

## **BARNSELEY METROPOLITAN BOROUGH COUNCIL**

This matter is not a Key Decision within the Council's definition and has not been included in the relevant Forward Plan

### **REPORT OF THE EXECUTIVE DIRECTOR, PLACE TO CABINET 16<sup>th</sup> May, 2018**

#### **GREATER USE OF ENFORCEMENT POWERS TO TACKLE PROBLEMATIC LONG-TERM EMPTY PROPERTIES**

#### **1. PURPOSE OF REPORT**

- 1.1 To advise members of proposals to make greater use of enforcement powers to bring back into use problematic long-term empty properties.

#### **2. RECOMMENDATIONS**

- 2.1 That, in order to more effectively tackle problematic long-term empty properties approval be granted for the use of:

- Empty Dwelling Management Orders (EDMOs),
- Enforced Sale procedure through the use of delegated powers as mortgagee under the Law of Property Act (1925) and
- Compulsory Purchase Orders

- 2.2 That powers under the Acts set out below be delegated to the Service Director, Culture, Housing and Regulation insofar as they relate to tackling long-term empty properties.

- Housing Act 2004 – for Empty Dwelling Management Orders (EDMO) and Housing Health & Safety Rating System (HHSRS)
- Building Act 1984 – for ruinous and dilapidated buildings
- Town & Country Planning Act 1990 – for maintenance and amenity of land
- Prevention of Damage by Pests Act 1949 – for dealing with rats and mice
- Environmental Protection Act 1990 (section 215) – for detriment being caused by condition of land and buildings

#### **3. INTRODUCTION**

- 3.1 The Council's Senior Management Team has indicated that an increased focus should be brought to bear on tackling the number of long-term empty homes within the Borough. The latest statistics are shown below:

Time Empty	Total
6 months – 2 years	1019

2 years – 5 years	333
5 years – 10 years	191
10 years plus	72
Grand Total	1615

Source: Council tax data extract Apr. 2018.

The vast majority of long-term empty homes are found in the private sector.

- 3.2 The Council already provides a range of support services to the owners of empty homes to return such properties to use; this includes basic advice, the provision of grants and the offer of property purchase. However, sometimes offers of support go unheeded and in such circumstances enforcement action leading to a change in property ownership can be required if problematic empty homes that are dragging down local neighbourhoods are to be brought back into use. The range of enforcement powers that can be used to tackle long-term empty homes is set out in the Council's Empty Homes Strategy 2014-18.
- 3.3 It isn't just long-term empty homes that cause problems – the same is true of long-term empty non-domestic properties. For example, there are a number of former pubs in the Borough that have been empty for years that are causing blight and disamenity; properties such as these could potentially be converted into housing and brought back into use, again making use of enforcement powers to change ownership if need be to achieve this end.
- 3.4 Making greater use of enforcement powers to return long-term empty property into use as housing will have the following benefits:
- An increase in the supply of good quality accommodation to meet housing need
  - The removal of eyesores that have been blighting and causing disamenity in local neighbourhoods
  - The removal of magnets for anti-social behaviour
  - In some cases, the recovery of outstanding debts owed to the Council
  - Be part of the answer to broader local neighbourhood renewal initiatives
  - Complement other activity in the Council's proposed selective licensing areas, helping to restore confidence in neighbourhoods.
- 3.5 In itself enforcement will not provide a panacea for all long-term empty properties; indeed, in many instances, and particularly if the property is not causing disamenity, it would be wholly inappropriate to use enforcement powers. Enforcement action will only be taken where property owners have failed to respond in a positive manner to offers of support from the Council and where it is proportionate and reasonable to do so.

#### The Use of Enforcement Actions as a Precursor to the Enforced Sales Process

- 3.6 The Council has numerous enforcement powers and tools at its disposal. By way of reminder these powers, in relation to empty property enforcement action, are provided by virtue of the following statutes:

- Housing Act 2004 – for Empty Dwelling Management Orders (EDMO) and Housing Health & Safety Rating System (HHSRS)
- Building Act 1984 – for ruinous and dilapidated buildings
- Town & Country Planning Act 1990 – for maintenance and amenity of land
- Prevention of Damage by Pests Act 1949 – for dealing with rats and mice
- Environmental Protection Act 1990 (section 215) – for detriment being caused by condition of land and buildings

- 3.7 Local authorities can serve notices requiring property owners to carry out works under the above Acts. In the event of non-compliance a local authority can carry out the works required in default and charge the property owner for the costs incurred. If the property owner refuses to reimburse the local authority a charge in respect of the outstanding debt can then be registered against the title of the property. Continued failure to clear the debt then enables a local authority, as mortgagee, to invoke the Enforced Sales procedure under the Law of Property Act 1925.

#### **4. PROPOSAL AND JUSTIFICATION**

##### Enforced Sales Procedure

- 4.1 A greater use of the Enforced Sales procedure is proposed to bring about the change in ownership that will be required to bring back into use some of the problematic long-term empty properties in the Borough.
- 4.2 The use of this power will be addressed on a case by case basis and only used where it is proportionate and reasonable to do so. It should also be noted that some of the problematic long-term empty properties in the Borough have significant council debt attached to them and effecting a change in ownership will enable the repayment of many of these debts. Manchester City Council have been using the Enforced Sales Procedure successfully for some time now and have produced a very helpful guide on the matter.
- 4.3 The starting point for the use of the Enforced Sales procedure is the serving of notice(s) requiring the property owner to take action in regard to any of a number of matters linked to the empty property that is causing disamenity. As matters stand the delegated authority for the use of enforcement powers under the Acts listed above is currently delegated to the Service Director, Stronger Safer and Healthier Communities. This report seeks approval for the use of these powers to be delegated to the Service Director, Culture, Housing and Regulation as well, *but only and insofar as they relate to the Council's empty homes programme.*
- 4.4 The delegation of powers will enable officers within the Housing and Energy Service to carry out enforcement action in regard to problematic empty properties that have been identified and included in the Council's empty homes programme, leading, subject to final authorisation by BMBC Legal, to the enforced sale of such properties and their subsequent return to use.
- 4.5 Disposal of properties will be through an estate agent or, should this fail to result in a sale within a reasonable period of time, an auction house.
- 4.6 Not all properties will have an outstanding debt owed to the Council registered against the property title and in such cases the Enforced Sales Procedures couldn't

be used. However, it would be possible to use either a Compulsory Purchase Order or an Empty Dwelling Management Order in such circumstances.

#### Use of Compulsory Purchase Orders (CPOs)

- 4.7 It is possible to use CPOs as a means of bringing problematic long-term empty properties back into use under provisions within the Housing Act 1985 and the Town and Country Planning Act 1990. Some LAs, for example Wolverhampton City Council, have used the CPO power to good effect in this regard. Barnsley MBC does periodically use the CPO mechanism to acquire land and property that is required for housing redevelopment purposes but to date hasn't used CPOs as a tool to remedy problems with long-term empty properties.
- 4.8 As part of the increased focus on bringing such properties back into use as housing it is proposed that the Council will extend its use of CPO powers to tackle long-term empty properties, using existing approval mechanisms, where it is reasonable and proportionate to do so.

#### Empty Dwelling Management Orders (EDMOs)

- 4.9 Local authorities can apply to Residential Property Tribunals for an EDMO in respect of residential property that has been empty for at least 2-years. EDMOs can be interim (lasting up to 12-months) or final (lasting up to 7 years) in nature. EDMOs provide local authorities with the power to carry out works to the property such that it can then be let. Costs incurred are recouped from the rental income.
- 4.10 It is proposed that the Council makes use of the EDMO power where attempts to persuade property owners to remedy matters have failed and it is reasonable to do so.

#### Management of Empty Property Enforcement Caseload

- 4.11 A small officer group, coordinated and led by the Housing & Energy Service, is to be formed to assess and determine which properties are to be prioritised for enforcement action as part of the Council's empty homes programme and the enforcement route to be taken. The group will consist of representatives from the following services:

- Housing and Energy
- Safer Communities (case management)
- Legal
- Finance – council tax.

A specially designed scoring matrix will be used to inform the prioritization process. The group will meet on a bi-monthly basis and the workload will be managed to ensure that it matches the level of resources available.

- 4.12 Problematic empty properties will be identified through referrals from the public and front-line Council officers (principally within the Housing & Energy Service and Safer Communities). Area Council officers will also be an important conduit for referrals, as will relevant front-line officers within Berneslai Homes.

- 4.13 We do not anticipate large numbers of properties and their owners being subjected to the ultimate enforcement sanctions of CPOs, EDMOs or Enforced Sales – as previously stated the principal means of engagement with property owners will remain as one of support – but those properties that are returned to use through this route will make a significant difference to the general ambience and wellbeing of the neighbourhoods within which they are located.
- 4.14 Some of the properties identified might be suitable for inclusion in the Council's 2018/21 Empty Homes contract with Homes England (formerly the HCA). In such circumstances the Council, working in conjunction with Berneslai Homes, would seek to purchase and refurbish these properties and bring back into use as council housing thus obviating the need for enforcement action.

## **5. CONSIDERATION OF ALTERNATIVE APPROACHES**

- 5.1 The principal manner in which the Council will engage with the owners of long-term empty properties will continue to be through the provision of advice and support, including financial assistance that will be available through a number of capital programmes 2018/21. However, in cases where long-term empty properties are causing significant disamenity and the property owners have refused to respond to the support and advice that has been offered, the Council will use the enforcement powers set out in this report where it is reasonable and proportionate to do so.

## **6. IMPLICATIONS FOR LOCAL PEOPLE/SERVICE USERS**

- 6.1 Greater use of enforcement powers will enable the Council to better deal with long-term empty properties that blight local neighbourhoods. Bringing such properties back into use will alleviate the disamenity that is frequently associated with long-term empty properties and in the process help to improve the localities within which such properties are found.

## **7. FINANCIAL IMPLICATIONS**

- 7.1 Consultations on the financial implications have taken place with representatives of the Service Director – Finance (S151 Officer)
- 7.2 Where the support and actions by the Council results in the property owner taking steps to ensure the empty property becomes occupied, there will be no direct cost financial implication to the Council.
- 7.3 If the property owner refuses to take advantage of the support offered and the property remains vacant, the Council may have no further choice but to pursue enforcement action to take ownership of the property via the Enforced Sales process or the issuing of CPOs or EDMOs. The costs associated with this course of action including all the purchase costs will be funded from resources totalling £1.5M previously earmarked from the Berneslai Homes surplus.
- 7.4 Properties acquired will then either be held by the Council in its HRA housing stock and let accordingly (subject to any remedial works being carried out on the property which will be funded by the HRA capital programme) or alternatively the properties will be marketed for onwards sale via the use of estate agents or auction. The costs associated with the onward sale (including the original purchase cost) are expected

to be funded via income generated by the sale. However, it should be noted that there is a risk that the sale costs may not cover the full costs associated with this process, although this will be mitigated wherever possible.

7.5 In addition to the above the Council would also seek to recover any outstanding debt that has been held on the properties from the sale proceeds. This includes monies owed to the Council from works previously carried on properties in default.

7.6 Finally there may also be some financial benefits to the council via additional new homes bonus as a result of decreasing the number of long-term empty homes.

## **8. EMPLOYEE IMPLICATIONS**

8.1 The Council's Housing and Energy Service is in the process of recruiting a dedicated Empty Homes Officer on a 3-year fixed-term contract as part of a broader stepping up of empty homes activity. This additional resource will work closely with colleagues in the Stronger and Safer Communities service to enable the Council to take a more proactive approach in the use of enforcement powers to tackle problematic empty properties where it is appropriate and proportionate to do so.

## **9. COMMUNICATIONS IMPLICATIONS**

9.1 The Housing and Energy Service will continue to promote, in general terms, the advice and support that is available to owners of empty homes. Communications regarding the use of enforcement will be *targetted* at those owners whose empty properties are causing significant levels of disamenity.

## **10. CONSULTATIONS**

10.1 Consultation has taken place with:

- BMBC Stronger and Safer Communities
- BMBC Legal Services
- BMBC Finance
- BMBC Planning – Development Management

## **11. THE CORPORATE PLAN AND THE COUNCIL'S PERFORMANCE MANAGEMENT FRAMEWORK**

11.1 Tacking action to return empty properties to use as housing helps to deliver the following Corporate Plan outcomes:

- Creating more and better housing
- Increase skills to get more people working

11.2 The number of long-term empty homes returned to use is a corporate performance indicator.

## **12. PROMOTING EQUALITY, DIVERSITY AND SOCIAL INCLUSION**

12.1 No issues arising from this report.

### **13. TACKLING THE IMPACT OF POVERTY**

13.1 No issues arising from this report.

### **14. TACKLING HEALTH INEQUALITIES**

14.1 No issues arising directly from this report.

### **15. REDUCTION OF CRIME AND DISORDER**

15.1 Empty property is a magnet for anti-social behaviour. Reducing the number of empty properties will reduce the opportunity for crime and disorder.

### **16. RISK MANAGEMENT ISSUES**

<b>Risk</b>	<b>Mitigation</b>
That enforcement is used in inappropriate circumstances	Established approval process in regard to CPOs.  Officer group to identify which properties are to be escalated for CPO, Enforced sale or EDMO action. Prioritisation process contains checks and balances.  Oversight from Service Director, Culture, Housing and regulation and Legal throughout process.
Excessive caseload	Officer group to assess and prioritise properties for enforcement action commensurate with resources available.

### **17. HEALTH, SAFETY AND EMERGENCY RESILIENCE ISSUES**

17.1 No issues arising from this report.

### **18. COMPATIBILITY WITH THE EUROPEAN CONVENTION ON HUMAN RIGHTS**

18.1 Article 1 of the Convention provides for the right to the peaceful enjoyment of one's possessions. The checks and balances in within the procedure that officers will follow when seeking to invoke the enforcement powers set out in recommendation 1 of this report will ensure that that action taken is compatible with the European Convention on Human Rights.

### **19. CONSERVATION OF BIODIVERSITY**

19.1 No issues arising from this report.

### **20. GLOSSARY**

- EDMO – Empty Dwelling Management Order
- CPO – Compulsory Purchase Order

## 21. LIST OF APPENDICES

None.

## 22. BACKGROUND PAPERS

Manchester City Council – Enforced Sales Procedure: <http://www.htlc.co.uk/wp-content/uploads/2015/09/manchester-enforced-sales-procedure-smaller-size2.pdf>

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Financial Implications/Consultation

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*(To be signed by senior Financial Services officer  
where no financial implications)*