

## Using Compulsory Purchase Orders to bring Empty Homes back into Occupation

Report of Cllr Carole Hegley, Executive Member for Social Care and Housing  
([carole.hegley@centralbedfordshire.gov.uk](mailto:carole.hegley@centralbedfordshire.gov.uk))

Advising Officers: Director of Social Care, Health and Housing,  
([julie.ogley@centralbedfordshire.gov.uk](mailto:julie.ogley@centralbedfordshire.gov.uk)) and Nick Costin, Head of Housing  
Service, ([nick.costin@centralbedfordshire.gov.uk](mailto:nick.costin@centralbedfordshire.gov.uk)), Tel: 0300 300 5219

**This report relates to a key issue**

---

### Purpose of this report

1. The report presents a case to use compulsory purchase order (CPO) powers to bring a long term empty home back into occupation. The report recommends the use of CPO for a particular long term empty home but also seeks delegated authority to take all necessary steps to complete the process.

### RECOMMENDATIONS

The Executive is asked to:

1. approve the principle of the acquisition of Empty property A, either voluntarily or through the use of a compulsory purchase order (CPO) and the subsequent disposal of the property;
2. approve the principle of the disposal of Empty property A following a successful acquisition and renovation to a habitable standard, regardless of the resulting value;
3. authorise the Director of Social Care, Health and Housing, in consultation with the Leader of the Council and Assistant Director Legal Services (Monitoring Officer), to make a compulsory purchase order to be known as "The Central Bedfordshire (Property A) Compulsory Purchase Order" under Section 17 of the Housing Act 1985 or any other relevant legal powers, in respect of land and property indicated on a map marked with the name of the Compulsory Purchase Order, where the words property A will be replaced with the full address of the property. For the avoidance of doubt this authorisation extends to a Key Decision should that be necessary; and

**4. Authorise the Assistant Director Legal Services (Monitoring Officer), in respect of Property A:**

- a) to take all necessary steps in connection therewith including the making and serving of the Order, the signing publication, and serving of all notices, the submission of the Order to the Secretary of State for Housing (and if any objections are received) the making of arrangements for a Public Enquiry, including the appointment of Counsel.
- b) to either serve a Notice to Treat under the Compulsory Purchase Act 1965 or make a General vesting Declaration under The Compulsory Purchase (vesting declarations) Act 1981 so as to acquire all necessary interests in the land and property included in the confirmed Compulsory Purchase order.

**Overview and Scrutiny Comments/Recommendations**

- 2. This item has not been presented to the Overview and Scrutiny Committee. The Council's Empty Homes strategy, which was presented to the Social Care, Health and Housing Overview and Scrutiny Committee on 18 October 2010, includes proposals for the use of CPOs and that approval is required from Executive for proposed cases.

**Issues**

- 3. Empty homes are a wasted housing resource and have a negative effect leading to a decline in the neighbourhood. They can cause a nuisance to adjoining properties by attracting fly tipping, infestation of rodents, vandalism, unauthorised entry and other anti social behaviour.
- 4. The total number of empty homes in Central Bedfordshire in May 2016 was 2,542 and of these 1,442 have been empty for six months or longer (although 379 of these are exempt from potential enforcement). There are 225 properties that have been empty for two years or more. These are the focus of the Housing Service. The Council, at 4 October 2016, has a housing waiting list of 1,453 households.
- 5. The Council has a successful record of using legislation to bring empty homes back into use with Empty Dwelling Management Orders (EDMO). EDMOs allow the Council to acquire management, refurbish, and use the property to meet needs for a period of seven years. Upfront costs are recovered through rental income. This enforcement action is suitable where the costs of refurbishing the property can be recovered in the seven years that the EDMO is in force.

6. There are cases where EDMOs are less suitable, due to size, location, cost of refurbishment, or other factors that make the property less able to meet housing need. On 12 January 2016, a review of the Empty Homes Capital programme resources resulted in Cllrs Wenham, Hegley and Collins agreeing to recommend the provision of additional resources (through a reserve amount in the MTFP capital programme) to increase empty homes activity and in particular to test the use of CPO's through the appropriate approval process.
7. Housing Services have procured a contract with Kent Legal Services (LS), who have expertise in supporting local authorities successfully obtain CPOs for empty homes. Five complex empty homes have been identified and reviewed as potentially suitable for CPO. The use of CPO's is new to the Council and can pose a significant financial risk, particularly if a public enquiry is held that results in the CPO application being unsuccessful. Working with Kent LS aims to minimise that risk.
8. The Council's Empty Homes Strategy concludes that a balanced approach to tackling empty homes is maintained with a co-ordinated approach between incentives and enforcement. Significant advice, information, and assistance is offered before using enforcement as a last resort. The Empty Homes strategy also sets out the Enforcement Protocol, which is followed by Officers pursuing EDMO or CPO action.
9. The details and rationale for recommending CPO in respect of property A are set out in Appendix A. It is intended that one property is initially subject to CPO action as this is a new course of enforcement action for the Council.

### **Options for consideration**

10. Where a property has a Council Tax debt in excess of £1,000 against it, the Council may seek to secure a Charging Order against the property concerned. A final Charging Order has to be approved by a District Judge at a hearing and follows a process where firstly a Liability Order is secured for the debt, and then an Interim Charging Order is made. The property owner(s) can challenge a Final Charging Order but if it is granted by the Judge, the debt is secured against the property and interest is applied.
11. Where a Charging Order is secured against a property, the Council could apply for an "enforced sale" of that property to release equity that would pay off the debt. To date, the Council have not enforced a sale through this route although the Head of Revenues and Benefits has confirmed that Charging Orders are being progressed in two of the five potential CPO cases that are being considered. The making of a Charging Order secures the debt but does not release funding unless the Council enforces a sale.

12. A further option for the five potential CPO cases is to pursue EDMOs. However, in most cases, the cost of refurbishment might not be recoverable during the seven year EDMO period. Although an application to extend an EDMO can be made, it leaves a risk that the Council might not be able to recover all initial capital costs. EDMOs are, however, more cost effective as there are minimal legal costs and no compensation payable (as the owner does not lose the value of the asset).
13. EDMO's are progressed as a cost effective solution where appropriate but in complex cases, CPO's have the benefit of giving the Council full control of the property acquired. CPO is a "strong" enforcement action and sends a positive message to all owners of long term empty homes that the Council is committed to meeting housing needs through bringing empty homes back into use.

#### **Reason/s for decision**

14. The decision will enable Housing Services to progress a CPO in respect of property A and will enable the Director of Social Care Health and Housing to take all necessary steps to complete the process in consultation with Assistant Director Legal Services (Monitoring Officer).

#### **Council Priorities**

15. The proposed actions support the Council's priority to Enhance Central Bedfordshire. Returning empty homes to use improves the quality of housing and enhances the immediate residential area.

#### **Corporate Implications**

#### **Community Safety Implications**

16. Empty homes can be an attraction to criminal and anti social behaviour. They attract fly tipping, damage, and unauthorised entry, which in turn can lead to arson. Neighbours of empty homes are often fearful of anti social behaviour and the impact on their quality of life.

#### **Legal Implications**

17. The Council has the power under s17 of the Housing Act 1985 to acquire land by compulsory purchase (land in this instance includes houses and buildings) for housing purposes. The guidance on the compulsory purchase process is Circular 06/2004, which states that bringing empty properties into housing use is one of the main uses of the power.

18. The Council's constitution currently provides the Director of Community Services with delegated authority to exercise the functions of the Housing Act 1985 in consultation with Assistant Director of Housing (4.3.34). In addition the constitution provides the Director of Community Services delegated authority for the development and appropriation of land and buildings, subject to a maximum value in any case of £200,000 per annum (revenue) or £500,000 (capital) (4.3.91). The Council's Empty Homes Strategy 2010, however, states that approval to progress a CPO would be made by Executive. It is likely that property A acquired with CPO will increase in value above £0.5M following renovation works.
19. Part XVII of the Housing Act 1985 applies, with modifications, the Acquisition of Land Act 1981 (compulsory purchase procedure), the Compulsory Purchase Act 1965 (post confirmation procedure) and the Land Compensation Act 1961 (amount and assessment of compensation).
20. The Council, as part of the acquisition process is required to provide a supporting Statement of Reasons for the CPO. This should set the context for taking action and explain the need for the Order. It should explain that there are no legal impediments to the making of the Order, that funding is in place and the policy reasons behind the making of the order. It should also consider the proportionality of the Councils action in terms of the owner s rights.
21. The Council is obliged to act in a way which is compatible with the European Convention on Human Rights. The Convention Rights relevant to compulsory acquisition are Article 1, Article 6, Article 8 and Article 14. These rights are qualified rights and may be interfered with provided such interference is prescribed by law, is pursuant to a legitimate aim, is necessary in a democratic society and is proportionate.
22. As with all empty homes work the Council would prefer to bring property A back into use with the cooperation of the owner. If the principle of using CPO to acquire property A is agreed by Executive, the owner will be written to requesting voluntary purchase of the property.
23. It is also possible that the owner may ask the Council to withdraw the CPO to allow him to complete renovation on the property and either let, sell or occupy it himself. This is considered unlikely in the case of property A, however, if this occurs it is proposed that the Council will proceed with the CPO but give an undertaking not to enforce it on condition that steps towards occupation are completed within given timescales.

24. The process for making and confirming a CPO then taking ownership of the property and selling it to achieve future occupation requires a series of detailed and prescribed steps, which will require the Council's Legal Services, LGSS to implement. Housing Officers will work closely with LGSS.
25. There is the likelihood that further properties may need to be acquired and be subject to a CPO. CPO is seen as a measure of last resort and it is important that those authorising a CPO have full information. The case for the making of the CPO must identify the acquiring powers, the financial ability, and the extent of land to be acquired. The case should ensure that the action is proportionate in terms of the owner's Human Rights and that there is no discrimination arising under the Equalities Act.

### **Financial and Risk Implications**

26. The financial aspects of undertaking a CPO are included in appendix A. There are greater costs associated with CPO in comparison to alternative enforcement action. This is due to the significant impact of the action. In particular compensation and legal costs have to be met by the Council.
27. If, however, the Council undertake the renovation works to the property and the value increases beyond the cost of those works, the "surplus" element of the sale can be used to cover the legal and compensation costs. The key here is to increase the value to a greater extent than the cost of CPO and refurbishment. Undertaking refurbishment would be an additional impact upon Council's capital programme but should be recoverable through re-sale of the property.
28. There is the risk that if the Council are unsuccessful at the public enquiry, the Council then become liable for the objector's costs, which might include legal costs. This risk will be minimised through following the advice of Kent LS, who are experienced in supporting local authorities with successful CPOs. Kent LS have provided many examples of successful local authority use of CPO.
29. The Council's capital programme provides £0.302M gross in 2016/17 and £0.21M gross for the remainder of the MTFP period, with a reserves amount of £0.2M in each year of the MTFP (see paragraph 6 above), and slippage, where agreed. Whilst a "back to back" sale might be conducted within one financial year, it would not, however, provide the opportunity to refurbish and make a surplus on the property, which could cover legal and compensation costs. For these reasons, a "back to back" sale is not recommended. This plan, is likely, however, to result in overspend within the year that the property is acquired.

30. There are risks that the anticipated costs/values outlined in Appendix A could eventually be higher or lower. These are indicative best estimate costs at this stage and will be firmed up before a CPO is made.
31. There is a risk that if the CPO is not confirmed by Secretary of State, the associated legal costs (and potentially the objector's costs) would have to be met from revenue funds, not capital as there would be no capital project. This risk can be minimised through taking expert legal advice on what is required to ensure a successful CPO.

### **Equalities Implications**

32. Compulsory Purchase Process and Crichel Down Rules (29 October Circular 2015) advises acquiring authorities that CPO should only be made where there is a compelling case in the public interest. The purposes for which the order is made should justify the interference with the human rights of those with an interest in the affected land. In this case officers have considered the relevant factors and are satisfied that the benefits of acquiring the property provide a compelling case in the public interest for the use of CPO powers and outweigh the impact on the existing owner.
33. Access to appropriate housing is particularly important for reducing inequalities, because too often, those most disadvantaged are more likely to be living in housing that does not meet their needs. Lack of choice and quality in the housing stock means that the most vulnerable communities are often housed in cramped, poor quality accommodation within deprived areas. Ensuring that empty homes are brought back into use can therefore be of assistance in terms of tackling housing inequality.
34. It is acknowledged that the service of a CPO may cause stress for the owner of property A. However, there have been numerous communications (written and spoken) between the owner and the Council's Empty Homes Officer, who has provided advice and offered assistance towards voluntarily bringing the property back into occupation. Property A is a bungalow, which would be desirable and suitable for older people or those with mobility problems in Central Bedfordshire.
35. The owner will not lose financially on the value of the property, which will be professionally determined, and will also be compensated, at 7.5% of the value. The owner has opportunity to appeal if he feels that the value offered by the Council is insufficient.

36. It is acknowledged that this proposal will have an effect on the human rights of the owner of the property, however, on balance it is suggested that the Council finds the public benefit of the proposal outweighs the impact on those affected. Regard has been taken in particular to the provisions of Article 1 of the First Protocol to the European Convention on Human Rights and to Articles 6 and 8.
37. Article 1 of the First Protocol provides that: *“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”.*
38. The order will affect the Article 1 rights of the present owner if confirmed by the Secretary of State. However there shall be no violation of those rights as officers are content that the steps taken are in the public interest and lawful as required by the first protocol. Those directly affected by the order will be entitled to compensation as provided by law, such compensation to be settled in absence of agreement by the impartial Upper Tribunal.
39. Article 8 of the Convention provides as follows: *“(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 wellbeing 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 8 is a qualified right and interference can be justified in appropriate cases with reference to Article 8(2).
40. The Order will be made pursuant to s17 of the Housing Act 1985 which authorises the Council to acquire land compulsorily subject to following the procedures laid down in the Acquisition of Land Act 1981. Whilst the Council could argue that an unoccupied and previously tenanted property does not provide its owner benefit from protection under this right, there is anyway a compelling case in the public interest to acquire the Order Land (property A) and the public benefit will outweigh the private loss. In the circumstances, the compulsory acquisition of the Order Land will not conflict with Article 8 of the Convention.



41. Article 6 of the Convention provides as follows: *“In the determination of his civil rights and obligations..... everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law”*.
42. The Order, when made will be publicised and all those affected by the Order will be notified and have the opportunity to make objections and to be heard at a public inquiry before a decision is made on whether or not the Order should be confirmed. A right of legal challenge exists to this process in accordance with section 23 of the Acquisition of Land Act 1981. Any dispute as to compensation payable is determined by the Upper Tribunal, a court established by law. All of those whose Article 1, Article 6 and Article 8 rights would be affected by the Order will have an opportunity to object to it and to have their objection considered at an independent and public hearing. Statutory judicial challenge provisions also exist.
43. The Equality Act 2010 provides protection from discrimination in respect of certain protected characteristics namely: age, disability, gender re-assignment, pregnancy and maternity, race, religion or beliefs and sex and sexual orientation. It places the Council under a legal duty to have due regard to the advancement of equality in the exercise of its powers. In particular the Council must pay due regard to the need to:
- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act
  - advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
  - foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
44. Having paid due regard to the provisions of Equalities Act and how they may relate to this case, it is considered that the proposal is fully compliant with the legislation. The Order required to facilitate the proposal is not anticipated to have any additional effects. The requirements of the Empty Homes Strategy Enforcement protocol are met, which was subject to an Equality Impact Assessment before being approved by Executive.

### **Implications for Work Programming**

45. There are no implications that might impact on the work programme of the Overview and Scrutiny Committee and no further reports which might be considered by Members.

## **Conclusion and Next Steps**

46. There are a significant number of longer terms empty homes in Central Bedfordshire at a time of continued high housing need. The Council has been pro-active in using EDMOs, which are suitable for properties that the Council can manage and bring back into use. Compulsory purchase orders (CPO) can be used for more intransigent cases where the opportunity to negotiate with the owners has been exhausted, the property is causing social problems, and compulsory acquisition is a measure of last resort. The application of these powers can send a message of intent to all empty property owners, demonstrating that the Council is committed to bringing the worst condition empty homes back into occupation.
47. The CPO process can be lengthy, complex and costly in comparison to alternative courses of action. The service of a CPO can, however, lead to a voluntary sale of the property by the owner, which provides the same desired result at little cost.
48. It is recommended that the Council progress the CPO for property A and if successful, renovate the property to a habitable standard before resale. This plan will help ensure that the costs associated with CPO are covered by the increase in value resulting from complete renovation. Whilst this lengthens the process, it reduces financial risks and has the added benefit that the Council are in control of renovation, which is not the case where there is a back to back sale.
49. As part of the CPO process, delegated authority should also be provided to Director of Social Care Health and Housing in consultation with the Leader of the Council, to dispose of property A, regardless of the resulting value.

## **Appendices**

The following is attached;

50. Appendix A Property A Case Details and Cost Implications of CPO

## **Background Papers**

51. The following background papers, not previously available to the public, were taken into account and are available on the Council's website:
  - (i) Empty Homes strategy is a background paper but is available on the Council's website.