

Enforced sale of a long term vacant and neglected, privately owned house.

Purpose

- 1.1 This report seeks Cabinet approval to initiate action to enforce the sale of a privately owned, but longstanding vacant house.
- 1.2 The property has stood unoccupied since the death of the proprietor in 2014. Since that time, it has remained neglected, and has become a source of complaint from local residents.
- 1.3 The substantial costs of the residential care provided for the proprietor in the latter years prior to her death remain unrecovered.
- 1.4 No council tax can be demanded from the property until either probate for the estate of the deceased proprietor has been awarded, or the property has been transferred.
- 1.5 No evidence is available of the long pledged application for probate for the estate of the deceased.
- 1.6 The action recommended will secure a transfer of the house, and its subsequent occupation will contribute towards the Council's New Homes Bonus income
- 1.7 There is a compelling case in the public interest for the Council to take enforcement action to ensure that the property is brought back into beneficial occupation, to facilitate the recovery of monies owed to the Council, and to enable the re-introduction of a council tax demand for the property
- 1.8 The report also recommends that the authority to initiate such action, where considered appropriate in relation to empty homes, be delegated to the Strategic Director of Corporate Resources in consultation with the Cabinet Members for Finance and Procurement and Governance and Licencing where attempts to recover monies owed to the Council and registered as legal charges, have been exhausted

Recommendations

- 2.1 That the Council takes action to enforce the sale of the house pursuant to the powers included in The Law of Property Act 1925.

- 2.2 That the Strategic Director of Corporate Resources be authorised, following consultation with the Cabinet Member for Finance and Procurement, to take possession of and dispose of the property and take all other necessary steps to initiate and progress the action recommended.
- 2.3 That, upon the sale of the property, the Strategic Director of Corporate Resources in consultation with the Cabinet Member for Finance and Procurement, be authorised to initiate such action as necessary, to recover monies owed to the Council and registered as legal charges.

Reasons

- 3.1 The Council is owed considerable monies for the unpaid residential care costs of the now deceased proprietor of the house identified in the Appendix to this report.
- 3.2 The house has been vacant for a number of years. The premises are in very poor condition and the subject of complaints from local residents. It's sale and re-occupation will eliminate the issues associated with this property being empty.
- 3.3 The course of action is recommended in order to:
 - 3.3.1 recover the outstanding residential care home costs.
 - 3.3.2 facilitate a transfer of the house in order to see it returned into use.
 - 3.3.3 enable the Council to recover demands for council tax receipts
 - 3.3.4 restore the house to becoming useful housing stock, thereby contributing to meeting the increasing housing needs in Derby and contributing to the Council's New Homes Bonus income.
 - 3.3.5 avoid the risk of common problems associated with empty buildings such as trespass, vandalism, fly tipping or anti-social activities.

Supporting information

- 4.1 The person recorded as proprietor of the property at HM Land Registry was for some years housed by the Council in residential care accommodation, until her death in 2014.
- 4.2 The house remains vacant and in the absence of maintenance continues to deteriorate. The garden is becoming unkempt and there is a dilapidating asbestos garage in the grounds. It has become the source of police call-outs and the subject of complaints from local residents.

- 4.3 The property and grounds continue to deteriorate, notwithstanding repeated assurances of an improvement from the deceased owner's son, and despite his longstanding commitment, his seeking probate for her estate remains unconfirmed - a Probate Registry search indicates that an application has not been submitted. Moreover, he has proved increasingly elusive. Over recent months, there has been no response to the many postal, email and telephone attempts to make contact. Officers have not been able to locate others who might hold/claim an interest in the estate.
- 4.4 Attempts to recover the residential care costs owing have been similarly frustrated. The costs owing are presently included as a Registered Charge against the property under Section 22 of the Health and Social Services and Social Security Adjudications Act 1983. Detail of the amount owed is included in the Appendix to this report.
- 4.5 The Council is statutorily barred from seeking council tax, until probate is awarded, or the property is transferred
- 4.6 Nationally and locally, housing need continues to increase, as the number of new homes provided falls behind requirements. The Right to Buy has reduced the availability of social housing stock across the city. Removal of the spare room subsidy from affordable housing has also increased the demand for primarily smaller housing accommodation. Current demographic trends indicate that demand for housing will continue to outstrip supply.
- 4.7 The Ministry of Housing, Communities & Local Government advises that local authorities, where appropriate, should make use of enforcement powers to tackle the problem of empty homes, as specifically included in the National Planning Policy Framework. The high priority of the re-use of unnecessarily vacant housing is also evidenced by the inclusion of empty properties in the New Homes Bonus scheme, which rewards Local Authorities for increasing the number of occupied houses in their area.
- 4.8 Action to enable the return of the unoccupied house to the useful housing stock accords with the council's Empty Homes Strategy.
- 4.9 The enforced sale proposals are in the public interest, as they will secure the Council's aim to increase housing supply within a reasonable timescale, and to recover monies owed to the Council.
- 4.10 The number of empty homes in Derby has declined over recent years due to the work of the empty homes team and increased demand for housing. In 2010 there were around 4,500 vacant homes, of which, around 2,500 were long-term empty. This has reduced to 3000 vacant homes with circa 1470 long-term empties
- 4.11 It is considered that all attempts to encourage promote a voluntary progress have been exhausted in relation to the subject house, although endeavours to promote a voluntary progress will continue throughout the enforced sale process, should it be approved.

Public/stakeholder engagement

- 5 Neighbours and other interested parties will continue to be updated.

Other options

- 6.1 Do nothing.

This is not considered appropriate. The Council needs to try to recover the monies owed, the property would remain a waste of potentially good housing, would continue to present a blight on the local neighbourhood, and the re-instatement of a demand for the payment of a council tax would not be available.

- 6.2 Compulsory purchase

Compulsory purchase proceedings are considered in this instance to be more protracted and more expensive to the council. Given the estimated high cost required to bring this property up to the Council's affordable housing standard, it is considered unlikely that it will be financially viable for the property to be added to the Council's own stock.

- 6.4 Empty Dwelling Management Orders

The level of works required to bring this property up to a lettable standard are likely to be significant. This reduces the likelihood of an EDMO succeeding as these costs will need to be met through subsequent rental income. Such action would also involve the eventual return of the property to the original owner. The present proprietor is deceased and the co-operation of those claiming an entitlement to her estate continues to be denied. This is not therefore considered a desirable option.

- 6.5 Other enforcement powers

The local authority has powers to deal with structural danger, nuisance or other environmental problems. These alone are piecemeal and reactive in nature and do not provide a long-term strategic solution.

Financial and value for money issues

- 7.1 The total valuation of the subject property is approximately £106,000.
- 7.2 If the enforced sale proceedings are successful, the council will take possession of the property and offer the property for open market sale by public auction or by way of closed tenders. The sale price is used as the basis for determining the market value of the property.

- 7.3 The person responsible for the estate of the deceased proprietor can appeal to the County Court against the proposed enforced sale action.
- 7.4 The council charge (residential costs owing) and the legal costs of processing this action can be recovered by the council from the proceeds of the sale. The amount outstanding remains in the estate of the deceased
- 7.5 New Homes Bonus received for increasing the occupied housing stock also mitigates this cost.
- 7.6 There remains the prospect that the person/s who can obtain probate, can on doing so, renovate the house themselves for occupation or sale, or sell the property in its existing condition.
- 7.7 The Enforced Sale of the property is a cheaper and quicker option for the Council in terms of returning the property into occupation.
- 7.8 Empty Homes enforcement proceedings have helped secure over £5.5m empty homes related New Homes Bonus funding since 2011. Since that date, the Council has recovered over £550,000 debt from empty homes owners.

Legal implications

- 8.1 In certain circumstances, as in relation to this property, the Council, as a local authority, can create a charge against a property which takes effect as if created by a deed of charge by way of legal mortgage within the meaning of The Law of Property Act 1925.
- 8.2 The Act authorises the Council to serve notice under Section 103 of the Act, 3 months after which, if the debt is not paid, the authority can sell the property to recover that owing. On sale, the legal costs in undertaking the enforced sale procedure, conveyancing costs in connection with the sale, auctioneer's or other marketing costs, and other officer time in relation to the enforced sale process can be recovered from the sale proceeds.
- 8.3 The balance is then paid over to the ex-owner of the property. If the identity of the actual inheritor of the property has not been determined, the money will be retained by the council. After 12 years the right to claim it will be lost.
- 8.4 Individual rights of the owner are protected by the right of appeal to the County Court against the action.
- 8.5 The council needs to consider the provisions of Article 1 of the First protocol to the European Convention on Human Rights (right to peaceful enjoyment of possession) and Article 8 of the Convention (right to respect for a private and family life, a home and correspondence). The council also needs to consider the public sector equality duty. Cabinet must therefore be satisfied that the proposed Enforced Sale proceedings are in the public interest.

8.6 In view of the lack of cooperation from the only person identified as holding a possible interest in the property, and that the proposed action accords with Department of Communities, Housing and Local Government guidelines, it is considered that the action proposed is necessary and proportionate, and makes lawful the interference with the individual rights of the property owner.

Other significant implications

9.1 Health and Safety

The action will remove the threat to health and safety of neighbours or others passing the property, resulting from the deterioration of already poor structures and grounds.

9.2 Environmental Sustainability

The proposals will remove the environmental blight empty dwellings can present to local neighbourhoods.

Improved insulation and energy efficiency measures can be incorporated into the renovation of empty homes.

9.3 Property and Asset Management

The proposals will bring a vacant home into use.

9.4 Corporate objectives and Priorities for Change

This proposal supports commitments within the Council Plan to create additional available housing and improve existing housing

This report has been approved by the following people:

Role	Name	Date of sign-off
Legal	Olu Idowu	2/11/18
Finance	Don McLure	9/11/18
Service Director(s)	Greg Jennings	12/11/18
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