

EAST HERTS COUNCIL

EXECUTIVE – 27 JUNE 2017

REPORT OF THE EXECUTIVE MEMBER FOR HEALTH AND WELLBEING

COMPULSORY PURCHASE OF A LONG TERM EMPTY PROPERTY

WARD(S) AFFECTED: Bishop's Stortford Central

Purpose/Summary of Report

- This report recommends that the Council gives authority for the acquisition of an empty property in Bishop's Stortford Central ward either with the voluntarily agreement of its owner or, if this is not possible, through the use of the Council's 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 proposal for a Compulsory Purchase Order (CPO), should a voluntary agreement not be struck, is supported by outlining the housing need in this area and the current empty homes situation. The report provides the case history and the work already undertaken to bring this property into residential use.
- The reasons and justification for proposing this potential CPO are given, as are the Human Rights and Equalities considerations.

RECOMMENDATIONS FOR EXECUTIVE: That:

(A)	1. the land comprising the property be acquired by East Herts Council either with the voluntarily agreement of the owner or through a compulsory purchase process, with the purchase not proceeding only if the owner makes arrangements, to the Council's satisfaction, prior to acquisition for the property to return it to residential use, such that the full costs can be met from (i) onward disposal of the property, (ii) reimbursement from the sub-regional PLACE (Private Lease Agreements for Converting Empties) programme and (iii) existing budgets, with any future need to allocate additional resources subject to future
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member approval

- 2. should a voluntary agreement to purchase the property be made, authority be delegated to the Property Manager , acting in consultation with the Head of Housing & Health, to carry out the necessary processes to acquire the property for an acceptable consideration**

- 3. should compulsory purchase be required:**
 - a. authority be delegated to the Head of Housing & Health to make a compulsory purchase order to be known as the District Council of East Hertfordshire (Property X [address to be given in the order], Bishop's Stortford) 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**

 - b. arrangements be made for the common seal of the Council to be affixed to the necessary documents**

 - c. authority be delegated to the Head of Housing & Health in consultation with the Head of Legal and Democratic Services to make an application to the Secretary of State for confirmation of the Order**

 - d. authority be delegated to the Head of Housing & Health in consultation with the Head of Legal and Democratic Services to confirm the Order following the passing of this responsibility from the Secretary of State**

 - e. authority be delegated to the Head of Legal and Democratic Services to prepare for a Public Inquiry and defend the Order should objections be made and the matter requires a public inquiry to proceed**

 - f. authority be delegated to the Property Manager, acting in consultation with the Head of Housing & Health, to acquire the necessary interests in**

	<p>the land and property included in the confirmed compulsory purchase order by means of a general vesting declaration, for an acceptable consideration or on terms ordered by the Lands Tribunal</p> <p>4. the property, if acquired, be sold on in the open market as soon as practicable and to enable this the Property Manager be required to (a) arrange for such essential works to the property while it is in the Council's possession so as to deal with any immediate issues of safety and security, (b) abate environmental nuisances, (c) prepare the property for marketing and (d) dispose of the freehold interest in the property, on the open market, by most suitable method to achieve best consideration on terms and conditions to be agreed with the Head of Strategic Finance</p>
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REPORT

1.0 Background

- 1.1 Empty homes as well as being a wasted resource can have a negative impact on the neighbourhood and can cause a reduction in value of nearby properties. There is also the potential for rodent infestation, unauthorised entry and vandalism, fly-tipping and other anti-social behaviour.
- 1.2 The number of privately owned dwellings in East Hertfordshire that were empty for longer than six months was 413 in the Council Tax base return for October 2016 (out of a total number of 61,164 dwellings in the district).
- 1.3 East Herts Council's Empty Homes Strategy seeks to encourage owners of empty homes to voluntarily bring them back into use. We take great effort to contact owners and offer advice and support according to their aspiration for their property. The offer of grants, or the opportunity to make use of leasing schemes or other arrangements with housing providers are other options provided.
- 1.4 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.

1.5 The Council is part of a Consortium of councils that are delivering the PLACE (Private Lease Agreements Converting Empties) project designed to bring long term empty properties back into use, in whatever way, using funding provided from central government. This finance can also be used for certain costs associated with enforcement action including the use of CPOs.

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 of similar properties that were built in 1901. It is situated in a mainly residential area within access of Bishop's Stortford town centre it is accessed via a footpath set back from the main road. The majority of the other properties within the area are in a good habitable condition, well maintained and occupied, however this property is in a particular state of disrepair.

2.3 The property has been empty since July 2008 apart from a six week period of occupancy in 2011. Several complaints have been made by adjoining property owners and other members of the public in regards to its poor condition and the negative effect the property is having in the vicinity.

2.4 The property is currently in a very neglected condition. The flat roof over the ground floor kitchen and bathroom is in a poor state with a partial ceiling collapse in the kitchen. Neighbours have tried to maintain the garden at the front of the property to the benefit of the terrace as a whole.

2.5 An internal inspection of the property has not been carried out as there has been no permitted access, although some of the ground floor is visible through the front and rear windows.

2.6 With regard to officers' actions to date to return the property to use, between 2010 and 2017:

- the Empty Property Officer has written to the owner at the last known address on several occasions and also at the empty property address (given as the owners address on the Land Register) and offered assistance to bring the property back into use
- a request was delivered for the completion and return of a Requisition for Information about the property's ownership served under Section 16 of the Local Government (Miscellaneous Provisions) Act 1976
- queries were made as to the owner's intentions on how the property was going to be brought back into use
- there has been no response from the owner over the past two years
- 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. At the time of serving the notice, the owner was asked to make contact to discuss any help we could provide

2.7 In line with the Council's current Empty Homes Strategy a number of properties have been identified as high priority for further action based on factors including: the length of time the property has been empty, the property's location and condition of the property and the number of complaints received about the property. Officers are carrying out further work with each of these properties, endeavouring to enter into dialogue with the owners to bring the properties back into occupation.

2.8 The property considered in this report is included within the high priority group with a particularly high level of complaints. The lack of action to date by the owner coupled with the lack of engagement with the Council suggests that voluntary moves by the owner to bring this dwelling back into residential use are very unlikely.

2.9 In line with the Council's Private Sector Housing Enforcement Policy and the Empty Homes Strategy officers have carried out an exercise to determine the most appropriate method of enforcement for the property (see **Essential Reference Paper**

‘D’). The options considered as alternatives to Compulsory Purchase included:

- Enforced Sale using the Law of the Property Act 1925. This is primarily a debt recovery process and as there is no current debt to the council this option is not available for this property.
- Empty Dwelling Management Orders under the Housing Act 2004. This would allow the Council to take management control of the property for a period of up to 8 years. The property would have to be brought up to standard before any tenants could occupy the property and it was determined that the overall cost to the council may not be recovered through the rental income. Therefore an EDMO has not been pursued.

2.10 Thus, based on the lack of involvement by the owner of this empty property and the complaints received by neighbours, officers consider that there is a compelling case in the public interest for the acquisition of the property. Whilst compulsory purchase is considered an option of last resort, it is considered that the benefits compulsory purchase will bring 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 – see more detailed discussion of this below.

2.11 Officers have considered the use of the property should it be acquired by the Council. The options, along with officers’ views on each, are as follows:

Option	Officers’ comments
Retention by the Council for letting to those in housing need / homeless	<ul style="list-style-type: none"> • The property will require extensive works to enable it to be let • The Council does not retain any properties for letting to this client group • Recovery of full costs from the PLACE project would not be possible as these are only available for onward sale <p>Option REJECTED</p>
Onward sale to a housing company, should the Council	<ul style="list-style-type: none"> • The Council has no such company at present • Such a company, if established,

establish one in the future	would most probably wish to focus on properties particularly suited to the private rental market, such as smaller flats and houses, with parking (this house has no dedicated parking) Option REJECTED
Onward sale on the open market	<ul style="list-style-type: none"> • The property could be sold on quickly following purchase with only minimal works to maintain security (which in all likelihood would be recovered from the onward sale price) • This option would be the quickest and poses the least risk of adverse price movement between purchase and sale Option RECOMMENDED

2.12 As discussed in the table above, officers would recommend that once acquired, onward sale in the open market should commence as soon as possible.

3.0 Legal Powers and use of Compulsory Purchase

3.1 Section 17 of the Housing Act 1985 empowers local housing authorities to acquire land, houses or other properties by compulsion for the provision of housing accommodation. Acquisition must achieve a quantitative or qualitative housing gain. The main uses of this power have been to assemble land for housing and ancillary development, including the provision of access roads; to bring empty properties into housing use; and to improve substandard or defective properties.

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 approved 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 of 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.
- 4.0 Reasons for the Decision and the Justification for Making the Proposed CPO
- 4.1 The guidance on the compulsory purchase process and Crichel Down Rules 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 Paragraph 9 of Appendix E (Acquisition of an empty property for housing use) 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.
- 4.3 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 to justify interfering with the human rights of those affected.
- 4.4 Given the assessment of options (**Essential Reference Paper ‘D’**) officers are of the opinion that there is a compelling case for intervention by means of a CPO 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.

5.0 Financial Considerations

5.1 The courses of action detailed in this report are in all probability cost neutral.

5.2 The estimated costs of making and implementing this CPO are as set out in **Essential Reference Paper 'C'** along with details of how the costs would be met from the proceeds of the onward sale and reimburse of associated costs, including stamp duty and various legal fees, through the PLACE scheme. The information is confidential as it contains estimates of the purchase price and costs of works and fees, consideration of which in public would fetter the Council's ability to achieve best consideration.

5.3 An estimated value of the property has been supplied by the Council's Assets and Estates Manager. This valuation is given in **Essential Reference Paper 'C'**. If it is necessary to proceed following confirmation of a Compulsory Purchase Order then independent valuations will be sought.

5.4 It is noted that there is a small risk that the cost of works undertaken before sale plus the negotiated compensation amount could be higher than the price achieved in the open market when sold. Any such risk would be mitigated by:

- undertaking only essential works to the property to maintain the security of the building
- swift onward sale, as recommended in this report,

5.5 It is probable that the PLACE scheme could cover any reasonable loss however, even if 10% of the original purchase price and cost of works could not be recovered on resale, this amount (detailed in **Essential Reference Paper 'C'**) is not of a level which is material to the Council's overall finances and could be met within existing allocated budgets.

5.6 Should, for whatever reason, resources in excess of 10% of the property purchase and works costs be required, member approval would be sought before proceeding.

6.0 Human Rights and Equality Act 2010 Considerations

- 6.1 The guidance on the compulsory purchase process and Crichel Down Rules 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 the discussion earlier in 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 Members find the public benefit of the proposal to outweigh 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 6

6.5 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”

6.6 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.

Article 8

6.7 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.”

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

6.9 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.

Application of Human Rights to the Order

- 6.10 In recommending 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 Members of the Executive find 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 the 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 current property is not used disproportionately by any group with protected characteristics as the property is empty. 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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