



## Housing Committee 21<sup>st</sup> June 2018

<b>Title</b>	<b>Compulsory Purchase of long term vacant properties</b>
<b>Report of</b>	Councillor Gabriel Rozenberg
<b>Wards</b>	West Hendon, Brunswick Park and Golders Green
<b>Status</b>	Public (with a separate exempt report)
<b>Enclosures</b>	None
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### Summary

Empty properties provide extra pressure on the housing market. The Private Sector Housing Team endeavour to work with the owners of these properties to bring them back into residential use through advice and financial assistance. Where this is not possible the appropriate enforcement action is taken.

This report recommends the making of Compulsory Purchase Orders (CPO) in relation to three long term vacant properties and to give Officers the discretion to proceed with any of the three options detailed in the report of consensual purchase, cross undertaking or dispute resolution. The property identification and case details are contained within the exempt report.

## **Recommendations**

- 1** That the Housing Committee recommends to the Assets, Regeneration and Growth Committee to authorise the making of Compulsory Purchase Orders, under Section 17 of the Housing Act 1985 and the Acquisition of Land Act 1981, in respect of the properties identified as 'a to c' in the exempt report.
- 2** That, subject to the Assets, Regeneration and Growth Committee authorising the making of the Compulsory Purchase Orders referred to in recommendation 1 above, the Orders be submitted to the Secretary of State for Housing, Communities and Local Government for consideration and confirmation.
- 3** That, in the event of the Secretary of State for Housing, Communities and Local Government returning any of the Orders for confirmation by the Council, the Deputy Chief Executive be authorised to confirm the Order(s).
- 4** Following confirmation of any of the Orders, to authorise the Deputy Chief Executive to enter into a cross-undertaking with the owner(s) of any relevant property not to implement the Order on the condition that the owner(s) agree to bring their property back into use within a reasonable time.
- 5** If a cross-undertaking is not entered into as referred to in recommendation 1.5 below, or the terms of the cross-undertaking are not adhered to by the owner, to recommend that the Assets, Regeneration and Growth Committee authorises the Deputy Chief Executive to proceed with the compulsory acquisition of any of the properties in question.
- 6** To authorise the Deputy Chief Executive to enter into negotiations for consensual purchase of the property at current market value or to enter into alternative dispute resolution with the owner
- 7** Following compulsory acquisition of any of the properties 'a to c', an options paper on the onward disposal will be brought back to the Assets, Regeneration and Growth Committee for a decision.
- 8** To note that the financial costs of the CPOs will be funded through the currently approved capital programme.

## **1. WHY THIS REPORT IS NEEDED**

- 1.1 Barnet currently has around 2,000 properties recorded with Council Tax as being long term empty. Some of these properties are in a poor condition and represent an environmental blight on the local neighbourhood and waste of the Borough's housing stock.
- 1.2 The Private Sector Housing Team, part of the Environmental Health Service within Re Ltd, work with empty property owners to secure property improvement and reoccupation. This is done through a combination of offering, in the first instance advice, support and grant aid to owners. Where this fails the appropriate enforcement action is taken depending on the response. This ranges from minor enforcement action to improve and/or secure the property to taking over of the property through Compulsory Purchase powers.
- 1.3 National experience, and the local experience of the Borough, has shown that making a resolution to compulsorily purchase a property focuses the minds of the current owner(s) to either dispose of the property or bring it back into use without further need for intervention. In the majority of cases where the Compulsory Purchase process is started, the Council rarely reaches the situation where purchase becomes necessary. As such, this is a very cost effective tool in bringing empty properties back into use.
- 1.4 Should the Council resolve to make the CPOs ('the Orders') on the properties "a to c"; they will be submitted to the appropriate Government Minister for confirmation. Where an objection to an Order is made by an owner and is not withdrawn, then, unless satisfied that the objection is exclusively related to compensation, the appropriate Minister must arrange for either a public local inquiry or a hearing before an inspector, appointed by the Minister. The time limit for the exercise of a Confirmed Order is three years from the time the Order becomes operative.
- 1.5 National experience of the use of Compulsory Purchase powers has demonstrated that once CPO action has been initiated, an owner may belatedly come forward with proposals. In such instances, a local authority can enter into an undertaking (in the form of a legally enforceable agreement) with the owner to bring the property back into use within an agreed reasonable time-scale and not object to the making of the CPO or to withdraw any objection and allow it to be confirmed unopposed. This would mean that the Council cross-undertakes not to implement the CPO within the agreed time period, but if the owner fails to carry out works, then the Council (the CPO having been confirmed at this stage) can move to possession. This negates the need for an Inquiry and all the costs involved in the Inquiry process.
- 1.6 The Government guidelines for the making of CPOs (the Crichel Down Rules) also provide for two other ways to proceed. The first of these is that the Council could purchase the property by consent. Once approval for making a CPO is granted, should the owner wish to, they may enter into negotiations with the Council for a sale at current market value. This would be at a similar

cost as the price payable to the owner should the CPO proceed to conclusion but would save considerable Officer time and legal costs.

- 1.7 The second is the use of Alternative Dispute Resolution (ADR) techniques – This involves employing (at joint cost) a suitably qualified independent third party throughout the compulsory purchase process. This mediation might, for example, help to clarify any concerns around the principle of the compulsory acquisition of the land, while an independent valuation might help the owner with regard to the potential level of compensation eventually payable if the order were to be confirmed. The use of ADR can save time and money for both parties, while its relative speed and informality may also help to reduce the stress which the compulsory purchase process could place on an owner.
- 1.8 Once the Order is confirmed, and if there is no consensual agreement to purchase, no ADR used or no cross-understanding agreed (or the terms of the cross-understanding is not adhered to by the owner), the Order can be implemented either by way of Notice to Treat, or by General Vesting Declaration (GVD). The Notice to Treat procedure would enable the Council to take possession of the property very quickly. However, it would not give the Council legal ownership of the property. Ownership can only be transferred when compensation has been paid. If the level of compensation is disputed and the matter is referred to the Lands Tribunal for settlement, it may take up to two years for the Council to obtain ownership. Throughout this period it would not be possible to sell the property for refurbishment. The GVD procedure, which is the preferred route, enables possession to be obtained only three to four months after confirmation thus allowing prompt transfer and commencement of refurbishment without waiting for compensation issues to be settled. The owner can apply for 90% advance payment of the Council's valuation. The balance of the compensation (or the whole if no advance payment is claimed) is payable on completion of the transfer of ownership. Whether the Council proceeds by way of Notice to Treat or GVD, it will also have to pay interest on the compensation from the date of entry to the date of completion of the purchase. The rate of interest is prescribed by regulation made under the Land Compensation Act 1961.
- 1.9 Once the Order is confirmed, the property would be sold either with a mechanism to ensure that the house is brought back into repair and habitation, or following improvement with a mechanism to ensure that the property is occupied.
- 1.10 Details of the three properties are contained in the Exempt Report.

## **2 REASONS FOR RECOMMENDATION**

- 2.1 These properties are considered to be a high priority for targeted enforcement work because there is little prospect of the properties being returned to residential use otherwise. This is because of the lack of action taken by the owners thus far and the detrimental effect they are having on neighbouring

premises and the wider community. Case details are contained in the associated exempt report.

- 2.2 Whilst there is a procedure for officers to work through to initiate CPO action this is flexible as it depends on the actions taken during the process by the empty property owner. A CPO is a significant piece of enforcement action and if at any stage the owner demonstrates a firm commitment to carry out repairs and return a property to residential use this has to be taken into consideration. As such the timescale of the CPO process varies significantly depending on the particular details of the case.
- 2.3 In relation to property a-c, a full summary of the case details is contained in the "Exempt Report", but the basic details are as follows:

<b>Property Reference</b>	<b>Case summary</b>
<b>A</b>	<p>This vacant property is a two-storey semi-detached property.</p> <p>It is believed that the house has been empty for the majority of the time since at least 2005.</p> <p>To deal with empty homes, Environmental Health have devised a series of three standard format letters to be sent to owners offering assistance to bring the house back into use and advising the owners of the consequences of failing to do so.</p> <p>These letters were sent 2016-2017.</p> <p>On 29 March 2017 the owner attended a meeting at the property.</p> <p>The property was found to be in good order and repair with no significant or obvious defects.</p> <p>The owner indicated a willingness to lease the property to Barnet Homes and the two parties were put in touch but the leasing arrangements were not accepted by the owner.</p> <p>An exchange of letters followed culminating in a formal complaint in March 2018.</p> <p>Whilst this exchange continued, on 21 November 2017, the Empty Property Steering Group considered the case, including the offer of a lease and decided that this report should be submitted to the Housing Committee.</p>
<b>B</b>	<p>This vacant property is a three storey, three / four bedroom semi-detached property. The internal walls have been knocked down and the property has been stripped out. The Council Tax record states that the property has been empty since August 2013.</p>

	<p>The property was first brought to the attention on Environmental Health in February 2017 via a neighbour complaint and an initial visit was carried out on 15<sup>th</sup> February 2017. The complaint was regarding the lack of progress with the renovation work and the unsightly appearance of the property. One year later there has been very little progress with the renovation works.</p> <p>Environmental Health visited the property again on 2<sup>nd</sup> May 2017 and the case was referred to the Planning Enforcement team on 5<sup>th</sup> May 2017 as the work had not progressed following promises from the owner. The Planning Enforcement team served a Town and Country Planning Act 1990 Section 215 Notice in July 2017 taking effect on 16<sup>th</sup> August 2017. The notice required the owners of the property to clear the land surrounding the building</p> <p>On 16<sup>th</sup> May 2017 the property was inspected with the owner and extensive work still found to be required.</p> <p>Since this time further communications have been exchanged with the owner regarding the need to progress the works.</p> <p>A Housing Technical Officer visited the property again on 5<sup>th</sup> December 2017 and 11<sup>th</sup> January 2018 but no noticeable progress was seen.</p> <p>The Empty Property Steering Group met on 22<sup>nd</sup> January 2018 and agreed the best course of action would be a Compulsory Purchase Order.</p> <p>Further complaints about vermin have since been received.</p>
<b>C</b>	<p>This vacant property is a three storey 3/4 bedroom, semi-detached property of a traditional solid brick construction.</p> <p>The property was first brought to the attention of Environmental Health in July 2008 following a complaint from a neighbour concerned that the property was unsecure and vulnerable to unauthorised entry. Statutory action was taken by the Council to secure the property.</p> <p>Various letters were sent to the owner with no response. A letter was sent on the 12<sup>th</sup> June 2009 informing the owner that the Council would be considering Compulsory Purchase action.</p> <p>Multiple efforts were made to engage the owner but all attempts failed and eventually the property was referred to the Councils Cabinet Resources Committee with the intention to Compulsory Purchase the property. On the 16<sup>th</sup> March 2010 authorisation was given by the Council's Cabinet Resources Committee for a Compulsory Purchase Order (CPO) to be made.</p>

	<p>Communication with the owner followed regarding plans for reoccupation.</p> <p>Following a fire at the property a Prohibition Order was served in April 2012 to ensure no occupation of the property took place in its current condition.</p> <p>The owner was written to on 3<sup>rd</sup> October 2013 outlining options to bring the property back into use. Mentioned in this letter were the option of a cross-undertaking, Alternative Dispute Resolution (ADR) and a voluntary purchase of the property.</p> <p>A Compulsory Purchase Order was made on 31 January 2014 and an objection received from the Owner. A compromise was reached whereby the Owner who agreed to carry out works to restore the property to a habitable condition.</p> <p>The owner entered into a Cross Undertaking in August 2014 and was given 18 months to complete the work. By agreement the Owner withdrew her objection to the CPO, which was then confirmed. Under the terms of the Cross Undertaking the Council agreed not to implement the CPO provided that the Owner complied with her promise to carry out the work. The Owner did commence the work, which was nearing completion at the time of the Cross Undertaking deadline and the owner was therefore allowed extra time in order to finish the work.</p> <p>Unfortunately, the work was never completed.</p> <p>Further communications were exchanged between HB Law and the owner regarding proposals for completion of the works and the timescale for completion was extended.</p> <p>Despite the extra time given by extending the Cross Undertaking and the multiple attempts to engage the owner to complete the works, the property remains empty and the works are not finished.</p> <p>The Empty Property Steering Group met on 13<sup>th</sup> March 2018 and agreed the best course of action would be to recommence action for a Compulsory Purchase Order.</p>
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### **3 ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED**

3.1 There are two other possible options for dealing with this property:

- Making of Empty Dwelling Management Orders - due firstly to the lack of evidence of anti-social behaviour required to warrant such action and secondly, in one of the three cases, b, the amount of work required to make the property habitable, this option holds more financial risk for the Council.
- Do nothing – this is not felt to be appropriate due to the drain on Council and Emergency Services resources caused by long term empty properties, the pressure on the existing housing stock and the continued cause for neighbour complaint.

### **4 POST DECISION IMPLEMENTATION**

4.1 Should the recommendation be approved, the owners of properties “a to c” will be notified in writing. If insufficient or inadequate progress is made in bringing the property back into use, an application will be made to the Secretary of State at the Ministry of Housing, Communities and Local Government for consideration and confirmation of fresh CPO(s).

### **5 IMPLICATIONS OF DECISIONS**

#### **5.1 Corporate Priorities and Performance**

5.1.1 The Corporate Plan 2015-2020 is based on the core principles of fairness, responsibility and opportunity to make sure Barnet is a place:

- Of opportunity, where people can further their quality of life
- Where people are helped to help themselves, recognising that prevention is better than cure
- Where responsibility is shared, fairly
- Where services are delivered efficiently to get value for money for the taxpayer

5.1.2 The policy meets the Council’s key Corporate Priorities detailed in the Barnet Corporate Plan 2015-2020 as follows:

Increasing the available housing stock meeting minimum standards will help ensure that people can further their quality of life.

5.1.3 Barnet’s Housing Strategy 2010-2025 key objective is to increase the housing supply, including family sized homes, to improve the range of housing choices and opportunities available to residents. Taking CPO action contributes to this by improving the condition and sustainability of the existing housing stock.



### 5.2.1 RESOURCES (Finance, Procurement, Performance & Value for Money, Staffing, IT, Property, Sustainability)

The costs to the Council are divided into capital and revenue costs

#### Estimated Capital Cost

- a. The properties have an estimated desktop valuation, in their present condition, of

Property a – £600,000

Property b – £540,000

Property c – £765,000

The Council has an Empty Property capital budget to assist in bringing empty properties back into residential use. This funding will be used to support the purchase of the property and any property security, repairs or improvements that need to be carried out prior to sale. It is broadly estimated that the property purchases will not all take place during 2018/19. The current capital budget for Empty Properties is as follows:-

2018/19	£2,843,000
2019/20	£2,000,000
2020/21	£467,000

- b. If the Compulsory Purchase Order for any of the properties “a to c” is confirmed, Barnet will proceed if necessary with the acquisition of the property. Compensation will be payable to the owner based on the valuation on the date of possession, which could be higher or lower than the Council’s valuation. At this time there is no way of knowing exactly whether or not the Council will be able to recover this compensation in full. In the current economic conditions it is anticipated that the risk to the Council could be high. There is however every chance that the pressure of initiating the Compulsory Purchase procedure will be sufficient to ensure that the property owners take the appropriate action to either repair and reoccupy the property or sell the property.
- c. The Planning and Compulsory Purchase Act 2004 introduced an entitlement for former owners of compulsorily acquired property to claim basic loss payments. The amount is 7.5% of the value of the person's interest in the land, subject to a maximum of £75,000. The Act provides that the entitlement to basic loss payment is lost if certain criteria are all met:
- a specified statutory notice/order has been served on the owner;
  - at the time the Compulsory Purchase Order is confirmed the statutory notice/order has effect or is operative; and
  - The owner has failed to comply with any requirement of the statutory notice/order.

- d. A Section 215 notices under the Town and Country Planning Act 1990 is in place on the property b. Unless the owner complies with the terms of this notice, which is unlikely, the consequence is that the owner will lose the entitlement to the Basic Loss Payment described above.

### **Revenue Costs**

- e. For the Compulsory Purchase Orders and acquisition, the revenue costs of making the Orders and associated administration has been provided by funds secured previously from the North London Housing Sub Region for CPO work. These funds are currently held in the Council's reserves. The reserve is managed by Re and currently stands at £158,890.

In-house property acquisition costs (including inspection, valuation, security and maintenance, liaison with legal services, negotiations with the owner throughout the Compulsory Purchase Order) are estimated at £15,000 per property. These costs will be financed from the reserve mentioned above.

- f. While enforcement engenders the aforementioned revenue costs, once the properties in question are returned to use, they will no longer generate a demand for Council resources, enabling these to be focused on other priorities. The acquisition and immediate disposal of these properties may result in nomination rights for the Council to meet the needs of accepted homeless families, if the properties were sold to a Registered Social Landlord.

## **5.3 Legal and constitutional references**

- 5.3.1 Section 17 of the Housing Act 1985 ('the 1985 Act') empowers local housing authorities to compulsorily acquire land, houses or other properties for the provision of housing accommodation. Acquisition must achieve a quantitative or qualitative housing gain.
- 5.3.2 In 2015 the Department for Communities and Local Government issued the document: 'Guidance on compulsory purchase process and the Crichton Down rules for disposal of surplus land acquired by, or under threat of, compulsion'. The guidance is clear that Compulsory Purchase powers only be used in the last resort and where there is a compelling case in the public interest. The action must not unduly interfere with the owner's human rights. Historically the compulsory purchase of empty properties may be justified as a last resort in situations where there appears to be no other prospect of a suitable property being brought into residential use. Authorities will first encourage the owner to restore the property to full occupation. When considering whether to confirm a compulsory purchase order the Secretary of State will normally wish to know how long the property has been vacant; what steps the authority has taken to encourage the owner to bring it into acceptable use; the outcome; and what works have been carried out by the owner towards its re-use for housing purposes.

- 5.3.3 In making its recommendations, the Housing Committee should have regard to the relevant provisions of the Human Rights Act 1998, namely Article 1 to the First Protocol – ‘no one shall be deprived of his possessions except in the public interest’, and Article 8 to the Convention – ‘the right to respect for private and family life, home and correspondence’.
- 5.3.4 It is considered that the potential exercise of Compulsory Purchase powers may be justified in due course by reason of being in the public interest, authorised by law and both necessary and proportionate towards meeting the Council’s Housing Strategy and the environmental, social and economic well-being of the area.
- 5.3.5 Local Authorities are given powers to dispose of housing land in accordance with *The General Consent for the Disposal of Land held for the purposes of Part II of the Housing Act 1985 - 2013 which came into force on 11 March 2013*, which states:
- A Local Authority may dispose of land for a consideration equal to its market value.
- 5.3.6 In the case of this empty property held for housing purposes the relevant section of those general consents is A3.3.1 which states that a Local Authority may dispose of an unoccupied dwelling-house to a person who intends to use it as their only or principal home.
- 5.3.7 It should be noted that any transfer to the buyer will contain a restriction that the owner must, having carried out works (where appropriate), occupy the property.
- 5.3.8 The Council Constitution, Responsibility for Functions – sets out the terms of reference of the Housing Committee which includes “All matters related to regulation of private sector housing, including enforcement, licensing, empty properties and squatting”.
- 5.3.9 The Assets Regeneration and Growth Committee has responsibility as regards – ‘all matters relating to land and buildings owned, rented or proposed to be acquired or disposed of by the Council’.

#### **5.4. RISK MANAGEMENT ISSUES**

- 5.4.1 There are risks associated with compulsory purchase. These arise from two sources:
- 5.4.2 Financial risks - these arise if the resale value of the property, once acquired, is less than the compensation paid for it at the time that possession is taken. To reduce the risk, it is essential that the property be disposed of as soon as possible after acquisition. The corollary is that the Council would benefit from any increase in value in an appreciating market, which could be used to offset

the costs of acquisition. Any shortfall would have to be funded from Council resources.

- 5.4.3 There is also a risk to the Council in not dealing with empty properties, both in the way central government assesses the Council's strategic housing performance and in the way residents see the ability of the Council to intervene in the problems which beset them.
- 5.4.4 An options paper on the onward disposal of the properties will be brought back to the Assets, Regeneration and Growth Committee for a decision.
- 5.4.5 If the acquisition from forced sale of these properties does not proceed, no action will take place. The property will continue to deteriorate and be the subject of neighbour complaints.

## **5.5 EQUALITIES AND DIVERSITY ISSUES**

- 5.5.1 The Corporate Plan 2015-2020 sets the Strategic Equalities Objective, which is: that citizens will be treated equally, with understanding and respect, and will have equal access to quality services which provide value to the tax payer. Changes to policies and services are analysed in order to assess the potential equalities impacts and risks and identify any mitigating action possible before final decisions are made.
- 5.5.2 The Equality Act 2010 sets out the Public-Sector Equality Duty which requires public bodies to have due regard to the need to:
  - eliminate discrimination, harassment and victimisation and other conduct prohibited by the Act
  - advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not
  - foster good relations between persons who share a relevant protected characteristic and persons who do not
- 5.5.3 The relevant protected characteristics are: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.
- 5.5.4 The proposed action has been reviewed against the protective characteristics and it is considered that there will not be any specific adverse impact on any of the groups.
- 5.5.5 It is considered that requiring the improvement of these properties will have a positive impact for all local residents. Empty properties can lead to residents having an increased level of area insecurity and fear of crime in their neighbourhood.
- 5.5.6 Any regulatory activity will be carried out in accordance with the current Development and Regulatory Services Enforcement Policy to ensure the objective application of powers and responsibilities.

## **6. LIST OF BACKGROUND PAPERS**

Department for Communities and Local Government entitled "Guidance on Compulsory Purchase Process and the Crichel Down rules for disposal of surplus land acquired by, or under threat of, compulsion" 2015

Anyone wishing to inspect the individual case papers should telephone Belinda Livesey on 020 8359 7438