



**PRIVATE SECTOR HOUSING WORKS IN DEFAULT
REPORT OF DEPUTY CHIEF EXECUTIVE (COMMUNITY
DIRECTION)**

WARDS AFFECTED: ALL WARDS.

1. PURPOSE OF REPORT

- 1.1 To request a works in default budget to tackle long term empty properties and properties in substantial disrepair in the private sector.

2. RECOMMENDATION

Council agree:

- 2.1 That the works in default budget approved at Council on 17 March 2015 (exempt papers) be allocated to tackle long term empty properties and properties in substantial disrepair in the private sector.
- 2.2 That authority be delegated to the Deputy Chief Executive (Community Direction) in conjunction with the Executive Member for Housing and Community Safety to authorise works in default, including to demolish/rebuild/repair the properties (should the owners not comply with the legal enforcement notices)
- 2.3 That the recovered costs from the approved budget of £120,000 to carry out works in default be used to tackle similar long term empty and properties in disrepair as part of a rolling programme.

3. BACKGROUND TO THE REPORT

- 3.1 A works in default budget was previously agreed to tackle three specified properties in the private sector where owners did not comply with notices served due to their substantial disrepair. The issues with two of these properties were resolved without use of the budget. However, the Private Sector Housing team are currently working with several properties where action is required due to non compliance of notices by the owners. The use of the agreed works in default budget would allow the works to be completed in default of the notice.
- 3.2 This work will continue within the Private Sector Housing Team and therefore it is requested that rather than report on each individual property to secure a works in default budget, the original £120,000 is used, with approval for use being delegated to Deputy Chief Executive (Community Direction) in conjunction with the Executive Lead for Housing and Community Safety.

4. RECOVERY OF COSTS

- 4.1 Many statutes allow for local authorities to recover certain costs incurred in enforcement work. The Building Act 1984 permits us to recover such costs including interest accrued from the date of the completion of the works. Until recovered, any charge incurred through the default works can be protected on the Council's local land charges register.
- 4.2 HBBC may by order declare the expenses recoverable by it to be payable with interest by installments within a period not exceeding 30 years, until the whole

amount is paid. Such an order may be made at any time with respect to an unpaid balance of expenses and accrued interest, but the period for repayment must not in any case extend beyond 30 years from the service of the first demand for the expenses.

- 4.3 HBBC are also entitled to recover the sum under the Building Act 1984 as a simple contract debt in any court of competent jurisdiction, (usually the County Court).
- 4.4 Enforcement of the debt/charge is subject to the normal County Court enforcement procedures which include asking the court to place a charge on the property (Charging Order) and requesting the court to grant power of sale. However, these options are subject to a myriad of considerations such as human rights, personal circumstances, and alternatives and the debt may take a number of years to recover.
- 4.5 At Council on 17th March 2015 an enforced sales procedure was adopted. In simple terms the process for this is as follows: The council must serve notice under section 103(1) of the Law of Property Act 1925 on the owner of the property (or land) which has the registered local land charge. The notice must request the full payment of the debt and stipulate that the council will look at enforcing the sale if not repaid. If the debt is not paid within 3 months the council can then apply to the Land Registry for registration of the charge on the title. The registration claims priority over all other charges and when the charge certificate is returned from the Land Registry the property can then be marketed for sale. Once sold, the council (and any other charges) recover their charge.

5. FINANCIAL IMPLICATIONS (TF)

- 5.1 Currently, there is a budget of £120,000 which is to be spent on 3 specific properties. If we were to use the £120,000 to finance different projects the financial implications would be the same as previously approved.
- 5.2 The reinvestment of the £120,000 would mean the monies previously approved would not be return for investment in other areas of the council.
- 5.3 In accordance with accounting practise income received from charging will need to be reflected within the general fund and an appropriated to reserves for future use.
- 5.4 Spending of recovered costs would only be available once the money has been returned to the general fund and could not be spent in advance.
- 5.5 Previously approved financial implications are included below.
- 5.6 Debt Recovery Timeline

If works were to be carried out, costs would be recovered through the normal debt recovery process. If the debt is not repaid the Council would seek a recovery process through the County Courts. At this stage the Council would also seek to recover reasonable costs. Possible earliest recovery timelines are summarised below:-

Initial Debt recovery process (invoice and 2 reminder letters) 30 days
Formal letter demanding payment or possible court action 30 days
Court Summons process 40 days
HBBC application for CCJ 60 days
ESP (not known)

Therefore there would be a minimum 160 days before a formal ESP would be considered.

5.7 Capital Cost of works

The use of the existing capital costs should be extended to be used as a rolling/recoverable fund to complete the works required by legal notice. The cost will be funded by charging the property owners. Due to the work not being on Council assets the cost and income would need to be reflected in the General Fund. These transactions would be reversed out so there would be no net impact on the general fund.

Due to the value involved a supplementary capital and a revenue budgets will require council approval.

If the cost is not recovered ESP action will commence. The debt will need to be written off to the General Fund Revenue Account and the ESP income would be used to fund the debt, **Due to the level of the write off this would require Council approval. There will also be a time delay between the debt write off and receiving the income through ESP**

5.8 Alternative Options

CPO – This process would take more time and would require additional administrative support. The potential costs would also be greater. The properties would need to be purchased and either disposed or retain them for social housing. This is not an option officers are considering.

Prosecutions – The costs of prosecution are currently unknown. Additionally this would not make good the properties so civil enforcement action would still be required,

6. LEGAL IMPLICATIONS (JB)

A large number of the legal implications are covered in the body of the report. There are however additional implications to be considered:

Securing costs incurred:

- 6.1 In relation to each of the identified properties (and any future properties) the property registered should be checked for charges before any decision is taken to proceed. Where a property has a charge (or multiple) the possibility of the council recovering its costs incurred is reduced as other charge holders will have priority over the proceeds upon a sale. The council should also check what other liabilities there are on it resulting from this authority, for example council tax, to ensure these are secured prior to any forced sale.

County Court recovery:

- 6.2 In terms of county court recovery of debt it should be noted that this increases the council's costs and there is no guarantee of recovery. Once a judgment is obtained there are several possibilities with regards to enforcement, including those set out in the report. They would need to be considered on a case by case basis with regards to the owners circumstances. Once judgment is obtained then interest will accrue on the debt at the rate of 8%.

Alternative options:

- 6.3 The council also has alternative options open to it under alternative legislation (though each option would need full consideration in their own right) such as a compulsory purchase of the property. The state of repair would reflect in the valuation of the property for compensation. This has been used by other authorities to deal with eyesore properties. The pre-requisite of this would be to undertake negotiations to purchase without the need for a CPO however. In the event these properties were required the council could seek to retain the asset or dispose to recover costs. However, on average, the ESP is more expedient and can achieve a quicker sale of the property, if it is intended only to sell on and recover costs.

Prosecutions:

- 6.4 To proceed with prosecutions the full evidence would need to be assessed by legal services to ensure we have sufficient evidence to discharge the criminal burden of proof. In relation to the public interest test, the purpose of a prosecution is to punish an offender but the Notices will continue to be breached. It is therefore a question of determining in each case whether it would be justifiable to expend public money when it may be necessary, at the same time, to carry out the works in default, hence incurring further expenditure.

6.5 The ESP

Recovery can occur when the debt recovery process can go no further. The sale of a property can proceed in circumstances where the debt recovery process is stifled. Examples are as follows:-

- where the property has changed hands and the enabling statute does not enable the Council to recover the debt from the new owner but confers the benefit of a charge on the property which would enable a sale under the ESP to proceed
- where debt recovery cannot be pursued because it is statute barred (six years has expired) but the limitation period in respect of a sale under the ESP is not statute barred (twelve years)
- the debtor refuses to pay even though a court order has been obtained to that effect

7. CORPORATE PLAN IMPLICATIONS

- 7.1 Creating a vibrant place to live by tackling the long term neglected properties that have been the subject of many complaints from residents.

8. CONSULTATION

None

8. RISK IMPLICATIONS

Management of significant (Net Red) Risks		
Risk Description	Mitigating actions	Owner
Although outstanding charges have been checked additional borrowing by owner could be secured against the property.	Check charges again at point just prior to commencement of works.	RAL
Properties could change ownership	Check ownership again at the point just prior to commencement of works.	RAL

9. KNOWING YOUR COMMUNITY – EQUALITY AND RURAL IMPLICATIONS

9.1 Notices are actioned usually following complaints from residents. Any support needs of owners which may impact on their ability to carry put works will be identified and addressed where possible.

10. CORPORATE IMPLICATIONS

10.1 By submitting this report, the report author has taken the following into account:

- Community Safety implications
- Environmental implications
- ICT implications
- Asset Management implications
- Procurement implications
- Human Resources implications
- Planning implications
- Data Protection implications
- Voluntary Sector

Background papers: Council report 17th March 2015 (exempt papers)

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