



NEWCASTLE·UNDER·LYME
BOROUGH COUNCIL

Enforced Sale Policy 2012

This document sets out the Council's policy for dealing with empty properties using Compulsory Purchase Orders.

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

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1. PURPOSE/ SCOPE

1.1. The purpose of this document is to explain the Council's policy on Enforced Sales.

2. POLICY BACKGROUND

2.1. The Enforced Sales Procedure (ESP) is a process by which the Council brings about the sale of a privately owned house. It is used as a means to "sell on" a long-term vacant house to a new owner, in circumstances where the present owner is either unwilling or unable to deal with the house and its associated problems.

2.2. By bringing about a change in ownership, it is hoped that a new owner will be more willing and able to invest in the property, and ensure its likely re-occupation, upkeep, and proper use.

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

- *Creating a Cleaner, Greener and Safer Borough* - by reducing dereliction, vandalism, litter and anti social behaviour such as damage, theft and arson.
- *Creating 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.
- *Creating a Healthy and Active Community* – by ensuring access to a range of quality homes.

2.4. The process of ESP is actually a method for debt recovery, but the main principle for its operation in Newcastle-Under-Lyme under this procedure 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. It can only be used in certain circumstances where there is an outstanding debt owed to the Council

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

- a dwelling
- vacant
- registered with the Land Registry (but see Section 7)
- a property where debt is owed to the Council, whether or not the debt is registered in Part 2 of the Local Land Charge Register
- of sufficient priority within the context of the Empty Homes Strategy

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

2.6. Further information concerning the background, and strategic considerations to the use of ESP, are contained in the report to the Housing Advisory Panel for Empty Homes enforcement (?/08/2010).

3. IDENTIFYING AND PRIORITISING POTENTIAL PROPERTIES FOR ESP

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 the Empty Homes Officer

3.3. To check if a vacant property is potentially one which could be the subject of ESP, the following needs to be checked:

- Land Registry registration.
- This is most easily done on-line at Area Offices, via <http://www.landreg.gov.uk/>

3.4. Debt. The housing officer will liaise with Building Control, Planning and Environmental Services to identify details of Works in Default. (see table in appendix 1.)

3.5. The housing officer will identify whether there is an outstanding debt owed to the Council by liaising with Finance.

3.6. The housing officer will identify if there is Land Charge against the property by contacting the Land Charges department.

3.7. Properties will only be selected for ESP when the housing officer has exhausted all avenues to bring the property back into use by advisory methods. The housing officer will undertake a balancing exercise prior to commencing this process to assess viability.

4. PRE-ACTION TO ESP

4.1. Consideration of other, more appropriate, types of action must always be prior consideration before pursuing ESP.

4.2. The use of ESP, as with Empty Dwelling Management Orders and Compulsory Purchase Orders should be seen as a means of last resort. In both 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
- 4.4. Identify what charges are outstanding for the property and whether they can be registered as a Local Land Charge. Some of the Acts (appendix 1) state that they can be registered as a Local Land Charge however if this is not possible then the relevant Act provides for a charge to be put on the land. Therefore whether it is a local land charge or not does not affect its enforceability-it can still be enforced. It is necessary to ensure there is enough equity in the property to cover all/any charges, this is particularly important where your charge does not take priority.
- 4.5. 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, either privately, or to an interested RSL if available
 - 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
- 4.6. The market value of the property should be discussed and any charges registered against the property to give the owner an indication of the equity available in the property. The owner should be encouraged towards selling the property without our intervention at this stage.
- 4.7. 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 tactics.
- 4.8. 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 put pressure on the Owner to deal with the property. For example:
- Other Departments' enforcement actions (Environmental Services, 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)

5. SERVICE OF NOTICES

- 5.1. The housing officer will need to be satisfied that any Statutory Enforcement notices, will have been served correctly in accordance with Newcastle-Under-Lyme's Corporate Enforcement Policy and in line with the relevant departmental procedures.

A list of statutory notice actions where debt from Works in Default can be charges on the land is given in Appendix 1.

- 5.2. On debts that are not charges on the land but personal debts like Council Tax, the LA can apply to the County Court to award an interim charging order. If the court gives a favourable judgement the local authority can apply for a final charging order and order the sale of the property.

6. LEGISLATIVE BASIS FOR ESP

- 6.1. This section provides a brief summary of the legal process, which allows the Council to use ESP. It is provided for information purposes. In the main, these legal processes are carried out by staff within Legal Services.
- 6.2. The basis for using ESP is where the relevant Act of Parliament makes the debt a charge on the land. This gives a Local Authority the power to enforce that Charge. Consequently, the Council has all the powers and remedies available to a mortgagee under the Law of Property Act 1925.
- 6.3. Sec 7 of the Local Land Charges Act 1975, provides that a financial Local Land Charge takes effect, as if it had been created by a Deed of Charge within the meaning of the Law of Property Act 1925.
- 6.4. Sec 101(1) of the Law of Property Act 1925, confers on a mortgagee a power of sale. An Order of the Court is not necessary as the legislation itself provides that power.
- 6.5. Sec 87(1) of the Law of Property Act 1925, confers a right of possession. In addition, many of the statutes used by the Council, which result in carrying out Work in Default, give to the Council a power of sale and a right of priority over other Charges.
- 6.6. The first step in pursuing the legal process for ESP is to serve a notice under Sec 103(i) of the Law of Property Act 1925. The Council may not exercise the power of sale unless and until this Notice (requiring payment of the mortgage money), has been given, and a default of payment has been made for 3 months after the service of the Notice.
- 6.7. The Council should write to the Owner requesting the Land or Charge Certificate.
- 6.8. The Council must also write to the Owner, and any other Chargees, stating that it intends to carry out an enforced sale. If another Chargee should pay the outstanding money, this prevents the Council taking priority over their charge.
- 6.9. Likewise, if, at any stage prior to the actual sale of the property, the Owner should pay the outstanding debt, then ESP is no longer an option.
- 6.10. Once default of payment is apparent, the Council can apply to the Land Registry for registration of the Charge, claiming priority over all other Charges. The Land Registry will require the following to be submitted to them by Legal Services:
 - Form AP1

- Fee
- Land or Charge Certificate or evidence that efforts have been made to obtain the same
- Certificate as to the value of the Charge (unless stated in the resolution)
- Resolution of the Council

6.11. When the Charge Certificate is returned from the Land Registry, the property can be marketed for sale. It is good practice to send another letter to the Owner and any Chargees to warn them again that the charge is to be enforced.

7. PROCEDURE WHERE THE PROPERTY IS NOT REGISTERED

7.1. In some instances, properties may be discovered which are not registered with the Land Registry. This will increasingly be the case for older properties, particularly where no recent sales have taken place, or property has changed ownership without proper conveyancing, etc.

7.2. The position as to whether ESP can be carried out is not straightforward in the case of unregistered land, as the Council cannot apply to be registered as mortgagee. So it is important to ensure that any purchaser will be able to be registered as proprietor following the sale. (See paragraph 7.4).

7.3. The extent of the property bound by the charge and that can be sold is ascertained by applying the facts to each case, and the particular statutory provisions that have given rise to the Local Land Charge. The position is clear in the case of Charges which arise under the following legislation. Thus, enforced sales should be able to proceed in these cases:

- Public Health Act 1936 Sec 291
- Prevention of Damage by Pests Act 1949
- Building Act 1984 Sec 107

7.4. Advice should always be sought from Legal Services before pursuing ESP in the case of a property where the land is unregistered.

8. HUMAN RIGHTS ACT 1998

8.1. 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.

8.2. 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 and Chargees. This will be covered by correspondence issued by Legal Services, in liaison with the housing officer.

9. RECOVERY OF COSTS

9.1. If a debt can be registered as a local land charge then that should happen shortly after the works in default have been completed and the debtor billed and has not paid. If the statute says a debt can be enforced as a charge then you can enforce whether registered as a local land charge or not. In most cases, it is not important on whom the notice was originally served, the Charge can still be registered. (For example, a Housing Act notice served on the "Person Having Control", who may not have been the Owner, would still be able to be registered against the property.

Copies of the original notice, if properly served, should in any event have been served on "interested parties", which would have included the Owner at that time).

9.2. However, additional care needs to be taken in the case of the Environmental Protection Act 1990. Under this legislation, it must be the case that the original person on whom the notice was served was the Owner at that time. (And was therefore also the person who caused the nuisance by their own act or default).

9.3. It does not matter, in either scenario, whether the property then subsequently changes ownership. Once the Charge has been established, the land continues to be subject to the Charge even if it has passed to subsequent (possibly entirely innocent) owners.

9.4. Debts are affected by the Limitation Act, in that any debts over 12 years old (generally from the date when the expense was incurred) are no longer recoverable. Thus, any attempts to recover debts through Local Land Charges or by using ESP, are not permissible after this time has passed.

9.5. All debts owed to the Council on the property are recovered on sale. In addition, reasonable costs incurred by the Council in pursuing the sale can also be deducted. Thus, reasonable legal, surveying, marketing and administrative costs are recoverable.

10. INSTIGATING SALE

10.1. Once a property is identified for the ESP, it should be referred by the housing officer to Legal Services.

10.2. The following information must be included with the referral:

- Property Address
- Name of Current Owner and Address (as per Land Registry)
- Details of each Notice served on which debt is still outstanding
- Legislation, Act and Section
- Date of Service
- Full Name and Address of Person(s) on whom Notice served
- Description of Works Required
- Details of Outstanding Debts created by Works in Default (see paragraph 3.3 b)
- Dates Works Carried Out (start & finish dates if known)
- Cost of Works

- Date registered in Part 2 of the Local Land Charge Register
- Copies of any relevant correspondence sent to, or received from, the Owner

NOTE: Much of the above information can be provided by supplying a photocopy of the original notice(s).

- 10.3. Once a property is identified for ESP, and action to pursue it has commenced by Legal Services, it should normally be pursued to a conclusion.
- 10.4. Properties may drop out of the ESP process at any point prior to an actual sale being achieved. This will usually be because:
- the debt has been paid, or
 - the property is sold voluntarily by the present Owner, or
 - the property is no longer vacant
- 10.5. In many cases, should any of these events occur, this can still be seen as a success, even though the property did not go to enforced sale. The situation of the long-term vacant house will have changed significantly, and there can be guarded optimism that its associated problems and mis-use will be alleviated in due course.
- 10.6. If this proves not to be the case, consideration of other action will need to be given. For example, where the debt is paid but there appears to be no other positive progress, Empty Dwelling Management Order (EDMO) or Compulsory Purchase Order (CPO) action may be considered as being the only appropriate alternative courses of action.
- 10.7. Another scenario may be where a house has been sold to another Owner (either voluntarily or by implementing ESP), but that Owner does not make proper attempts and progress towards dealing with the empty property. Again, EDMO or CPO proceedings could ultimately be appropriate, or using ESP to force another ownership change.
- 10.8. Close liaison and co-operation needs to be maintained with Legal Services throughout the pursuance of the legal matters explained above (see paragraphs 5 and 6). Once the Land Registry has issued the Charge Certificate to the Council, via Legal Services, then the property can be marketed for sale.
- 10.9. Legal Services should provide the necessary information to Resources to instigate the sale process, and also inform the housing officer that this has happened.

11. MARKETING AND SALE

- 11.1. The process of marketing and sale is dealt with by the Corporate Property. These notes are provided mainly for information purposes for the housing officer, and describe the method by which properties may be sold,

on receipt of the Charge Certificate from the Land Registry by Legal Services.

- 11.2. Some of the processes which might normally be associated with the sale of properties by the Council are able to be streamlined when using ESP. Consultation with ward councillors, for example, is not required to the same degree, as we are not selling Council-owned property.
- 11.3. It is good practice to keep ward councillors and concerned neighbours informed of properties in the ESP programme, especially where they have expressed interest. In any event, the housing officer will do this routinely when putting a property up for sale.
- 11.4. As the Council at no time takes possession of the ESP property, it has no more rights of access than it does for other private houses. So, whilst the Council may exercise its legitimate Powers of Entry from time to time, using the proper procedures, it is not able to permit viewings of the property to potential purchasers.
- 11.5. As access can not be gained, there is no requirement to carry out a risk assessment.
- 11.6. The Council has a duty to secure the best possible price on sale. This means that marketing techniques have to be sufficiently wide to ensure that a proper competitive bidding process takes place. Failure to be able to demonstrate this could mean the Council being legitimately challenged by the Owner (whether currently known or not), at a later date.
- 11.7. Properties will be put up for sale by auction.
- 11.8. Despite its assumed position of mortgagee, the Council has no power to put up a "For Sale" sign. Neighbours will, however, be kept informed in these later stages by the housing officer in liaison with Corporate property of the pending sale of the house.
- 11.9. One of the intentions of ESP is to try and change ownership of the property in a positive way. But, as viewings are not permissible, it seems unlikely that many potential owner-occupiers are likely to outbid private landlords, due to the level of risk involved.
- 11.10. The housing officer will need to monitor the property throughout the ESP process. This is particularly important immediately prior to the sale date, when a final check on the state of the property needs to be carried out. It is particularly important to be vigilant in assessing if there is any evidence of habitation. If there is any doubt, check with neighbours, etc., to make sure that the house is still vacant. The power of sale is seriously hindered if the mortgagee can not sell with vacant possession.
- 11.11. It is advisable to make a photographic record of the property, for future reference, at this stage.

12. MONITORING ESP

- 12.1. It is important to monitor the effectiveness of ESP, both of properties which are forcibly sold, and properties which drop out of ESP due to the Owner being persuaded to deal with them.
- 12.2. To this end, from time to time, an analysis of the effects of ESP will be carried out, including a survey of the properties and people affected by ESP. This will provide vital information and feedback, enabling a review of the service and procedures.

13. PROCEDURE SUMMARY

- 13.1. The flow chart in Appendix 1 gives a summary of the responsibilities of the various departments involved in ESP, and shows indicative timescales for key parts of the process.
- 13.2. These procedures will be followed in conjunction with Newcastle-Under-Lyme Borough Council Enforced Sales procedure document.

14. RECORDS

- 14.1. Records must be maintained on Flare

Enforced Sales Procedure (ESP)

Preliminary assessment



