



**Cabinet**  
**3 January 2023**

<b>Subject</b>	Empty Homes – Policies for Forced Sale and Prioritising Action
<b>Report by</b>	Councillor Richard Kerry Cabinet Member with responsibility for Housing
<b>Supporting Officer</b>	Teresa Howarth Principal Environmental Health Officer Teresa.howarth@eastsoffolk.gov.uk 07990848206

Is the report Open or Exempt?	OPEN
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Category of Exempt Information and reason why it is <b>NOT</b> in the public interest to disclose the exempt information.	This report is to be considered during the <b>OPEN</b> part of the Agenda. <a href="#">Click or tap here to enter text.</a>
<b>Wards Affected:</b>	All Wards

**Purpose and high-level overview**

<p><b>Purpose of Report:</b></p> <p>To adopt a clear process, strategy and policy for assessing long term empty homes against local priorities and determining when action to force the sale of a property should be taken to recover debts.</p>
<p><b>Options:</b></p> <p>To bring properties requiring Cabinet decision on an individual basis, which could result in delays in the process.</p> <p>To adopt a policy to ensure consistent decision making and efficient operations and provide delegated powers to officers to make decisions aligned to the adopted policy</p>
<p><b>Recommendation/s:</b></p>

That Cabinet adopts the Forced Sale Policy attached to the report to provide a standardised tool for decision making across the Council.

That Cabinet adopts the Empty Homes Policy attached to the report to provide a clear and effective framework for decision making on dealing with empty homes

## Corporate Impact Assessment

### **Governance:**

The Council is the Strategic Housing Authority for East Suffolk. One housing challenge within the district is that presented by long term empty homes. A long-term empty property is defined as a residential property that has been empty for more than two years. The challenge presented by these properties is managed within the Private Sector Housing team with oversight by the Head of Housing.

### **ESC policies and strategies that directly apply to the proposal:**

#### [We are East Suffolk Strategic Plan 2020-24](#)

The approach in dealing with empty homes proactively contributes towards the Council's Strategic Plan with primary and secondary priorities in 3 of the 5 key theme areas including Growing our Economy, Enabling our Communities and Caring for the Environment.

#### [East Suffolk Housing Strategy 2017-23](#)

*Empty homes are a wasted resource at a time of housing crisis and can cause blight on neighbourhoods: attracting anti-social behaviour, vandalism and fly-tipping.*

*Each year the councils review all those properties that are identified by Council Tax data as having been empty for more than 6 months. We will continue to prioritise within the list of long term empty properties so that the service focuses on those where re-occupation would bring most benefit in housing and community terms.*

#### [Private Sector Housing Strategy](#)

*"There is recognition of the value of bringing an empty home back into the housing stock when compared to building a new house. During the life of this strategy a case will be made, along with other housing priorities, to bring in more resources to address the empty home problem, which at a time of housing shortage is not acceptable.*

*The solutions need to be tailored to each case and owner. They often require an empathetic approach and time to explore all options and present comprehensive arguments. Owners who have left properties vacant for years do not tend to be swayed by one letter or telephone call! Options considered may include encouraged or forced sale, private sector leasing, renovation plans and compulsory purchase."*

The Council's Acquisitions policy sets out the principle of when a property may be purchased and this includes, on occasions an empty home:

*"The Council will on occasions seek to purchase a property, either to meet a need or take an opportunity that assists us meeting a wider strategic objective. The Council may seek to purchase units where there is a wish to extend its housing stock to meet the demand for affordable housing within the district. When the financial opportunity permits, the Council will seek properties that meet our stated criteria (which is reviewed annually). Acquisitions*

*will only take place when funding is identified during the year and they meet a strategic desire to increase our council housing stock or a critical operational objective. It is not expected that any acquisition will take place that does not meet these requirements.”*

**Environmental:**

Empty homes represent a wasted resource. Where there are opportunities to renovate and return to use, the end result will be a modernised, more energy efficiency home utilising fewer resources than a new build. The solutions are often in the private sector, but the council can have a key role in opening up the opportunity for investment and restoration where this has stalled.

**Equalities and Diversity:**

ESC has declared Deprivation and Disadvantage as a 10th 'characteristic' for the purpose of assuring Equality in our District. Many of the private sector housing initiatives seek to assist those on low incomes who are suffering from poverty. There are opportunities in working to bring back into use long term empty homes (LTEH), to develop housing units offered at affordable rents, thereby supporting those on low incomes.

**Financial:**

There are no direct financial implications linked to the adoption of these policies. The business case for a strategic approach to long term empty homes was made and agreed by Cabinet in March 2022.

**Human Resources:**

No implications form this report for HR

**ICT:**

No implications from this report for ICT

**Legal:**

There are few legal provisions that specifically relate to empty homes, but there are a number that can be applied to empty homes in the same way as to occupied housing. Legal interventions tend to be implemented when the condition of the property deteriorates to the extent that it impacts on the community.

Most LTEH need a change of owner to bring them back into occupation. This can sometimes be achieved by persuasion and support but sometimes needs a more forceful approach as set out in this report.

All of the legal options can be complex and protracted but the adoption of policies provides a reference framework to support decision making.

**Risk:**

There are risks of not acting on LTEH including the deterioration of the property resulting in damage and nuisance to adjoining property, antisocial behaviour and decline in the area resulting in detriment to local amenities.

**External Consultees:** Other Local Authorities including the Suffolk Councils

## Strategic Plan Priorities

Select the priorities of the <a href="#">Strategic Plan</a> which are supported by this proposal: (Select only one primary and as many secondary as appropriate)		Primary priority	Secondary priorities
<b>T01</b>	<b>Growing our Economy</b>		
P01	Build the right environment for East Suffolk	<input type="checkbox"/>	<input type="checkbox"/>
P02	Attract and stimulate inward investment	<input type="checkbox"/>	<input type="checkbox"/>
P03	Maximise and grow the unique selling points of East Suffolk	<input type="checkbox"/>	<input type="checkbox"/>
P04	Business partnerships	<input type="checkbox"/>	<input type="checkbox"/>
P05	Support and deliver infrastructure	<input type="checkbox"/>	<input type="checkbox"/>
<b>T02</b>	<b>Enabling our Communities</b>		
P06	Community Partnerships	<input type="checkbox"/>	<input type="checkbox"/>
P07	Taking positive action on what matters most	<input type="checkbox"/>	<input checked="" type="checkbox"/>
P08	Maximising health, well-being and safety in our District	<input checked="" type="checkbox"/>	<input type="checkbox"/>
P09	Community Pride	<input type="checkbox"/>	<input type="checkbox"/>
<b>T03</b>	<b>Maintaining Financial Sustainability</b>		
P10	Organisational design and streamlining services	<input type="checkbox"/>	<input checked="" type="checkbox"/>
P11	Making best use of and investing in our assets	<input type="checkbox"/>	<input type="checkbox"/>
P12	Being commercially astute	<input type="checkbox"/>	<input type="checkbox"/>
P13	Optimising our financial investments and grant opportunities	<input type="checkbox"/>	<input type="checkbox"/>
P14	Review service delivery with partners	<input type="checkbox"/>	<input type="checkbox"/>
<b>T04</b>	<b>Delivering Digital Transformation</b>		
P15	Digital by default	<input type="checkbox"/>	<input type="checkbox"/>
P16	Lean and efficient streamlined services	<input type="checkbox"/>	<input checked="" type="checkbox"/>
P17	Effective use of data	<input type="checkbox"/>	<input checked="" type="checkbox"/>
P18	Skills and training	<input type="checkbox"/>	<input type="checkbox"/>
P19	District-wide digital infrastructure	<input type="checkbox"/>	<input type="checkbox"/>
<b>T05</b>	<b>Caring for our Environment</b>		
P20	Lead by example	<input type="checkbox"/>	<input checked="" type="checkbox"/>
P21	Minimise waste, reuse materials, increase recycling	<input type="checkbox"/>	<input checked="" type="checkbox"/>
P22	Renewable energy	<input type="checkbox"/>	<input type="checkbox"/>
P23	Protection, education and influence	<input type="checkbox"/>	<input type="checkbox"/>
<b>XXX</b>	<b>Governance</b>		
XXX	How ESC governs itself as an authority	<input type="checkbox"/>	<input type="checkbox"/>

### How does this proposal support the priorities selected?

Ensuring there are sufficient homes for our residents and these homes are safe, secure and suitable is a key priority that sits within the priority for maximising well-being and health. Empty homes can also attract anti-social behaviour. (PO8) Empty homes are a wasted resource and can be brought back into use at a fraction of the cost and material used on new builds (P21). Renovation and reoccupation addresses supporting infrastructure (P05), tackling what matters most to communities by addressing an eyesore and restoring a home (P07). The opportunity to utilise external funding to deliver the proposal makes good use of the rewards available. (P13)

## Background and Justification for Recommendation

1 Background facts	
1.1	There are a number of ways of defining Empty Homes. Councils report on all empty homes that are unoccupied <b>and</b> unfurnished, and then further define them by the length of time they have been empty. Long-term empty homes (LTEH) are those that have been empty for more than 2 years. Unoccupied homes that remain furnished are not part of this recording process but can also be significant and problematic.
1.2	In East Suffolk, we currently have 292 properties classified as being LTEH. Although we achieve some success in bringing LTEH back into use, we know we can do more with dedicated resources.
1.3	In September 2021, Scrutiny committed that a paper be brought forward looking to make a business case to have an Empty Homes Initiative to tackle LTEH in a coordinated way. In April 2022 Cabinet accepted the proposal to employ a dedicated officer to tackle empty homes as part of a 3 year long programme. In August 2022 the Empty Homes Officer was appointed.
2 Current position	
2.1	Early work has focussed on developing links both internally and externally as Empty Homes can present significant challenges and cut across many areas of responsibility. A best practice review has been undertaken and standard documents have been evaluated and prepared. Data protection issues for the sharing of information between Anglia Revenue Partnership and Private Sector Housing have been resolved and training on Compulsory Purchase and Forced Sale has been undertaken.
2.2	The Empty Homes Officer has already achieved some engagement with problematic properties. 4 long term empty properties have now positively engaged. 1 has been brought back to market and 1 will shortly be going to auction. 2 properties have resolved short term issues of rats/mice and are now being assisted with going through Probate or clearing the internal property before marketing for sale/auction. All 4 properties have been empty for 4 years or more with 1 of the properties being empty for over 6 years.

	In the whole of the financial year 2021/22 – 11 Long term empty properties were reoccupied after ESC involvement. Since August 2022 – to date (09.12.2022) – 8 Long term empty properties have been reoccupied or will be in the near future including the 4 properties mentioned above.
2.3	There are 292 LTEH listed, as of 1 December 2022. It is not possible to deal with them all concurrently so a matrix has been prepared which will be used to score the properties, to help consistently decide which should be prioritised. A worked example, using the scoring matrix, is included at Appendix A.
2.4	A policy setting out the methodology, options and priorities for Empty Homes is included at Appendix C.

### 3 How to address current situation

3.1	To ensure a consistent approach and optimise the work of the Empty Homes Officer, the 292 LTEH will be scored in batches of 20 starting with those in the areas where we know we have the highest housing need. Then they will be actioned using the standard letters to initiate contact and where there is no engagement, the possibility of enforcement will be brought to bear. The diagram at Appendix B gives an indication of the process and options.
3.2	Where the Council has placed a charge on the property there is the opportunity to force sale to recover the debt. The process requires the adoption of a forced sale policy which is included at Appendix D. The key features of the policy are: To deal with long term empty properties which have outstanding debt, to facilitate debt recovery and to bring empty homes back into use. Enforced sale will only be used as a last resort once other methods have been exhausted and where the total debt on the property exceeds £1000.00. Properties with a debt less than £1000.00, may be considered if they are causing issues in the local community and the owner is not taking action. Properties will be placed on the open market or if suitable, can be brought into Council stock.

### 4 Reason/s for recommendation

4.1	To create a consistent approach to the resolution of long term empty properties
4.2	To ensure a clear and transparent policy for when it is appropriate to take force the sale of a property.

## Appendices

<b>Appendix A</b>	Scoring Matrix for Empty Homes – worked example
<b>Appendix B</b>	Empty Homes Investigation Process
<b>Appendix C</b>	Empty Homes Policy
<b>Appendix D</b>	Enforced Sale Policy

## Appendix A

### Worked Example – Scoring Matrix

<b>Address:</b>	98 Park Road, Lowestoft
<b>Owner:</b>	Redacted
<b>Contact Details:</b>	Redacted
<b>Empty Date:</b>	06.01.1995

<b>Part A: Scoring Matrix</b>	<b>Overall Score</b>	<b>205</b>
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Max score is 360

Issues	Comment	Score
Length of time empty	<p style="color: red;"><i>Less than 6 months = 5pts</i></p> <p style="color: red;"><i>6m - 2 years = 10pts</i></p> <p style="color: red;"><i>2y - 5 years = 15pts</i></p> <p style="color: red;"><i>5y - 10 years = 20pts</i></p> <p style="color: red;"><i>10+ years = 25pts</i></p> <p><b>Empty since 1995 = over 10 years = 25pts</b></p>	25
Overgrown garden (10 pts)	<p style="color: red;"><i>(Refer to PSH scale)</i></p> <p><b>Evidence of overgrown rear garden in photo.</b></p>	10
Property in disrepair (10 pts)	<p style="color: red;"><i>(Add description of disrepair e.g. missing tiles, broken fencing, glazing, guttering, chimneys)</i></p>	10



Property insecure (10 pts)	<b>Reports of people gaining entry, storm doors broken.</b>	5
Windows/Doors boarded (10 pts)		0
Rubbish present (10 pts)	<i>(Refer to PSH scale)</i>	10
Vermin present (10 pts)	<i>Last seen? How many? How often? How is it affecting complainant?</i> <b>Reported but not substantiated.</b>	5
Fire (15 pts)	<i>When? Extend of the damage?</i>	0
ASB - Graffiti, Youths entering (10pts)	<b>Garage and house broken into.</b>	10
Outbuildings? (10pts)	<b>Garage was dilapidated with entry gained.</b>	10
Other (5-20 pts)	<b>Tree growing in the property - photo shows part of tree inside property.</b>	10 
<b>Complaints</b>	<b>Comment</b>	<b>Score</b>
Neighbour complaints (10 pts each; max of 50 pts)	<b>9x neighbour complaints</b>	50
Councillor complaints (10 pts each; max of 30 pts)	<b>1x Councillor complaint</b>	10

MP complaints (10 pts each)		
Media complaint (10 pts each)		
<b>Notices</b>	<b>Comment</b>	<b>Score</b>
Current notice (10 pts)		
Non-compliance of current notice (10 pts)		
Cost of WID	<i>£0-£500=5 pts £500-£1500=10 pts £1500-£5000=15pts £5000+=20pts every 5k over £5k +5pts</i>	
Any previous enforcement action (5 pts each)	PDPA notice served in 2012	5
Any previous enforcement debt		
Any other council debt		
<b>Location/Action</b>	<b>Comment</b>	<b>Score</b>
Located within a principal town/town centre	<i>Points for housing need area: Remote village = 10pts Small Town = 20pts Main town (Lowestoft, WB, Flx) = 30pts House in located in Lowestoft = 30 pts</i>	30
Adjacent property empty (10 pts)		0
Additional empty properties on street (10 pts each)		0

Suitable for ESC Acquisition? (15 pts)	Large 4 bed property in main town (Lowestoft). Bought back into ESC stock - see before and after photo.	
Property being marketed (-10 pts)		
Property being renovated (-10 pts)		
Communication	Comment	Score
Communication prior to notice being served (+/-10 pts)		
Communication after notice but prior to WID being served (+/-10 pts)		
Communication after WID but prior to S.103 being served (+/-10 pts)		
Communication after S.103 but prior to sale instruction (+/-10 pts)		

<b>Recommended by:</b>	
<b>Date:</b>	

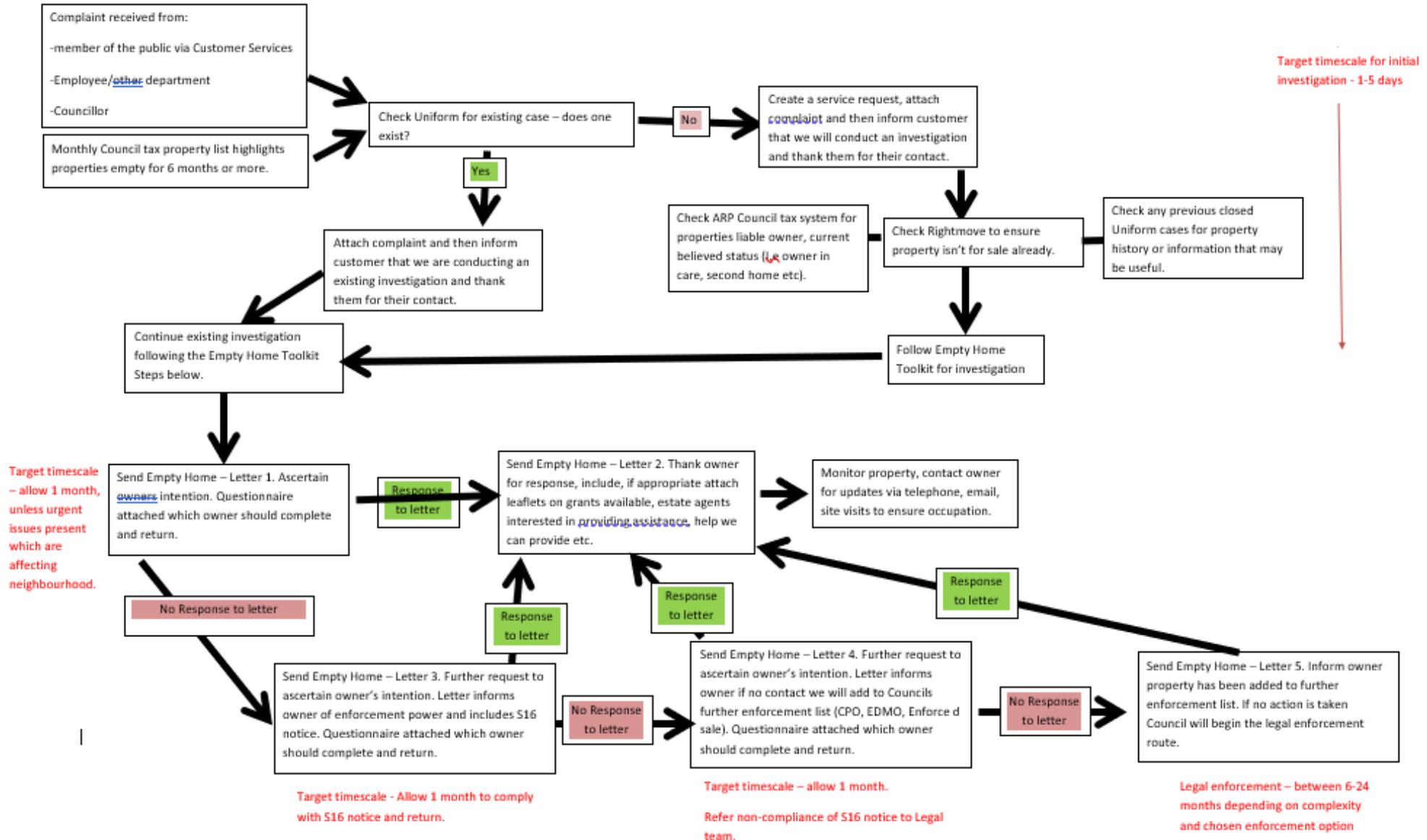
### Part B: Additional Information

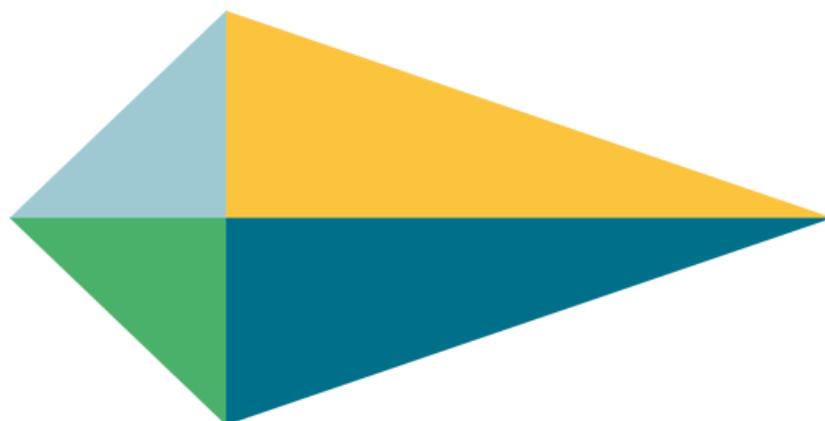
Include: empty date; communication with owner; area info; council tax info; current notice info; quotes; invoice; sales order; legal charge; S103 notice; file notes; enforced sale is only option;

Request to **carry out WID/serve \*S.103 notice/enforce the sale** in respect of the above property

<b>Authorised by:</b>	
<b>Date:</b>	

# Appendix B





**EASTSUFFOLK**  
C O U N C I L

**EAST SUFFOLK COUNCIL  
EMPTY HOMES POLICY 2022**

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## INTRODUCTION

There are many definitions of an empty home.

Council Tax legislation identifies a property as a long-term empty home when it has been empty of people, furniture and or possessions for six months or more.

A long-term Empty Home is also defined as a property that has been unoccupied for six months or longer and has nobody occupying it on a regular basis, whether it is furnished or not. This is the definition that East Suffolk Council will use and will concentrate on returning properties that have been empty for over six months, back into use with priority normally being given to those empty for more than 2 years

If a property remains empty for more than two years, additional Council Tax is payable through an Empty Homes Premium being applied.

A sustainable way of increasing the supply of housing is to bring empty properties back into use. This is supported by the government and helps reduce blight on neighbourhoods. Local builders and investors are also encouraged by the Government to repurpose empty properties.

In East Suffolk Council, there are approximately 292 long term empty homes (1 December 2022). With the need to increase the supply of affordable homes, taking action to deliver reoccupation of empty homes is something the Council has recognised as a priority and has resourced a 3 year programme to tackle.

**Table 1: Long Term Empty Homes, based on Council Tax Data**

<b>Length of time empty</b>	<b>Number (as of 1 December 2022)</b>
<b>Over 2 years but less than 5 years</b>	<b>172</b>
<b>Over 5 years but less than 10 years</b>	<b>70</b>
<b>10 years+</b>	<b>50</b>

Evidence has shown that an empty house in a neighbourhood can cause significant blight, attract vandalism, fly-tipping and resulting in adjacent houses becoming difficult or impossible to let out or sell.

There is a large private rented sector already established in the district, but rents are rising and are considerably higher than local housing allowance in many areas meaning there is a significant need for affordable housing. The Empty Homes Policy will work towards preventing a property being left empty and bring empty properties back into use as affordable accommodation.

## AIMS & OBJECTIVES

East Suffolk Council's aim is to reduce the number of long term empty properties by bringing them back into use and discouraging owners from leaving them empty.

Achieving this will help alleviate a growing national housing need, offer more choice to the market, and prevent empty properties from becoming a blight within their residential neighbourhoods, improving the overall environment.

To achieve this aim, East Suffolk Council' objectives are:

- 1) Promote and deliver a range of advice and assistance options to owners of empty homes.
- 2) Limit the number of empty properties that stagnate and become empty for prolonged periods by utilising early intervention as part of investigations and support.
- 3) Proactively engage with owners of long term empty homes and understand their reasons for leaving a home vacant and help them to find a solution that is right for them.
- 4) Raise awareness of successful action on empty homes across the district to encourage others to realise the benefits.
- 5) Commit appropriate resource from within the council and utilise external partners, where appropriate, to tackle issues that arise and complete the job.
- 6) Offer a Landlord grant to financially assist owners of empty homes to bring properties back into a lettable condition being let at Local Housing Allowance rate.

These objectives will help bring empty properties back into use increasing the local housing supply.

Most properties that become empty are not an issue and will be returned to use without the need for intervention, through normal sale and letting routes, via local or national agents. East Suffolk Council needs to have a range of options available for those properties that do not return to use via these routes.

To meet our objectives, East Suffolk Council' will:

- 1) Contact owners of residential empty properties to notify them of the range of options and assistance available to them
- 2) Monitor the number of empty properties in the district and proactively prioritise properties which may need intervention
- 3) Target properties that are having an adverse impact on the neighbouring community or the sustainability of that neighbourhood according to a robust set of priorities to ensure effective prioritisation
- 4) Proactively utilise methods including the use of enforcement action such as Compulsory Purchase Orders, Enforced Sale Procedures and Empty Dwelling Management Orders where applicable,
- 5) Develop further initiatives and investigate ongoing legislation or resource that will allow us to proactively target and return long term empty properties to use.



Success story: The same property before and after council intervention.

## BACKGROUND

There is a high demand for housing in East Suffolk Council. Properties which sit empty are a wasted resource and could be utilised for sale or rent.

As of 5 December 2022, there were 4505 active applications on the housing register for East Suffolk. There is a desperate need to bring empty properties back in to use and increase the supply of housing to help to meet local housing demand.

While the Council understands that Empty Homes are a significant issue, it does not have a statutory duty to address them. Previously, there has been limited resource available to investigate these properties proactively; the majority of work around empty properties have been investigations due to reactive complaints from local neighbours.

Through new resource, a reviewed toolkit and further enforcement options, East Suffolk Council hope to be able to increase the number of empty homes being brought back into use.

## EMPTY HOMES IN EAST SUFFOLK COUNCIL

Properties can be left empty for a number of reasons. An owner may be unwilling or unable to move the property forward due to ill health or lack of knowledge on how to proceed and in these circumstances the empty property deteriorates. Apart from becoming an eyesore due to overgrown gardens, it can also draw attention for more serious anti-social behaviour. A house which begins to slip into a state of accelerating disrepair can cause significant damage not only to the empty property, but also, to adjoining buildings. Neighbours will start to complain about real and anticipated problems. Damaged and dilapidated properties may affect neighbours chances of selling or letting out their house. If the council does not tackle empty homes, an increasing number of houses may fall into a state of dilapidation and anti-social behaviour could increase leading to a general downwards slide in the neighbourhood.

## TARGETING THE PROBLEM

The Council will target action against all houses that have been vacant for longer than six months. In special circumstances, action may be taken in respect of houses that have been vacant for less than six months, for example where an enforcement notice is outstanding.

The Council will identify an empty property by liaison with Anglia Revenues Partnership and will maintain an empty property database. The database will include all houses that have been empty for six months or longer. The database can also be used to electronically map the location of empty houses to identify any concentrations.

The public can report homes that are suspected to be empty via our Customer Services team.

[Private sector housing » East Suffolk Council](#)

Once a report has been made, the Council will investigate the ownership of the property and circumstances of it being vacant and if appropriate will make contact with the owner. The Private Sector Housing team may also receive reports of empty homes from other council departments such as planning or building control, or outside organisations such as the police or fire and rescue service.

Using the Empty Property register as the data source, all cases will be prioritised according to the scoring matrix in Appendix A. In the first instance properties in the areas of highest housing need will be prioritised in batches of 20 and when the highest scoring have had initial contact the next 20 will be reviewed. The annual target for returning properties to use by all means is 25.

## IDENTIFYING AND IMPLEMENTING SOLUTIONS

The Council has a range of options available for dealing with empty homes.

Initially, East Suffolk Council will attempt to work with owners and advise how they can bring a property back into use. Assistance will be offered by the Empty Homes Officer.

There are a range of current legal powers which can be used to reduce any nuisance complaints from properties causing issues or affecting other homes, while the Empty Homes Officer works to bring the property back into use. This action could range from securing the property or carrying out works to rectify disrepair that is affecting neighbouring properties e.g. dangerous structure or other issues such as vermin infestation.

If after initial correspondence there is no response from the owner, the Council will consider taking further steps to secure bringing the property back into use. The following options are available to the Council and each property will be considered individually based on the information gathered in the investigation:

## EMPTY HOMES TOOLKIT

The Empty Homes toolkit is designed to guide officers on how to tackle empty properties. The toolkit includes:

- A rolling list from council tax of properties that are registered with the council tax department as being empty for more than 6 months
- A scoring matrix - for prioritising the worst case properties
- A list of estate agents/auctioneers agreed to offer reduced fees for promoting, selling and letting empty homes,
- A list of schemes that are available to help bring empty homes back into use,
- A number of letter templates that can be used to generate letters that provide advice and assistance to empty property owners,
- A list of the properties that have been brought back into use and the methods used to encourage this.

The Council will use the toolkit to monitor and evaluate progress and keep an up-to-date accurate picture of long-term empty properties within the district.

## **ENFORCEMENT POWERS**

The Council will use available powers and work with other departments where additional or alternative powers are required, such as:

- Local Government (Miscellaneous Provisions) Act 1982 s29 to take action to secure an insecure property
- Prevention of Damage by Pests Act 1949 allows the Council to require and undertake works on behalf of an owner or occupier to prevent damage to buildings being caused by rats and mice (can include works to property or gardens)
- Public Health Act 1936 allows the Local Authority to require and undertake works on behalf of an owner or occupier to improve filthy and verminous properties
- Town and Country Planning Act 1990 s215 allows the Council to take action to require improvement of an unsightly building (including gardens).
- Sections 77 & 78 Building Act 1984 (dangerous structures).
- section 265 Housing Act 1985 (demolition orders).

## **APPROACH TO ENFORCEMENT**

The Council aims to educate first, encourage second and then, if necessary, enforcement action will be considered. This maximises the opportunity for the property owner to take action themselves to bring the property back into use, without enforcement action from the Council.

Should the initial correspondence not achieve the desired result, or where an owner is not engaging, there is a range of legislation allowing the Council to take further action.

## **PRIVATE SECTOR HOUSING – LANDLORD GRANT**

Another option available to assist empty property owners to bring their properties back into use is the Landlord grant, which owners can apply for.

Grants of up to £15,000 are available towards the cost of certain eligible works to help bring empty properties back into a lettable condition at Local Housing allowance rent. More information is available on the council website.

## **FURTHER ENFORCEMENT ACTION**

The following options are considered as a last resort for those properties which are causing significant issues to the local community. These processes can be lengthy, and each property will be assessed individually to ensure the most appropriate action is taken.

## **EMPTY DWELLING MANAGEMENT ORDER**

To consider an Empty Dwelling Management Order (EDMO), a property must meet the following criteria:

- has been unoccupied for at least 12 months, and
- the Council feel that the property is unlikely to be occupied in the near future

An EDMO can be a helpful tool in tackling empty properties by preventing the property from deteriorating further. The Council would take over the management of the property and complete any renovation work required, while the owner retains ownership.

An EDMO will only be used when the property is in a habitable condition, or can be made habitable at a reasonable cost, and is likely to become occupied if an EDMO is made.

Partnership working between the Private Sector Housing team, Housing Development team and Tenant Services team will be required to take over the management of any properties that are subject to an EDMO. Those on the Council's housing register will be given the first opportunity of occupying the property. It should be noted that EDMOs are rarely used by Councils as they are complicated and carry a degree of financial risk that may be off-putting but for the right property they can be useful.

## **VOLUNTARY PURCHASE**

The use of voluntary purchase is a cost effective way of proceeding particularly if the property is one that the Council would like to acquire for the Housing Revenue Account, perhaps an ex-council property.

Where contact has been made with an owner of a property, who has expressed an interest in selling, the Council will consider purchasing the property if it meets our Acquisitions Policy. Close liaison will be required with the appropriate asset management, legal, financial and housing officers.

## ENFORCED SALE

Where the Council has registered a local land charge on an empty property following the service of a Statutory Notice (against the property/owner), if the owner does not repay those costs, the Council will consider forcing a sale of the property to recover our costs. This is an effective and relatively quick process but does carry the risk of the owner repaying the debt at the very last moment at which point the acquisition process has to stop. There is a separate policy document covering this area.

## COMPULSORY PURCHASE

To consider a Compulsory Purchase Order (CPO), a property must meet the following criteria:

- the house is in a poor state of repair and/or
- it is unlikely to be brought back into use by the owner,
- and a clear public benefit would be achieved.

Such a benefit would include provision of affordable housing, improving the appearance of the neighbourhood and reducing anti-social behaviour. If a CPO is under consideration it is likely the Council would engage expert, outside support, to ensure due process is followed in a timely manner as the legal processes are complex and require a significant input from legal.

## SECOND HOMES

There are genuine legitimate reasons for properties to be used as a second home, and the Council recognises this, however, there are instances where a property is simply remaining empty and unused.

Properties where owners cannot demonstrate the use of the property as second home will be investigated in line with the Empty Homes Policy and Toolkit.

The below table gives examples of evidence which could be used to support the use of the property as a second home:

<u>Type of proof</u>	<u>Description</u>
Gas usage	Copies of actual (not estimated) gas bills for the last 12 months showing the property in use for a minimum six months of the calendar year. Use may constitute 26 weekends throughout the year or midweek usage equivalent to six months usage.

Electric usage	Copies of actual (not estimated) electric bills for the last 12 months showing the property in use for a minimum six months of the calendar year. Use may constitute 26 weekends through the year OR midweek usage equivalent to 6 months usage.
Water usage	Copies of water meter reading bills (not set tariff) for the last 12 months showing the property in use for a minimum six months of the calendar year. Use may constitute 26 weekends through the year OR midweek usage equivalent to six months usage.
Booking Confirmations	Copies of booking confirmations for use of property as a holiday home, or equivalent information.
Officer inspection	A Council Officer inspection to help evidence the property's internal condition and suggest use as a second home.

## Conclusion

The Empty Homes policy provides a clear framework for tackling the problem of Long term EMPTY Homes in a coordinated and consistent manner

### CONTACT:

Please contact the Private Sector Housing at East Suffolk Council, for more information.

Email: [emptyhomes@eastsoffolk.gov.uk](mailto:emptyhomes@eastsoffolk.gov.uk)

Address: Empty Homes Officer, Private Sector Housing, Riverside, 4 Canning Road, Lowestoft, NR32 0EQ

Policy will be reviewed every 36 months if not before. Next review date August 2025.

## Appendix A

### **Empty Homes Scoring and Rating System**

Each empty home identified will be assessed using a scoring sheet which considers various criteria. The result of this assessment is that the property will be placed in a category which determines the priority level it is given and the subsequent course of action taken. Properties will be reassessed when necessary / new information is obtained to ensure they remain situated in the correct categories and the correct level of priority is given.

The categories will be classified as follows:

#### **Red – Priority properties – (scores 150 or over)**

Cases which fall into this category will be prioritised. All avenues will be explored with the owner to return their property to use in a way that suits their own needs, the needs of the community and the Council. Where assistance is refused and the owner is unwilling to cooperate, all enforcement options will be considered to establish the most appropriate course of action.

#### **AMBER - (scores 80+)**

Cases which fall into this category will be considered a lower priority than those in the Red category.

Resources will still be invested in these cases and officers will work with owners in an attempt to prevent empty homes from deteriorating and being reassessed to a higher category. Where necessary, enforcement options will be employed if considered the most appropriate course of action. Cases in this category will be monitored on a more frequent basis than those properties which fall within the Green category and will be reassessed where necessary.

#### **GREEN - (scores less than 80)**

Cases which fall into this category will be given a lower priority for action, but owners will be contacted and offered any assistance they may need to return their property back into use. These properties will be monitored for any change and reassessed where necessary.

<b>Address:</b>	
<b>Owner:</b>	
<b>Contact Details:</b>	
<b>Empty Date:</b>	

<b>Part A: Scoring Matrix</b>	<b>Overall Score</b>	0
-------------------------------	----------------------	---

Maximum score is 360

Issues	Comment	Score
Length of time empty	<i>Less than 6 months = 5pts 6m - 2 years = 10pts 2y - 5 years = 15pts 5y - 10 years = 20pts 10+ years = 25pts</i>	
Overgrown garden (10 pts)	<i>(Refer to PSH scale)</i>	
Property in disrepair (10 pts)	<i>(Add description of disrepair e.g. missing tiles, broken fencing, glazing, guttering, chimneys)</i>	
Property insecure (10 pts)		
Windows/Doors boarded (10 pts)		
Rubbish present (10 pts)	<i>(Refer to PSH scale)</i>	
Vermin present (10 pts)	<i>Last seen? How many? How often? How is it affecting complainant?</i>	
Fire (15 pts)	<i>When? Extend of the damage?</i>	
ASB - Graffiti, Youths entering (10pts)		
Outbuildings? (10pts)		
Other (5-20 pts)		

<b>Complaints</b>	<b>Comment</b>	<b>Score</b>
Neighbour complaints (10 pts each; max of 50 pts)		
Councillor complaints (10 pts each; max of 30 pts)		
MP complaints (10 pts each)		
Media complaint (10 pts each)		
<b>Notices</b>	<b>Comment</b>	<b>Score</b>
Current notice (10 pts)		
Non-compliance of current notice (10 pts)		
Cost of WID	<p><i>£0-£500=5 pts</i>  <i>£500-£1500=10 pts</i>  <i>£1500-£5000=15pts</i>  <i>£5000+=20pts</i>  <i>every 5k over £5k +5pts</i></p>	
Any previous enforcement action (5 pts each)		
Any previous enforcement debt		
Any other council debt		
<b>Location/Action</b>	<b>Comment</b>	<b>Score</b>
Located within a principal town/town centre	<p><i>Points for housing need area:</i>  <i>Remote village = 10pts</i>  <i>Small Town = 20pts</i>  <i>Main town (Lowestoft, WB, Flx) = 30pts</i></p>	
Adjacent property empty (10 pts)		
Additional empty properties on street (10 pts each)		
Suitable for ESC Acquisition? (15 pts)		

Property being marketed (-10 pts)		
Property being renovated (-10 pts)		
<b>Communication</b>	<b>Comment</b>	<b>Score</b>
Communication prior to notice being served (+/- 10 pts)		
Communication after notice but prior to WID being served (+/-10 pts)		
Communication after WID but prior to S.103 being served (+/-10 pts)		
Communication after S.103 but prior to sale instruction (+/-10 pts)		

<b>Recommended by:</b>	
<b>Date:</b>	

### Part B: Additional Information

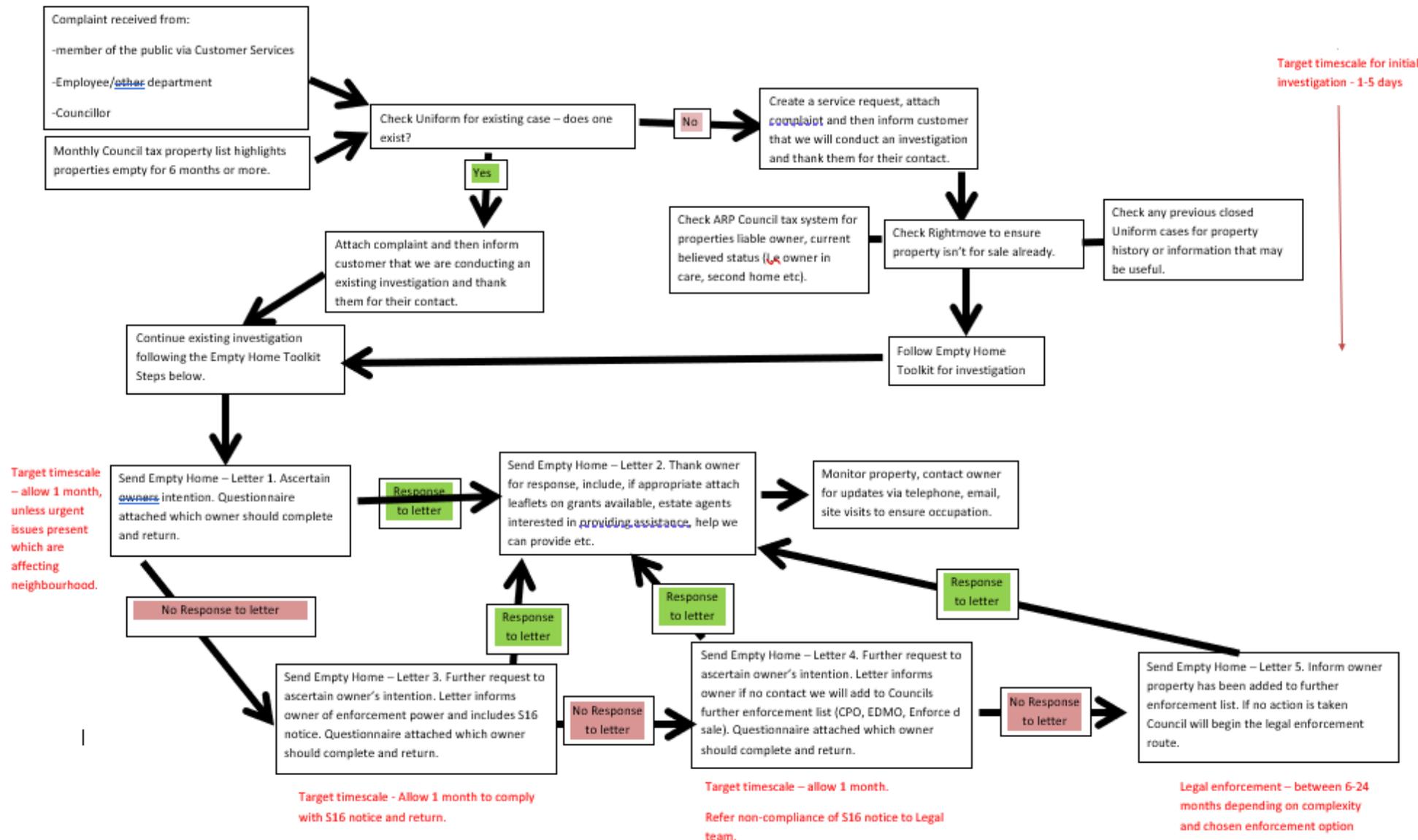
Include: empty date; communication with owner; area info; council tax info; current notice info; quotes; invoice; sales order; legal charge; S103 notice; file notes; enforced sale is only option;

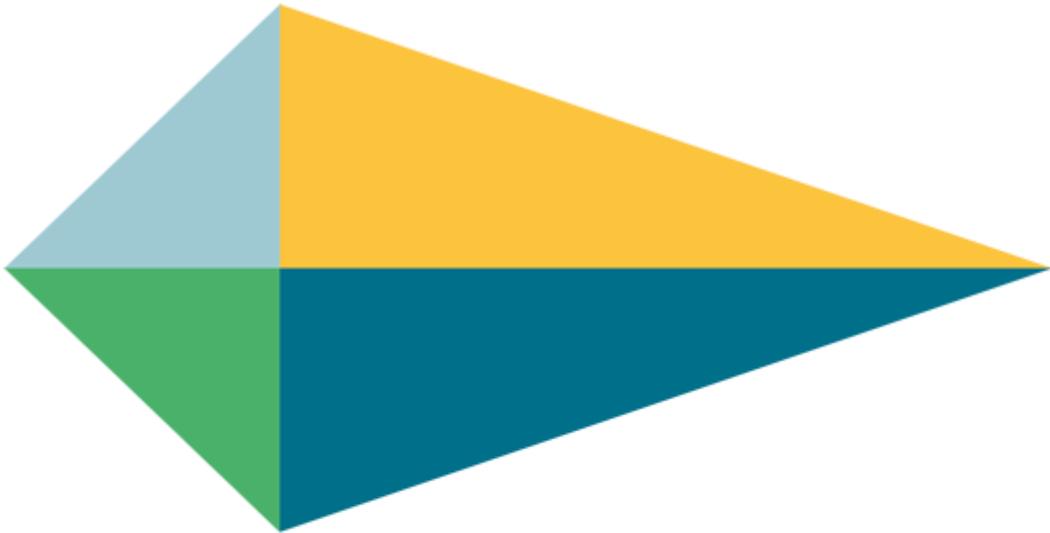
Request to **carry out WID/serve \*S.103 notice/enforce the sale** in respect of the above property

**Authorised by:**

**Date:**

Appendix B





**EASTSUFFOLK**  
C O U N C I L

**East Suffolk Council  
Enforced Sale Policy**

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## **PURPOSE**

The Enforced Sale Policy (ESP) defines a procedure which can be used to recover outstanding land charge debts owed to the Local Authority to support a range of options to bring empty properties back into use. The purpose of this procedure is to outline East Suffolk Council's policy and how it will operate in relation to Enforced Sales.

## **AIMS**

To deal with long term empty properties which have outstanding debt, to facilitate debt recovery and bring empty homes back into use.

## **INTRODUCTION**

Across the East Suffolk district, there are 833 empty properties. As of 1 December 2022, 292 of these are classed as long-term empty properties (unoccupied for a period of more than 2 years).

While there are a number of reasons why properties may be left empty for a short period of time, such as, awaiting probate, undergoing renovations etc. there are some properties which will never be bought back into use without our intervention. These can become eyesores, and negatively impact the neighbourhoods if left to deteriorate further.

However long the period of vacancy, an empty property is a wasted resource to both the owner and local community. An empty property could provide a capital gain to the owner if sold, or could provide a rental income, of which both options provide a home for someone in the local community.

Enforced Sale is a process used to sell a property on which there is a debt to the Council. The use of the process will not only ensure that the debt is repaid to the Council but is also likely to result in the property being renovated and returned to use.

ESP is a helpful tool for East Suffolk Council to have at its disposal for properties which are problematic long-term empty homes. ESP will only be considered for properties where other informal opportunities and formal action by the local authority have been considered and are not appropriate or have been tried and have failed.

## **LEGISLATION**

Councils can trigger the Enforced Sale procedure where there is a financial charge registered in Part 2 of the Local Land Charges Register.

- Section 7 of the Local Land Charges Act 1975, provides that a financial Local Land Charge takes effect, as if it had been created by a Deed of Charge within the meaning of the Law of Property Act 1925.
- Section 101(i) of the Law of Property Act 1925, confers on a mortgagee a power of sale. An Order of the Court is not necessary as the legislation itself provides that power. This gives the Council the power to sell the property if the debt isn't recovered.

- Section 87(1) of the Law of Property Act 1925, confers a right of possession. In addition, many of the statutes used by the Council which result in work in default of a legal notice, give the Council a power of sale and a right of priority over other charges.

**Under Section 20 of the Limitations Act 1980, no action can be taken to recover a sum of money secured by a charge on the property after a period of 12 years from the date on which the right to receive the money accrued.**

### **Human Rights Act 1998**

The Council must consider the Human Rights Act 1998 - an Act which gives further effect to the rights and freedoms guaranteed under the European Convention on Human Rights.

- Article 8 – Right to respect for private and family life.
- Protocol 1, Article 1 – Property, meaning that a person is entitled to the peaceful enjoyment of his possessions whereby the needs have to be balanced against the general benefits and rights of neighbours and the surrounding community.

East Suffolk Council will write to the owner, with a statement of intended action to exercise the ESP and this is considered proportionate, in accordance with the Act. Further correspondence will be issued by our Legal Services team.

### **Contribution to wider objectives of East Suffolk Council**

This policy will assist the Council in meeting the wider Housing Strategy, the Authority's Development and Local Plans through the regeneration of neighbourhoods. It will also assist the Council in maximising the number of empty private sector dwellings brought back into use.

## **THE PROCESS**

### **How are empty properties found and prioritised?**

Empty properties can be identified in a number of ways:

- Council Tax information
- Council Officers
- Elected Members
- Neighbours and general public
- Electoral Register
- Historical information on files and databases

Initial investigations will be undertaken first, with each empty property being prioritised in accordance with the Scoring Matrix in East Suffolk Council's Empty Homes Policy. Enforced Sale will only be considered to deal with an empty property if other methods of securing its re-occupation have failed and there is already a charge on the property.

## What are the criteria for using the Enforced Sale Policy (ESP)?

An Enforced Sale will typically only be used as a last resort once other methods have been exhausted.

There are 6 main criteria used to determine whether the ESP can be applied:

- The total debt on the property exceeds £1000.00\*
- The property is vacant for over 6 months
- The debt has been owed to the Local Authority for more than 3 months
- Having made all reasonable effort, the owner is either unknown or cannot be found, or is known but unable to be located. Or if located, has been afforded every opportunity but shown no inclination to improve the property or dispose of it
- The location of the property/land and the economic conditions of the area indicate that sale and occupation would be readily achieved
- Forcing the sale of the property is in the interests of the community and is the best means of ensuring the property does not deteriorate again

*\*Properties with a debt less than £1000.00 may be considered where properties are causing issues in the local community and the owner is not taking action.*

## Process

Once it has been confirmed that the criteria of the ESP have been met, the first stage of the Enforced Sale process is to compile a property file for our legal services team.

Once considered, and if agreed, a Section 103 notice of the Law of Property Act 1925 must be served allowing 3 months for the owner to repay the debt. The property cannot be sold until the notice has expired.

If no response is received, and the debt is still outstanding and has not been repaid; a charge is registered with the Land Registry. (If the property is unregistered, please refer to Appendix B)

Sale by auction is the preferred method to demonstrate best value. Should a property be sold by other means, three independent valuations must be undertaken to determine the sale price.

Immediately before the auction or exchange of contracts, a further check will be made to confirm the charge has not been repaid. If at any stage the charge is repaid, Enforced Sale is no longer an option and the process will immediately cease.

The Council is able to deduct the following from the proceeds of the sale:

- Any charges already placed on the property by the Local Authority
- Legal costs in undertaking the Enforced Sale
- Conveyancing costs in connection with the sale
- Auctioneer or marketing costs
- Officer time in relation to the Enforced Sale

If the sale of the property does not fulfil all debts outstanding, then consideration on what fees must be paid first should be considered. Any outstanding auctioneer's fees and solicitor fees will need to be paid. Any remaining debt to be pursued in the normal manner.

If any balance remains from the proceeds of the sale:

- If the whereabouts of the owner/the person first entitled is known, then the balance is paid in the normal way.
- If the owner's whereabouts are not known, then the balance must be paid into an interest-bearing account. If no claim is then made within a period of 12 years, the money reverts to the council.

See Appendix A for a detailed process.

## **RISKS**

The key risk is that a considerable amount of Officer time may be expended only for the owner to repay the debt at the last moment. In these circumstances the ESP ceases immediately.

## **ADVANTAGES**

The enforced sale process is relatively straight forward, particularly compared to compulsory purchase.

In addition to the debt being recovered, the property will be renovated and re-occupied. A Positive Covenant will be included upon sale to ensure the property is occupied within a set timescale, dependent on the condition of the property and amount of work required to bring back into use.

It can be used to deal with problematic, long term empty properties where the owner cannot be located.

If a property has not gone through probate, the Local Authority is still able to use the ESP to bring the property back into use, using other legal provisions.

The ESP will ensure that Enforced Sale is only used in cases where the risk of last minute debt repayment is low by referring to the 6 criteria. In the rare occasion that the debt is repaid, other action will still be pursued to achieve the bringing the property back into use.

# APPENDICES

## Appendix A

### Detailed Enforced Sale Procedure (ESP)

(Reference Rushcliffe Borough Council)

#### Compiling a property file

A property file must be prepared when referring the case to Legal Services when a decision has been made to invoke the ESP.

This should include:

- A chronology of the case with significant milestones, including dates of decisions, inspections carried out, letters sent etc.;
- Copies of all the statutory notices served prior to the Council carrying out the necessary works in default together with details as to how the notices were served;
- Copies of the work instructions to the contractor for the work to be carried out;
- Dates work carried out;
- Copies of all the invoices from the contractors;
- Cost of any fees, charges and cost charged by the council;
- Name of current owner and address (including source of information);
- Copies of any relevant correspondence sent to, or received from, the owner and/or interested parties in respect of the notice(s) or the debt.
- Details of any inspections and interviews with the property owner;
- An up-to-date copy of the local land charges register for the property
- Sign off by the Executive Manager for Neighbourhoods authorising the commencement of the ESP.

Once Legal Services has considered all of the evidence and the file, they will provide their advice and recommendations as to whether the case can proceed or not, or whether they require any further information.

Once Legal Services is satisfied that the matter can proceed the following steps will be carried out:

#### Section 103 Notice

Once a check has been made that the charge has not been paid off a formal letter will be sent to the current owner telling him or her of the existence of the charge and that if it is not paid off the council will be taking steps to sell the property.

Where Section 81A of the Environmental Protection Act 1990 applies where the debt has arisen from works following the service of an abatement notice – (see Appendix C) the relevant notice will also be served at this time.

This letter should include a copy of the original notice and give 21 days for the owner to pay the money owing. If there are other mortgages on the property the relevant bank or

building society should be notified too of the proposal to sell the property if the debt is not paid.

If the debt is not paid (and no appeal has been received where Section 81A applies) then a notice pursuant to Section 103 of the Law of Property Act 1925 is then served in accordance with normal rules of service (i.e., posted to property, posted to last known address, affixed onto the property). This gives the owner three months to repay the debt.

The property cannot be sold until the Section 103 notice has expired, but during this time the procedure can be progressed through the various stages as far as possible.

### **Registration of Charge – Registered Land**

If there is no response to the letter, s.103 Notice and no debts have been repaid then a charge must now be registered with the Land Registry.

1. If the property is registered at the Land Registry then prepare a resolution, and have it sealed, setting out: the service of the original notice; the carrying out of works in default; the registration of the costs as a local land charge; and the service of the section 103 notice.
2. Then apply to the Land Registry on form AP1 to have the charge noted on the registered title.
3. If the charge is to have priority over existing charges complete and submit form SC.

Once the charge is registered at the Land Registry it is good practice to write to the owner and any bank or building society with an existing charge to tell them that you will now be selling the property.

The property can then be sold. The council owes a duty to the owner of the property (as does any bank or building society selling a property where there has been mortgage default) not to sell at under value.

### **Unregistered Land**

The procedure for unregistered land is set out at appendix B. A statutory declaration containing the information set out within the resolution (and a copy of this resolution) will be sworn prior to any action to sell unregistered land.

### **Selling the Empty Home**

Other than where there is particular justification, sale at public auction will be the preferred option to ensure best value can be demonstrated.

If choosing sale by private treaty to a preferred purchaser, then two valuations of the property to determine the sale price shall be carried out – one from our internal asset management team and an external estate agent valuation. Sales to a preferred purchaser must be approved by the Executive Manager for Neighbourhoods. Immediately prior to the auction/exchange of contracts Legal Services will make a further check to confirm whether

the Charges have been repaid. If at any stage prior to the actual sale of the property the outstanding debt is repaid, the ESP is no longer an option and will be halted at whatever stage it has reached.

### **Post-Sale**

The following deductions will be made from the proceeds of the sale:

- any Charges registered in favour of the Local Authority, including interest if applicable;
- the legal costs in undertaking the enforced sale procedure;
- conveyancing costs in connection with the sale;
- auctioneer's or other marketing costs;
- other officer time in relation to the enforced sale process;

If the debts are greater than the proceeds of sale, consider whether the fees are to have first call on the proceeds or not. The auctioneer's fees will have to be paid in any event and the other fees should also have first call on the proceeds. Any remaining debt is taken off the property and placed against the former owner as a personal debt, to be pursued in the normal manner if economically viable.

If any balance remains from the proceeds of the sale and the whereabouts of the owner/the person first entitled is known, then the balance is paid in the normal way.

If, as is most likely, the owner's whereabouts are not known, then the balance must be paid into an interest-bearing account. If no claim is then made within a period of 12 years, the money reverts to the council.

## **Appendix B**

### **Dealing with Properties not registered with Land Registry**

*Reference Rushcliffe Borough Council*

#### **Check that the property is not registered**

A search of the index map must be undertaken at the Land Registry to ensure that the property is not registered. The search must also include the adjoining properties. This might reveal what encumbrances affect the property and also the extent/limits of the title of the property in question.

The extent of the property bound by the charge and that can be sold is ascertained by applying the facts to each case, and the particular statutory provisions that have given rise to the Local Land Charge. The position is clear in the case of charges which arise under the following legislation. Thus, the ESP should be able to proceed in these cases:

- Public Health Act 1936, Section 291
- Prevention of Damage by Pests Act 1949
- Building Act 1984, Section 107.

#### **Ascertain what encumbrances affect the property**

Using any information found during this investigation and any other information available as to the name(s) of the owner, the purported owner or any other interested party, a Land Charges Act 1972 search must then be carried out against the name of any such person(s) and the property concerned. This may produce clues as to encumbrances affecting the property e.g. easements, covenants and charges.

Where the statutory charge binds all the estates and interests in the property, any registered charges will be of little significance, other than for the purpose of giving notice to any charge as to the Council's intentions. However, where this is not the case, then it would probably be inadvisable to proceed unless it is certain that there are no prior charges and that the statutory charge binds the freehold or a long lease.

As stated above, if any of the adjoining properties are registered, it may be possible to ascertain what encumbrances affect the same. This may give a purchaser some clues as to the matters affecting the property and make the property more marketable. The alternative is that no such steps are taken and the purchaser is made aware, via the contract terms, that such is the case. In both cases though, the contract for sale will need to contain special conditions covering the position.

#### **Write to all interested parties**

If the searches provide any information as to the identity or whereabouts of the owner(s) or other interested parties, or such information is already available, a letter is now sent to all persons having an interest in the property in order to advise them of the position (See Appendices 6 and 12). This will include others who have a charge registered against the property. The owners copy must be:

- Delivered to the Owner or Owners by post, or by hand or should be affixed to the property and,
- Must be posted to any other addresses shown on the Land Registry.

### **Enquiries are completed**

If either:

- No information is found as to the identity or whereabouts of the owner(s) or other interested parties or
- There is no reply within 21 days to the letter above

The property is put forward for sale. The contract will need to contain special conditions

## Appendix C

### Enforced Sale Procedure - A Practitioner's Guide (NPLaw, 2015)

#### 1. Introduction

Many statutes allow a council to serve a notice on an owner of property calling on the owner to carry out works. It may be, for example, that works are needed to deal with the dangerous or untidy condition of the property. Sometimes failure to comply with a notice amounts to an offence; often the council has the right to carry out the works in default and to recover the cost. Some statutes provide that the cost of carrying out the works in default is a charge on the property.

It is the latter scenario that provides the basis for the enforced sale procedure. In essence the local authority exercises the power of sale conferred by the charge to recover the money it is owed for carrying out the work in default. It is the same power that a bank or building society uses to sell a house when the owner has defaulted on the mortgage payments.

(This guide does not cover the right to sell a property because of council tax arrears. That process, unlike the enforced sale procedure covered in this guide, requires an application to court and an order for sale).

#### 2. What are the relevant statutes?

2.1 Set out below are some of the most common statutory provisions that enable the enforced sale procedure to be used. (There are many others too). Also identified are some differences between the various statutes.

<u>Statute</u>	<u>Notice Use</u>	<u>Type of charge</u>	<u>Notes</u>
Section 4 – Prevention of Damage by Pests Act 1949	Requiring land to be kept free of rats and mice	On the premises and on all estate and interests therein	Charge arises from date of completion of work. Reasonable interest can be claimed from date of service of demand for costs.
Section 79 – Building Act 1984	Requiring works to remedy ruinous and dilapidated buildings and neglected sites	On the premises and on all estate and interests therein	Charge arises from date of completion of work. Reasonable interest can be claimed from date of service of demand for costs.
Section 80 – Environmental Protection Act 1990	Requiring abatement of statutory nuisance	On the premises	Charge arises 21 days after service of demand under s81A (unless an appeal is

			made against the notice, when the period is extended). Reasonable interest can be claimed.
Section 215 – Town and Country Planning Act 1990	Requiring steps to be taken for the purpose of remedying the adverse effect on amenity caused by detrimental condition of land and buildings	Binding on successive owners of the land	Charge arises from date of completion of the works.
Section 11 and 12 – Housing Act 2006	Requiring the taking of action to deal with category 1 or 2 hazards in residential premises	On the premises	Charge arises 21 days after service of demand (unless an appeal is made against the notice, when the period is extended). Reasonable interest can be claimed.
S55 Planning (Listed Buildings and Conservation Areas) Act - Change proposed by Historic Environment (Wales) Bill	Urgent works to a listed building	On the land	Charge arises from date the notice under s55(2) becomes operative

2.2 When the charge has arisen (either immediately the works in default have been carried out or following service of a demand - as set out in the table) it should be registered as a local land charge by the council's Local Land Charges Team. This is an administrative step familiar to Local Land Charges staff.

2.3 The charge takes effect as if created by a deed of charge by way of legal mortgage within the meaning of the Law of Property Act 1925. This is what provides the power of sale.

### **3. Exercising the power of sale**

3.1 The first thing to do is to check that the original notice was properly drawn up and served. This is unlikely to be a problem as nearly all officers serving statutory notices will be aware of the requirements for service. You will also want to check who the present owner of the property is, just in case it has changed hands recently. A Land Registry search will, if the land is registered, provide this information.

3.2 You will, of course, want to check that the charge has not been paid off. Assuming it has not, you will then want to write to the current owner telling him or her of the existence of the charge and that if it is not paid off the council will be taking steps to sell the property. This letter, which is really sent as a matter of courtesy, should include a copy of the original notice and give, say, 21 days for the owner to pay the money owing. If there are other mortgages on the property (and this will be revealed by a Land Registry search) it is sensible if the relevant bank or building society is notified too of the proposal to sell the property if the debt is not paid).

3.3 If the letter is ignored you can then go on to serve a notice under section 103 of the Law of Property Act 1925. This is a legal requirement before you exercise a power of sale under a mortgage/charge. This notice explains that money is owed under a mortgage/charge and that if it is not paid off within 3 months, the council may then sell the property to recover the money. It is probably a good idea to send a copy to any relevant bank or building society that has an existing mortgage over the property.

3.4 Assuming the section 103 notice is ignored you can then get ready to sell the property. If the property is registered at the Land Registry you will need to prepare a declaration, and have it sealed, setting out: the service of the original notice; the carrying out of works in default; the registration of the costs as a local land charge; and the service of the section 103 notice. You will then apply to the Land Registry on form AP1 to have the charge noted on the registered title. If the charge is to have priority over existing charges you will also need to complete and submit form SC. If the property is unregistered you will need to include the same information in a statutory declaration, probably sworn by the officer who originated the enforced sale action. Once you have registered the charge at the Land Registry or sworn your statutory declaration it is good practice to write to the owner and any bank or building society with an existing charge to tell them that you will now be selling the property.

3.5 The property can then be sold. It is common to place enforced sale properties in an auction but it is important that you seek to obtain the best price. The council owes a duty to the owner of the property (as does any bank or building society selling a property where there has been mortgage default) not to sell at under value.

#### **4. Settling the account**

When the property has been sold you can deduct from the sale proceeds the original works in default costs, the legal costs in undertaking the enforced sale procedure, conveyancing costs in connection with the sale, auctioneer's or other marketing costs, and other officer time in relation to the enforced sale process. If there are any other debts owed to the council these can be deducted too. The balance is then paid over the ex-owner of the property or, if there is another mortgage on the property, you will pay them off first before handing the balance over. If you do not know the identity of the

owner, the money will be retained by the council. After 12 years the right to claim it will be lost.

## **5. Practical issues**

### **5.1 Can you use the enforced sale procedure if the property is occupied?**

Whilst the answer is “yes”, nearly all enforced sale cases relate to empty properties or vacant land. If you use the procedure in respect of occupied land or property you will need to make an application to court for a possession order and if the property in question is residential there will be further restrictions on when a possession order can be granted. No court application is required in connection with unoccupied property.

### **5.2 What size of debt is necessary to do an enforced sale?**

The enforced sale process will be halted if the owner of the property pays the council the amount owed. The smaller the debt, the more likely it is that this will happen. Furthermore it may be considered unduly harsh for a council to seek to sell someone’s property for a small debt. For this reason some councils have a policy of not using the enforced sale process unless the debt is above a certain amount. I have seen figures of £300, £500 and £1,500 quoted so there is a fair bit of flexibility. On the other hand, if the owner of the property cannot be identified it may be considered appropriate to use the enforced sale procedure for a much smaller debt, perhaps even as low as £100. Remember that in calculating the sum owed, any VAT you have paid a contractor to do the works in default can be deducted. This is because the council will already have reclaimed the VAT and it is the net cost that you are reclaiming.

### **5.3 What about other mortgages registered against the land?**

(a) Where the charge against the land is binding on the “premises and on all estates and interests therein” (see table) it is a priority charge. This means that the council’s charge takes precedence against all other existing charges.

(b) In the case of a section 215 Town and Country Planning Act 1990 charge it should be noted that the charge is only binding on successive owners of the land. This means that if there is already a charge registered against the title 5 it will probably not be worth doing an enforced sale. This is because the council charge will rank behind the existing charge. (You would only want to do an enforced sale in this situation if there was sufficient equity in the property to cover both charges and the bank or building society with the prior charge was happy for you to sell the property).

(c) In the case of those charges stated to be a “charge on the premises” (see table) the position is more complicated. Some commentators suggest that these are not priority charges. However there are two cases that suggest the wording is sufficient to create a priority charge. These are *Paddington Council v Finucane* (1928) and *Bristol Corporation v Virgin* (1928). Further support for this view is provided in the later case of *Westminster*

City Council v Haymarket Publishing Ltd (1981). Certainly at nplaw we work on the basis that these charges are priority charges.

#### **5.4 Selling the property**

When we sell a property the contract makes clear that the council is selling in exercise of its power of sale under a mortgage. No covenants for title are given and it is made clear that the council does not warrant the class of title that the buyer will be able to obtain at the Land Registry. This has not posed a problem to date and buyers have still been willing to proceed.

## Appendix D

### Enforced Sale Process diagram

