

LANCASTER CITY COUNCIL

ENFORCED SALES PROCEDURE (ESP)

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Purpose/ Scope

The purpose of this guidance is to explain the Council's policy on the Enforced Sales Procedure (ESP). When used, the ESP recoups outstanding land charge debts owed to the Authority along with bringing empty rundown properties back into use.

1. Policy Background

All areas of the country suffer from the effect of vacant dilapidated buildings. Rundown empty properties blight our cities and attract anti-social behaviour.

The Authority's district wide aim is to promote our city, coast and countryside. In doing so we will achieve lasting opportunities for all in a safe and healthy district that is proud of its natural and cultural assets.

LCC's Regeneration Strategy 2010 brings flesh to the bones of the district's wide aim. It identifies that *"the key challenges for stakeholders in the District are to provide a sustainable District to meet the needs of a growing population, to maintain and improve the quality of life, and to spread the benefits of economic growth to area of deprivation and exclusion"*.

To maintain and improve the quality of life within the District it is necessary to deal with abandoned rundown empty properties. Bringing properties back into use, or into a state of reasonable repair will reduce crime, will promote wellbeing and greater economic stability within the district.

Briefly, the ESP is a process by which the Council may bring about the sale of a privately owned house where it has had to incur the expense of having to take some statutory based action to deal with a property and where the owner has failed to repay this expense.

The powers as to the use of the ESP are statute based. Where a statute confers the necessary rights, a local authority can either recover the expenses incurred through the debt recovery process or by charging the legal title(s) of a property with the debt and then selling it to recover the debt.

The ESP procedure will ensure that the owner brings the property into proper repair. It is hoped that a property owner, with the means to keep his or property in a state of repair, will not want to allow the Council to sell his or her property. Thus, the potential of the ESP being followed should ensure compliance with statutory notices or payment of expense incurred via statutory provision.

In the event that a property owner, having knowledge of the Council's ESP procedure, does not pay the sum incurred under statutory provision then the Council will be entitled to sell the property under the ESP.

In these circumstances it is hoped that the new owner will be more willing and able to invest in the property and ensure its likely re-occupation, upkeep and proper use.

2. Benefits of Adopting the Enforced Sales Procedure

Social Benefits

By selling a property that is in a derelict condition to a new owner, there is a strong possibility that it will become inhabited after being refurbished.

Financial Benefits

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

The property being sold can bring about the payment of the debt by the owner/mortgagee.

Good Housekeeping

Owners of empty properties become aware of the authority's initiative and as a result may in the future discharge debts more readily, carry out works pursuant to statutory notices served and keep their properties in a reasonable state. Less time is then spent by the authority to deal with such problems.

3. Legislative basis for ESP

This section provides a brief summary of the legal basis, which allows the Council to use ESP. It is provided for information purposes for staff. In the main, these legal processes are carried out by Legal Services.

The basis for using ESP the existence of an unpaid financial Charge registered in Part 2 of the Local Land Charges Register¹. This, together with the primary legalisation, gives a Local Authority the power to enforce a financial Charge.

Section 7 of the Local Land Charges Act 1975, provides that a financial Local Land Charge takes effect, as if it had been created by a Deed of Charge within the meaning of the Law of Property Act 1925. Consequently, the Council has all the powers and remedies available to a mortgagee under the Law of Property Act 1925 with regard to Part 2 Charges.

Section 101(i) of the Law of Property Act 1925, confers on a mortgagee a power of sale. An Order of the Court is not necessary as the legislation itself provides that power.

Section 87(1) of the Law of Property Act 1925, confers a right of possession. In addition, many of the statutes used by the Council, which result in carrying out Work in Default, give to the Council a power of sale and right of priority over other Charges.

¹ Section 1 (1) and (2) of the Local Land Charges Act 1975 defines a local land charge. Specifically, S 1 (2) states that any sum which is recoverable from successive owners or occupiers of land in respect of which the sum is recoverable shall be treated as a charge. These charges are defined as financial charges registrable in Part 2 Charges (see Rule 2 (2) and 3 of The Local Land Charges Rules 1977).

For example, Section 291 of the Public Health Act 1936 and Section 107 of the Building Act 1984 provides that the expenses and interest 'accrued due thereon shall, until recovered, be a charge on the premises and on all estates and interest therein'. This means that all other charges on the estate take subject to the Council's land charge.

This is important, as it allows the Council to take its money from the proceeds of sale before any other person.

However, this is not the case with all statutory charges. For example, section 81 – 81A of the Environmental Protection Act 1990 does not provide that the charge will take preference over all other estates and interests therein.

Hence, if the statutory power under which the debt has arisen **does not**:

- a. Confer a charge on all the estates and interests in the property; and
- b. Confer Law of Property rights

Then it will be necessary to consider whether section 7 of the Local Land Charges Act 1975 applies. If it does, then the procedure may still be used. However, only the owner's estate will be bound, not all the estates and interests in the property. Hence, other charges may therefore take priority over the Council's charge and it will be necessary to ascertain whether there is sufficient equity in the property before embarking on the ESP.

Local Land charges are classified as overriding interests in land pursuant to schedule 2 and 3 of the Regeneration of Land Act 2002. As such these charges will take priority over other 'registered' charges entered after the creation of the Financial Land Charge.

The Legal Process

The first step in pursuing the legal process for ESP is to serve a notice under Section 103(i) of the Law of Property Act 1925. The Council may not exercise the power of sale unless and until this Notice (requiring payment of the mortgage money) has been given, and a default of payment has been made for 3 months after the service of the notice.

The Council must write to the Owner(s) stating that it intends to carry out the ESP in relation to the unpaid financial charge.

The Council must also write to any other Chargees similarly. If another Chargees should pay the outstanding money this prevents (if applicable) the Council taking priority over their charge.

If at any stage prior to the actual sale of the property, the Owner should pay the outstanding debt. Then the ESP is no longer an option.

Once default of payment is apparent, the Council can apply to the Land Registry for registration of the charge, claiming priority over all other charges (if applicable).

When the charge certificate is returned from Land Registry, the property can be marketed

for sale. It is good practice to send another letter to the Owner and any Chargees to warn them again that the charge is to be enforced.

4. Human Rights Act 1998

Consideration of the provisions of the Human Rights Act 1998 must be taken by the Council. In particular, Part 1, Article 8 “the right to respect for... private and family life..., home and... correspondence”, and Protocol 1, Article 1 “peaceful enjoyment of... possessions”, need to be balanced against the general benefits and rights of neighbours and the surrounding community.

Each case should be judged on its own merits. It will be important that the rights of those affected by the property are properly weighted and considered.

An officer’s note should be placed on both the instructing service and legal services file stating that the rights of those connected to the property have been considered, what facts were considered, and why it is considered proportionate that the council should use its power of sale.

If it is found not to be proportionate then officers should consider what further or other steps (if any) should be taken to deal with the debt owed.

If the matter is to proceed, a statement that the intended action of the Council in exercising its power of sale is considered to be proportionate, in accordance with the Human Rights Act, should be included in letters to the Owner and Charges. This will be covered by correspondence issued by Legal Services.

5. Enforced Sales Procedure – The Empty Property Team’s Role

A. Identifying Potential Properties for ESP

Vacant private properties can be identified in a number of ways. For example:

- Council Tax information;
- Empty Property Officers, other Council Officers, Elected Members;
- Neighbours and general public;
- Electoral Register;
- Historical Information on files and databases.
- Visiting the property

To check if a vacant property is potentially one that could be the subject of ESP, the following needs to be checked:

1. Land Registry registration. This is most easily done on-line via <http://www.landreg.gov.uk>;
2. Debt. The Property File will contain details of Works in Default, and will contain the Sundry Account Number of any Land Charge Debts.

Remember to consider if other departments have outstanding debts on the property, and to take those into account as well. In particular, Planning, Building Control, Environmental Services and Highways may have taken action leading to work being carried out in default and a debt then being created.

The use of these powers is available, where the statutory provisions permit, for the recovery of debts on a property which are identified and put forward subject to the following 7 checks being carried out. These are as follows:

- A property must be a residential dwelling;
- Must be vacant;
- Be registered with land registry;
- Have financial local land charges registered against it.
- The property is not subject to any insolvency or bankruptcy proceedings.
- The statutory notices have been served correctly
- There should be no proposed CPO action within a 2 year period

If the title to the property has not been registered at the Land Registry, and the Council is not aware of the identity of the owner(s), then the following investigations are carried out;

- The Council's electoral register;
- Council tax records;
- Enquiry of the adjoining house owners.

B. Priority and Criteria

Lancaster City Council's criteria for using the ESP are;

- The total debt on the property should exceed £1,500.00;
- The property is vacant;
- Not in a CPO area;

- Legal Services considers that the debt is unlikely to be recovered via other debt recovery procedures (for example, attachment of earnings, bankruptcy proceedings etc).

However, if a vacant property is causing a great problem where the debt is below £1,500.00 and the owner cannot be traced or is refusing to co- corporate the use of this procedure could be considered.

C. Can the authority use the Procedure?

- The primary consideration is whether the statutes pursuant to which default works were carried out confer the necessary rights and powers;
- If the statute(s) confer a charge on all the estates and interests in the property concerned and also confer Law of Property rights in regard thereto (i.e. grant the powers and remedies available as if the charge had been created by Deed) then the procedure may be used and the charge will bind any **prior** charges affecting the property;
- If the statute(s) do not confer such rights it will be necessary to consider whether Section 7 of the Local Land Charges Act 1975 applies.

If section 7 of the Local Land Charges Act 1975 does apply, the procedure may still be used but only the estate of the owner will be bound, not all the estates and interests in the property. The existence of any prior charges and the quality of the offending party's title are major considerations when deciding whether to use the procedure in such circumstances. If none of the above apply, then the procedure cannot be used and consideration should be given to pursuing the matter via the debt recovery process or via Compulsory Purchase Order.

D. Pre-action to ESP

Consideration of other, more appropriate, types of action, must always be a prior consideration before pursuing ESP.

The use of ESP should be seen as a means of last resort. It is expected that all informal and formal actions will have been taken and exhausted by the Council in order to resolve the existence of a dilapidated residential dwelling.

The first steps will be to trace and contact an Owner, if this is not already known. To this end, the following suggestions may usefully assist:

- Serving Local government (Misc. Provs) Act Sec 16 Notices;
- Land Registry (On Line Service);
- Empty Property FLARE Database;
- Neighbours;
- Council Tax (last payer);
- Property files;

- Other Council departments and agencies.

Once an Owner is identified, they should be contacted in order to offer advice, clarify the problems the property poses, and discuss and offer potential solutions. This may include:

- Voluntary Sale or Leasing, either privately, or to an interested RSL;
- Consequences of “letting the property go”, including its market value depreciation;
- Effects on the neighborhoods;
- Loan or Renovation Grant availability to repair the property;
- Advice about letting and becoming a landlord;
- Contacting relatives or others who may be able to assist.

The appropriateness and emphasis to be given to such factors, and others, will very much depend on each individual case. The Empty Property Officers assessment of the Owner’s attitude and capability will also strongly influence tactics.

Officers should not offer or give financial advice, but should suggest that the Owner seeks independent advice with regard to the various options discussed.

Vulnerable persons

If the Owner appears, or is known to be, vulnerable or disadvantaged then officers should consider whether other agencies could assist in the case. Contact should be made with Lancashire Social Services in order to ascertain whether the person is under a social worker or whether an adult assessment of the Owner could be undertaken pursuant to section 47 of the Health and Community Care Act 1990.

Officers should also carefully consider the impact of using the ESP procedure and whether there are any other steps they could take to mitigate the effect of using the ESP method or whether the ESP approach is necessary and proportionate in the circumstances.

Due regard should be had to the Council’s obligations under the Equality Act 2010 and a record of due consideration should be kept on file if the Act is applicable.

Other Departments and organisations

Liaison with other departments and agencies, particularly those with an enforcement of financial role, should also be considered, together with any other legitimate means to put pressure on the Owner to deal with the property. For example:

- Other Departments’ enforcement actions (especially Planning, Building control and Highways);
- Exemptions or relaxations for Council Tax payment should be reconsidered;
- Debt Recovery processes should be actively chased;
- Involvement of mortgage lenders if property mortgaged (e.g. breach of occupation conditions, validity of buildings insurance policy).

Furthermore, if the owner cannot be located, contact should be made with both the prison

and the National Health Services. They should be asked whether they have any record of the Owner. If the Owner is detained at her majesty's pleasure or is detained under the Mental Health legalisation, then offices should ascertain the addresses and persons to whom letters or ultimately notices under the ESP can be sent to.

E. Property File

The property file is produced by copying;

- All statutory notices served prior to the Council carrying out the necessary works in default together with the details as to how the notices were served;
- The record of service of notice form;
- The work instructions to the contractor for the work to be carried out;
- All invoices from the contractors along with breakdown of labour and material charges.
- All correspondence sent and telephone messages un/taken by LCC or received from the owner.

A file summary sheet is produced which includes what is on the file, the notice number and the amount of financial charge in each case. The file will also include copies of any ownership details, local land charge details and any correspondence sent or received relevant to the property.

F. Re-service of Notices

Legal Services will carry this out in conjunction with the Empty Property Officer. All notices originally served and notices of demand of payment are re-served on the property together with a covering letter demanding payment (comprising of a Letter before EPS Action).

This will ensure that an owner or interested party is made aware of the debt and also ensures that there is adequate evidence available. Furthermore it will ensure that any notices that need to be served under Section 81A Environmental Act 1990 are served.

Copies are taken of all the original notices served and then served on the property by hand, and also sent by first class post to the listed owner and any other interested party of which the Council is aware.

After a period of 28 days if no appeal (as to the section 81A notice) or payment is made, a notice pursuant to Section 103 of the Law of Property Act is then served. This notice allows the owner 3 months to repay the debt, the property cannot be sold until the Section 103 notice has expired, but during this time the procedure is progressed through the various stages as far as possible.

The Section 103 Notices are divided into 2 categories;

- Where notices pursuant to Environmental Protection Act 1990 have been served;
- Where no notices pursuant to Environmental Protection Act 1990 have been served.

When serving the notices, a photograph is taken of the property and copies of all the notices served and confirmation of the method of service are attached to the property file and onto the Flare database.

A memorandum is sent to Financial and Legal Services to:

- Suspend all legal action regarding the debt;
- Check the account numbers of the outstanding debts to ensure no payments have been received to date.

6. Enforced Sales Procedure: Legal Service's Role

(From receiving instructions to the registration of charge). When the property is registered at HM Land Registry

Are the charges still outstanding?

The first step taken upon receipt of the file is to go through the Default Works file making a list of all the charges, a check is then carried out to find out which charges are still outstanding. **(Appendix 1)**.

This is done as there are so many ways debts can be paid and there is little point in undertaking work where a charge has been repaid.

Write to all interested parties

If charges are still outstanding, a letter is sent to all persons on the register who have an interest in the property advising them of the position.

By doing so, the owner and any other interested party is given fair notice of the steps the Council proposes to take. It is accepted that in most cases the whereabouts of the owner will be unknown. Even so a letter addressed to the property and any other address(s) is sent in an attempt to notify the owner. Every attempt is made to give such persons notice of LCC's proposals and ample opportunity to repay the debt.

A period of 28 days is allowed for the persons served to respond.

If debt has been repaid, the council will seek alternative course of action (if necessary).

Have the Statutory Notices been validly served?

A check should be made that statutory notices have been correctly served. Once the investigations in the above paragraphs have been completed and there has been no reply to any letters sent, the property is put forward to sale

7. Enforced Sales Procedure - Selling the empty property in association with Property Services.

A. Methods of selling the property

Auction Sale

Whatever the preferred method of sale, the same rules apply to a sale under the ESP as to any other sale of a property by a mortgagee.

Auction or sealed offers with a guide price will be considered to be the most expedient method of disposal and generally a mortgagee can accept the highest bid for a property described and advertised in a properly published auction. This will be in conjunction with the Corporate Property Section.

Valuation

Whatever the method of sale, a valuation is undertaken by the Local Authority's appointed valuer or by Property Services.

B. Contract

Registered Property

The contract for sale will be the same as any contract for sale by mortgagee.

Unregistered Property

There will probably be no deeds or details of any in cumbrances affecting the property and the contract for sale need to reflect this. On completion of sale the Land Registry require the Council to provide a letter containing a certification that they have the necessary rights and powers to dispose of the property.

C. Title

Where the title deeds have not been recovered the following should be borne in mind.

Registered Title

Copies of the document referred to on the title can be obtained from Land Registry. Where they are not available, include an appropriate clause in the contract to cover the position.

Unregistered Title

There would probably be no deeds or details of the encumbrances affecting the property.

Are the charges still outstanding?

Prior to auction/exchange of contracts, a further check is made to ascertain whether the charges have been repaid.

D. Post Sale

The position is similar to an ordinary sale by a mortgagee. A broad simplified overview is set out below. However, the distribution of the sale proceeds can be complicated by prior and subsequent encumbrancers.

Generally, the cost of selling the property and debts are deducted from the proceeds of the sale. If the debts are greater than the proceeds of the sale, then officers are to consider whether the fees are to have first call on the proceeds or not.

The auctioneer's fees would have to be paid in all events.

Where the proceeds do not cover the total costs of the sale and the outstanding debt (including interest), the remaining debt is taken off the property and placed against the owner after the sale. This then takes the form of a personal debt.

If there are any balance proceeds of the sale, and if the Council is aware of the owner(s) whereabouts, the balance is paid over in the usual way (see s 105 of the Law of Property Act 1925). This is providing there are not any other encumbrancers entitled to any of the proceedings following the Council's payment of fees and debt.

If there is another encumbrancer then the surplus (in full) should be passed to the next encumbrancer (see s 107 of the Law of Property Act 1925).

If the whereabouts of the owner is unknown, the money can be paid into court under section 63 of the Trustee Act 1925 (see also The Chancery Guide [CHG 25.13]). The money can be held against the property in an interest bearing account. This is held for a period of 12 years (see the Limitation Act 1980); thereafter the Council is free to allocate such money as it pleases.

Appendix 1

CHARGES FORM

Address of property:..... Charges registered in Part 2
of the Register of Local Land Charges as at..... 200 .

Date registered in Part 2	Amount of charge	To be registered against title (Yes or No)

Appendix 2

