

Private Sector Empty Homes Strategy

1.0 Background

- 1.1 The Council is, at present, required, as a Best Value Performance Indicator (BVPI), to report on an annual basis, its success, or otherwise, in returning long-term empty private sector properties (empty for 6 months or more) to occupation as a direct result of any action it takes. It is also required to report on such properties it demolishes.
- 1.2 This BVPI will be abolished in April 2008, when all existing BVPIs will be replaced by National Indicators. Whilst the need to monitor and report performance to Central Government in this area will no longer be necessary, as best practice, it would be logical to continue to monitor performance as a local indicator. This Policy assumes this to be the case.
- 1.3 At any one time in Corby there are nearly 70 empty properties that have been empty for longer than six months. Some of these are re-occupied again after a 6 month period and within the following year; however, there are a number of properties that lie empty for considerable periods of time and over many years.
- 1.4 The negative impacts of long-term empty properties include neighbourhood blight, unauthorised occupation by squatters/drug users, vandalism, litter and in extreme cases arson. Such properties can be the cause of damage to adjoining properties and are frequently the cause of complaints to local authorities e.g. in relation to environmental health issues. Empty properties also have a degenerative effect on the properties and communities surrounding them. The owners of these empty properties often live elsewhere, which means they do not suffer the direct negative impacts.

2.0 Introduction

- 2.1 Clear benefits for local authorities and the local community accrue from the re-use of empty properties. They include the provision of improved quality and choice of housing accommodation for the residents of Corby, increased Council Tax revenue and reduced expenditure by eliminating the need to board them up to keep them secure. Each empty property brought back into use will not only save hours of Council, but also, potentially, Police and Fire Service officers' time and enable scarce resources to be targeted into other areas.
- 2.2 Anti-social behaviour issues are often associated with long-term empty properties. A proactive and clearly defined strategy for bringing such properties back into use is vital in improving, at the very least, the visual amenity of the neighbourhood in which they are located, as well as contributing to the minimisation of anti-social behaviour issues referred to above.

2.3 Fundamental to the success of this strategy is to continuously seek to establish the exact number of empty private sector properties within the Borough and to identify/trace their owners. The position is not a static one but fluctuates over time and, as a consequence, must be continually and regularly monitored. Council Tax records, Land Registry records and various other tools will be used to achieve this outcome.

2.4 Corby Borough Council is responsible for ensuring that properties are decent and safe for human habitation and is committed to identifying empty properties and bringing them back into use, in accordance with the wider objectives of the Corporate Plan. Once identified, there are a number of options available to the Council to secure this objective (see below).

3.0 Options to secure re-occupation

3.1 The most effective option is to seek to persuade the owner of the need to return his/her property back into use and will be the option initially pursued. Only when it has become clear that negotiation with the owner has been unsuccessful, and that he/she does not voluntarily intend to co-operate, other legally enforceable sanctions will be considered.

3.2 Legal sanctions that may not necessarily, of themselves, compel the owner to return his/her property back into use but may, as a consequence of the financial impact of compliance with a particular statute, result in the re-letting of a property in order to recoup his/her costs are detailed in Appendix 1.

3.3 Where the owner fails to comply with conditions imposed by any legal sanction, the cost of any remedial action taken by the Council in default of the owner is normally, but not always, recoverable from him/her. However this is not always possible for various reasons, e.g. the owner of the property has changed, the recovery of the debt is now statute barred or the owner cannot be found. (see Appendix 1).

3.4 Other sanctions, far more draconian in their impact than the above, which are available to the Council, are detailed below. All of these options would achieve the desired objective but each option has potentially negative implications in respect of finance and resources and would only be used as a last resort.

3.4.1 Enforced Sale Procedure (ESP)

3.4.2 Compulsory Purchase Order (CPO)

3.4.3 Empty Dwelling Management Order (EDMO)

4.0 Enforced Sale Procedure (ESP)

4.1 Enforced sale is not a procedure that is directly intended to deal with problematic properties. Instead, it is a provision that enables the council to recover outstanding debts, following actions that have created a land charge against a property. The Enforced Sale Procedure is explained in greater detail in Appendix 2.

5.0 Compulsory Purchase Order (CPO)

- 5.1 The Council can use its compulsory purchase powers in order to address an acute local housing need or where there are good planning or development reasons to justify their use and it may be possible to structure a legal agreement with a third party such as a registered social landlord (RSL) or private developer, who will purchase the property from the Council when the Compulsory Purchase Order is confirmed.
- 5.2 The benefit of compulsory purchase is that it generally guarantees that the property is brought back into use and made to the Decent Home standard; whereas the use of the Council's other legal powers may only result in urgent problems being addressed.
- 5.3 The principal disadvantages of the compulsory purchase option are the extremely long time periods involved, which, even if an appeal is not involved, can take between 12 – 24 months and the significant financial cost to the Council, which may not be recouped. At the final stages of the procedure further delays and costs can be encountered if a public inquiry is made due to objections from written representations.
- 5.4 The compulsory purchase option will only ever be used as a last resort when all negotiations have failed with the owner or the owner cannot be found and only with Committee approval.

6.0 Empty Dwelling Management Order (EDMO)

- 6.1 An EDMO enables the Council to assume management control of an empty dwelling in order to secure its occupation. The associated management and maintenance costs can be recovered by the Council from rental income. It is likely that EDMOs will only be a realistic proposition where a property is in reasonably good condition at the outset.
- 6.2 An EDMO is only likely to be a financially realistic proposition if the property subject to such an Order is in reasonably good condition at the outset. If considerable expenditure is necessary to return the property to a statutory standard that is free from Category 1 hazards and is decent and safe for human occupation, this option may not be suitable due to the expenditure needed. The EDMO procedure is explained in greater detail in Appendix 3.

7.0 Locating/Identifying long-term empty dwellings

- 7.1 Long-term empty dwellings are identified from the following sources/inputs:
- Regular, programmed updates from Council Tax records
 - Routine inspections of the Borough
 - Local knowledge
 - Complaints from neighbours
 - Referrals from other organisations and other Council departments
 - Feedback from publicity campaigns

8.0 Prioritising action on long-term empty properties

- 8.1 Although all long-term empty properties are a wasted resource and require action to bring them back into use, some are more problematic than others, as a result of their location and/or condition, and will be addressed in accordance with the prioritisation matrix illustrated in Appendix 4.

9.0 The Empty Homes procedure

- 9.1 Once identified, an Initial inspection of the property will be undertaken to assess the extent of the problem posed by the property and to assign an action priority. Contact will then be made with the owner, if his/her details are known, to discuss the reasons for the property's abandonment, the long-term future for the property and to resolve any immediate health or safety issues.
- 9.2 If an owner fails to respond to an informal approach to improve the property, then the Council will consider imposing legal sanctions, detailed elsewhere in this Strategy, to compel the owner to carry out improvement works.
- 9.3 Where the owner fails to undertake improvement works within the prescribed timescales and is in breach of a statutory notice, the Council will, where practicable, undertake to carry out those works in default, recovering the cost of those works, where possible, as outlined in Appendix 1.
- 9.4 Should any owner fail to reimburse the Council, then, depending on the legal sanction utilised when works were undertaken in default, the Council will register a charge against the property at the Land Registry. Once the charge is registered the Council will then consider the use of the Enforced Sale Procedure.
- 9.5 Where no charge can be made against a property, the Council will consider using its compulsory purchase powers. As highlighted in paragraph 5 above, these powers will only be used as a last resort when all negotiations with the owner have failed or the owner cannot be found. If the owner cannot be traced, the use of options outlined elsewhere in this Strategy will be evaluated.

10.0 Legal, Financial & Resource Implications

- 10.1 Local authorities have a wide range of legal powers to deal with substandard and unsafe buildings. The Council has the power to undertake works itself where property owners will not or cannot undertake the works themselves. The Council has a fiduciary duty to its Council Tax and Ratepayers to recoup its debts. Where the owner cannot repay the expenses that the Council has incurred in undertaking works, then the Council can enforce the sale of the property. A decision either to enforceably sell or compulsorily purchase a property will depend on the individual merits of each case.

Where a property is sold through the enforced sale procedure, the Council will ensure that it obtains the best possible price. Where the Council compulsorily acquires a property, then the Council will pay the market value of the property to the owner.

10.2 Notional costs for each option, per property, are as follows:

EDMOs – Unable to determine costs for this until expressions of interest have been received by registered social landlords.

CPOs - Capital budget is needed to purchase the property in the first place. Money here will be kept and recycled for future purchases. The average cost of £2,500 per property covers legal services, clearances and any overheads. A basic loss payment of 7.5% of market value, subject to a cap of £75,000 for compensation (ex owners have 6 years to claim this after CPO sale.) Other costs include costs of around £4,000 to the Secretary of State if written representations are made at the appeal or public inquiry.

Enforced Sale – Costs and legal costs will be determined on a case by case basis and will include the potential cost of the valuers and taking it to auction if an agreement with a third party can't be made.

11.0 Prosecution

11.1 Prosecution will be actively pursued if statutory notices referred to in this Strategy are not complied with. This will most commonly be the case in respect of contraventions under the legislation detailed in Appendix 1.

12.0 Conclusion

12.1 In attempting to return long-term empty properties back into use, officers will adopt the best alternative strategy that suits the circumstances pertaining at any given time, but will always favour persuasion as opposed to proscription.

12.2 Officers will always be mindful of limited resources and financial constraints that may have to be drawn upon in any proactive interventions when determining the best course of action to follow and, where interventions with potentially negative impacts upon the Council's limited resources appear inevitable, any such interventions will only be implemented with Committee approval.

Appendix 1

Statute and enforcing mechanism		Charge assumes priority over other Charges?	Interest accrues?
Environmental Health	Planning (P), Building Control (BC) and Highways (H)		
<u>Public Health Act 1936</u> Sec 45 – works to WC closets Sec 83 – filthy or verminous premises		Yes	Yes
<u>Local Govt. (Misc. Provs.) Act 1976</u> Sec 33 – restore services Sec 35 – private sewer		Yes	No
<u>Local Govt. (Misc. Provs.) Act 1982</u> Sec 27 – drains Sec 29 – boarding of property		No	No
<u>Highways Act 1980</u> Sec 154 – hedges and trees Sec 165 – unfenced land (H)		Yes	No
<u>Building Act 1984</u> Sec 59 – drainage Sec 60 – soil vent pipes Sec 76 – defective premises Sec 84 – yards		<u>Building Act 1984</u> Sec 77/78 – dangerous building (BC)	Yes No
<u>Housing Act 2004</u> Sec 11 – Improvement Notice (Category 1 hazard) Sec 12 – Improvement Notice (Category 2 hazard) Sec 40 – emergency remedial action Sec 49 – enforcement action charges Sec 50 – recovery of charges under Sec 49		Yes	Yes
<u>Town & Country Planning Act 1990</u> Sec 215 – land condition (P) Sec 172 – planning breach (P)		No	No
<u>Environmental Protection Act 1990</u> Sec 80 – statutory nuisance		Yes	Yes
<u>Prevention of Damage by Pests Act 1949</u> Sec 4 – rats and mice		Yes	Yes

Appendix 2

Enforced Sale Procedure

The ultimate sale of the property may be forestalled by the payment of the outstanding debt by the owner. Even if that is the case, it will still have resulted in limited short-term success, e.g. the recovery of the outstanding debt, and may have made the owner realise that the benefits of leaving the property unoccupied may not, any longer, outweigh the long-term consequences of having to bear the cost of continuing repair/maintenance costs without any rental income to off-set those costs.

Sale of the property does not of itself guarantee that the property will be improved. Notwithstanding this, it is reasonable to suppose that a previously neglected property is more likely to be improved by the purchaser than by the previous owner.

The Council may sell the property to a preferred purchaser without full exposure to the property market. This is an option that should be considered when seeking its renovation to complement other associated regeneration work. However, other than where there is particular justification, sale at auction will be the preferred option. A caveat at the sale can ensure the property is brought up to the Decent Home standard.

The Council recovers its debts and costs from the proceeds of the sale and must place any remaining balance in a separate, secure account. If the owner does not claim this balance within 12 years it reverts to the Council.

The procedure can be utilised to recover relevant debt owed to any section/department of the Council. Priority will be given to the strategic use of the procedure in order to achieve the aims of regeneration programmes and the Empty Homes Strategy.

If the option is ever exercised, it is intended that the procedure should only be utilised in relation to unoccupied properties, because of the complexities surrounding the sale of a property without vacant possession.

Limitations of the Procedure

The issues surrounding the empty condition of a property vary so widely that no single measure offers a tailor-made solution. Even where the following criteria can be met, it is necessary to consider how likely it is that the Enforced Sales Procedure will achieve the desired outcome and to consider whether other courses of action might be more appropriate.

The Enforced Sales Procedure may be followed even where the owner cannot be traced and even where the property has changed hands, as long as the relevant debt remains unpaid.

The procedure may be used to recover debt arising from the exercise of any statutory powers that: -

- confer a charge on all the estates and interests in the property

Appendix 2

- confer Law of Property rights (i.e. grant the powers and remedies available as if the charge had been created by Deed).

Any such charge will bind any prior charges affecting the property, i.e. the Council's charge will have a priority over other charges. However, covenants and easements over the property will not be so bound.

If the statutory powers under which the debt has arisen do not confer the above-mentioned 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, but only the estate of the offending party will be bound, not all the states and interests in the property. Other charges may therefore take priority over the Council's charge.

Principally, the statutory powers that will enable the procedure to be used are: -

- Prevention of Damage by Pests Act 1949
- Housing Act 2004
- Building Act 1984
- Public Health Act 1936
- Public Health Act 1961
- Environmental Protection Act 1990

Actions in relation to the service of statutory notices under these provisions are most likely to have given rise to the relevant debt(s).

Additionally, the following criteria will be applied when considering whether to instigate the procedure: -

- the principle sum of the original work carried out in default must be at least £300. (This can be the total of a number of combined principle sums)
- **the statutory notices must have been served correctly.** Refer to the relevant statute for the requirements relating to service, but see below for the Environmental Protection Act 1990¹. All copy notices must have been stamped and signed by the serving officer. The procedure cannot be employed if the notices have not been served in this manner. (If the serving officer is still employed by the council, then it may be possible to ask them to rectify the notice).
- the serving officer must complete a 'Record of Service of Notice' form on service of the statutory notice.
- there should be no proposed CPO action within a 2-year period.
- the property must not be the subject of any bankruptcy action. (This would usually be noted on the title).

It should be noted that the right to enforce a sale in order to recover land charges is limited by section 20 of the Limitation Act to 12 years from when the right to receive the money accrued, **not** from when the demand was sent out.² However, where the owner has attempted to repay and any amount has been received, the 12-year period starts afresh from that date.

Appendix 2

Properties shown as Unregistered using the On-line Link to the Land Registry

The following key considerations arise in such cases: -

- where the statutory charge does not bind all the estates and interests in the property, it would probably be inadvisable to proceed unless it is certain that there are no prior charges and that the statutory charge binds the freehold or a long lease.
- it will be necessary for the eventual purchaser of the property to apply for first registration of the title. Difficulties might arise in determining the extent of the land to be registered and in identifying the encumbrances affecting the property.

1. Environmental Protection Act 1990

Note that there is no provision under this Act for service by affixing the notice to the property. However, Section 233 of the Local Government Act 1972 supplements the provisions and does in fact enable service to be effected by affixing to the property **so long as** the name or address of any owner, lessee or occupier of land on whom the notice is to be served cannot be ascertained **following reasonable enquiry**.

2. The right to receive money will depend on the legislation under which the council is acting. For example: -
Environmental Protection Act 1990 (Section 81(4)) – the right to recover expenses arises when the expense is incurred by the Council.

Environmental Protection Act 1990 (Section 81A) – the right to recover interest arises only when the Council has served notice under Section 81A.

Prevention of Damage by Pests Act 1949 (Sections 5 or 6) – the right to recover expenses arises when the expense is incurred by the Council.

Building Act 1984 (Section 99) - recover expenses arises when the expense is incurred by the Council.

Empty Dwelling Management Order (EDMO)

An EDMO enables the Council to take control of an empty property to secure occupation and proper management of the unoccupied dwelling. The EDMO is made against the person with the most relevant interest in the property, known as the relevant proprietor and allows the Council to take over most of the rights and responsibilities of the relevant proprietor, i.e. the right to possession. The Council does not become the legal owner and, as such, cannot sell or mortgage the property, although an EDMO is a local land charge and the Local Authority may apply to have details entered on HM Land Registry.

Interim EDMO's

A Local Authority must apply to the Residential Property Tribunal (RPT) to grant an interim EDMO and the RPT must be satisfied that:

- the dwelling has been unoccupied for a minimum of 6 months;
- the owner does not intend to take immediate steps to secure occupation of the dwelling;
- there is reasonable prospect of occupation if the EDMO is made and that the Council has correctly applied for the EDMO.

An interim EDMO comes into force as soon as it has been authorised and can last for 12 months. The local authority must then take steps to secure occupation and proper management of the dwelling although it may only grant a tenancy with the consent of the relevant proprietor.

Final Empty Dwelling Management Orders

The Council can make a final EDMO to replace an interim EDMO or a previous final EDMO if it considers the dwelling would otherwise become or remain unoccupied. This may include the situation where the relevant proprietor refuses to allow a tenancy to be granted. The Council does not need to obtain authorisation from the Residential Property Tribunal to make a final EDMO but must consider that the making of a final EDMO is the most appropriate course of action taking into account the interests of the community and the effect the Order will have on the rights of the relevant proprietor and any third parties.

A final EDMO can last for up to 7 years and must contain a management scheme in which the Local Authority specifies how it intends to carry out its duties, i.e. manage a tenancy and undertake repairs and how it will account for monies expended and collected whilst it is operative. Full accounts of income and expenditure must be provided and anyone with a relevant interest in the dwelling will be granted reasonable access to inspect them. The relevant proprietor or third party has a right of appeal at various stages to the RPT.

Prioritisation mechanism

