

EAST HERTS COUNCIL

EXECUTIVE – 6 OCTOBER 2015

EXECUTIVE MEMBER FOR HEALTH AND WELLBEING

COMPULSORY PURCHASE OF A LONG TERM EMPTY PROPERTY

WARD(S) AFFECTED: Hertford Castle

Purpose/Summary of Report

- This report recommends that the Council gives authority for the acquisition of an empty property in Hertford voluntarily or through the use of compulsory purchase powers. **Essential Reference Paper 'B'** gives the address of the property referred to in this report as Property X or the property.
- The report gives the background to this proposal by outlining the housing need in this area and the current empty homes situation and then gives the case history for the work already undertaken in seeking to bring this property into residential use.
- The relevant statutory powers and current guidance are set out together with an outline of the process towards confirmation of the Compulsory Purchase Order (CPO).
- The reasons and justification for proposing this CPO are given as are the considerations for Human Rights and Equality.

<u>RECOMMENDATIONS FOR EXECUTIVE:</u> That:	
(A)	authority be given for the acquisition of the land comprising the property identified in the report submitted, either voluntarily or through a compulsory purchase process;
(B)	the Director of Neighbourhood Services be authorised to make a compulsory purchase order to be known as the District Council of East Hertfordshire (<i>Property X</i>, Hertford) Compulsory Purchase Order, under Section 17 of the Housing Act 1985, in respect of the land and property indicated on a map marked with the name of the

	Compulsory Purchase Order, where the words “Property X” will be replaced with the full address of the property;
(C)	the Director of Neighbourhood Services be authorised to fix the common seal of the Council to the necessary documents and make an application to the Secretary of State for confirmation of the Order;
(D)	the Director of Neighbourhood Services be authorised to confirm the Order following the passing of this responsibility from the Secretary of State;
(E)	the Director of Neighbourhood Services be authorised to acquire the necessary interests in the land and property included in the confirmed compulsory purchase order by means of a general vesting declaration, on terms to be agreed by the Director of Neighbourhood Services or on terms ordered by the Lands Tribunal;
(F)	the Director of Neighbourhood Services be authorised to determine and to follow the most appropriate course of action for the property following the options appraisal undertaken as set out in the revised Empty Homes Strategy 2016 to 2020, which may include an appropriate amount of works to be carried out to the property while it is in the Council’s possession to deal with issues of safety and security, to abate environmental nuisances and to prepare the property for marketing, the costs incurred in carrying out these works to be recovered from the rental income or resale price;
(G)	subject to the results of the options appraisal in (F) above, the Director of Neighbourhood Services be authorised to dispose of the freehold interest in the property, on the open market, by what he considers the most suitable method and otherwise on terms and conditions to be agreed by the Director of Neighbourhood Services; and
(H)	a budget based on the financial information in Essential Reference Paper ‘C’ be set for undertaking this CPO.

1.0 Background

- 1.1 Empty homes are a wasted resource and have a negative effect leading to a decline in the neighbourhood. They can cause a potential nuisance to adjoining properties by attracting fly tipping, infestation of rodents, vandalism, unauthorised entry and other anti social behaviour.
- 1.2 The number of privately owned dwellings in East Hertfordshire as reported in the Council Tax base return for October 2014 as empty for longer than six months was 415.
- 1.3 The total number of dwellings in the district as reported in the same Council Tax base return was 59,783 dwellings.
- 1.4 The number of households on the Council's Housing Needs Register at 15 Sept 2015 is 2,147, of which 1,097 have expressed an interest in living in Hertford. We have housed 694 households since 1 April 2014. We have accepted applications and registered for housing 366 households since 1/4/2015.
- 1.5 The East Herts approach to tackling empty homes is explained in the Council's Empty Homes Strategy which is currently being revised and will be presented to Scrutiny on 17 November 2015 followed by consideration by Executive on 1 December 2015. We aim to encourage those who own empty homes to bring them back into use voluntarily and so our approach is focused initially on engaging with the owners offering support, advice and, where appropriate, offering grants, or the opportunity to make use of leasing schemes or other arrangements with housing providers.
- 1.6 Where, after repeated attempts, we are unable to enter dialogue with an owner or where an owner refuses to consider bringing back their property to use, we will consider taking enforcement action.
- 1.7 This is in line with our Private Sector Housing Enforcement Policy which states that "The Service's approach is to give informal advice, information and assistance when possible. Where this approach fails, or it is necessary to protect the health, safety or welfare of persons or the environment, the service will take necessary enforcement action".
- 1.8 The Council is part of a Consortium of councils that are delivering the PLACE project designed to bring long term empty properties

back into use using funding provided from central government. This finance can also be used for certain costs associated with enforcement action including the use of CPOs where the intention is to sell the property on vesting.

2.0 Case History

- 2.1 The address of the property is contained in **Essential Reference Paper B**. The information is confidential because it has been judged to be personal information.
- 2.2 The property is a 3 storey mid terraced house in a road comprising properties of similar construction built towards the end of the 19th Century. It is situated in a mainly residential area having had extensive residential development over the past decade. It is within easy access of the town centre, local parks and is approximately 5 minutes walk from the nearest train station. The majority of the other properties within the area are in a good habitable condition, well maintained and occupied.
- 2.3 The property has been empty since 2005 and complaints have been received from adjoining property owners and other members of the public concerning its derelict condition and its negative effect on neighbouring dwellings and the surrounding area.
- 2.4 The Council's Empty Property Officer has written to the owner at his last known address and at the empty property address (given as the owners address on the Land Register) on various occasions between 2012 and 2014 offering assistance if required to bring the property back into use, and requiring the completion and return of a Requisition for Information about the property's ownership served on him under Section 16 of the Local Government (Miscellaneous Provisions) Act 1976, and asking that he provides details of how he intends to return this long term empty property back into use. To date there has been no response from the owner. On two occasions the owner was served with notice of intended entry as required under the Housing Act 1985 and the Housing Act 2004 but on neither occasion did the owner attend the property.
- 2.5 The property is in a run down condition with broken windows and rotten wood work to the rear. The rear garden is overgrown and the shed has a collapsed roof. Neighbours in the same street have tried to maintain the front of the property to the benefit of the street as a whole and have painted the front door and window

frames some years ago.

- 2.6 No full internal inspection of the property has been possible although some of the ground floor is visible through the rear window. It is believed that the property has three bedrooms across the 1st and 2nd floors with a living room on the ground floor front and a kitchen on the ground floor rear. The bathroom is in a flat roofed, single storey rear addition. It appears that some works were commenced in the kitchen, but these have been abandoned. There is water dripping from the kitchen sink overflow to the rear of the property and neighbours have attempted to divert this away from the kitchen wall using sections of guttering.
- 2.7 The property has been valued by the Council's Assets and Estates Manager although this is a best estimate as no internal inspection has been possible to assist the valuation, this valuation is given in **Essential Reference Paper 'C'**. (A valuation by the District Valuer will be requested prior to entering negotiation with the owner on compensation.)
- 2.8 An exercise has been undertaken, which led to officers determining that the most appropriate method of enforcement for this property is compulsory purchase.
- 2.9 Based on the complaints received by the neighbours and the lack of involvement by the owner of this empty property it is considered that there is a compelling case in the public interest for the acquisition of the Property considering the benefits it will bring to the District which outweigh any detriment that may be suffered by the current landowners. The proposed Compulsory Purchase Order is therefore considered to be compatible with the European Convention on Human Rights.
- 3.0 Legal Powers and use of Compulsory Purchase
- 3.1 The Council has the power under s17 of the Housing Act 1985 to acquire land by compulsory purchase (land in this instance includes houses) for housing purposes. This section specifically includes the acquisition of houses, or buildings which may be made suitable as houses, together with any land occupied with the houses or buildings. The guidance on the compulsory purchase process ODPM Circular 06/2004 includes bringing empty properties into housing use as one of the main uses of the power.

- 3.2 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).
- 3.3 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.
- 3.4 As with all empty homes work the Council would prefer to bring this property back into use with the cooperation of the owner. If the use of CPO powers is agreed by this committee the owner will be written to requesting voluntary purchase of the property.
- 3.5 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. 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.
- 3.6 The process for making and confirming a CPO then taking ownership of the property and selling it to achieve future occupation requires the following steps:
 - 3.6.1 Following proper authorisation within the Council the Council must make and seal the order together with the order map. It must also prepare a statement of reasons.
 - 3.6.2 Copies of these must then be served on all parties with an interest in the dwelling (in this case the owner and the mortgagee) and placed on deposit. A notice stating that the CPO has been made must be displayed on site and a similar notice must be placed in a local newspaper for two consecutive weeks. At the same time the original CPO and map are sent to the National Planning Casework Unit (NPCU) which deals with the CPO on behalf of the Secretary of State.

- 3.6.3 There is then a period during which objections may be sent to the NPCU (a minimum of 21 days but in this case anticipated to be at least one month). Any objections received by the NPCU will be forwarded to the council.
- 3.6.4 If no objections are made or if those that are made are withdrawn, the Secretary of State may allow the authority to confirm the CPO (this is done by adding a signed and dated endorsement to the CPO stating that it has been confirmed).
- 3.6.5 If an objection is made by the owner or the mortgagee and not withdrawn the objection will be dealt with by either written representations or by a public inquiry and the Secretary of State will then determine whether to confirm, modify or quash the Order.
To encourage an owner not to make, or to withdraw, an objection the Council may agree an undertaking with the owner that, provided he takes specific steps to refurbish and achieve reoccupation to an agreed timetable the Council, having had the unopposed CPO confirmed, will not enforce it.
- 3.6.6 The confirmation of the Order may be challenged on a point of law within 6 weeks of the publication of such confirmation.
- 3.6.7 At this point a final options appraisal will be undertaken as set out in the Empty Homes Strategy 2016-2020 (this strategy to be submitted to the Executive Committee for approval later this year). This may result in the following outcomes after confirmation of the CPO either:
- 3.6.8 The Council may enter into and monitor an agreement as in 3.6.5 to bring the property into use within a specific time, OR
- 3.6.9 the Council may take ownership of the property by way of a General Vesting Declaration GVD and then:
- 3.6.9.1 The property may be sold by the Council, inserting a covenant into the contract requiring that the property be improved to a habitable condition within a specified date and that afterwards reasonable

steps be taken to secure occupation.

3.6.9.2 The property may be sold by the Council after undertaking improvement works to enhance its value.

3.6.9.3 The Council may undertake works to bring the property to a lettable condition and then make it available for rent

4.0 Reasons for the Decision and the Justification for Making the Proposed CPO

4.1 ODPM Circular 06/2004 provides guidance as to the factors the Secretary of State can be expected to consider when considering the CPO and explains the factors that should be included in a statement of reasons.

4.2 The key test is that a CPO should only be made where there is a compelling case in the public interest and that the purposes for which a CPO is made sufficiently justify interfering with the human rights of those affected.

4.3 As the property in question:

- has been left empty and is becoming derelict
- has been subject to complaints from neighbours
- is in an area of housing need
- could be returned to use as a much needed 3 bedroom family home, and
- as the owner has failed to cooperate with the Council's efforts to engage with him to bring the property back into use voluntarily,

it is considered that there is a compelling case for intervention by means of a CPO.

4.4 Paragraph 9 of Appendix E (Orders made under housing powers) to the Circular, states that "When considering whether to confirm a compulsory purchase order the Secretary of State will normally wish to know how long the property has been vacant; what steps the authority has taken to encourage the owner to bring it back into acceptable use; the outcome; and what works have been carried out by the owner towards its reuse for housing purposes". Officers believe that the steps shown in the case history above

will prove sufficient to justify the use of a CPO.

5.0 Financial Considerations

- 5.1 There is no budget currently identified for undertaking empty homes work including the costs associated with undertaking a CPO, however there are costs involved that will not be recovered from the sale of the property.
- 5.2 The CPO costs may be recovered from the PLACE consortium if the property is subsequently sold as described in paragraph 3.6.9.1.
- 5.3 Where works are undertaken by the Council to enhance value of the property, as described in paragraph 3.6.9.2, CPO costs could be recovered from the additional value realised on completion.
- 5.4 Where the property is made available for rent, as described in paragraph 3.6.9.3, the Council could include the CPO costs in the capital cost of the asset acquisition and fund such costs from the capital programme.
- 5.5 The estimated costs of making and implementing this CPO are as set out in **Essential Reference Paper 'C'**. The information is confidential because it relates to the financial affairs of the Council.

6.0 Human Rights and Equality Act 2010 Considerations

- 6.1 Circular 06/04 advises acquiring authorities that compulsory purchase orders 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 (see in particular paragraphs 2.8, 3.3, and 4.2-3 of this report).
- 6.2 Officers acknowledge that this proposal will have an effect on the human rights of the owner of the property however, on balance officers recommend 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.

Article 1 of the First Protocol

6.3 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”

6.4 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.

Article 8

6.5 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.”

6.6 Article 8 is a qualified right and interference can be justified in appropriate cases with reference to Article 8(2).

6.7 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 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.

Article 6

6.8 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”

6.9 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 falls to be determined by the Upper Tribunal, a court established by law.

Application of Human Rights to the Order

6.10 In pursuing this Order officers of the Council have carefully considered the balance to be struck between individual rights and the wider public interest.

6.11 To the extent that the Order would affect those individual rights, officers recommend that the Council finds that the proposed interference with them would be in accordance with the law, proportionate and necessary in the public interest in order to secure the development of the Order Land and improvements and benefits that the Scheme will bring.

6.12 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.

- 6.13 Appropriate compensation will be available to those entitled to claim it under the relevant provisions of the compensation code and any disputes over compensation are determined by an impartial tribunal established by law.

Equality Act Considerations

- 6.14 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.

- 6.15 The Council considers that the proposal is fully compliant with the Equality Act. The Order required to facilitate the proposal is not anticipated to have any additional effects. The requirements of the appropriate Council Enforcement Policies which take into account Equality Impacts have been followed.

7.0 Implications/Consultations

- 7.1 Information on corporate issues and consultation with this report can be found within **Essential Reference Paper 'A'**.

Background Papers

None

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