

	Housing and Growth Committee Date 13 June 2022
Title	Compulsory Purchase of a long term vacant property
Report of	Deputy Chief Executive- Cath Shaw
Wards	Mill Hill
Status	Public (with a separate exempt report)
Urgent	No
Key	No
Enclosures	
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Summary	
<p>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 Council seeks to take steps to compulsorily acquire the properties in order to bring them back into use.</p> <p>This report recommends the making of a Compulsory Purchase Order (CPO) in relation to a long-term vacant property. The property identification and case details are contained within the associated exempt report.</p>	

Officers Recommendations

- 1 That the Committee authorises the making of Compulsory Purchase Orders, under Section 17 of the Housing Act 1985, in respect of the property identified in the exempt report.**
- 2 That, subject to authorisation of the making of the Compulsory Purchase Order referred to in recommendation 1 above, the Order be submitted to the Secretary of State for Levelling up, Housing and Communities for consideration and confirmation.**
- 3 That, in the event of the Secretary of State returning the Order for confirmation by the Council, the Deputy Chief Executive be authorised to confirm the Order.**
- 4 Following confirmation of the Order, to authorise the Deputy Chief Executive to enter into a cross-undertaking with the owner of the property not to implement the Order on the condition that the owner agrees to bring their property back into use within a reasonable time.**
- 5 In the event that a cross-undertaking is not entered into as referred to in recommendation 4 above, or the terms of the cross-undertaking are not adhered to by the owner, to recommend that the Housing and Growth Committee authorises the Deputy Chief Executive to proceed with the compulsory acquisition of the property.**
- 6 To authorise the Deputy Chief Executive to enter into negotiations for the consensual purchase of the property at current market value at terms equivalent to terms under a CPO or to enter into alternative dispute resolution with the owner as detailed in 1.7 below**
- 7 Following compulsory acquisition of the property, an options paper on the onward disposal will be brought back to the Housing and Growth Committee for a decision.**
- 8 To note that the financial costs of the CPO will be funded through the currently approved capital programme.**

1 WHY THIS REPORT IS NEEDED

- 1.1 Barnet currently has around 2,444 properties recorded with Council Tax as being long term empty (empty for more than 6 months and unfurnished). There are also 3,231 properties recorded as second homes (empty for more than 6 months). These may be second homes or empty properties containing an element of furnishings. Some of these properties are in a poor condition and represent an environmental blight on the local neighbourhood.
- 1.2 The Private Sector Housing Team, part of the Environmental Health Department within Re, 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. The Empty Property Grant Offer was reviewed in 2017 by Housing Committee to make the offer more attractive to empty property 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 the use of 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 a CPO ('the Order') on the property it will be submitted to the appropriate Secretary of State for confirmation. Where an objection to the Order is made by the owner and is not withdrawn, then, unless satisfied that the objection is exclusively related to compensation, the Secretary of State 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 timescale 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 with 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 Once the Order is confirmed and if there is no cross-undertaking (or the terms of the cross-undertaking 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 where 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.

- 1.7 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.
- 1.8 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.
- 1.9 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 property are contained in the associated Exempt Report

2 REASONS FOR RECOMMENDATIONS

- 2.1 This property is considered to be a high priority for targeted enforcement work because there is little prospect of the property being returned to residential use otherwise. There has been a lack of action taken by the owner thus far and it is having detrimental effect on neighbouring premises and the wider community. Case details are contained in the associated Exempt Report.

3 ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED

- 3.1 There are two other possible options for dealing with this property:
 - Making of an Empty Dwelling Management Order – due to the amount of work required to make the property habitable, this option holds more financial risk for the Council.

Additionally, there are no significant and on-going concerns being raised by the local community which are a pre-requisite for this type of action.

- 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 and the pressure on the existing housing stock.

4 POST DECISION IMPLEMENTATION

- 4.1 Should the recommendation be approved, the owner of property will be notified in writing. If insufficient or inadequate progress is made in bringing the property back into use after the committee date of 13 June 2022, an application will be made to the Secretary of State at the Department for Levelling Up, Housing and Communities for consideration and confirmation of a CPO.

5 IMPLICATIONS OF DECISION

5.1 Corporate Priorities and Performance

- 5.1.1 The Barnet Plan 2021 to 2025 vision says *“We care about Barnet and want it to be a great place to learn, live, work and visit. Listening to and working with all our residents of any age and partners, we will provide the best possible services so that people have opportunities to live healthy and fulfilling lives in safe and thriving families and communities. We are committed to providing outstanding customer service in everything we do”*. Bringing long term empty homes back into useful occupation to provide safe, good quality housing for both individuals and families makes a significant contribution to this vision.
- 5.1.2 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 Resources (Finance & Value for Money, Procurement, Staffing, IT, Property, Sustainability)

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

Estimated Capital Cost

- a. The property has an indicative value, in the present condition, of £315,000 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 security, repairs or improvements that need to be carried out prior to sale. The current capital budget for Empty Properties is £3,700,000.
- b. If the Compulsory Purchase Order of this property 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 initial 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 is not significantly high. There is however every chance that the pressure of initiating the Compulsory Purchase procedure will be sufficient to ensure that the property owner takes 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:
 - i. a specified statutory notice/order has been served on the owner;
 - ii. at the time the Compulsory Purchase Order is confirmed the statutory notice/order has effect or is operative; and
 - iii. The owner has failed to comply with any requirement of the statutory notice/order.

- d. There is however no such notice in place on this property

Revenue Costs

For the Compulsory Purchase Order and acquisition, the revenue costs of making the Order and associated administration will also need to be made from the capital budget.

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 £12,000.

While enforcement engenders the aforementioned revenue costs, once the property in question is returned to use, it will no longer generate a demand for Council resources, enabling these to be focused on other priorities

The acquisition and immediate disposal of this property may result in nomination rights for the Council to meet the needs of accepted homeless families, if the property was 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 and Growth 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 including 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 and Growth Committee which includes “All matters related to regulation of private sector housing, including enforcement, licensing, empty properties and squatting”.

5.4 **Insight**

5.4.1 The empty property work programme is prioritised based on the duration a property has been empty, property condition, the impact on local residents.

5.5 **Social Value**

5.5.1 CPO of this property will increase the number of private sector dwellings in the borough at a time when the housing market is under significant pressure.

5.5.2 The reduction in the number of empty properties contribute to the council improving the general appearance of neighbourhoods, protect the environment, reduce ASB, and reduce fear of crime.

5.6 **Risk Management**

5.6.1 There are risks associated with compulsory purchase. These arise from two sources:

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. This is possible but unlikely in the current housing market. 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.

Reputational risk - 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.

5.6.2 An options paper on the onward disposal of the properties will be brought back to the Housing and Growth Committee for a decision to be made at a later date.

5.6.3 If the acquisition of the property does not proceed, no action will take place. The property will continue to deteriorate and be the likely subject of neighbour complaints.

5.7 Equalities and Diversity

5.7.1 Equality and diversity issues are a mandatory consideration in the decision-making of the council.

5.7.2 Decision makers should have due regard to the public-sector equality duty in making their decisions. The equalities duties are continuing duties they are not duties to secure a particular outcome. The equalities impact will be revisited on each of the proposals as they are developed. Consideration of the duties should precede the decision. It is important that Housing and Growth Committee has regard to the statutory grounds in the light of all available material such as consultation responses. The statutory grounds of the public-sector equality duty are found at section 149 of the Equality Act 2010 and are as follows:

A public authority must, in the exercise of its functions, have due regard to the need to:

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- (c) Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

5.7.3 Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:

- (d) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
- (e) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;

- (f) Encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

5.7.4 The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include steps to take account of disabled persons' disabilities.

5.7.5 Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard to the need to:

- Tackle prejudice, and
- Promote understanding.

5.7.6 Compliance with the duties in this section may involve treating some persons more favourably than others; but that is not to be taken as permitting conduct that would otherwise be prohibited by or under this Act. The relevant protected characteristics are:

- Age
- Disability
- Gender reassignment
- Pregnancy and maternity
- Race,
- Religion or belief
- Sex
- Sexual orientation
- Marriage and Civil partnership

5.7.7 It is considered that requiring the improvement of this property will have a positive impact for all local residents. The property is a blight on the area and the local community that can lead to residents having an increased level of area insecurity and fear of crime in their neighbourhood.

5.7.8 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

5.8 Corporate Parenting

5.8.1 This report will not have a direct impact on care leavers.

5.9 Consultation and Engagement

5.9.1 There is no requirement to consult local residents in relation to the proposals in this report.

5.9.2 There has been on going communication with the property owner with the aim of bringing this property back into residential use without the need for enforcement action.

5.9.3 Every year two separate Empty Property weeks are held to promote the work of the team and encourage long term empty property owners to bring their properties back into residential use. Across the year social media is used to similar effect.

5.10 Environmental Impact

5.10.1 There are no direct environmental implications from noting the recommendations.

5.10.2 Refurbishing empty properties has a lower environmental impact than building new properties.

BACKGROUND PAPERS

Department for Communities and Local Government entitled [Guidance on Compulsory Purchase Process and the Criche! Down rules for disposal of surplus land acquired by, or under threat of, compulsion](#)