



Derby City Council

**COUNCIL CABINET**  
**13 MARCH 2012**

**ITEM 9**

Report of the Strategic Director of  
Adults Health and Housing

## **Compulsory acquisition of long term empty houses**

### **SUMMARY**

- 1.1 This report seeks Cabinet approval to initiate compulsory purchase proceedings in relation to 6 long term vacant houses.
- 1.2 The houses have stood vacant and neglected for some years and have been the source of nuisance to, and complaint from local residents.
- 1.3 The aim of the Council's Empty Homes Strategy is to encourage and persuade owners of such properties to take action to enable the satisfactory renovation of empty houses, to facilitate re-occupation, and thereby make a contribution towards both meeting the housing need in the City, and removing the increasing environmental nuisance that neglected properties can present.
- 1.4 In the absence of an acceptable response, and where appropriate, it is considered that there is a compelling case in the public interest for enforcement action by the Council, to ensure that this aim is achieved.
- 1.5 Over recent years, the use by the Council of compulsory purchase powers has been productive in ensuring the return of problem houses to the useful housing stock.

### **RECOMMENDATIONS**

- 2.1 That the Council makes Compulsory Purchase Orders under section 17 and Part XVII of the Housing Act 1985, and the Acquisition of Land Act 1981 for the acquisition of the houses identified in Appendix 2, together with the land associated with them, and as shown edged in bold on the plans attached at Appendix 3, for the purposes of their renovation and reoccupation as housing accommodation.
- 2.2 That the Strategic Director of Adults Health & Housing be authorised, in consultation with the Director of Legal & Democratic Services and the Head of Estates to:
  - 2.2.1 take all necessary steps to secure the making, confirmation and implementation of the Compulsory Purchase Orders including the publication and service of all notices and the presentation of the Council's case at any public inquiries
  - 2.2.2 to acquire interests in the properties within the Compulsory Purchase Orders either by agreements or compulsorily; in consultation with the Head of Estates

- 2.2.3 suspend the compulsory purchase order proceedings in relation to any particular property, or withdraw an Order, on being satisfied that the subject house will be satisfactorily renovated and re-occupied without the need to continue the purchase proceedings in relation to that property
- 2.2.4 take all necessary action to acquire and obtain possession of the properties included in the Compulsory Purchase Orders, either compulsorily or by agreement, and to deal with all matters relating to the payment of compensation and statutory interest including the instituting or defending of proceedings as necessary
- 2.2.5 dispose of the properties in accordance with the proposals set out in this report
- 2.2.6 take all other necessary action to give effect to these recommendations

### **REASON FOR RECOMMENDATIONS**

3. The properties concerned have been vacant for a number of years and all avenues open to the Council to encourage the respective owners to bring them back into use by voluntary means have proved unproductive

### **SUPPORTING INFORMATION**

- 4.1 At its meeting on 21 February 2012, the Cabinet approved the Council's Private Sector Empty Homes Strategy. This Strategy provides for the use of compulsory purchase powers in respect of long term empty properties in the city, as a last resort when all other endeavours to persuade, encourage, or enforce action to facilitate re-occupation have failed.
- 4.2 Previous Compulsory Purchase Orders in respect of other empty or badly managed properties have been confirmed by the Secretary of State, and the houses included have been, or are in the process of being, returned to the useful housing stock.
- 4.3 The properties, which are detailed in Appendices 2 and 3, have been unoccupied for a considerable time, and will require substantial investment to bring them up to a habitable and otherwise acceptable condition. Exhaustive, but unsuccessful efforts have been made by the Council over recent years to persuade and encourage the various owners, where known, to improve their properties.
- 4.4 The Council is willing to assist present owners to achieve market value sales.
- 4.5 Anti-social and criminal activities at some of the properties have necessitated attendance by the emergency services, with the associated health and safety risks to the response officers.
- 4.6 The proposed action is considered as a last resort, in the public interest, as the only reasonable means remaining available to ensure acceptable improvements to the properties, and to provide a good standard of housing accommodation in response to the increasing housing needs and demands in the city.

- 4.7 Following the Council taking possession of the individual houses, it is proposed that transfer to Derby Homes is explored at values provided by the District Valuer, or that the properties will be sold at auction (save for exceptions where in the opinion of the Head of Estates, sale by either Private Treaty or Tender would be a more appropriate method of achieving market value); the transfer/sales are to include a condition that the accommodation is brought to a standard no less than the minimum standards prescribed under Housing and other relevant legislation and statutory guidelines, and to provide its occupation within twelve months of transfer, or such other period considered reasonable.
- 4.8 The market value as evaluated by the District Valuer, or as realised, at the auction sale should substantially cover the compensation claim of the current owner, as reviewed in the financial comments.
- 4.9 The encouragement of voluntary action by the current owners will continue, but it is considered that the Compulsory Purchase Order should be made in order to secure the improvement/re-use of the properties, should those efforts prove unsuccessful.
- 4.10 One or more of the properties can be withdrawn from these compulsory purchase proposals, or the Compulsory Purchase Order not implemented in respect of them, if satisfactory progress by the owner becomes evident in the meantime.

<b>OTHER OPTIONS CONSIDERED</b>
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5.1 Do nothing.

This is not considered an appropriate option. The properties, in their present condition, would remain a waste of potentially good housing accommodation, and in the continued absence of maintenance and proper management would become an increasing environmental blight on their respective neighbourhoods.

5.2 Enforced sale

The Law of Property Act 1925 empowers a local authority to enforce the sale of a property where it holds a Local Land Charge against it. The Council is in the throes of initiating such action at other properties but those debts to the Council at the report properties are considered inadequate to substantiate the use of enforced sale procedures.

5.3 Empty Dwelling Management Orders

Local Authorities can consider making Empty Dwelling Management Orders under the Housing Act 2004 to address the improvement and future use of empty dwellings. However, such action is not considered appropriate in the particular circumstances of the report properties.

5.4 Other enforcement powers

Various legal powers are available to a local authority to improve the condition of a neglected building, for example, to deal with structural danger, nuisance or other environmental problems. However these alone would not address the suitability of

the accommodation for occupation, the ongoing upkeep of the building, nor the future management of the property. These measures can only be viewed as piecemeal, reactive and relatively expensive short term approaches and do not provide the long term solution presented by the report proposals.

**This report has been approved by the following officers:**

<b>Legal officer</b> <b>Financial officer</b> <b>Human Resources officer</b> <b>Service Director(s)</b> <b>Other(s)</b>	Clare Wasteney Peter Shillcock  Brian Frisby Ian Fullagar Jonathan Webster
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<b>For more information contact:</b> <b>Background papers:</b> <b>List of appendices:</b>	Name Brian Salt tel : 01332 256329 e-mail brian.salt @derby.gov.uk None Appendix 1 - Implications Appendix 2 - Property Details and Histories - CONFIDENTIAL Appendix 3 – Plans - CONFIDENTIAL
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<b>IMPLICATIONS</b>
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**1. Financial and Value for Money**

- 1.1 The Council, as the acquiring authority, will be able to argue that the property value as evaluated by the District Valuer, or as achieved at auction, if obtained close to the valuation date for the Compulsory Purchase Order and in the absence of any other variables, should also be adopted as the appropriate market value compensation level. These have to be held as reasonable bases of valuation but is open to appeal to the Upper Tribunal (Lands Chamber), and although unlikely and rare, could result in the determination of a higher value. These risks are mitigated by a close and effective working relationship with the Council's Legal and Asset Management officers, and have not been an issue previously. This, and the addition of surveyors' fees and legal costs, could result in the Council incurring a deficit between the property value assessed by the District Valuer or that achieved at auction sale, and the total outlay.
- 1.2 The cost of the proposed acquisitions will therefore, subject to the points made in 1.1 above, be restricted to a maximum of the statutory provisions for compensation payments and the administrative costs of the enforcement and purchase.
- 1.3 The administrative and procedural costs in 1.1 and 1.2, along with valuation and conveyance fees, are expected to be significantly less than the estimated maximum potential loss of £65,000, and will be fully contained within the budget for the Housing Capital Programme.
- 1.4 Any capital receipt from the transfer/auction of the properties will need to be ring-fenced for the discharge of the Council's compensation obligations.
- 1.5 The costs of administering and enforcing the Order will be compensated by;
  - (i) facilitating the recovery of any outstanding Council Tax dues
  - (ii) the recovery of previous costs incurred by the Council, in carrying out work in the owner's default
  - (iii) the increase in Council Tax to be recovered on re-occupation
  - (iv) the payment to the Council of a New Homes Bonus equivalent to the level of the Council Tax for the individual houses for a period of 6 years
  - (v) the saving of the cost of officer resources in responding to problems from, and complaints about the houses,
  - (vi) the saving of the costs of the emergency services having to respond to empty building problems, and
  - (vii) eliminating the intensive, but unproductive, communications with the uncooperative owners

## **2. Legal**

- 2.1 The Council has the power under s17 of the Housing Act 1985 to acquire land by way of compulsory purchase (land in this instance includes houses) for housing purposes.
- 2.2 Part XVII of the Housing Act 1985 applies to the compulsory purchase. This in turn 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).
- 2.3 The Compulsory Purchase Order must be advertised locally and copies served on all owners, lessees or reputed lessees, tenants or reputed tenants (other than lessees), and occupiers (except tenants for a month or less). If any statutory objector (a statutory objector can be an owner, lessee or occupier, not a licensee or tenant for one month or less of land within the Order) has objected within the stipulated period and not withdrawn the objection, the Secretary of State can :
  - cause a public local inquiry to be held;
  - afford the objector an opportunity of appearing before and being heard by a person appointed by the Secretary of State, or
  - with the consent of the objector, follow a written representations procedure, and then consider his findings before determining whether or not to confirm, quash or modify the Order.
- 2.4 In the event that there is no objection, the Secretary of State may, in certain circumstances, permit the Council to confirm the Order.
- 2.5 The confirmation of the Order may be challenged on a point of law within 6 weeks of the publication of such confirmation. Any dispute as to the amount of compensation to be paid is referred for determination by the Upper Tribunal (Lands Chamber).
- 2.6 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 as follows:-
  - a) Article 1 (of the First Protocol)

This protects the right of everyone to the peaceful enjoyment of possessions. No one can be deprived of possessions except in the public interest and subject to the relevant national and international laws.
  - b) Article 6

This provides that in determining civil rights and obligations ... everyone is entitled to a fair and public hearing within a responsible time by an independent and impartial tribunal established by law.
  - c) Article 8 (of the Convention)

This protects private and family life, home and correspondence. No public authority can interfere with these interests except if it is in accordance with

the law and is necessary in the interests of national security, public safety or the economic well being of the country.

d) Article 14 (of the Convention)

This protects the right to enjoy rights and freedoms in the Convention free from discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, or national or a social origin.

- 2.7 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. In this case, compulsory purchase of land is permitted under the terms of the Housing Act 1985 and is subject to a statutory procedure (giving rights to consultation and to be heard at a Public Inquiry) which is being followed. In addition, compensation is payable making the action fair and proportionate. Furthermore, in relation to Article 14, everyone is treated equally in the context of the policy covering the relevant issues and is subject to the same process/procedure.
- 2.8 It is considered that there is a compelling case in the public interest for the acquisition of the properties considering the benefits it will bring to Derby which would not be achieved by agreement and which outweigh the loss that will be suffered by the current landowners. The proposed Compulsory Purchase Order is therefore considered to be compatible with the Convention.

### **3. Personnel**

- 3.1 There are no specific Personnel implications arising from this proposal.

### **4. Equalities Impact**

- 4.1 None directly arising, but the proposal does seek to target resources at the more vulnerable private sector residents.

### **5. Health and Safety**

- 5.1 The proposal seeks to target resources at tackling the health impacts of private sector housing conditions.
- 5.2 The proposals target directly the health and safety implications for the public in general, for investigating officers, and for the emergency services

### **6. Environmental Sustainability**

- 6.1 The proposals will restore longstanding vacant and neglected houses to the useful housing stock, and will remove the environmental blight that they presently present to local neighbourhoods.

### **7. Asset Management**

- 7.1 The proposals will restore presently wasted houses to the useful housing stock in the city

## **8. Risk Management**

### **8.1 Risks identified**

- objections to where the funding is being spent
- delays and costs of protracted procedures of compulsory purchase action
- applications for permission to acquire houses compulsorily being refused by the Secretary of State
- the potential for appeal to the Upper Tribunal (Lands Chamber) determining a true market value over the transfer/auction sale price

The above risks have been mitigated by :

- doing nothing is not considered an acceptable option
- other alternative actions have been eliminated as unachievable or inappropriate
- costs balanced by other savings or incomes
- procedural delays are unavoidable, but acceptable in relation to the progress made
- preparing convincing submissions that the Council's actions are appropriate and achievable
- the unlikely risk of market value levels exceeding those realised by way of statutory appeal is mitigated by a close and effective working relationship with the City Council's Legal and Asset Management officers. Any such costs can be contained within the Empty Homes Programme line of the Housing Capital Programme.

## **9. Corporate objectives and Priorities for Change**

### **9.1 This proposal supports the following commitments within the Council Plan:**

- a) more good quality and affordable housing
- b) a better built and natural environment
- c) delivering improvements to private sector housing conditions
- d) more vulnerable people supported to live independently, including those supported through private sector housing initiatives
- e) less crime
- f) less fear of crime and anti-social behaviour
- g) more empty, private sector homes returned to use
- h) less household carbon emissions
- i) fewer complaints
- j) better level of satisfaction with Council services
- k) improved satisfaction levels with the city among local people
- l) using resources in the most efficient and effective way