

STAFFORDSHIRE MOORLANDS DISTRICT
COUNCIL

ENFORCED SALES POLICY

January 2023

1.0 Introduction

The aim of the Enforced Sales Policy (ESP) is to provide a service that is consistent, transparent and proportionally targeted at long term empty properties in order to:

- bring empty homes back into the useful housing stock
- reduce the impact on the environment and neighbouring occupants
- reduce debt owed to the authority

Empty homes are currently considered to be an important issue nationally and are often associated with neighbourhood decline and can attract anti social behaviour, crime and arson. Empty properties can also attract and create nuisance such as fly tipping, criminal damage; disrepair and dampness bringing about a negative impact on adjoining properties and their occupants.

2.0 Background

2.1 What are the benefits of adopting an Enforced Sale Policy?

I. Social benefits

Empty properties can have an adverse impact on people's quality of life in a number of ways. Perceptions of the safeness, cleanliness and quality of an area can be affected by the existence of derelict or neglected properties. Long term empty homes can become the target of vandalism and other forms of anti-social behaviour and minor crime. In extreme cases, derelict properties can affect the housing market within a particular area.

By selling a property that is in a poor condition to a new owner there is a likelihood the new owner will refurbish the property which will in turn increase the chances that it will become occupied once again, eliminating the adverse impact the property is having on the local community.

Furthermore, empty homes are a wasted housing resource; when refurbished they will provide a home to a family in need of housing in the city at a time of increasing social housing waiting lists and low levels of new developments.

II. Financial benefits

Debts owed to the Council can, if not managed effectively, reduce the level and quality of services the Council is able to deliver. However, debts which are financial charges and which could otherwise prove impossible to recover can be discharged out of the proceeds of sale when using the ESP.

Furthermore, the very prospect of having the property sold can bring about the payment of the debt by the owner. It is believed that the recovery of debts registered against long term empty homes will be far more successful with the use, or potential use, of the ESP than if the normal debt recovery process is used.

There will also be a reduction in expenditure on services which deal with the problems usually found at long term empty homes, such as clearance of fly tipping; boarding up properties open to access; dealing with rat infestation due to accumulations of rubbish and responding to complaints from neighbours of long term empty homes.

Owners of properties, in particular, property companies, are more likely to discharge their debt to the council once they become aware of the council's ESP or, may deal with the nuisance; that is undertaking the required works prior to the service of a statutory notice and keep their properties in a reasonable state of repair to avoid the ESP, therefore reducing the time which the local authority spends on dealing with nuisance issues.

III. Environmental benefits

The use of this Policy will contribute towards improving the condition of private sector housing stock within the district.

The re occupation of long term empty homes will not only improve the visual appearance of properties concerned but, also the area as it will also reduce the opportunity for fly tipping; theft; squatting and other forms of crime and anti social behaviour usually experienced at the site of long term empty homes. This is more likely to make an area more desirable and assist in the housing market of the area.

IV. The ESP is more expedient than a Compulsory Purchase Order (CPO)

Generally, a Compulsory Purchase Order takes a minimum of 18 months to complete. Furthermore, certain statutory criteria need to be established in order to use this procedure. In comparison, whilst using the ESP it is anticipated that, on average, a sale could be achieved within 10 months from the date instructions are received by the Legal Section, subject to no challenges from the owner of the property.

In order to utilise the procedure, recovery can occur when the normal debt recovery process can go no further. This procedure can be used once Revenue Services have raised the invoice, and sent reminders and if the debt remains unpaid, a letter is sent out informing the owner that bailiffs and/or court action is to be pursued.

3.0. Criteria for enforcing the sale of a long term empty property

This is something each local authority has to consider in accordance with their aims and objectives.

At present we will adopt the following criteria:

- I. The total debt on the property should exceed £300
- II. The property has to be a long term empty property, i.e empty for over 6 months
- III. The property has to be registered with the Land Registry,
- IV. The necessary Enforcement Notices and documentation have been served.

If the above criteria are not satisfied then we may consider the CPO route.

However, if there is a derelict empty property causing a major problem, such as being subjected to repeated arson attacks, where it does not meet the above criteria and the owner cannot be traced, or is refusing to cooperate, the use of this policy would be considered. It is important to remember that the smaller the debt, the greater the justification needed for using this policy.

It is considered that a property owner who remains reluctant to address his debts tends to become far more cooperative when the forced sale of his property is a real prospect. The ESP can therefore be used as a supplement to the normal debt recovery process.

4.0 Fundamental Considerations

4.1 Does the Act give the right of an enforced sale?

In order to make use of this procedure, the first consideration is whether the Act under which the default works were carried out confers the necessary rights and powers to enable the Council to enforce a sale. In other words, does the relevant Act provide that the expenses incurred become a charge upon the property local or otherwise?

Attached at Appendix A is a list of the statutes which create a charge on a property in the case of works carried out in default by the Council. This list is not exhaustive.

If the relevant statute creates a charge on the property and thereby confers a power of sale under the Law of Property Act 1925 then, the ESP may be used. In most cases, the Council's charge will take priority over any earlier charges, including a mortgagee's charge. However this will need to be considered at the outset because, if the Council's charge does not take priority then pursuing an enforced sale may not be financially viable.

If the statute(s) does not create a charge then, it will be necessary to consider whether Section 7 of the Local Land Charges Act 1975 applies. If it does, the policy may still be used as the charge will be registered on the Local Land Charges Register but this may **not** take priority over existing charges. As noted above, the existence of any prior charges and the quality of the offending party's title are major considerations when deciding whether to use the policy in such circumstances.

If none of the above applies then the procedure cannot be used and consideration will be given to making a Compulsory Purchase Order or continuing to pursue the matter via the authority's normal debt recovery process.

4.2 The Human Rights Act

When considering whether or not to exercise the ESP, consideration must be given and documented in relation to the Human Rights Act 1998. Selling property belonging to a third party engages Article 8 of the Act namely; *“the right to respect for... private and family life.. home and correspondence..”* . Further, Article 1 of Protocol 1, namely *“..the peaceful enjoyment of possessions..”* is also engaged. As such, interference is only permitted if such action is considered proportionate. The individual’s property rights have to be balanced against the general benefits to the community if the property were to be brought back into use.

A statement which sets out the reasons as to why (in any given case) it is proportionate, in accordance with the Act, to invoke the ESP should, be a matter of record on the particular file and, should also be set out in any correspondence to the owner.

4.3 The Limitation Act

The power to utilise the ESP is time limited by section 20 of the Limitation Act 1980. This states that no action can be brought to recover a sum of money secured by a charge on a property after a period of 12 years from the date on which the right to receive the money accrued. In other words, the normal rule is that the 12 years will run from the date when the expense has occurred. As the ESP uses various statutes there may however be some exceptions to the norm. Advice should be sought from the in-house legal team if there is any doubt.

5.0 Authorisations

It is proposed that the Executive delegates to the Director of People – Adult and Neighbourhood Services the power to institute the ESP, in consultation with the Assistant Director of Legal Services, and for a resolution to be issued and delivered to the Land Registry which details the following:-

- the statutory provisions;
- the service of the necessary notices;
- what work was done and when;
- the registration of the charge in the register of local land charges,
- a claim to priority over all estates and interest (if legal powers)

The resolution will be prepared by the in-house legal team and done under seal. The appropriate written authorisation of the Director of People – Adult and Neighbourhood Services (or such officer to whom the Director has sub delegated his authority) should form part of the file sent to the Assistant Director of Legal Services.

6.0 Summary of the Enforced Sale Procedure

An ESP Operating Procedures will be developed with the co-operation of relevant partners, as follows;

- Empty Homes Team
- Legal Services
- Revenue Services
- Property Services

As stated earlier, the basis for using the ESP is where the relevant statute confers a power of sale or where there is a financial charge registered in Part 2 of the Local Land Charges Register .

The first step in commencing the ESP, (providing the file has been checked by Legal Services and the requisite authority has been given by the Director of People in consultation with the Head of Legal Services), is the service of a legal notice under Section 103(I) of the Law of Property Act 1925. The S103 Notice will be prepared and served by the in-house Legal Team.

The power of sale cannot be exercised until this Notice has been served. This Notice must require the payment of the outstanding debt and give a period of no less than 3 months from the date of service of the Notice. The Notice must be served on the owner of the property at which the previous Default Notice was served. It will also be necessary to serve a copy of the Notice on any other chargee.

If the outstanding debt is paid as a result of the S103 Notice then, the ESP cannot be used.

If, after the three month period the debt remains outstanding then, an application can be made to the Land Registry for registration of the charge and, where possible, claiming priority over all other charges. The Legal Team will make the above application.

When the Charge has been registered and the Charge Certificate has been returned then the property can be marketed for sale. It is good practise however, to send another letter to the owner and any other chargee to warn that the charge is to be enforced. It is anticipated that this process will take approximately 10 months to complete.

In any subsequent sale, reasonable care should be taken to ensure that a fair price for the property is obtained. It is likely that sale by auction will achieve this. Thus, our preferred method of sale will be by way of auction. This is considered the safest and quickest method of disposal as, it will enable the Council to accept the highest bid for the property and reduce any risks of a claim that the property was sold for a lesser than market price.

If, following the recovery of the Council's charges (including its legal and sale costs) and any other outstanding charges, such as mortgagee or utility charges, if there remains any

balance then, this will (where the identity and location of the owner is known) be paid to him/her. In cases where the Council has not been able to identify or locate the owner the remaining balance will be paid into an interest bearing account or an application can be made to have the monies paid into Court.

The Council's Estates Team will be responsible for marketing the property and the Council's Legal Team will be responsible for completing the sale of the property and dispensing of the charges.

The Empty Homes Team will be responsible for making contact with the new owner to ensure that the property is brought back into use as soon as possible.

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LIST OF RELEVANT STATUTES UNDER WHICH USE OF ESP CAN BE CONSIDERED **APPENDIX 1**

<u>ENVIRONMENTAL HEALTH LEGISLATION</u>	
Public Health Act 1936	Section 45 -Work to WC closets Section 83 - Filthy or verminous premises
Prevention of Damage by Pests Act 1949	Sec 4- Rats and mice
Public Health Act 1961	Section-17 - Work to drains
Local Govt. (Misc.Provs.) Act 1976	Sec 33- Restore Services Sec 35-Private sewer
Building Act 1984	Sec 59- Drainage, Sec 60- Soil vent pipes, Sec 76- Defective premises, Sec 84- Yards.
Environmental Protection Act 1990	Sec 80-Statutory nuisance
Housing Act 2004	Sec 11-Improvement Notice Sec 12- Improvement Notice Sec 40- Emergency remedial action Sec 49- Enforcement action Sec 50- Recovery of charges under Section- 49 above.

<u>PLANNING, BUILDING CONTROL & HIGHWAYS LEGISLATION</u>	
Highways Act 1980	Sec 154-hedges and trees, Sec 165-unfenced land
Building Act 1984	Sec 77/78 –Dangerous buildings
Town & Country Planning Act 1990	Sec 215- Untidy state of land Sec 172- Planning breach.

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