



Leicester
City Council

WARDS AFFECTED

Aylestone, Coleman, Eyres Monsell, Fosse, New Parks, Stoneygate, Thurncourt, Westcotes & Western Park

FORWARD TIMETABLE OF CONSULTATION AND MEETINGS:

CABINET

30th November 2009

Compulsory Purchase of Empty Homes

48 The Newry, 161 Uppingham Road, 64 Keightley Road, 26 Fastnet Road, 5 Worcester Road, 107 Warwick Street, 171 Anstey Lane, 28 Meadhurst Road & 106 St Margaret's Way, 88 Kimberley Road

Report of the Director of Housing Strategy & Options

1. Purpose of Report

To propose that compulsory purchase orders are made on ten long-standing empty homes.

2. Summary

This report proposes that a Compulsory Purchase Order is sought under the City Council's Empty Homes Strategy for ten privately owned empty properties that have been vacant for between 3 to 15 years, where owners have not responded to the council's request to repair and bring them back into use.

Financial and confidential information relating to the properties are contained in the supplementary report on the 'B' agenda.

The Empty Homes Strategy aims to bring vacant residential properties empty for more than 18 months back into use. It contributes towards our strategic objective to, "Improve our environment to make local neighbourhoods and the city centre places for people to be proud of". This will also assist in creating thriving safe communities improving wellbeing and health thereby promoting neighbourhood sustainability preventing areas from becoming rundown, two of the themes of the One Leicester vision.

The Council now also has powers to make Empty Dwelling Management Orders as well as Compulsory Purchase Orders and long-standing empty homes are considered for

both alternatives. Due to the cost of improving these homes, they are recommended for compulsory purchase.

3. Recommendations

Cabinet is recommended to:

- 3:1 Make Compulsory Purchase Orders (CPO) under s17 Housing Act 1985 on the land and dwellings, as outlined in Appendix D, and as listed below in order to secure their improvement, proper management and occupation as residential dwellings:

| | | |
|-------------------|--------------------|-----------------------|
| 48 The Newry | 161 Uppingham Road | 64 Keightley Road |
| 26 Fastnet Road | 5 Worcester Road | 107 Warwick Street |
| 171 Anstey Lane | 28 Meadhurst Road | 106 St Margaret's Way |
| 88 Kimberley Road | | |

- 3:2 Authorise the necessary capital expenditure from the Housing Capital Programme.

4. Policy Background

The Empty Homes Strategy was adopted in 1995 and revised in March 2009 and forms part of Leicester's Housing Strategy (2005 – 2010), which contributes towards our strategic objective to "Improve our environment to make local neighbourhoods and the city centre places for people to be proud of". This supports the One Leicester vision of creating thriving safe communities. The corporate plan target is to reduce the number of private homes that have been empty for more than 5 years to nil.

On 19 January 2004, Cabinet approved additional resources to increase the impact of the Empty Homes Strategy and to target all properties vacant for more than 18 months. A dedicated Empty Homes Team began work in April 2004. The purpose is to work with owners to bring empty properties back into use, which will help to address the housing shortage. The addition of two Empty Homes Officers in 2008 has meant that the team is making progress in tackling properties vacant for more than 5 years.

Please see Appendix A for brief details of how the Empty Homes Strategy works and Appendix B, which briefly sets out the CPO process.

The action to be taken has links with a number of key corporate and departmental strategies as listed below:

- 'One Leicester' our Sustainable Community Strategy
- Leicester City Council Corporate Plan 2006 - 2008
- The Community Plan – Diversity Action Plan
- Housing Strategy for Leicester 2005 –2010
- The Citywide Empty Homes Strategy 1996
- Revised Empty Homes Strategy 30th March 2009
- 'Unlocking the Potential' published in May 2003 – Government Guidance

5. Progress to date with Empty Homes Strategy

- 5:1 As at 30th September 2009, the Empty Homes Team had a total active caseload of 830 properties. Contact is yet to be made with 180 of the owners.
- 5:2 Since 2002, Cabinet has approved the making of 71 compulsory purchase orders of which, 23 have been confirmed by the Department for Communities and Local Government (DCLG), with 34 occupied before confirmation was requested.

| | Restarted Prior to Cabinet | Occupied After Cabinet | Monitoring @ Stage 8 | Confirmed | Confirmed and Occupied | Un-con-Firmed | Un-con-firmed & Occupied |
|------------------------|----------------------------|------------------------|----------------------|-----------|------------------------|---------------|--------------------------|
| Before Public Inquiry | 1 | 34 | 6 | | | | |
| Public Inquiry | | | | 7 | 6 | 3 | 2 |
| Written Representation | | | | 5 | 3 | 4 | 4 |
| Un-contested | | | | 11 | 9 | 0 | 0 |
| TOTAL = 71 | 1 | 34 | 6 | 23 | | 7 | |

- 5:3 As a result of the work of the Empty Homes Team between 1 April 2004 – 30th September 2009, 837 properties have become occupied.

6. Report

The properties in Appendix D have been empty for more than eighteen months and therefore meet the criteria for CPO action as set out in Appendix B.

The details of the properties and grounds for action are set out in Appendix D attached to this report.

7. General

Plans of the proposed CPO properties are attached to this report. See Appendix D.

Following Cabinet approval the Empty Homes Team prepares the cases for CPOs and forwards them to Legal Services to make the CPOs and deal with the legal formalities.

The Council is required to advertise the making of the orders for a minimum period of 28 days in which objections can be made.

The orders are sent to the Department of Communities & Local Government (DCLG) for confirmation.

Following the expiry of the objection period, if any objections are made, where necessary DCLG will arrange for a public local Inquiry to be held. Although since November 2004, owners have been able to opt for written representation, if they wish to object to the CPO rather than an inquiry being held.

The Council will be required to pay compensation to the owner at the open market value of the property in the event that possession of the property is taken, together with a basic loss payment of 7.5% of that valuation. (Subject to a maximum payment of £75,000)

The basic loss payment came into force where a Compulsory Purchase Order has been made after 31st October 2004 under the Planning and Compulsory Purchase Order Act 2004. It means that the owner of a property is entitled to a basic loss payment of 7.5% of the market value up to a maximum of £75,000 on a £1m property. However, if certain Notices and Orders are served and not complied with, then Leicester City Council will not incur this extra cost.

8. FINANCIAL, LEGAL AND OTHER IMPLICATIONS

Financial Implications: Danny McGrath, Principal Accountant

**See Appendix D
7.1**

Legal Implications: Zoë Ayriss, Principal Legal Officer

**See Appendix C
C1-C7**

A note on the legal and policy basis for making a CPO is contained for members' information at Appendix C.

- For the purposes of the EHS, all CPOs are made under section 17 of the Housing Act 1985.
- **Human Right Consideration** – The Human Rights Act 1998 incorporated into domestic law the European Convention on Human Rights ('The Convention'). The Convention includes provisions in the form of articles, the aim of which is to protect the rights of the individual. DCLG Circular 06/2004 states that an acquiring Authority should be sure that the purposes for which it is making a CPO sufficiently justify interfering with the human rights of those with an interest in the land affected, having regard to the provisions of Article 1 of the First Protocol to the Convention and Article 8 of the Convention. Paragraph 16 of the Circular states that "Parliament has always taken the view that land should only be taken compulsorily where there is clear evidence that the public benefit will outweigh the private loss. The coming into force of the Human Rights

Act has simply served to reinforce the basic requirement.” In resolving to make the Order, the Council has duly considered the rights of property owners under the Convention, notably under the Articles 1, 8 and 14 of the Convention and Article 14 of the First Protocol to the Convention.

9. Other Implications

| OTHER IMPLICATIONS | YES/NO | Paragraph References Within Supporting Information |
|-------------------------------|--------|--|
| Equal Opportunities | NO | |
| Policy | YES | 4 |
| Sustainable and Environmental | YES | 2, 3 |
| Crime and Disorder | YES | 1 |
| Human Rights Act | YES | 7:2 |
| Elderly/People on Low Income | NO | |

10. Details of Consultation for this Report

- Legal Services
- Financial Planning and Control, Adults & Housing Department
- Strategy & Performance, Personalisation & Business Support
- Property Services, Strategic Asset Management
- Committee Services, Democratic Support

11. Background Papers:

Local Government Act 1972

Human Rights Act 1985 Section 17

DCLG Circular 06/2004

Article 1, 8 & 14 of the First Protocol of the European Convention of Human Rights

Property files held in the Empty Homes Team

Report Author:

Carole Thompson

Empty & Decent Homes Team Leader

Empty Homes Team

Housing Strategy & Options

Renewal & Grants Service

Direct Line: (0116) 299 5386

Email: carole.thompson@leicester.gov.uk

| | |
|--------------------------------------|---------------------|
| Key Decision | No |
| Reason | N/A |
| Appeared in Forward Plan | N/A |
| Executive or Council Decision | Executive (Cabinet) |

APPENDIX A

A What happens to referrals made to Leicester City Council's Empty Homes Team?

- A.1 Any dwelling in the city that has been empty for at least 18 months and is not held by the Housing Revenue Account can be registered with the Empty Homes Team.
- A.2 Standard questions are asked to enable officers to determine how long the property has been vacant and whether the dwelling is:
- Located within a Home Improvement Area (if not, it is classed as 'City-wide')
 - Of a type that requires a minimum investment in order to bring it back into use, and has been vacant for 18 months or more
 - Of a type that is in very poor condition, requires significant investment to bring it back into use and has been vacant for less than 18 months
 - Of a type currently outside the scope of the Empty Homes Strategy and therefore not required to meet housing needs, i.e. a property with a commercial element without a separate entrance to the living accommodation and/or has only one bedroom
- A.3 Depending on the assessment of the referred property, the following actions may be taken in order to bring them back into use. Usually these actions are targeted at dwellings, which have been vacant for more than 18 months, but action can also be directed at very run-down houses, which have been empty for a shorter period.
- i. Standard letters are sent to empty property owners to maintain contact and provide advice and encouragement to enable them to make an informed decision about the future improvement and occupation of the property such as whether to sell or let. If the owner's response is unsatisfactory or there is no response, then statutory action will be considered.
 - ii. Face to face and/or phone conversations are offered to assist owners with their decisions.
 - iii. Where appropriate, owners are put in touch with HomeCome, LeicesterLet or Registered Social Landlords.
 - iv. As a last resort, statutory action in the form of a Compulsory Purchase Order or an Empty Dwelling Management Order is taken.

APPENDIX B

An outline of the Compulsory Purchase Order Procedure

| Criteria for CPO action | |
|---|---|
| Identify property falling within the CPO policy: - | |
| <ul style="list-style-type: none"> Property vacant and unimproved for over 18 months located in area of priority housing need and where no attempt has been made by the owner to improve the property. CPO action may also be considered on properties that have been vacant for less than 18 months if they are blighting the neighbourhood. | |
| <i>CPO Procedure over a period of approximately 24 months</i> | |
| Stage 0 | Awaiting allocation to Empty Homes Team. |
| Stage 1 | Stage 1 letter is sent advising the owner of Leicester City Council's Empty Homes Strategy and setting out options available for returning the house to occupation. Includes a 'statement of intentions form' for the property for owner completion. |
| Stage 1a | Monitoring work in progress after reply to stage 1 letter. |
| Stage 2 | A Stage 2 letter is sent reminding the owner of the Empty Homes Strategy if there has been no response to the first letter |
| Stage 3 | Site visits are conducted to monitor properties where work is in progress. Stage 3 letter 1 is sent if there has been no response to Stage 1 & 2 letters asking to respond or the file will be passed to an EHO (Empty Homes Officer). If still no response then Stage 3 letter 2 is sent informing the owner of the Empty Homes Officer now dealing with their property. |
| Stage 4 | If no progress to the Stage 1, 2 & 3 letters, a Stage 4 letter is sent, informing the owner that a CPO or EDMO is being considered. |
| Stage 5 | EHT refer to Property Services for valuation and to try to negotiate purchase, obviating need for CPO. Also, HIOs draw up schedule of works for improvement. |
| Stage 6 | Cabinet CPO report prepared if no progress. |
| Stage 7 | CPO approved by Cabinet. |
| Stage 8 | Statement of Reasons sent to Legal Services. |
| Stage 9 | CPO advertisement placed – objection period minimum 28 days. |
| Stage 10 | Order submitted to Department of Communities & Local Government (DCLG). |
| Stage 11 | Written representation invited or public inquiry date set if owner objects and DCLG deems it necessary. |
| Stage 12 | Public inquiry held/written representation submitted – awaiting outcome |
| Stage 13 | DCLG decision received. |
| Stage 14 | Confirmed CPO Notice placed – 6 weeks to challenge legal process, but not CPO. |
| Stage 15 | EHT Monitoring properties where time/undertaking allowed. |
| Stage 16 | Negotiation to buy by agreement underway. |
| Stage 17 | Property Services and Legal Services instructed to take possession. |
| Stage 18 | Possession taken. |
| Stage 19 | Property Services and Legal Services instructed to dispose. |
| Stage 20 | Disposal to new owner await compliance with conditions and occupation. |

APPENDIX C

CPO Advice from Legal Services

- C.1 In considering proposals to bring forward a CPO, the Council is required to comply with and have regard to Government guidance, and in particular, the guidance contained in DCLG Circular 06/2004. The Council is required to justify how the CPO of any land and/or dwelling thereon demonstrates a compelling case in the public interest, sufficient to defend its proposals at public inquiry (or written representations), or in the courts.
- C.2 To demonstrate a compelling case, the authority will need to be sure that the purposes for which it is making the CPO sufficiently justify interference with the human rights of those with an interest in the property. The Council will need to consider the rights of owners to the free and undisturbed use of their property, provided by Article 1 of the First Protocol to the European Convention on Human Rights. This means that the Council will fail to show a compelling case if it cannot justify the public benefit, which would result in a lawful interference with an owner's human rights. Indeed, the Council has occasionally failed to have a housing CPO confirmed on these grounds.
- C.3 The Circular goes on to state that the Council must demonstrate that there are no planning problems or other impediments to the scheme proceeding following confirmation of the CPO. The Council will need to show that it also has sufficient resources to bring forward a scheme, or an indication of how potential shortfalls will be met, for example, the degree to which other bodies have agreed to make financial contributions or have agreed to underwrite the scheme.
- C.4 To meet this test the Council would need to have in place firm, viable proposals for bringing the property back into use as housing accommodation in accordance with the purpose that underlines the CPO. (It will be difficult to show justification for a CPO in the public interest if there is no clear idea as to how the land and/or dwelling thereon will be used, or that the necessary resources will be available in a reasonable time-scale). It would only be in exceptional (and fully justified) circumstances where it might be reasonable to acquire land and/or a dwelling thereon where there was little prospect of implementation within a reasonable timescale.
- C.5 The Council should also be able to demonstrate that the public benefit will outweigh the private loss and that the human rights of those affected are fully considered (see above).
- C.6 CPO is a **last resort** – Government guidance suggests that acquisition should always be attempted by negotiation in the first instance. If CPO is used, the Council is required to show that negotiations with the landowner to buy the site and/or dwelling have been pursued and that an ongoing dialogue has been maintained, but that the use of the property as housing accommodation cannot be achieved unless a CPO is made and confirmed.
- C.7 Any perceived abuse of CPO powers could lead to the CPO being refused, or a claim against the Council for abuse of statutory powers. The Council would need to

demonstrate a significant need to interfere with the owner's human rights in these circumstances. Such action is likely to be considered to be an unlawful interference with the owner's human rights and could potentially lead to the Order being made void, with the consequences referred to above.

Prepared by:
Zoë Ayris
Principal Legal Officer
Legal Services
Property Team 1
Direct Line: 252 6342
Email: zoeayris@leicester.gov.uk