

**SOLICITOR TO THE COUNCIL
REPORT NO. LEG1514**

COMPULSORY PURCHASE OF A LONG TERM EMPTY PROPERTY

Purpose

This report seeks Cabinet approval for the initiation of compulsory purchase proceedings in relation to a particular long-term empty property.

1. Background

- 1.1 The Council's Housing and Homelessness Strategy 2011-2016 contains the Council's policy in dealing with empty properties. The objective is to bring empty homes in the private sector back into use as quickly as possible. The reason for this is twofold: firstly, to increase the number of homes available for local people and secondly, to improve neighbourhoods where an empty home is having a negative effect on the community.
- 1.2 The Strategy also provides for the use of compulsory purchase powers in respect of long-term empty properties in the Borough. The use of this power however is as a last resort when all other endeavours to persuade, encourage, or enforce action to facilitate re-occupation have failed.

2. The Property

- 2.1 The property, being a two bed terrace house in Aldershot, is in a poor state of repair. It has been empty for approximately 15 years and has been the source of nuisance to, and complaints from, neighbouring local residents. The property is identified in confidential Appendix A and shown shaded on the plan.

3. The history of action

- 3.1 The owner inherited the property January 2000 but has never lived in the property. His exact whereabouts are unknown. Attempts have been made over the years to trace him in order to bring the property back into use, but all attempts have been unsuccessful. Council tax arrears are also in excess of £10,000.
- 3.2 The owner instructed an Estate Agent to sell the property in 2012: the property received two separate offers, however these did not come to fruition as the estate agent and the solicitor instructed were unable to

establish further communications with the owner and the sale did not proceed in both instances.

- 3.3 Due to this lack of contact all informal means of encouraging the owner to take action to bring the property back into use voluntarily have so far failed to achieve reoccupation. Environmental Health has had complaints from the adjoining owner regarding damp and mice in January 2015. The adjoining owner resolved the damp problem by repairing her section of the party wall.
- 3.4 In the absence of an acceptable response it is considered that there is a compelling case in the public interest for compulsory purchase. The property has been unoccupied for a considerable period of time, and will require investment to bring it up to a habitable condition.
- 3.5 Were contact to be re-established with the owner the Council would be willing to assist the owner to achieve a market value sale in order to avoid the need for compulsory purchase.
- 3.6 The proposed action is considered as the only reasonable means available to achieve renovation and reoccupation.
- 3.7 It is proposed that the property can be disposed of by auction and that the market value of the property as realised at the auction sale should substantially cover the compensation. Alternatively, a reserve price could be used based on the open market value which might enable a purchaser to put in an offer without going to auction

4. Alternative options

4.1 Option 1: No Further Action

Making use of compulsory purchase powers could be considered a draconian measure that will restrict the individual rights of the property owner. However, doing nothing is not considered to be an appropriate option in the case of the reported property. In its present condition the property would remain a waste of good housing accommodation, continue to be a source of blight for local residents and put the reputation of the Council at risk

4.2 Option 2 – Explore Alternative Legal Remedies

a) Enforced Sale –The Law of Property Act 1925 empowers local authorities to enforce the sale of a property where it holds a Local Land Charge against it. However, the property to which this report refers does not have a Local Land Charge applied to it and any that could potentially

exist in the future are unlikely to be sufficient to substantiate the use of enforced sales procedures.

b) Empty Dwelling Management Orders (EDMO's) - Local Authorities can consider making such Orders under the Housing Act 2004 to secure the improvement and future use of empty dwellings. The Council would be required to take over the Management of the property or appoint a Registered Housing Provider to manage it on its behalf. The ongoing financial; legal; administrative and housing management issues associated with EDMO's mean that this is not considered an appropriate option in relation to this property.

c) Other Enforcement Powers – Various legal powers are available to a local authority, for example, to deal with structural danger, statutory nuisance or other environmental problems. However, in this particular case these powers alone would not address the suitability of the property for occupation; influence ongoing maintenance and future management arrangements, or achieve reoccupation.

4.3 Option 3 – Make use of Compulsory Purchase powers

- 4.3.1 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 property and provide a good standard of housing accommodation in response to the increasing housing needs and demands in the Borough.
- 4.3.2 In the event that further contact can be made with the owner, the encouragement of voluntary action by the owner will continue, but it is considered that the Compulsory Purchase Order should be made in order to secure the improvement and re-occupation of the property, should any such further efforts prove unsuccessful. Sufficient safeguards are in place within the legislative framework for owner to make formal representations to challenge the appropriateness of the making of a CPO (Appendix B).
- 4.3.3 The CPO process can be discontinued at any point if the owner cooperates to return the property to a housing use, or alternatively the council could decide that it is not necessary to implement any confirmed Compulsory Purchase Order by taking possession, if satisfactory progress by the owner is evidenced in the meantime.
- 4.3.4 Upon acquisition of the property, either through negotiation or compulsorily, the Council has a number of options:
- (i) Disposal at auction in its unimproved condition
 - (ii) Renovation followed by immediate sale
 - (iii) Private sale at open market value or an immediate vesting in a third party should appropriate agreement on compensation be in place.

5. Council Plan

- 5.1 The reports objectives are in line with two of the key themes identified within the Corporate Plan: Place- protecting and developing a safe, clean and sustainable community and People and Communities- supporting our people and communities and meeting local needs.

6. Financial Implications

- 6.1 The use of a CPO procedure will mean that the council will have to pay compensation to the owner at open market value or if the owner fails to make contact then the money will be paid into court. This can be reimbursed through the sale of the property. Alternatively, after the order is confirmed, the council could seek to vest the property in a third party provided they assume the liability for the payment of compensation into court.
- 6.2 Although the Housing Act powers are being used to acquire the property, there is no requirement to reopen the Housing Revenue Account.

7. Equalities

- 7.1 Increasing housing supply by bringing empty homes back into use will help meet the needs of vulnerable residents in the Borough.

8. Legal Implications

- 8.1 Part XVII of the Housing Act 1985 allows the Council to implement the actions proposed in this report. This legislation in turn applies, with modifications, to 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). These powers are summarised in Appendix B.
- 8.2 The Human Rights implications are also summarised in Appendix B.

9. Property Implications

- 9.1 The proposal will return a presently wasted property back to the useful housing stock of the borough. In the first instance, if contact is achieved with the owner, the Solicitor to the Council will seek to negotiate a purchase price directly with the owner.
- 9.2 Where the Council takes possession, either by negotiation or compulsorily, one of the following options are available:
 - (i) Immediate disposal at auction in its current condition. The sale will include a condition that the accommodation is brought up 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.

(ii) Renovation to the standard set out in (i) above through the General Fund, followed by immediate disposal through sale.

iii) private sale at open market value or an immediate vesting in a third party should appropriate agreement on compensation be in place.

10. Risk Management

10.1 The following risks are identified with this course of action:

(i) delays and costs of protracted legal procedures under CP action

(ii) refusal of confirmation of the CPO by the Secretary of State

(iii) the potential for appeal to the Upper Tribunal (Lands Chamber) to determine a true market value over the transfer/auction sale price.

10.2 The above risks have been mitigated by the following considerations:

(i) doing nothing is not considered an appropriate option

(ii) other alternative actions have been discounted as unachievable or inappropriate

(iii) favourable publicity gained as a result of the Council taking action

(iv) procedural delays are unavoidable, but acceptable in relation to the progress that will be made

(v) the existence of extensive and robust evidence for a compelling case in the public interest

(vi) working with Legal Services to prepare convincing submissions that the Council's actions are appropriate

(viii) the unlikely risk of market value exceeding those realised by way of statutory appeal can be mitigated by getting a valuation of the property.

Recommendation

That Cabinet:

(i) Approve the use of Compulsory Purchase Orders under section 17 and Part XVII of the Housing Act 1985, and the Acquisition of Land Act 1981 for the purchase of the property and associated land identified in and shown on the plan in confidential

Appendix A for the purposes of its renovation and reoccupation as residential accommodation.

(ii) Authorise the Solicitor to the Council, if contact with the owner can be established, to seek the purchase of the reported property by agreement in the first instance

(iii) Authorise the Solicitor to the Council to take the following steps in the event that purchase by agreement cannot be achieved:

a) Take all necessary steps to secure the making, confirmation and implementation of the Compulsory Purchase Order including the publication and service of all notices and the statement of reasons for making the order and the presentation of the Council's case at any public enquiry.

b) Suspend the Compulsory Purchase Order proceedings, or withdraw an Order, on being satisfied that the reported property will be satisfactorily renovated and re-occupied without the need to continue the purchase proceedings.

c) Dispose of the property in accordance with the proposals set out in this report

d) Take all other necessary action to give effect to these recommendations

(iv) Authorise the Head of Financial Services to make the payment of appropriate compensation for the acquisition of the property and all necessary action to recover the compensation from the sale of the property

Reason for Recommendation :

The property concerned has been vacant for a considerable number of years and continues to have a detrimental impact on the neighbourhood and individual residents. All alternative avenues open to the Council to encourage the owner to bring the property back into use voluntarily have proved unsuccessful. Acquisition followed by renovation and reoccupation through the will help the Council respond to increasing housing need within the borough and improve the quality of life for local residents in the vicinity of the property.

APPENDIX A

Please note the information contained in Appendix A is confidential and has only been supplied to Members of the Cabinet

Appendix B – Legal Implications

1. 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. Compulsory Purchase Orders 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:
 - (i) cause a public inquiry to be held
 - (ii) afford the objector an opportunity of appearing and being heard by a person appointed by the Secretary of State, or
 - (iii) with the consent of the objector, follow a written representations procedure, and then consider his finding before determining whether or not to confirm, quash or modify the order
3. In the event that there is no objection, the Secretary of State may, in certain circumstances, permit the Council to confirm the Order.
4. 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).
5. 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 Purchase 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 reasonable 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.

6. 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.
7. It is considered that there is a 'compelling case in the public interest' for the purchase of the property, considering the benefits it will bring to the City which would not be achieved by agreement and far outweigh the loss that will be suffered by the current owner. The proposed Compulsory Purchase Order is therefore considered to be compatible with the Convention.