

Nottingham City Council

Enforced Sale Policy and Procedure for empty properties and vacant land

May 2020

Enforcing the sale of long term empty houses and vacant land under the Law of Property Act 1925 can be a quick and cost effective way of bringing them back into active use

The aim in the next few years is to continue to make optimum use of the powers we have available to bring empty homes back into use... Quality Homes For All 2018-21 (Nottingham's Housing Strategy)



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Nottingham City Council's Enforced Sale Policy and Procedure for empty properties and vacant land

1. Policy

1.1 Summary

Enforced sale is a legal process by which a person or organisation can sell a property/site if they are owed money. This policy confirms that Nottingham City Council will actively pursue the use of enforced sale where over £1000 is owed and the owner is either absent, unwilling or unable to pay, and it is unlikely that debt will be repaid; or for amounts lower than £1000 where the impact of the property on neighbours or the neighbourhood is significant.

1.2 Policy statement

Nottingham City Council recognises that long term empty homes and sites are wasted resources that are in short supply. The enforced sale of empty homes is a low cost solution to bring empty homes and vacant land back into use where owners refuse, or are unable, to do this themselves.

Using the powers available under the Law of Property Act 1925 our aims are to:

- bring empty residential properties back into use as housing stock
- reduce debts owed to the Council
- improve local neighbourhoods

1.3 The benefits of the Enforced Sales Policy (ESP)

The ESP supports a number of the Council's priorities which can be broadly considered under social benefits, financial benefits, and the provision of housing.

1.3.1 Social benefits

Empty properties and sites can have an adverse impact on people's quality of life in a number of ways:

- Visual impact on the surrounding area
- Antisocial Behaviour (ASB) and crime¹
- Reduction in local property values
- Wasted housing resource and adding to the pressure to build new houses²

By selling an empty home or plot of land there is a probability that the new owner will refurbish the property and this increases the chances that it will become inhabited again or, if it is a plot of land, that it is brought back into commercial or other active use. If the Council sell the property using this policy it can impose enforceable conditions that the property is brought back into use within a fixed time period.

1.3.2 Financial benefits

Debts owed to the Council directly affect the Council's core budget. Debts, which could otherwise prove impossible to recover, are discharged out of the proceeds of sale. The very prospect of having the property sold can bring about the payment of the debt by the owner and potentially the sale of the property also. There is a fee income advantage in respect of a sale (legal/ surveyors /administration fees) to the Local Authority as the Local Authority's costs in undertaking an enforced sale are fully recoverable if the process is completed; both the Legal Team's, Property Services' and Environmental Health's costs can be added to the amount recovered as long as there is adequate equity in the property. In addition Nottingham City Council regularly has to use resource to carry out enforcement action to keep empty properties safe and reduce their impact on the neighbourhood as far as possible, less intervention is required if the property is occupied.

Recovery can occur when the debt recovery process can go no further. The sale of a property can proceed in circumstances where the debt recovery process is stifled. For example:

- Where the property has changed hands and the enabling statute does not enable the Council to recover the debt from the new owner but confers the benefit of a charge on the property which would enable a sale under this Policy to proceed
- Where debt recovery cannot be pursued because it is statute barred (6 years has expired) but the limitation period in respect of a sale under this policy is not statute barred (12 years)

1.3.3 Increased Housing Provision

Hundreds of homes are sitting empty within Nottingham City, of these around 700 (693 as of February 2020) are long term (over 6 months). Nationally in 2020 the picture is of numbers rising but in Nottingham we have been working hard to reduce numbers and have reversed the national trend. There are a hard-core of properties that remain empty for years. Bringing empty homes back into use reduces the need for building new homes and increases availability in the marketplace. Each property that is occupied brings money into the City through its residents' economic activity including housing repairs, shopping, utility payments and social activities.

1.4 Alignment with existing Council Policies

1.4.1 Housing Provision

This Policy will contribute towards a housing gain both numerically, as more houses are occupied, and qualitatively as most properties are refurbished before they are re-occupied³.

1.4.2 Reduction in ASB

One of the five key objectives in Nottingham City Council's Plan for 2019-2023¹ is to cut crime and reduce ASB by a quarter. Empty homes and sites are a magnet to both, one of the first properties currently waiting for enforced sale has had three acts of arson, other properties are frequently broken into, fly tipped, subject to graffiti and similar.

1.4.3 Bringing empty homes back to use

The use of enforced sale will contribute to the Council Plan's commitment to bring 100 empty homes back into use². These properties are often some of the longer term empty homes which are otherwise difficult to turn around.

1.5 The legal background

There are two legal options for undertaking enforced sale;

- Law of Property Act 1925 (The Act): this allows Nottingham City Council to take action without recourse to the Courts, by serving notice on the debtor then following a process to transfer the property which is clearly documented by the Land Registry. This is the same legislation used by mortgage companies to recover property. The legislation, in brief, is as follows:
 - Section 7 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.
 - Section 101(i) confers on a mortgagee a power of sale. An Order of the Court is not necessary as the legislation itself provides that power.
 - Section 87(1) confers a right of possession. In addition, many of the statutes used by the Council, which result in carrying out Work in Default, give the Council a power of sale and a right of priority over other Charges.
 - 103(i) 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.

- Common Law: this is the process for the recovery of any debt. The Council has to apply to court for a Liability Order, this can then be followed up by a Charging Order which is then registered against the property and after this the sale of the property can be enforced.

This policy only covers the use of the Law of Property Act, the Liability Order route is more complex, costly and time intensive. It would normally only be used where the Law of Property Act cannot be used.

1.6 Alternatives to enforced sale

In all cases the Local Authority is obliged to have attempted to recover the debt from the owner and the owner has several months to arrange payment even after formal enforced sale action starts. If they pay in full, including interest, before the sale is finalised the process stops and the Council is unable to recover costs relating to the forced sale. Other

Other action by the Council will already have been taken to contact the owner, to offer alternatives to enforced sale where these are available. As of the date of this Policy these included:

- use of a payment plan (administered by East Midlands Shared Services)
- leasing scheme (offered by Nottingham City Homes)
- voluntary buy back (available for certain properties); the Council has specific capital funding to purchase properties, ideally ex-council built stock, to address increases in homelessness

Even where the owner is unknown correspondence will be fixed to the property itself to give them, or someone who knows them, the chance to see it.

Other possible alternatives include:

- Compulsory Purchase; guidance states that a Compulsory Purchase Order (CPO) is a last resort. Clearly if enforced sale is an option to Nottingham City Council pursuing a CPO is not a last resort therefore a CPO should not be sought. Enforced sale is also more expedient than a CPO. On average, a sale can be achieved within 10 months from the date instructions are received by the Legal Section. Enforced sale is normally more efficient, involving far less officer time than making a CPO. Recovery of debts can still occur when the City Council's debt recovery process, which can include contacting the debtor and referral to an external debt recovery, can go no further. The sale of a property can proceed in circumstances where the debt recovery process is stifled.

- Empty Dwelling Management Orders (EDMO); see 2.2.2.for details. Although potentially useful in bringing an empty home back into use they are impractical for the vast majority of the longer term empty homes that Nottingham City Council has to deal with due to the cost of refurbishment to a reasonable standard for letting. Nottingham City Council has no allocation of funding for refurbishing properties as part of an Empty Dwelling Management Order. Debts which have been accrued through other legal action cannot be repaid through the process of making an EDMO therefore it is likely that debts would remain unpaid.

References

1. Council Plan 2019-2023 – commitment to cut ASB by a quarter. Page 3.
2. Council Plan 2019-2023 – commitment to bring at least 100 long term empty homes back into use. Page 15.
3. Quality Homes for All 2018-2021 – housing strategy commitment to actively bring empty homes back into use. Page 41.

2. Procedure and background

This is not intended to be a detailed procedural document but identifies some of the key areas that need to be considered when carrying out an enforced sale.

2.1 Criteria for taking action

The following criteria will be applied in each case when considering whether to use enforced sale:

- the secured debt, referred to as the principal sum, for the work carried out in default plus any interest due should normally be at least £1,000 (This can be the total of a number of combined principal sums), The Act requires that interest should have accrued on the sum owed
- where the principal sum is less than £1000 enforced sale can still be actioned but Nottingham City Council will only do this where the property is causing problems to neighbours or a significant impact on the neighbourhood. It is noted that there is no statutory minimum amount that limits the use of this process
- the statutory notice(s) must have been served correctly. The case officer will refer to the relevant statute for the requirements relating to service. All copy notices must have been signed by relevant authorised signatories. Digital copies of the original notices or copies are acceptable
- the serving officer must have completed a 'Certificate of Service' on service of the statutory notice and a fully completed copy must be available. Digital copies are acceptable
- notice under s103 of The Act must have been given, copies of the notice are retained and certificate of service will be completed and retained
- there should be no proposed Compulsory Purchase Order (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, at the Land Registry, if registered). 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 or the local land charge registered. However, where the owner has attempted to repay and any amount has been received, the 12 year period starts afresh from that date

- Human Rights Act 1998 - Nottingham City Council is committed to carrying out its duties in a fair and consistent manner. The provisions of the Human Rights Act will always be taken into account when making a decision to deprive someone of their property.

Consideration of the provisions of the Human Rights Act 1998 must be taken by the Council. In particular:

- Part 1, Article 8 - *everyone has the right to respect for his private and family life, his home and his correspondence.*
- Protocol 1, Article 1 - *every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. This need is to be balanced against the general benefits and rights of neighbours and the surrounding community.*

In respect of Part 1, Article 8 this policy is only intended to cover empty homes (although The Act remains available for use outside this policy wherever it is applicable).

In the case of enforced sale there will normally be a clear case that following this policy is in the public interest for several reasons including:

- housing need
- impact on neighbours and the surrounding community
- recovery of public funds

In relation to the contents of that property, every effort will be made to allow the owner/ex-owner to recover their property in accordance with relevant legislation. If, however, they cannot be found, do not respond or are otherwise unable to deal with the contents of the property they will be disposed of by the Council or the next owner of the property.

2.2 Enforcement options available to Local Authorities

Empty Homes Officers, and colleagues, have a wide range of legislation available to them to resolve problems that may arise. The following details are not exclusive but give brief details of the powers under the particular Act. These enforcement actions can, through works in the owners' default, or other action, enable the Local Authority to secure a charge against that property – a Local Land Charge which can lead to the ability to enforce the sale of the property under The Act if the debt is not repaid.

2.2.1 Housing Act 2004

If a category 1 hazard is identified the Council has a duty to take appropriate action to reduce the hazard to an acceptable level. Enforcement action includes serving:

- Improvement Notices to secure necessary repairs or improvements
- Prohibition Orders to prohibit the use of all or part of a dwelling
- Emergency Remedial Action

The Council will place a charge on the property for any costs incurred in carrying out enforcement action including for the service of the notice.

2.2.2 Empty Dwelling Management Orders (EDMOs)

EDMOs enable the Council to take over the management of an empty home. The Council can then carry out repairs and subsequently let the property. The costs of the repairs may be recovered by the Council from the rent. These may be suitable where, despite the Council's best endeavours, the owners have failed to bring a home back to use and it is cost effective for the Council to intervene.

An interim EDMO allows the Council to take control of an empty property for 1 year, during which the Council can carry out necessary works to enable the dwelling to be let to a tenant, but the Council cannot grant a tenancy without the consent of the owner. A final EDMO allows the Council to continue to manage the dwelling for a period of 7 years during which the Council has the power to grant tenancies without the consent of the owner.

2.2.3 Dangerous Structures

Officers can take action under the Building Act section 78 where the property is imminently dangerous. They also have powers to deal with ruinous and dilapidated buildings and neglected sites affecting the amenity of the area.

2.2.4 Eyesore land/property

The Town and Country Planning Act 1990 section 215 can be used to require the owner of an empty property to undertake works where the condition of their property and/or land is detrimental to the amenity of the area.

2.2.5 Compulsory Purchase Order (CPO)

CPOs can be made under section 17 of the Housing Act 1985 to acquire land or buildings for housing purposes and under section 226(1)(a) Town and Country Planning Act 1990 for improvement.

CPO is considered a last resort and requires consent by the Secretary of State before it can be approved. The Secretary of State will need to be satisfied that all other available options have been considered and explored before consideration will be given to approve a CPO.

The owner of the property is entitled to the market value of the property.

2.2.6 Various other powers relating to rubbish, vermin, nuisance etc.

The Prevention of Damage by Pests Act 1949 confers a power to serve notice on property to rid it of rats and mice. The Public Health Acts 1936 and 1961 contain various powers to deal with rubbish and other problems. The Environmental Protection Act 1990 has powers to deal with nuisances.