

Powers of sale

Nottingham City Council (NCC) intends to utilise statutory powers to enforce the sale of 13 Horsham Drive. These statutory powers are derived from various pieces of legislation.

The power of sale arises under section 101(1)(i) of the Law of Property Act 1925 (LPA 1925); only once the following conditions have been met:

- secured obligations under a mortgage over land made by deed become due;
- the relevant notice has been served on the mortgagor; and
- there is a failure to make payment, for a period of at least three months from service of the notice (section 103 (i)).

The relevant legislation appears as follows:

101 - Powers incident to estate or interest of mortgagee.

(1) "A mortgagee, where the mortgage is made by deed, shall, by virtue of this Act, have the following powers, to the like extent as if they had been in terms conferred by the mortgage deed, but not further (namely):

(i) "A power, when the mortgage money has become due, to sell, or to concur with any other person in selling, the mortgaged property, or any part thereof, either subject to prior charges or not, and either together or in lots, by public auction or by private contract, subject to such conditions respecting title, or evidence of title, or other matter, as the mortgagee thinks fit, with power to vary any contract for sale, and to buy in at an auction, or to rescind any contract for sale, and to re-sell, without being answerable for any loss occasioned thereby";

103 - Regulation of exercise of power of sale.

"A mortgagee shall not exercise the power of sale conferred by this Act unless and until—

(i) Notice requiring payment of the mortgage money has been served on the mortgagor or one of two or more mortgagors, and default has been made in payment of the mortgage money, or of part thereof, for three months after such service";

In this particular instance, the power arises once payment secured by a Land Charge becomes due, because the Land Charge is akin to a mortgage in accordance with sections 1 (1), 1 (1) (a) and 7 of the Local Land Charges Act 1975 which state the following:

1 (1) "A charge or other matter affecting land is a local land charge if it falls within any of the following descriptions and is not one of the matters set out in section 2 below":—

1 (1) (a) "any charge acquired either before or after the commencement of this Act by a local authority.... or any similar charge acquired by a local authority.... under any other Act, whether passed before or after this Act, being a charge that is binding on successive owners of the land affected";

7 "A local land charge falling within section 1(1)(a) above shall, when registered, take effect as if it had been created by a deed of charge by way of legal mortgage within the meaning of the Law of Property Act 1925, but without prejudice to the priority of the charge".

Having reviewed the documentation, I am satisfied that NCC have the requisite powers of sale and that the above requirements have been met. Sufficient debts are secured by Land Charges and those debts remain outstanding following expiry of the three month period referred to above.

Subject to final approval of this DDM, NCC will write to the land registry to begin the process of enforced sale. However, it should be noted that immediately before NCC proposes to submit its documentation to the land registry, a final check should be made to ensure that the outstanding sums have not been settled.

Further Considerations

Despite having the legal powers to proceed with this process, there ought to be consideration of other relevant factors. As the process involves depriving a party of their property, there are potentially Human Rights Act considerations, as follows:

ARTICLE 8

Right to respect for private and family life

- 1. Everyone has the right to respect for his private and family life, his home and his correspondence.*
- 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.*

ARTICLE 1

Protection of property

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.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

There must therefore be a balanced approach between the individual's rights and the rights of the neighbours and the surrounding community. The approach taken by NCC should be proportionate and reasonable. In this case, such an approach has been taken. It should be noted that in this case, Horsham Drive has been empty since 2009 and is one of at least four empty properties in the city

owned by the same individual. That individual is not therefore being deprived of their only home, nor indeed their place of residence.

The many issues referred to in the DDM warrant the action proposed. This is particularly the case as regards:

1. The impact on the community.
2. The continued drain on the staffing and financial resources of NCC.
3. The risk of future deterioration of the property and subsequent implications.
4. The continued lack of engagement by the property owner over a significant period.

The cost of proceeding with this process should also be borne in mind. However, those costs can be recovered during the process and therefore this is a cost neutral decision.

Finally, the proposer has already considered other alternatives to this action and I am satisfied that those alternatives are unsuitable for the reasons stated by the proposer.