

## **Housing and Regeneration**

### **Team procedures for Enforced Sale and Compulsory Purchase**

#### **1. Background**

The Empty Homes Strategy identifies Newcastle-under-Lyme's approach for returning empty homes to use. This is a two stage approach starting with encouragement, support and persuasion, moving on to considering enforcement options. The enforcement options are detailed in the Empty Homes Strategy and range from requiring works to ensure the property is not a detriment or a danger to the neighbourhood moving on to more serious measures such as enforced sale and compulsory purchase.

#### **2. When to consider Enforced Sale**

There are two key prerequisites, that;

- returning the property to use has sufficient priority within the context of the Empty Homes Strategy.
- there is an outstanding debt against the property owed to the Council, this debt may be through work in default charges or Council Tax arrears.

Work in default charges may arise from the Council having to carry out works to the property to prevent its condition affecting adjoining properties or the neighbourhood. If the debt can not be recovered from the owner the usual debt recovery procedures will be followed with a charge being registered against the property.

#### **3. Enforced Sale Legislation - Law of Property Act 1925**

Where an outstanding debt is registered as a charge against the property the Council can enforce that charge and has all the powers and remedies available to a mortgagee under the Law of Property Act 1925. This means that the Council can obtain a court order allowing the property to be sold with all secured debts, being paid out of the proceeds.

Many of the Council's charges have priority over any others registered. Thus, our ability to recover costs will not be affected by the amount of equity the owner has in the property. However, if there is only a small amount of equity and it appears that the proceeds of a sale would be insufficient to recover funds due, other options may be considered more appropriate.

Appendix 1 sets out the statutory provisions where the registration of the land charge will take priority over other registered charges and also where interest can be claimed on the monies outstanding.

#### **4. Enforced Sale Process**

Where enforced sale is considered the appropriate action a report should be compiled seeking permission to proceed. Use of the Law of Property Act 1925 is not within the

constitution, therefore only Cabinet can approve its use or delegate this decision to the Public Protection Committee. This report should include;

- details of the owner or interested parties,
- copies of relevant correspondence with the owner,
- summary of activities to date to bring the property into use,
- details of outstanding debts,
- condition of the property and impact it being empty is having on the neighbourhood.

If approved to proceed the matter will be referred to Legal Services, legal processes will then include;

- Serving a notice under the Law of Property Act 1925 requiring payment of monies due within 3 months
- Writing to the owner, and any other chargees, advising the Council intends to enforce a sale. This letter should contain a statement of how the action is proportionate in accordance with The Human Rights Act 1998.
- Once default of payment is apparent, the Council can submit evidence to land registry applying for registration of the Charge.

When the Charge has been registered by the Land Registry, the property can be marketed for sale.

If the property is not registered with land registry the legal process is more complex and only certain debts can be registered.

## **5. Enforced Sale - Marketing of the Property**

Usually properties will be sold by auction as this demonstrates the best price possible. The Council's legal, surveyors and marketing costs can be deducted from the sale price.

## **6. Likelihood of Success**

An owner or interested party can stop the enforced sale at any point by occupying the property, selling it voluntarily or paying off the debt. The first two still achieve the aim of the Empty Homes Strategy; the third will not directly but should demonstrate the Council's commitment to dealing with empty homes. Compulsory purchase may be considered if the property continues to be empty.

## **7. When to consider Compulsory Purchase**

Compulsory purchase should be considered an action of last resort where there is no other realistic prospect of the property being brought back into use. Factors taken into consideration will be:

- length of time the property has been empty,
- history of compliance by the owner,
- previous enforcement activity carried out,
- detrimental impact the property is having on the area,
- impacts on adjoining and neighbouring properties,
- nuisance arising from the property including anti social behaviour and squatting,
- concerns identified by the police.

## **8. Legislative Basis for Compulsory Purchase Orders**

The Housing Act 1985, section 17 gives Local Authorities the power to acquire buildings and land through compulsory purchase for the purposes of providing housing accommodation.

## **9. Compulsory Purchase Process**

Where compulsory purchase is considered the best option a report must be prepared for Council. This is due to the serious nature of the action, potential cost implications and to meet the terms of the constitution. This report should include:

- a description of the property and its condition,
- description of the impact the property is having on neighbouring properties and the local community,
- land registry details of all owners and persons with an interest in the property,
- details of all actions to encourage the owners / interested parties to return the property to use,
- details of enforcement action taken to return the property to use,
- statement of why compulsory purchase is considered a suitable option,
- Statement that all previous attempts have failed to bring the property to use and no further ones can be identified apart from Compulsory Purchase,
- the Council's proposals for the property if successful,
- financial implications.

If agreed Legal Services will proceed with preparing the necessary paperwork for an application to the appropriate Government Office and notifying people identified as having an interest in the property. If a Compulsory Purchase order application is unopposed, the Government Office will normally issue a decision within two months. If it is opposed a public enquiry will be held.

Statements and evidence will need to be presented at any Public enquiry to support the Council's case. The Council is responsible for paying the administrative costs and expenses for the Inquiry.

If successful a General Vesting Declaration is made allowing the Council to take possession.

## **10. Compulsory Purchase - Marketing of the Property**

Usually properties will be put up for sale by auction as this demonstrates the best price possible. This should be done as soon as possible after possession.

## **11. Compulsory Purchase - Compensation**

Ultimately the owner is entitled to the full market value of the property.

## **12. Human Rights Act 1998**

Consideration of the provisions of the Human Rights Act 1998 must be taken account of by the Council for both actions. 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.

A statement that the intended action of the Council in exercising its powers is proportionate, in accordance with the Act, should be included in reports.

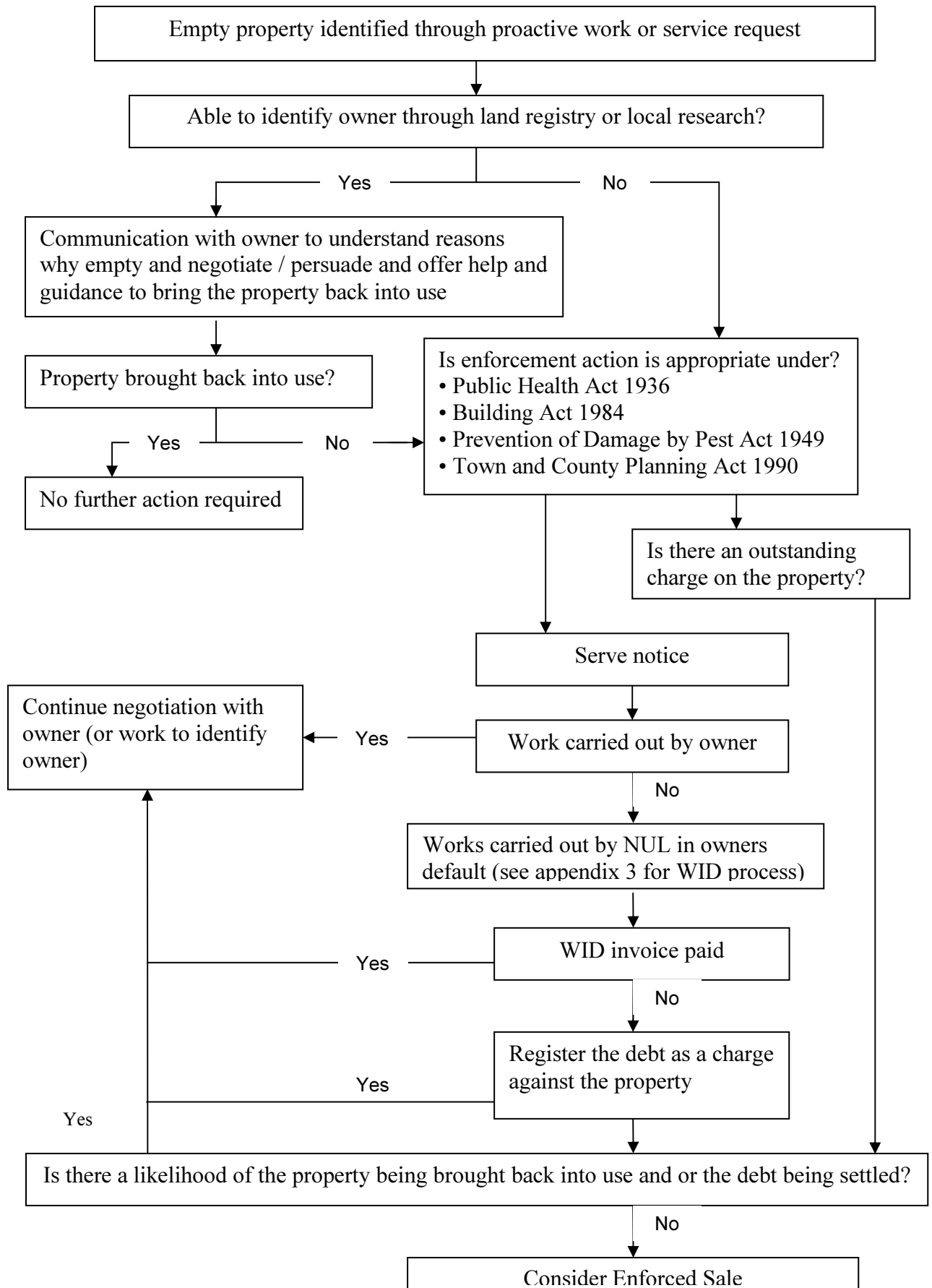
### 13. Procedure Summary

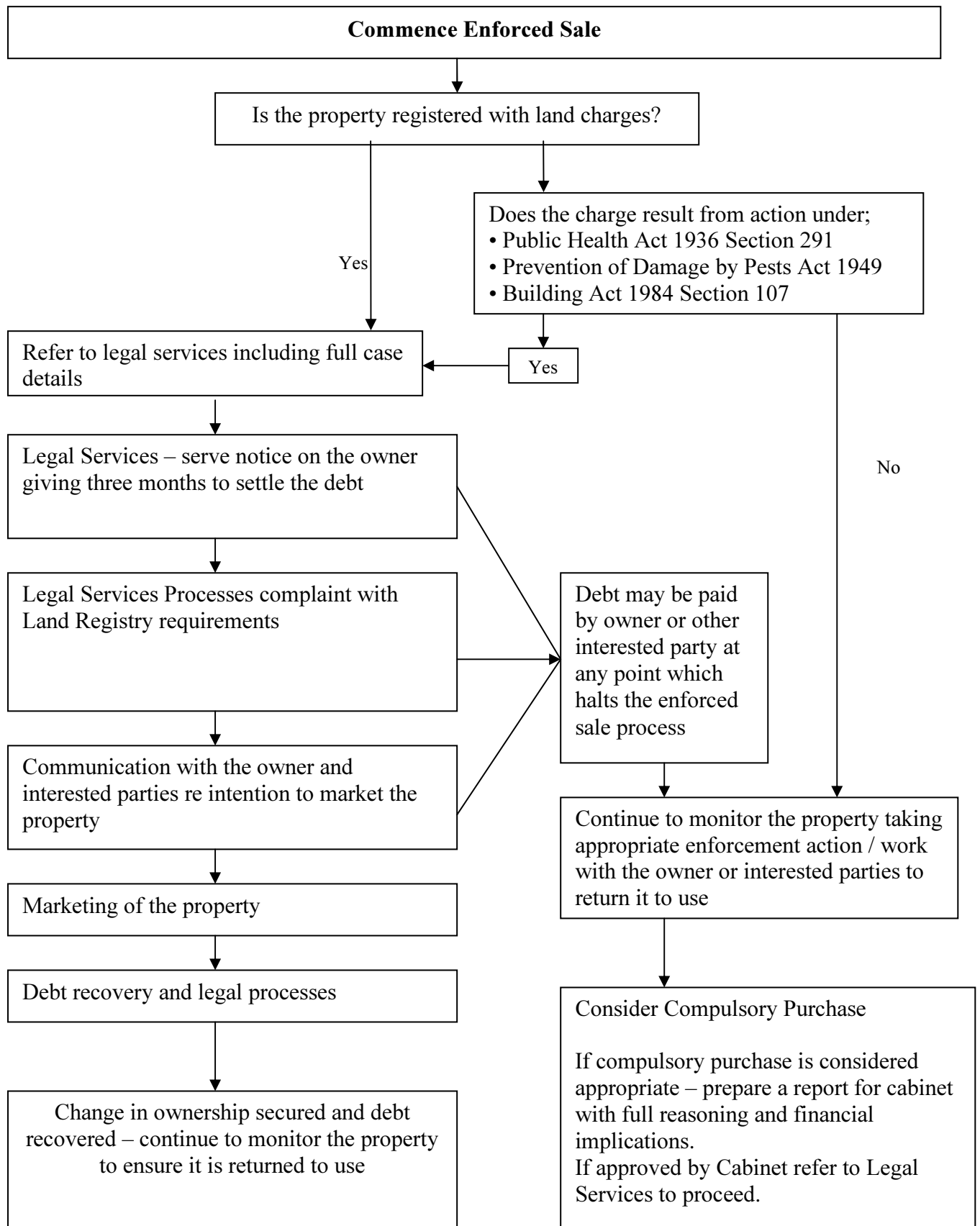
The flow chart in Appendix 2 gives a summary of the responsibilities and activities involved under the Empty Homes Strategy. Appendix 3 outlines the work in default process which may result in a debt being secured against the property.

#### Appendix 1: Statutes Which Allow an Outstanding Debt to be lodged as a Charge

Statute	Priority over other charges	Can interest be claimed
Public Health Act 1936, Section 291	YES	YES
Local Government (Miscellaneous) Provisions Act 1976, Section 33	YES	NO
Highways Act 1980, Section 305	YES	NO
Building Act 1984, Section 107	YES	NO
Housing Act 1985 paragraph 7 of Schedule 10 Ss 189/190 (repair notices) Ss 352/372 (HMO's)	YES	YES
Town and Country Planning Act 1990 and regulation 14(2) of the Town and Country Planning General Regulations 1992, Section 178	NO	NO
Environmental Protection Act 1990, Section 81A	YES	YES
Prevention of Damage by Pests Act 1949	YES	YES

## Appendix 2: Flow Diagram - Enforced Sale





### Appendix 3: Work in Default Process

#### Works in default of a statutory notice

