



NEWCASTLE·UNDER·LYME
BOROUGH COUNCIL

Empty Dwelling Management Order – (EDMO) Policy

This document sets out the Council's policy for dealing with empty properties using Empty Dwelling Management Orders.

If you have any questions about this document or need a copy in another format, please contact 01782 742542.

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PURPOSE/ SCOPE

- 1.1 The purpose of this document is to explain the Council's policy on Empty Dwelling Management Orders (EDMO's).

2. POLICY BACKGROUND

- 2.1 The Empty Dwelling Management Order (EDMO) is a process which allows the Council to take over the management of empty residential properties with a view to agreeing with owners a plan to bring them back into occupation. It is used as a means to reoccupy a long-term vacant house where the Council has been unable to persuade the owner to bring the property back into use and considers this course of action necessary as a last resort.

- 2.2 EDMO's are suitable for consideration in circumstances where the present owner is either unwilling or unable to deal with the house and its associated problems.

- 2.3 Bringing empty homes back into use contributes towards the following Corporate Strategy aims:

- *Promoting a Cleaner, Greener and Safer Borough*-by reducing dereliction, vandalism, litter and anti social behaviour such as damage, theft and arson.
- *Promoting a Borough of opportunity*- by improving market values and the attractiveness of areas adjoining vacant homes reducing a spiral of decline and helping increase the number of residents who feel the Council is making the area a better place to live.
- *Promoting a Healthy and Active Community* –by ensuring access to a range of quality homes.
- *Transforming our Council to achieve excellence* - by working in partnership with relevant organisations to deliver dwellings which can be occupied.

- 2.4 The main principle for the operation of EDMO's in the Newcastle-Under-Lyme Borough is to bring empty homes back into use. It should be used as part of the range of options available to achieve this and this procedure should only be considered once all other methods of intervention have been exhausted.

- 2.5 By taking over the management of the property the Council can bring the property up to a safe condition through renovation works and allow reoccupation of the property by letting the property for the duration of the EDMO.

- 2.6 The Council will appoint a managing agent through tendering for the individual management of each property subject to an EDMO.

- 2.7 In order for a property to be considered suitable for EDMO under this procedure, it must satisfy the following criteria. It must be:

- a dwelling;

- vacant for at least 12 months This applies, even if the property is being occupied unlawfully, i.e. squatted in;
- a property which does not fall within any exempt categories

Housing (Empty Dwelling Management Orders) (Prescribed Exceptions and Requirements) (England) Order 2006 (SI 2006 no. 367, article 3);

Prescribed exceptions

For the purposes of section 134(1)(b) of the Housing Act 2004 a dwelling falls within a prescribed exception if —

(a) it has been occupied solely or principally by the relevant proprietor and is wholly unoccupied because—

(i) he is temporarily resident elsewhere;

(ii) he is absent from the dwelling for the purpose of receiving personal care by reason of old age, disablement, illness, past or present alcohol or drug dependence or past or present mental disorder;

(iii) he is absent from the dwelling for the purpose of providing, or better providing, personal care for a person who requires such care by reason of old age, disablement, illness, past or present alcohol or drug dependence or past or present mental disorder; or

(iv) he is a serving member of the armed forces and he is absent from the dwelling as a result of such service;

(b) it is used as a holiday home (whether or not it is let as such on a commercial basis) or is otherwise occupied by the relevant proprietor or his guests on a temporary basis from time to time;

(c) it is genuinely on the market for sale or letting;

(d) it is comprised in an agricultural holding within the meaning of the Agricultural Holdings Act 1986 or a farm business tenancy within the meaning of the Agricultural Tenancies Act 1995;

(e) it is usually occupied by an employee of the relevant proprietor in connection with the performance of his duties under the terms of his contract of employment;

(f) it is available for occupation by a minister of religion as a residence from which to perform the duties of his office;

(g) it is subject to a court order freezing the property of the relevant proprietor;

(h) it is prevented from being occupied as a result of a criminal investigation or criminal proceedings;

(i) it is mortgaged, where the mortgagee, in right of the mortgage, has entered into and is in possession of the dwelling; or

(j) the person who was the relevant proprietor of it has died and six

months has not elapsed since the grant of representation was obtained in respect of such person.

- determined that there is a reasonable prospect that the dwelling will be occupied once the order is granted; and
- of sufficient priority within the context of the Empty Homes Strategy.

These criteria always apply, either for legal, and / or, Council policy reasons.

3. IDENTIFYING AND PRIORITISING POTENTIAL PROPERTIES FOR EDMO

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

- Council Tax information.
- Empty Homes Hotspots.
- Environmental Health Officers, other Council Officers, local councillors.
- Neighbours, general public, residents groups.
- Other bodies (e.g. gas, electric, water companies).
- Publicity/ awareness campaigns, etc.

3.2 The information database on empty private properties is recorded by a Housing Services Officer.

3.3 The Housing Officer will carry out a balancing exercise where a property has been identified for an EDMO to assess the pros and cons of using an EDMO. Section 133 (4) of the Housing Act 2004 states that in reaching the decision to apply to the Residential Property Tribunal (RPT) for authorisation the Council must “take into account the rights of the relevant proprietor of the dwelling and the interests of the wider community”. The Council will need to be able to show how and why they have reached their decision, having carefully considered all the evidence, and importantly have the documentation to prove it.

3.4 Properties will only be selected for EDMO when the Housing Officer has exhausted all avenues to bring the property back into use by advisory methods.

4. PRE-ACTION TO EDMO

4.1 Consideration of other, more appropriate, types of action must always take place before pursuing EDMO.

4.2 The use of EDMO, as with Enforced Sales and Compulsory Purchase Procedures should be seen as a means of last resort. In all cases, 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 the empty property and its associated problems.

4.3 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 Database.

- Neighbours.
- Council Tax (last payer).
- Other Council departments and agencies, for example a tracing agents.

4.4 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, through the Accredited Landlord Scheme's Matching Service or to an interested RSL.
- Consequences of allowing the property to fall into further disrepair, including its market value depreciation.
- Effects on the neighbourhood.
- Advice about letting and becoming a landlord.
- Contacting relatives or others who may be able to assist.

4.5 Each individual case will be assessed individually to ensure the most appropriate action is taken. The Housing Officer's assessment of the Owner's attitude and capability will also strongly influence the approach.

4.6 Liaison with other departments and agencies, particularly those with an enforcement or financial role, should also be considered, together with all other legitimate means to encourage the Owner to deal with the property. For example:

- Other Departments' enforcement actions (Environmental Health, Planning, Building Control).
- Exemptions or relaxations for Council Tax payment should be re-considered
- 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).

4.7 The designated management agent should be approached to determine the viability of letting the dwelling.

4.8 Section 239(1)(a) of the 2004 Act gives the Council power of entry to any property that may, in its view, be a candidate for an EDMO. Section 239 (4) explicitly mentions entry while an Interim or Final EDMO is in force. Power of entry will be required to judge the viability of an EDMO to assess the property's condition in some detail before a decision is made to pursue the EDMO route.

5. LEGISLATIVE BASIS FOR INTERIM EDMO

5.1 This section provides a brief summary of the legal process, which allows the Council to use EDMO. It is provided for information purposes. In the main, these legal processes are carried out by the Housing Officer in liaison within Legal Services subject to available capacity and resources.

5.2 Section 133 (3) (b) of the 2004 Act stipulates that, before deciding whether or not to apply to the RPT for authorisation to serve an Interim EDMO, the Council must make reasonable efforts "*to ascertain what steps (if any)* [the

owner] is taking, or is intending to take, to secure that the dwelling is occupied”.

- 5.3 Exceptions. The precise wording of Article 4 (1) (a) of the Housing (Empty Dwelling Management Orders) (Prescribed Exceptions and Requirements) (England) Order 2006 (SI 2006 No. 367) (with reference to Section 134 (2) (e) of the 2004 Act) must be quoted in communications with the owner. Article 4 (1) (a) states that the local housing authority “*must make reasonable efforts to establish from the relevant proprietor whether he considers that any of the exceptions contained in article 3 apply to the dwelling*”.
- 5.4 An application will be required to be made to the Residential Property Tribunal for authorisation to gain an Interim EDMO.
- 5.5 Section 134 (1)-(3) of the 2004 Act explains simply the terms under which the Residential Property Tribunal (RPT) will assess an EDMO application and may decide to grant authorisation for an Interim EDMO. In summary, there are four main counts; the RPT must be satisfied that:
- the property has been empty for more than twelve months, with little prospect of occupation without an EDMO and more chance if an EDMO is authorised;
 - the authority has notified the owner of its intention, tried to find out what plans, if any, the owner has to return the property to use, and complied with any other requirements;
 - the authority has considered the rights of the owner and the interests of the wider community; and
 - it has itself considered the interests of the wider community and the effects an EDMO would have on the rights of the owner and might have on those of third parties.
- 5.6 Section 133 (6) of the 2004 Act allows the authority to include “an application for an order under paragraph 22 of Schedule 7 determining a lease or licence of the dwelling” with its Interim EDMO application to the RPT if it so wishes.

6. LEGISLATIVE BASIS FOR FINAL EDMO

- 6.1 A detailed Management Scheme will need to be produced for the property in preparation for a Final EDMO. The Management Scheme is part of the Final EDMO. This will include details of works required to the property and cost estimates (for administration, works and management). It should also cover payment arrangements (including compensation, if any). Schedule 7, paragraph 13 (3) of the 2004 Act sets out what it “*must (in particular) include*”, and Schedule 7, paragraph 13 (4) lists additional, optional content; these lists are also set out at Chapter 8.4 of the DCLG Guidance Note on EDMOs.
- 6.2 The Council will engage a managing agent through tendering and liaise with them & housing benefits to determine the rent to be set. Schedule 7, paragraph 13 (3) (g) of the 2004 Act and the DCLG Guidance Note state that, should the Council set a sub-market rent, it must reduce the sum it takes from the rental income by the same amount as the sub-market rent falls short of the market rent. Where the rent is set at an affordable rent it should be in line with Local Housing Allowance Rates and the objectives of the Empty Homes Strategy. The Council must either:

- Ensure the income generated over the 7 year period allows for any shortfall between the market rent and the affordable rent.
- Submit a draft management agreement at an affordable rent which is open to appeal by the owner prior to being granted.

6.3 A notice of intention to make a final EDMO will be served. Any representations to be made in response to this notice would need to be made in writing to the Council within 14 days after the service of the notice.

6.4 Once the consultation period has ended the final EDMO can be made, incorporating any changes resulting from consultation response.

6.5 A notice of the final EDMO will be served on the owner within 7 days (owner has 28 days to appeal to the Council & RPT). If there is no appeal the final EDMO is confirmed at the end of the 28 days. If there is an appeal the final EDMO is not confirmed pending the RPT's decision.

7. PROCEDURE FOLLOWING GRANTING OF FINAL EDMO

7.1 It is the responsibility of the Council to:

- Secure the property and change the locks, if not already done.
- Store or dispose of any furniture not required by the owner.
- Commission and oversee necessary works.
- Ensure the Managing Agent keeps detailed accounts of all income and expenditure.
- Ensure the property is let and remains occupied or with minimal void periods.
- Ensure any surplus rental income is paid to the owner.
- Write to the owner when the property is repaired and let, confirming management arrangements and whom the property is let to and offering an opportunity to view and inspect the property.

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7.2 The property owner may request that the EDMO is revoked early. For example the owner may decide they wish to sell the property or live in it themselves. The council may revoke the order if they are satisfied that the owner will ensure the property is occupied or put up for sale. If the council is not satisfied, the owner may apply to the residential property tribunal to appeal. The council may refuse to revoke the order if doing so would leave it in debt, however it may be persuaded to do so if the owner agrees to pay the outstanding amount owed. If the property is occupied by tenants placed by the council, the council cannot revoke the order without the owners agreement. This ensures the owner is not left to manage tenancies set up by the council. If the council wishes to revoke the order in these circumstances it must first move the occupants out or agree with the owner an agreement to allow them to stay.

7.3 At the end of the seven year final EDMO the property will be handed back to the owner providing the council is satisfied that they will continue to keep the property in use. If the council is not satisfied that the owner will continue to do so, they can apply to the residential property tribunal for another final EDMO.

Further information can be found by reference to:
http://www.emptyhomes.com/usefulinformation/papers_publications/edmo_guide/edmo_stepbystep.html

8. EQUALITIES AND DIVERSITY

- 8.1 Each empty property owner will be treated in a fair and equitable manner, regardless of their age, disability, sexual orientation, gender, ethnic origin and religion or belief.

9. HUMAN RIGHTS ACT 1998

- 9.1 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.
- 9.2 A statement that the intended action of the Council in exercising its power of sale is considered to be proportionate, in accordance with the Act, should be included in letters to the Owner. This will be covered by correspondence issued by Legal Services, in liaison with the Housing Officer.

10. MONITORING EDMO

- 10.1 It is important to monitor the effectiveness of EDMO's.
- 10.2 To this end, from time to time, an analysis of the effects of EDMO's will be carried out, including a survey of the properties and people affected by EDMO's. This will provide vital information and feedback, enabling a review of the service and procedures.

11. PROCEDURE SUMMARY

- 11.1 The flow charts in Appendix 1 gives a summary of the responsibilities of the various departments involved in EDMO, and shows indicative timescales for key parts of the process.
- 11.2 These procedures will be followed in conjunction with Newcastle-Under Lyme Borough Council's procedures document.

12. RECORDS

- 12.1 Records must be maintained on Flare.