



**Caerphilly County Borough Council**

**Enforced Sale Policy**

## **PURPOSE**

The purpose of this policy is to set out a framework for Caerphilly County Borough Council to use the Enforced Sale Procedure utilising relevant statutory powers with a view of targeting long-term problematic empty properties, and to bring these properties back into use where possible.

Caerphilly County Borough Council recognises the importance of bringing empty properties back into use, as they are a wasted resource and can be a source of many problems. Long-term empty properties can have a negative impact on the visual amenity in the immediate neighbourhood and cause nuisance to adjacent occupiers. They can also lead to increased fly-tipping, vandalism, arson, potential squatting, dangerous structures and other anti-social behaviour.

## **POLICY BACKGROUND**

The Enforced Sale Procedure is a process by which the Council brings about the sale of a privately-owned property. It is used as a means to bring problematic long-term vacant property (being residential/commercial or land) back into use, in circumstances where the present owner is either unwilling or unable to comply with legal notices issued by the Council, or the ownership is unknown.

By enforcing the sale, it is anticipated that a new owner will be more willing and able to invest in the property, and ensure its likely reoccupation, upkeep, and proper use.

The process of Enforced Sale is a method that can be utilised for the recovery of debt owing to the Council and could be used to recover debts where the owner of a property has made no attempt to make payment in respect of problematic property.

## **IDENTIFYING AND PRIORITISING POTENTIAL PROPERTIES FOR ENFORCED SALE**

The Council uses a number of methods to identify empty private properties, including Council Tax information and referrals from members of the public, local Councillors, Police, Fire and Rescue Service, Planning Enforcement, Building Control, Private Sector Housing and Waste Enforcement.

In order to better utilise this policy, a database of empty private properties will be compiled and assessed for suitability of intervention under this policy. *(Note – Private Sector Housing already have a database of empty homes which identifies each residential unit that is a long term vacant - from information received annually from the Council Tax section. Each property is given a risk assessment score and they can therefore be ranked against each other).*

## **PRE-ACTION TO ENFORCED SALE**

When an empty property has been identified as a priority for intervention, steps will be taken to trace and contact the owner.

Where an owner is identified, they will be contacted, if possible, and provided with advice and a range of potential solutions to bring the property back into use. For example:

- Informing the owner about the problems being caused by the property being empty and in need of repair, together with its impact upon the wider community;
- Offering potential financial solutions, including the availability of loans/grants or negotiating the private sale or rental of the property;
- Highlighting the consequences of allowing the property to fall into further disrepair, including its market value depreciation and risk of enforcement action;
- Inspecting the property to identify if it is suitable for letting and inform the owner of the works required to bring it up to current standards;
- Guiding the existing and future owners through the legal requirements of Rent Smart Wales registration and licensing when applicable.

The market value of the property should be discussed and the owner notified about any Charges registered against the property. The owner will be encouraged towards selling the property without our formal intervention at this stage. The Council is able to provide a service to the owner to facilitate the Voluntary Sale either privately, or to the Council (Caerphilly Homes) or to a Registered Social Landlord.

Each case will be assessed individually and the use of the Enforced Sale Procedure should be seen as a means of last resort. Properties will only be selected for Enforced Sale when the Council has exhausted all other reasonable options to resolve the existence of the empty property, remedy any associated problems caused by the poor condition of the property and the recovery of debt owed to the Council.

The lead officer will liaise with other relevant departments and agencies, particularly those with an enforcement or financial role with a view to putting pressure on the owner to deal with the property. Examples of matters to be considered include:

- Involvement of other Enforcement Authorities such as Building Control, Cleansing, Environmental Health, Private Sector Housing and Planning Enforcement;
- Removal of exemptions or relaxations for Council Tax/NNDR payments;
- Debt Recovery processes should be actively chased;
- Involvement of mortgage lenders if appropriate.

## **CRITERIA FOR ENFORCED SALE**

In order for a property to be considered suitable for enforced sale, **all** of the following criteria must be met:

- The total recoverable debt must exceed £500;
- The debt must not be statute barred (generally under 12-years-old);
- The debt must be more than 2 months old;
- The property must be vacant with no prospect of it becoming occupied in the next 6 months;
- The owner, if they can be traced, must have demonstrated non-compliance with legislation in relation to the property;
- No positive/acceptable response has been received to letters regarding the Enforced Sale. If the response redeems the charge that ends the process sale can only be effected against a financial charge registered in the local land charges register.

## **SERVICE OF NOTICES & REGISTRATION OF CHARGES**

The lead officer will ensure all the Statutory Enforcement Notices have been correctly served and will ensure the correct notices are served in accordance with the legal procedures.

Where works in default have been undertaken to comply with a notice, and a debt is owed to the Council, checks will be made to find out if the debt is registered against the property as a local land charge

Where debts are not Charges registered against the property, but are personal debts, the Council may be able to pursue the debt at the County Court and secure an order against the property.

## **LEGISLATIVE BASIS FOR ENFORCED SALE**

The legal process for Enforced Sale is complex, and this section is provided for general information only.

There are various Acts of Parliament which allow the Council to register appropriate debts as a Charge against a property. These Acts give the Local Authority the power to enforce that Charge, so that the Enforced Sale Procedure under the Law of Property Act 1925 can be used to enforce the sale.

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 by way of a legal mortgage within the meaning of the Law of Property Act 1925.

Section 101(1) 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.

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 enable works to be carried out in default, also give the Council a power of sale and a right of priority over other Charges.

The Council may not exercise the power of sale until a notice under Section 103 of the Law of Property Act 1925 is served. (requiring payment of the debt), and the payment of such debt has not been made for 3 months after the service of the Notice.

The Council should write to the Owner requesting the Land or Charge Certificate. The Council must also write to the Owner, and any other Chargee, stating that it intends to carry out an enforced sale. If another Chargee should pay the outstanding money, this prevents the Council taking priority over their Charge.

Likewise, if at any stage prior to the actual sale of the property the Owner should pay the outstanding debt, then Enforced Sale is no longer an option.

Once default of payment is apparent, the Council can apply to the Land Registry for registration of the Charge, claiming priority over all other Charges.

When the Charge Certificate is returned from the Land Registry, the property can be marketed for sale. Another letter will be sent to the Owner and any Chargees to warn them again that the charge is to be recovered by Enforced Sale.

## **PROCEDURE WHERE THE PROPERTY IS NOT REGISTERED**

In some instances, properties may be identified which are not registered with the Land Registry. This may apply in relation to older properties, particularly where no recent sales have taken place, or the property has changed ownership without proper conveyancing. The Enforced Sale Procedure can be applied to unregistered property.

## **HUMAN RIGHTS ACT 1998**

Consideration of the provisions of the Human Rights Act 1998 must be taken into account by the Council. In particular, the right to respect for private and family life, home and correspondence and peaceful enjoyment of possessions. These rights need to be balanced against the general benefits and rights of neighbours and the surrounding community. For example, the need to deal with any dangerous or health risk conditions, the desire to bring a long-term empty property back into use; and to reduce crime, arson, fly tipping and the negative impact of the empty property on the locality.

A statement that the intended action of the Council in exercising its power of sale is considered to be proportionate in accordance with the Act should be included in the decision-making document seeking authorisation to pursue an Enforced Sale.

## **RECOVERY OF COSTS**

A debt can be registered as a Local Land Charge if the debtor has failed to pay the bill in relation to the works required under the notice and the works have been completed in default.

If the statute says a debt can be enforced as a charge then you can enforce that debt whether it is registered as a Local Land Charge or not. In most cases, it is not important on whom the notice was originally served.

Once the charge has been established, the land continues to be subject to the charge even if it has passed to subsequent owners. As such, it does not matter whether the property has subsequently changed ownership.

Debts are affected by the Limitation Act, in that any debts that are statute barred (generally 12 years old from the date when the expense was incurred) are no longer recoverable. Thus, any attempts to recover debts through Local Land Charges or by using the Enforced Sale Procedure, are generally not permissible after this time has passed.

All debts owed to the Council on the property are recovered on sale. In addition, reasonable costs incurred by the Council in pursuing the sale can also be deducted. This includes all legal, surveying, marketing and administrative costs.

## **MARKETING AND SALE**

Some of the processes which might normally be associated with the sale of properties are not possible when using the Enforced Sale Procedure. For example, there is no right of entry for prospective purchasers to view the property or its condition and there is no power to put up a 'For Sale' sign.

The Council has a duty to secure the best possible price on a sale. In the first instance, sale will be to a preferred bidder following a valuation of the property by a suitably qualified surveyor. Closed tenders will be invited from Registered Social Landlords zoned to develop within the County Borough and Caerphilly Homes, with the property being offered to the highest bidder if the valuation is met or bettered. Sales to a preferred purchaser must be approved by the relevant Director linked to the initial Local Land Charge. In the event of two matching bids (that meet or exceed the valuation), the preferred bidder will be at the discretion of the relevant Director.

A sale through public auction will be considered if:

- No closed tenders were received for the property;
- The valuation was not met.

Upon completion of sale, a bank account will be setup to hold the proceeds of sale (less costs and charges). Where the owner is known, they will be advised of the sale. Where the owner is not known, the proceeds of sale will be held by the Council and, if the money is not claimed within 12 years, the money reverts to the Council.