



# **WYCHAVON DISTRICT COUNCIL**

## **Enforced Sales Policy**

**2012**

# **WYCHAVON DISTRICT COUNCIL**

## **Enforced Sales Policy**

### **Section 1**

#### **1.1 Purpose**

The purpose of this document is to set out the Councils policy on Enforced Sales to enable an operational procedure to be developed.

#### **1.2 Aims**

In producing this policy document we aim to:

- Provide a service which is consistent, transparent and proportionally targeting long term empty properties in order to:
  - Bring empty properties back into the useful housing stock
  - Reduce the impact on the environment and neighbouring occupants
  - Reduce debt owed to the Authority
- By bringing long term empty properties back into use:
  - Reduction in antisocial behaviour
  - Reduction in crime
  - Reduction in arson
  - Reduction in fly tipping
  - Improvement of property standard which will reduce the negative impact on neighbouring properties and their occupants.

### **Section 2**

#### **2.1 Background to Empty Properties in Wychavon**

The Empty Homes Agency's most recent statistics for November 2011 detail that there are 720,000 empty properties in the UK with 279,000 that have been empty for longer than 6 months ([www.emptyhomes.com](http://www.emptyhomes.com)).

Within Wychavon, we currently have around 52,000 properties in the District and 1326 empty properties, of which 524 have been vacant for 6 months or longer, as reported through our Council Tax Department (April 2011). However, Local Authorities need to take into account that this information may not be up to date as landlords and owners do not always report that their property is occupied.

Of the 524 properties in the district which have been empty for more 6 months, 1% are holiday lets, 10% second homes and a further 24% would be difficult to bring back into use due to access problems e.g. access through a commercial unit. Some of these homes are empty due to reasons of probate, that the property is on the market or it has been taken off the market because of the economic downturn.

## **2.1 Legislative Consideration**

The powers to carry out an enforced sale sits within the Law of Property Act 1925. Attached at Appendix A is a list of the Statutes which enable a charge to be placed on a property in the event of works being carried out in default by the Council. This list is not exhaustive. If the relevant statute results in a charge on the property, it confers a power of sale under the Law of Property Act 1925 enabling the Enforced Sales Policy to be used.

In most cases, the Council's charge will take priority over any earlier charges, including a mortgagee's charge. However this will need to be considered at the outset because, if the Council's charge does not take priority then pursuing an enforced sale may not be financially viable.

If the Statute(s) does not create a charge then, it will be necessary to consider whether Section 7 of the Local Land Charges Act 1975 can be applied. If it can, the policy may still be used as the charge will be registered on the Local Land Charge Register but this may **not** take priority over existing charges. As noted above, the existence of any prior charges and the quality of the offending party's title are major considerations when deciding whether to use the policy in such circumstances.

If none of the above applies then the procedure cannot be used and consideration will be given to be making a Compulsory Purchase or continuing to pursue the matter via the authority's normal debt recovery process.

## **2.2 The Human Rights Act**

When considering whether or not to exercise the enforced sales policy, consideration must be given and documented in relation to the Human Rights Act 1998, Selling property belonging to a third party engages Article 8 of the Act namely; '*the right to respect for...private and family life...home and correspondence.*' Further, Article 1 of Protocol 1, namely '*...the peaceful enjoyment of possessions....*' is also engaged. As such, interference is only permitted if such action is considered proportionate. The individual's property rights have to be balanced against the general benefits to the community if the property were to be brought back into use.

A statement which sets out the reasons as to why (in any given case) it is proportionate, in accordance with the Act, to invoke the enforced sales policy should, be a matter of record on the particular file and, should also be set out in any correspondence to the owner.

## **2.3 The Limitations Act**

The power to utilise the enforced sales policy is time limited by section 20 of the Limitations Act 1980. This states that no action can be brought to recover a sum of money secured by a charge on the property after a period of 12 years from the date on which the right to receive the money accrued, so anytime 12 years after the date when the expense has occurred prohibits enforced sale action being taken.

## **2.6 Authorisations**

The council's Executive Board has delegated powers to the Head of Housing and Planning in consultation with the Head of Legal Services to institute the Enforced Sales Policy and for a resolution to be issued and delivered to the Land Registry which details the following:

- The statutory provisions
- The service of the necessary notices
- What work was done and when
- The registration of the charge in the register of local land charges
- A claim to priority over all estates and interest (if Legal powers)

The resolution will be prepared by Wychavon Legal Services and done under seal. The appropriate written authorisation of the Head of Housing and Planning (or such officer to whom the Head of Housing and Planning Services has sub delegated her/his authority) should form part of the file sent to Legal Services.

### **Section 3**

#### **3.1 Social Benefits of the Enforced Sales Policy**

Empty properties can have an adverse impact on people's quality of life in a number of ways. Perceptions of the safeness, cleanliness and quality of an area can be affected by the existence of derelict or neglected properties. Long term empty properties can become a target for vandalism and other forms of anti-social behaviour and minor crime. In some cases, derelict properties can affect the housing market in a particular area.

By selling a property that is in a poor condition to a new owner there is likelihood that the new owner will refurbish the property which in turn increases the chances that it will become occupied once more, eliminating the adverse impact the property is having on the local community. If the new owner chooses to rent the property, this in turn will have a positive benefit to reducing numbers on housing registers and the ever increasing burdens on the housing market.

Furthermore, empty homes are a wasted housing resource. When refurbished they will provide an additional home within the District.

#### **3.2 Financial Benefits**

Debts owed to the Council can, if not managed effectively, reduce the level and quality of services the Council is able to deliver. However, debts which are financial charges and which could otherwise prove impossible to recover can be discharged from the proceeds of sale when using the Enforced Sales Policy.

Furthermore, the very prospect of having the property sold can bring about the payment of the debt by the owner. It is believed that the recovery of the debts registered against long term empty properties will be far more successful with the use, or potential use, of the enforced sales policy than if the normal debt recovery process is used.

There will also be a reduction in expenditure on services which deal with the problems usually found at long term empty properties, such as clearance of fly tipping, boarding up properties open to access, dealing with rat infestations and responding to neighbours complaints.

Owners of properties, in particular, property companies, are more likely to discharge their debt to the Council once they become aware of the Councils Enforced Sales Procedure or deal with the nuisance prior to the service of a Statutory Notice and keep their properties in a reasonable state of repair therefore reducing the time that the Council spends dealing with nuisance issues.

### **3.3 Environmental Benefits**

The use of this policy will contribute towards improving the condition of the private sector housing stock within Wychavon.

The re-occupation of long term empty homes will not only improve the visual appearance of properties concerned, but also the area, as it will also improve the visual appearance of properties and reduce the opportunity for fly tipping; theft; squatting and other forms of crime and anti social behaviour usually experienced at the site of long term empty properties. This is more likely to make an area more desirable and assist in the housing market of the area.

### **3.4 Benefits of this Course of Action Compared to Compulsory Purchase Order**

Generally a Compulsory Purchase Order takes a minimum of 18 months to complete. Furthermore, certain statutory criteria need to be established in order to use the procedure. In comparison, whilst using the Enforced Sales Policy it is anticipated that, on average, a sale could be achieved within 10 months from the date instructions are received by the Legal Section, subject to no challenges from the owner of the property.

In order to utilise the procedure, recovery can occur where the normal debt recovery process can go no further. This procedure can be used once the invoice has been raised and reminders sent, if the debt remains unpaid, a letter is sent out informing the owner that bailiffs and/or court action is to be pursued.

## **Section 4**

### **4.1 Criteria for Enforcing the Sale of a Long Term Empty Property**

The criteria used need to be in conformity with the local authority aims and objectives. The criteria for the Wychavon district are to be;

1. The total debt on the property exceeds £300
2. The property is an empty property which has been empty for more than 6 months
3. The necessary Enforcement Notices and documentation have been served.

If the above criteria are not satisfied then a Compulsory Purchase or Empty Dwelling Management Order may be considered.

However, if there is a derelict empty property causing a major problem, such as being subjected to arson attacks, where it does not meet the above criteria and the owner can not be traced, or is refusing to cooperate, the use of this policy would still be considered. It should be noted that the smaller the debt, the greater the justification required for using this policy will be needed.

It is considered that a property owner who remains reluctant to address his/her debt tends to become far more cooperative when the forced sale of the property is a real prospect. The enforced sales policy can therefore be used as a supplement to the normal debt recovery process.

## **Section 5**

### **5.1 Summary of Enforced Sales Policy/Procedure**

This policy has informed the development of an enforced sales operating procedure which will be subject to regular review.

The basis for using the enforced sales policy is where the relevant statute confers a power of sale or where there is a financial charge registered in Part 2 of the Local Land Charges Register.

The first step in commencing the enforced sales policy, (providing that the file has been checked by Legal Services and that the Head of Housing and Planning has given the requisite authority), is the service of a legal notice under Section 103 (1) of the Law of Property Act 1925. The Section 103 Notice will be prepared and served by the Legal Section.

The Local Ward District Councillor and the Portfolio Holder should be notified that action is being taken at the specific property.

The power of sale can not be exercised until this Notice has been served. This Notice must require the payment of the outstanding debt and give a period of not less than 3 months from the service of this Notice. The Notice must be served on the owner of the property at which the previous default notice was served. It will also be necessary to serve a copy of the Notice on any other charge.

If the outstanding debt is paid as a result of the Section 103 Notice then, the Enforced Sales Policy can not be used.

If, after the three month period the debt remains outstanding then, an application can be made to the Land Registry for the registration of the charge and, where possible, claiming priority over all other charges. The Legal Section will make the above application.

When the charge has been registered and the Charge Certificate has been returned then the property can be marketed for sale. The Council will however send another letter to the owner and any other charge to warn that the charge is to be enforced. It is anticipated that this process will take approximately ten months to complete.

In any subsequent sale, reasonable care will be taken to ensure that a fair price for the property is obtained. It is likely that sale by auction will achieve this. Thus, our preferred method of sale will be through auction. This is considered the safest and quickest method of disposal as, it will enable the Council to accept the highest bid for the property and reduce any risks of a claim that the property was sold for a lesser than market price.

If, following the recovery of the Council's charges (including its legal and sale costs) and any other outstanding charges, such as mortgagee or utility charges, if

there remains any balance then, this will (where the identity and location of the owner is known) be paid to him/her. In cases where the Council has not been able to identify or locate the owner, the remaining balance will be paid into an interest bearing account or an application can be paid to have the monies paid into Court. The Legal Services team will be responsible for completing the sale of the property and dispensing of the charges and the Private Sector Housing Team will make contact with the new owner to ensure that the property is bought back into use in the shortest time as possible.

**Appendix A List of Relevant Statutes under which the Enforced Sales Policy can be used.**

<b>Public Health Act 1936</b>	<b>S. 45 – Works to WC closets S. 83 – Filthy and Verminous premises</b>
<b>Public Health Act 1961</b>	<b>S.17 - Works to drains</b>
<b>Prevention of Damage by Pests Act 1949</b>	<b>S. 4 – Rats and Mice</b>
<b>Local Government (Misc. Provs.) Act 1976</b>	<b>S. 33- Restore service S. 35 – Private sewers</b>
<b>Building Act 1984</b>	<b>S. 59 – Drainage S. 60 – Soil vent pipe S. 76 – Defective premises S. 77/78 – Dangerous Buildings S. 84 – Yards</b>
<b>Environmental Protection Act 1990</b>	<b>S. 80 – Statutory Nuisance</b>
<b>Housing Act 2004</b>	<b>S. 11 – Improvement Notice S. 12 – Improvement Notice S. 40 – Emergency Remedial Action S. 49 – Enforcement Action S. 50 – Recovery of Charges under S. 49</b>
<b>Town &amp; Country Planning Act 1990</b>	<b>S. 215 – Untidy state of land S. 172 – Planning Breach</b>
<b>Highways Act 1980</b>	<b>S. 154 – Hedges and trees S. 165 – Unfenced land</b>