

NEATH PORT TALBOT COUNTY BOROUGH COUNCIL

Environment and Highways Cabinet Board

5 January 2017

Report of the Head of Planning & Public Protection

N. Pearce

Matter for Decision

Wards Affected: *All Wards*

Environmental Health And Trading Standards Enforced Sale Policy

Purpose of Report

1. To consider the Enforced Sale Policy for Environmental Health. The Policy is presented in full in Appendix 1.
2. The report seeks endorsement of the Enforced Sale Policy and approval for implementation.

Executive Summary

3. The policy sets out a framework to use the Enforced Sale Procedure under the Law of Property Act 1925 with a view of targeting long term problematic empty properties, and to bring these properties back into use.

Background

4. Long term empty properties have a negative impact on the visual amenity of a neighbourhood and cause nuisance to adjacent occupiers. They can lead to increased fly-tipping, vandalism, arson, squatting and other anti-social behaviour.
5. The Enforced Sale Procedure 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 property to a new owner, in

circumstances where the present owner is either unwilling or unable to deal with the house and its problems; or the ownership is unknown.

6. 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 it's likely reoccupation, upkeep and proper use.

Financial Impact

7. Where there are no historic debts, some upfront costs will be required, as an Enforced Sale cannot be completed on properties where no direct action has been taken and no charges against the property exist.
8. The process requires significant investment of staff time, so properties will be selected for enforced sale using a risk rated priority scoring method.
9. Payment of certain fees will be required, e.g. land registry, property valuation and auction fees and may include other legal fees and administration costs.
10. The Council can recover from the proceeds of the sale, the original costs involved with direct action and the costs involved with the Enforced Sale process.

Equality Impact Assessment

11. In order to assist the Council in discharging its Public Sector Equality Duty under the Equality Act 2010, an Equality Impact Assessment (EIA) Screening Exercise has been carried out.

Workforce Impact

12. No impact on current workforce.

Legal Impact

13. There are legal implications associated with implementing this policy, as it allows the Council to force the sale of empty private properties.
14. The Enforced Sale Procedure is recognised nationally as an effective means to deal with long term empty properties.
15. The Council's Legal Section will be involved with every Enforced Sale undertaken by Environmental Health.

Risk Management

16. Due to the anticipated poor conditions of the empty properties subject to enforced sale, there is a risk that they will not achieve the full market value of a similar property in good condition. This could lead to a claim by the owner that the property has been sold at an undervalue.
17. Reasonable care will be taken to ensure the best sale price is achieved by the Council using either an Auction Sale or Sale by Private Treaty.

Any Other Impacts

18. The process of bringing long term empty properties back into use will have a positive impact on neighbours and the community.

Consultation

19. There is no requirement under the Constitution for external consultation on this item.

Recommendation(s)

20. That having considered the report and the purpose of the Enforced Sale Policy, it is resolved to make the following recommendations:
 - a. The endorsement of the Enforced Sale Policy as set out in Appendix 1.

- b. The approval of the Enforced Sale Procedure by Environmental Health for immediate implementation.

Reason for Proposed Decision(s)

21. The recommendations are needed to:
 - a. Ensure there is a clear policy in place to set out the framework for Enforced Sale by Environmental Health across Neath Port Talbot.
 - b. Ensure there is Members support for the implementation of the Enforced Sale Procedure to deal with long term problematic empty properties.

Implementation of Decision

22. The decision is proposed for implementation after the three day call in period.

Appendices

23. Appendix 1 – Enforced Sale Policy

List of Background Papers

24. Empty homes: Council action to tackle empty homes, Local Government Association.
25. Enforced Sales Procedure: Good Practice Guide, Manchester City Council.

Officer Contact

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Neath Port Talbot County Borough Council

Planning and Public Protection

Environmental Health

Enforced Sale Policy

1. PURPOSE

1.1 The purpose of this policy is to set out a framework for Environmental Health to use the Enforced Sale Procedure under the Law of Property Act 1925 with a view of targeting long term problematic empty properties, and to bring these properties back into use where possible.

1.2 Neath Port Talbot Borough Council recognises the importance of bringing empty properties back into use, as they can be a source of many problems.

1.3 Long term empty properties can have a negative impact on the visual amenity in the immediate neighbourhood and cause nuisance to adjacent occupiers. They can also lead to increased fly-tipping, vandalism, arson, potential squatting and other anti-social behaviour.

2. POLICY BACKGROUND

2.1 The Enforced Sales Procedure 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 problems; or the ownership is unknown.

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 reoccupation, upkeep, and proper use.

2.3 The process of Enforced Sales is a method for the recovery of debt owing to the Council, and could be used to recover debts where the owner of a property has made no attempt to make payment.

3. IDENTIFYING AND PRIORITISING POTENTIAL PROPERTIES FOR ENFORCED SALE

3.1 The Council uses a number of methods to identify empty private properties, including Council Tax information and referrals from members of the public, local Councillors, Police, Fire and Rescue Service, Planning Enforcement, Building Control and Waste Enforcement.

3.2 Environmental Health maintain a database of empty private properties, that is regularly reviewed using a risk based assessment, to identify priority properties that are suitable for proactive Statutory Action and the Enforced Sales process.

4. PRE-ACTION TO ENFORCED SALE

4.1 When an empty property has been identified as a priority for intervention, steps will be taken to trace and contact the owner.

4.2 If an owner is identified, they will be contacted and provided with advice and a number of solutions to bring the property back into use. For example:

- We will inform the owner about the problems being caused by the property being empty, together with its impact upon the wider community.
- We will offer potential financial solutions, including the availability of Empty Homes loans or negotiate the private sale of the property.
- We will highlight the consequences of allowing the property to fall into further disrepair, including its market value depreciation and risk of enforcement action.
- We are able to inspect the property to identify if it is suitable for rental/letting, and inform the owner of the works required to bring it up to current standards.
- We can guide existing and future owners through the legal requirements of Rent Smart Wales registration and licensing.

4.3 The market value of the property should be discussed and the owner notified about any charges registered against the property. The owner will be

encouraged towards selling the property without our formal intervention at this stage. The Council is able to provide a service to the owner to facilitate the Voluntary Sale either privately, or to an interested Registered Social Landlord.

4.4 Each individual case will be assessed individually and the use of the Enforced Sales Procedure should be seen as a means of last resort. Properties will only be selected for Enforced Sales when the Council has exhausted all other reasonable options to resolve the existence of the empty property, remedy any associated problems caused by the poor condition of the property and the recovery of debt owed to the Council.

4.5 Environmental Health will liaise with other departments and agencies, particularly those with an enforcement or financial role with a view to putting pressure on the owner to deal with the property. Examples of matters to be considered include:

- Involvement of other Enforcement Authorities such as Building Control, Pest Control and Waste Enforcement, and Planning Enforcement.
- Removal of exemptions or relaxations for Council Tax payments.
- Debt Recovery processes should be actively chased.
- Involvement of mortgage lenders if appropriate.

5. SERVICE OF NOTICES & REGISTRATION OF CHARGES

5.1 Environmental Health will ensure all of the Statutory Enforcement Notices have been correctly served, and will ensure the correct notices are served in accordance with the legal procedures.

5.2 Where works in default have been undertaken to comply with a notice, and a debt is owed to the Council, checks will be made to find out if the debt is registered against the property.

5.3 Where debts are not charges registered against the property, but are personal debts the Council may be able to pursue the debt at the County Court and secure an order against the property.

6. LEGISLATIVE BASIS FOR ENFORCED SALE

6.1 The legal process for Enforced Sale is complex, and this section is provided for general information only.

6.2 There are various Acts of Parliament which allow the Council to make appropriate debts a charge against a property. These Acts give the Local Authority the power to enforce that Charge, so that the Enforced Sale Procedure under the Law of Property Act 1925 can be used to enforce the sale.

6.3 Section 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 Section 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 Section 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 enable works to be carried out in default, also give 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 Enforced Sales is to serve a notice under Section 103 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 debt), 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. The Council must also write to the Owner, and any other Chargee, 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.

6.8 Likewise, if, at any stage prior to the actual sale of the property, the Owner should pay the outstanding debt, then Enforced Sale is no longer an option.

6.9 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.

6.10 When the Charge Certificate is returned from the Land Registry, the property can be marketed for sale. Another letter will be sent to the Owner and any Chargees to warn them again that the charge is to be recovered by Enforced Sale.

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 the property has changed ownership without proper conveyancing. The Enforced Sale Procedure can be applied to unregistered property.

8. HUMAN RIGHTS ACT 1998

8.1 Consideration of the provisions of the Human Rights Act 1998, must be taken into account by the Council. In particular, the right to respect for private and family life, home and correspondence and peaceful enjoyment of possessions. These rights need to be balanced against the general benefits and rights of neighbours and the surrounding community. For example, the need to deal with any dangerous or health risk conditions, the desire to bring a long term empty property back into use; and to reduce crime, arson, fly tipping and the negative impact of the empty property on the locality.

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, and this should be included in the decision making document seeking authorisation to pursue an Enforced Sale.

9. RECOVERY OF COSTS

9.1 If a debt can be registered as a local land charge then that should happen after the debtor has failed to pay the bill in relation to the works completed in default.

9.2 If the statute says a debt can be enforced as a charge then you can enforce that debt whether it is registered as a local land charge or not. In most cases, it is not important on whom the notice was originally served.

9.3 It does not matter, whether the property has subsequently changed ownership. Once the charge has been established, the land continues to be subject to the charge even if it has passed to subsequent 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 the Enforced Sale Procedure, 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. This includes all legal, surveying, marketing and administrative costs.

10. MARKETING AND SALE

10.1 Some of the processes which might normally be associated with the sale of properties are not possible when using the Enforced Sale Procedure. For example, there is no right of entry for prospective purchasers to view the property or its condition and there is no power to put up a 'For Sale' sign.

10.2 The Council has a duty to secure the best possible price for an enforced sale. Reasonable care will be taken to ensure the best sale price is achieved by the Council using either an Auction Sale or Sale by Private Treaty.

10.3 One of the intentions of the Enforced Sale Procedure is to try and change ownership of the property in a positive way. If the conditions of the property do not improve following the sale, further enforcement action will be considered and the Enforced Sales process repeated.