



**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

