, debts and reasonable costs and charges can be recovered. Any surplus will then be reimbursed to the owner (or sent to any other person entitled to the surplus) if they are known. If the Owner is not known the monies will be paid into Court in accordance with Section 63 of the Trustee Act 1925. However, if the monies are not claimed within a 12 year period, the Local Authority may retain it for "allocation".

Identification of Potential Properties

- 2.9 Clearly a system for identification and prioritisation of properties for taking action against is required. Only a limited number of properties at any particular time can be dealt with, taking into account resources. Prioritisation must be seen to be carried out in a fair and consistent manner.
- 2.10 In the majority of cases the Council is already aware of long-term, problematic empty properties. An initial assessment will need to take place to consider which of these properties are suitable for inclusion for enforced sale. Newly identified properties that are eligible may also be referred for inclusion into the scheme.

Prioritisation of Properties for Enforced Sales Procedure

- 2.11 Following the initial assessment, all properties will be risk assessed in accordance with Empty Property Risk Assessment (see Appendix A). The

higher the score produced, the higher the priority for action in relation to the property. The risk assessments will be reviewed annually, or on receipt of significant information which would affect their priority rating.

3.0 Details of Consultation

3.1 Legal/Finance Services have been consulted and their comments incorporated into the report.

4.0 Options and Options Analysis (including risk assessment)

	Option 1: Adopt enforced sales procedure	Option 2: Do not adopt enforced sales procedure
Advantages	Will bring long term empty properties back into use. Help regenerate the area, provide accommodation and recoup outstanding debts. It signals the council's commitment to addressing the empty property issues.	None. Officer time will be relocated to other projects
Disadvantages	There will be some additional burden on the authority's legal resources	These properties will continue to deteriorate, be detrimental to the community, may detract from private investment and will be a waste of a valuable asset.
Risks	Risk of bad publicity if the process is not managed correctly.	These dilapidated properties will continue to have an adverse effect on the area they are located in.

5.0 Officer Preferred Option (and comments)

5.1 Option 1 is the officer preferred option because it will remove and/or regenerate long term empty properties, provide valuable accommodation, recoup outstanding debts and indicate the council's commitment to addressing the empty property issue.

6.0 Conclusion

6.1 The use of the Enforced Sale Procedure should be seen as a last resort. It is expected that all informal and formal action will have been taken and exhausted by the Council in order to resolve the existence of the empty dilapidated property and its associated problems.

6.2 The Council is committed to carrying out its duties in a fair and consistent manner. This policy will be applied having regard to the council's Public Protection Enforcement Policy and the Enforcement Concordat in the regulation of private sector housing.

RELATIONSHIP TO POLICY FRAMEWORK

Bringing empty properties back into use is one of the key actions in delivering the council's health and well being priorities as set out in the Corporate Plan

CONCLUSION OF IMPACT ASSESSMENT

(including Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing)

Consideration of the provisions of the Human Rights Act 1998 and the Equality Act 2010 must be taken into account by the Council. A statement that the intended action of the Council is exercising its power of sale is considered proportionate, in accordance with the Human Rights Act, will be included within the Enforced Sales Procedure itself. Bringing empty properties back into beneficial use has significant community safety and sustainability benefits.

LEGAL IMPLICATIONS

Legal Services will have to be involved in the ESP. It will be important to ensure that the Council has the statutory right to enforce the charge and to this end each individual case will have to be considered on its own merits.

FINANCIAL IMPLICATIONS

Financial implications are set out in detail in the main body of the report.

OTHER RESOURCE IMPLICATIONS

Human Resources: None

Information Services: None

Property: There are no direct impacts arising from the introduction of this procedure. Property Services will provide advice and assistance when required.

Open Spaces: None

SECTION 151 OFFICER'S COMMENTS

The s151 Officer has been consulted and would add that in due course, Members will be asked to consider whether they wish to make changes to the existing council tax exemptions regarding empty properties. Such proposals may also help to bring such properties back into use.

MONITORING OFFICER'S COMMENTS

The Monitoring Officer has been consulted and has no further comments.

BACKGROUND PAPERS

Law of Property Act 1925, Land Charges Act 1975, Housing Act 1985, Human Rights Act 1998

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