

Central Bedfordshire Council

Executive

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Using Compulsory Purchase Orders to bring Empty Homes back into Occupation

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This report relates to a decision that is Key

Purpose of this report

1. The report presents a case to use compulsory purchase order (CPO) powers to bring empty homes 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 in principle the acquisition of Empty Property A, either voluntarily or using a compulsory purchase order (CPO);**
2. **approve in principle the disposal of Empty Property A following a successful acquisition and renovation to a habitable standard, and delegate to the Director of Social Care, Health and Housing in consultation with the Executive Members, authority to dispose of property A.**

3. **if required, authorise the Director of Social Care, Health and Housing, in consultation with the Executive Members and Interim Monitoring Officer, to make a compulsory purchase order to be known as “The Central Bedfordshire ([full postal address of property to be inserted]) Compulsory Purchase Order 201x” under Section 17 of the Housing Act 1985 and any other relevant legal powers, in respect of Property A; and**
4. **if required, authorise the Interim 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 Inquiry, 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

1. The item has not been presented to 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 24 July 2017, includes proposals for the use of CPOs and that approval is required from Executive for proposed cases. The Empty Homes Strategy was approved by Executive on 10 October 2017.

Issues

2. Empty homes are a wasted housing resource and have a negative effect leading to a decline in the neighborhood. They can cause a nuisance to adjoining properties by attracting fly tipping, infestation of rodents, vandalism, unauthorised entry and other anti-social behavior.
3. The total number of empty homes in Central Bedfordshire in April 2018 was 2,072 and of these 289 have been empty for two years or longer, which are the focus of the Housing Service and which would be considered for CPO. The Council, at 1st April 2018, has a housing waiting list with a two bedroom need of 442 with 92 being registered for Dunstable.
4. The Council has a successful record of using Housing Act legislation to bring empty homes back into use with Empty Dwelling Management Orders (EDMO). EDMOs allow the Council to acquire management, undertake refurbishment, and use the property to meet local housing 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.

5. 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. In 2016, the Council agreed, through the budget setting process, the provision of additional capital resources (through reserves) to increase empty homes activity and to test the use of CPO's through the appropriate approval process.
6. Housing Services instructed LGSS Law, who have expertise in supporting local authorities to successfully obtain CPOs for empty homes. This case has been reviewed with LGSS Law and they believe there are grounds for use of CPO. The use of CPO's is new to the Council and can pose a significant financial risk, particularly if a public inquiry is held.
7. The Council's Empty Homes Strategy, refreshed in 2017, 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 to the owners of empty homes before the use of enforcement is considered. The Empty Homes strategy clearly sets out the Enforcement Protocol, which is followed by officers pursuing EDMO or CPO action.
8. The details and rationale for recommending a CPO in favour of any other enforcement action in respect of property A are set out in Appendix A. The address of property A is provided in exempt Appendix B. It is intended that this one property is initially subject to CPO action as this is a new course of enforcement action for the Council. It is an option of last resort with the aim of bringing the property back into use where no other option will suffice. This action will allow the Council to gain experience, quantify the success, and consolidate its stance in the use of CPOs. The action will also send a message that the Council is intent on bringing long term empty homes back into use.

Options to bring property back into use

9. The first option available to bring empty homes back into use is an enforced sale. The Council would seek such an option where there is a considerable debt, typically Council tax debt, in excess of £1,000 and where a final charging order has been made by a Court. This option might be considered where the property is not suitable for Empty Dwelling Management Order or Compulsory Purchase Order and where all negotiations and offers of assistance with the owners have failed. This option carries the risk in terms of future use that either the debt will be repaid by the owner and the property remains empty, or that the enforced sale does not result in the property being renovated and re-occupied. This option does not apply to property A, where Compulsory Purchase offers the Council a stronger option to bring the property back into use.
10. The second option is to pursue an Empty Dwelling Management Order (EDMO). This action is normally only suitable if the costs of renovation can be recovered during the seven years the EDMO is in force. Although an application to extend an EDMO can be made, and the renovation costs attached as a legal charge to the property, excessive refurbishment costs should be carefully considered as the investment might be better made through making a CPO. EDMOs can be a more cost-effective option as there are minimal legal costs and no compensation payable.

The owner does not lose the value of the asset. This option does is not recommended for property A due to the estimated costs of the refurbishment. A Compulsory Purchase Order provides a better business case to reduce financial risks.

11. The third option available is a Compulsory Purchase Order (CPO). This would give the Council the benefit of acquiring full control of the property. A 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. Equally, the CPO allows the Council to tackle those properties whose refurbishment costs carry a significant element of risk, and provides more flexible options to recover their costs following the completion of the works. This is recommended as the best option for property A due to the high cost of refurbishment.

Reason/s for decision

12. The decision will enable Housing Services to progress a CPO in respect of property A and will provide delegated authority for the Director of Social Care Health and Housing to take all steps to complete the process in consultation with Executive Member and the Interim Monitoring Officer.

Council Priorities

13. The proposed actions support the Council's priority to Enhance Central Bedfordshire. Bringing empty homes back into use improves the quality of housing and enhances the immediate residential area. Empty Homes work contributes towards the Council's Five-Year Plan 2015-2020, the CBC Housing Strategy 2016-2021, Private Sector Housing Assistance Policy 2016, and is detailed and outlined in the Empty Homes Strategy 2017- 2022.

Community Safety Implications

14. 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

15. The Council has the power under section 17 of the Housing Act 1985 to acquire land by compulsory purchase (land in this instance includes houses) for housing purposes. In February 2018, the Department for Communities and Local Government issued "*Guidance on Compulsory Purchase Process and The Crichel Down Rules for the disposal of surplus land acquired by, or under the threat of, compulsion*".

16. The Council's Constitution provides the Director of Community Services with delegated authority to exercise the powers and enforce requirements in relation to the Housing Act 1985 in consultation with the Assistant Director of Housing (Part 3E, paragraph 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 single case of £200,000 per annum (revenue) or £500,000 (capital) in consultation with the relevant Executive Member and ward member(s) (Part 3E, paragraph 4.3.89). The Council's Empty Homes Strategy 2017, however, states that approval to progress a CPO would be made by Executive.
17. 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).
18. 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 Council's action in terms of the owner's rights. This document will be produced following the Executive's approval to make the CPO.
19. The Council is obliged to act in a way which is compatible with the European Convention on Human Rights. The rights within the Convention which are relevant to compulsory acquisition are Articles 1, 6, 8 and 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.
20. As with all empty homes work, the Council would prefer to bring property A back into use with the cooperation of the owner, however, the owner of property A is deceased. In such circumstances the Executor of the deceased's estate assumes legal responsibility for the property until the estate has been distributed and the property is either sold or transferred to the deceased's beneficiary in accordance with the deceased's will. The Executor has become the focus of negotiations and requests to agree a voluntary purchase of the property. Attempts to achieve this are ongoing.
21. It is also possible that the Executor may ask the Council to withdraw the CPO to allow her to complete renovations on the property and either let, sell or occupy it herself. This is considered unlikely given the Council believe the property has been empty for over 20 years. If this did occur, 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.

22. 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.
23. A 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 a CPO must identify the acquiring powers, the financial ability and the extent of the 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 breach of the public sector equality duty arising under the Equality Act 2010.

Legal Process

24. The owner of Property A is deceased. The Council is aware of an Executor and has procured a copy of the Will and associated Grant of Probate in order to deal with the estate effectively. There is no evidence from the Executor to date that they wish to deal with the property or indeed if the property has been brought under their control, however, they are registered to pay council tax, which is currently up to date. When making the Order to acquire the property, the Council will need to serve on the Executor, who has a power of sale but will also adopt procedures that apply to situations when owners of land cannot be traced. This also involves notice at the property as well as serving the Executor along with local newspaper publications.
25. With regard to compensation, the monies for the acquisition (if the CPO is confirmed) can be paid to the Executor for the benefit of the estate. Following confirmation of the Order full title to the property can be taken by serving the appropriate notice on the Executor. The Compensation, which should be based on a surveyor's valuation, can be claimed later up to three years from taking possession.
26. The Compulsory Purchase Process and Crichel Down Rules (28 February Circular 2018) gives guidance on the application of the Crichel Down Rules. These rules provide that for certain bodies, there is a mandatory requirement for the acquiring authority to offer any property acquired by, or under threat of, compulsion back to former owners or their successors if not required for the purpose it has been acquired.
27. As the Council is a Local Authority, these rules are not mandatory. The Guidance states that "previous practice among such authorities (for whom compliance with the rules is discretionary) has been very variable, but the government would like there to be a high level of compliance".
28. In this case the Council's purpose for acquiring the land is to restore the property to beneficial use and whilst the original owner has not taken steps to refurbish the property, the Council's aim to sell the property into the market will be consistent with bringing the dwelling back into occupation and consistent with the reason for making the CPO.

Financial and Risk Implications

29. 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 including the cost of purchasing, the cost of renovations, and compensation. In addition, there are legal costs that have to be met by the Council.
30. It is anticipated that renovation works to the property will increase the value, creating a surplus element following a sale, which can be used to cover the legal and compensation costs of the Compulsory Purchase Order. Undertaking refurbishment works would be an additional cost to the Council's capital programme but should be recoverable through the re-sale of the property. The aim is that property A, acquired with CPO, will increase in value following renovation works, making the action cost neutral.
31. There is the risk that if the Council is unsuccessful at the public inquiry, the Council becomes liable for the objector's costs, which might include legal costs. However, if no objections are received, the CPO can be confirmed by the confirming authority without the need for a public inquiry.
32. The Council's Empty Homes capital programme provides £0.354M gross in 2018/19 and £0.3M gross for the remainder of the Medium Term Financial Plan (MTFP) period, with a reserves amount of £0.2M in each year of the MTFP (paragraph 5 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 increase value of the property, which should cover legal and compensation costs. For these reasons, a "back to back" sale is not recommended. This plan, is likely, therefore, to result in overspend within the year that the property is acquired.
33. 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.
34. If the CPO is not confirmed by the 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.

Equalities Implications

35. Compulsory Purchase Process and Crichel Down Rules (28 February Circular 2018) 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.

36. It is acknowledged that the service of a CPO may cause stress, however, there have been numerous communications with the Executor between 2014 and the present date (detailed in Appendix B), none of which have resulted in a response. The Council's Empty Homes officer has offered advice and assistance towards voluntarily bringing the property back into occupation. Property A is a two-bedroom end terraced house, which would be desirable and suitable for families in Central Bedfordshire.
37. The beneficiary of this estate will not lose financially on the value of the property, which will be professionally determined, and there is basic loss payment at 7.5% of the value. The Executor of the estate has opportunity to appeal against the Order if it is felt it is not justified. There is a separate right to challenge the value offered by the Council if considered insufficient.
38. It is acknowledged that this proposal will have an effect on the human rights of the beneficiary of the estate, however, on balance, given that the property has been registered as empty on the authority's council tax system since 1993. 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.
39. 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"*.
40. The order will affect the Article 1 rights of the present owner if confirmed by the Secretary of State. However, whilst rights are interfered with, the Council believes that this is justified in this case 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.
41. 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).

42. The Order will be made pursuant to section 17 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. The Council would argue that a property unoccupied since before 1993 does not provide its owner benefit from protection under this right, and that there is 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.
43. 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”*.
44. The Order, when made, will be publicised and all those affected by the Order will be notified and have the opportunity to make objections or representations 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/Inquiry.
45. 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.
46. Having paid due regard to the provisions of the Equality 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.

Conclusion and next Steps

47. There are a significant number of long term empty homes in Central Bedfordshire at a time of continued high housing need. The Council has been pro-active in progressing Empty Dwelling Management Orders, where properties are suitable. Compulsory Purchase Orders (CPO) can be used, however, for more intransigent cases where the opportunity to negotiate with owners has been exhausted and where the property is causing social problems; the 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 empty homes in the worst condition back into occupation.
48. 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.
49. It is recommended that the Council progresses 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 the CPO are covered by the increase in value resulting from complete renovation. Whilst this lengthens the process, it reduces financial risks to the Council and has the added benefit that the Council are in control of the process to bring the property back into use, which is not the case where there is a back to back sale.
50. As part of the CPO process, delegated authority should be provided to the Director of Social Care Health and Housing in consultation with the Executive Members, to dispose of property A, regardless of the resulting value.

Appendices

Appendix A: Property A Case Details

Exempt Appendix B: Cost Implications of CPO and Full postal address of Property A

Appendix B is exempt under Schedule 12A of the Local Government Act 1972, paragraphs 1, 2, 3 and 6 as it contains information relating to any individual, information which is likely to reveal the identity of an individual, information relating to the financial or business affairs of any particular person (including the authority holding that information) and information which reveals that the authority proposes:

- (a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or
- (b) to make an order or direction under any enactment.

Background Papers

None

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