

North Norfolk District Council

Enforcement Policy - Empty Homes

1.0 What is an empty home?

1.1 A property which has been empty for in excess of 6 months is considered to be a long term empty property. Central Government has for a number of years encouraged local authorities to take action to bring empty properties back into use and has strengthened the powers available to local authorities to assist with this through the Housing Act 2004.

2.0 Why are properties being left empty?

2.1 There are often good reasons for properties being left empty but there are considerably more empty homes and properties are empty for longer than is justified by the workings of the housing market. Below are some of the reasons a property may be left empty;

- The property may be in need of major repairs or refurbishment and the owner may not have the necessary resources to make the property habitable.
- There may be problems with accessing the property.
- There may be planning restrictions which restrict the occupancy of the property.
- The owner may be having difficulty in finding a new tenant or owner.
- The owner may have been unable to obtain the mortgagor's or freeholder's consent to let the property.
- The owner may be trying to sell the property and may be prepared to leave the property empty whilst they wait for the right price.
- The owner may be unwilling to consider leasing or letting the property.

- The owner may be temporarily working abroad and intend to live in the property in the future.
- The owner may not be aware of the property's existence, for example where property records are not kept.
- There may be a complicated ownership scenario.
- The owner may not fully appreciate the business case for bringing their empty property back into use.
- The property may have been acquired solely for speculative investment purposes and the owner is not concerned that the property is empty.
- The property may be owned by a development company who has plans for its future redevelopment.
- The property may be joined to a business property and the business owner does not want to let it

3.0 Why is there concern over properties being left empty?

3.1 What happens to empty homes is not simply a matter of concern to those who own them. A property that is left unoccupied and not maintained will over time begin to impact on its surroundings including neighbouring properties whose condition and value might be adversely affected. Empty properties are also at risk from being broken into by vandals and squatters and in extreme cases might become a target of arson. Empty homes are frequently the cause of complaints to local authorities, for example in relation to environmental health issues, and the police and fire services are also regularly called out to deal with empty properties. Bringing empty homes back into use will save hours of officer time and enable investment to be targeted into other areas.

3.2 Bringing empty homes back into use can reduce the need to build more much needed new homes thus reducing pressure on Greenfield development which is in line with the Government's target to build 60% of new homes on previously used land. The reuse of the existing building

fabric is also generally more environmentally sustainable than building new homes. Bringing empty homes back into use can also act as a catalyst for wider regeneration by building confidence in the property market.

- 3.3 Empty homes are a wasted resource from the point of view of the local authority, especially at a time when there are people in urgent need of suitable accommodation.
- 3.4 The only effective way to reduce the negative impact of an empty dwelling is to occupy it. It is therefore in the public interest that empty homes are brought back into use.

4.0 How will the Council tackle the issue of empty homes?

- 4.1 The Council will take steps to identify properties in the district which are empty.
- 4.2 The Housing Act 2004 (s237) allows the Council to use information provided for the purpose of Council Tax to identify properties that are registered as empty in order that it can take steps to bring these properties back in to use.
- 4.3 In seeking to identify empty properties all processing of personal data will be in accordance with the Council's data protection policy and the rights of data subjects contained in Part 2 of the Data Protection Act 1988.
- 4.4 In addition the Council will encourage officers employed by the Council and other interested parties to report empty homes where it is considered to be in the public interest to bring such properties back into use including:
- Housing Officers
 - Building Control surveyors

- Conservation Officers
- Environmental Health Officers
- District Councillors
- Town and Parish Councillors
- The Fire Service
- The Police Authority
- The general public

4.5 The Council will contact the owners of empty properties and will offer advice and support to those wishing to bring their properties back into use. It will do this by providing advice and support to owners/landlords on letting and managing a property and has developed a number of initiatives to support this including:

- 'Opening Doors' – a direct letting scheme
- Damage Deposit and Rent in Advance Schemes
- Landlord Guide
- Empty Homes Grants

4.6 The Council will also outline the financial benefits to the owner of bringing the property back into use by consideration of the potential income, the savings on maintaining and securing an empty property, the increased value that will result from the occupancy of a property and conversely the depreciation in value if the property is not maintained and occupied.

4.7 If the owner does not want to bring the property back into use the Council will consider using its enforcement powers to bring the property back into use.

5.0 What approach will the Council take to enforcement action?

5.1 The Council will adopt the following principles in its enforcement activity:

- Transparency
- Accountability
- Proportionality
- Consistency
- Targeted only at cases for which action is needed

5.2 The Council will at all times have regard to an owner's human rights and will not pursue enforcement action where it is disproportionate in human rights terms. This will be considered alongside the benefits to the wider community that will arise from ensuring that properties do not remain empty in circumstances that are disproportionate and unjustified.

5.3 The Council will not use enforcement powers until all other avenues to encourage the owner to bring the property back into use have been exhausted. The Council will want to see that the owner is taking proactive steps to bring the property back into use and that progress is being made in this respect.

5.4 The Council will consider taking enforcement action where the owner is not engaging with the Council in finding a solution to bring the property back into use.

5.5 The Council will use the most appropriate enforcement action to provide the desired result which ultimately is to bring the property back into use and occupied. The Council acknowledges that taking enforcement action will not be without cost and therefore a cost benefit analysis will be undertaken and a business case made before taking enforcement action. The Council may have to prioritise the action that it takes and it will therefore take enforcement action in those cases which will deliver the greatest impact.

This is likely to include taking enforcement action to bring back into use the following properties:

- Those which are dangerous and pose a risk to the public
- Those most in need by those unable to access the housing market
- Those having the biggest impact on surrounding neighbours

5.6 The Council will communicate its intentions in plain English or in the appropriate language or method in accordance with the needs of the owner. The owner of the property will be made aware of the advice and support that the Council can provide to assist the owner in bringing the property back into use and the enforcement powers it has and what action the Council would intend to take in the particular instance including the relevant timescales and processes.

5.7 Once the owner of the property has been advised of the Council's intention to take enforcement action there will be a period during which the owner can consider their options and appeal against the proposed action being taken. Details of the Council's complaints and appeals processes will be provided at the outset. In addition any enforcement action will be answerable and open to appropriate review in the light of changed circumstances at any stage of the enforcement process.

5.8 The Council will undertake enforcement action as promptly and efficiently as possible in order to minimise delays and feedback will be sought on the service provided.

5.9 All action taken will be proportional to the circumstances of the individual case and the extent and impact of empty homes in the district at the time.

5.10 The Council will seek to ensure that cases are dealt with in a consistent manner and a regular review of the effectiveness of its enforcement activity will be undertaken. All officers undertaking enforcement action will be suitably trained, qualified and authorised so as to ensure that they are fully competent to undertake their enforcement duties.

6.0 What enforcement powers are available to the Council in respect of empty homes?

6.1 The Housing Act 2004 gives the Council a range of powers to make sure that properties are safe and suitable to live in. The following powers can be applied to empty homes:

- Powers of entry – allows an authorised officer to enter a property to inspect in the event that an owner refuses to allow access. 24 hours notice must be given to the owner. If an officer is refused entry or obstructed by an owner they may apply to the magistrates court for a warrant to enter allowing them to force entry if necessary (Housing Act 2004 s239)
- Power to require information – allows the service of a notice asking for certain information (e.g. the name of the owner). This allows the Council to act to improve an empty property using the other powers described (Housing Act 2004 s235)
- Hazard Awareness Notice – enables the Council to inform an owner that a hazard exists and identifies the need to carry out repairs or alterations (Housing Act 2004 s28)
- Improvement Notices – enables the Council to require remedial works to improve conditions within the accommodation (Housing Act 2004 s11 and 12)
- Emergency Remedial Action – enables an authorized officer to enter a property to carry out remedial works. If an owner fails to carry out works to the standard specified in a notice, the Council may choose to carry out

remedial works and place a charge on the property (Housing Act 2004 s40)

- Empty Dwelling Management Order (EDMO) – enables the Council to take control of and manage a property that has been empty for some time (Housing Act 2004 s132)
- Prohibition Order - enables the Council to prohibit the use of a property or part of a property. This course of action would only be taken where repairs are too expensive or the condition of the property is such that it cannot be satisfactorily repaired (Housing Act 2004 s20 and 21)

6.2 Other legislation to be considered when dealing with issues arising from empty properties, include:

- Local Government (Miscellaneous Provisions) Act 1982 s29 – enables the Council to secure a property that is open to access
- Buildings Act 1984 s77 and 78 – enables the Council to require an owner to make a property safe or allow emergency action to be taken to make it safe
- Town and Country Planning Act 1990 s215 – enables the Council to take action to address unsightly external appearance
- Housing Act 1985 s265 – enables the Council to demolish a property that cannot be satisfactorily repaired (i.e. derelict properties)

6.3 Improvement Notices

6.3.1 When a dilapidated empty property is identified the Council can serve improvement notices on an owner ordering that remedial work be done to rectify the problem. The notice will differ depending upon the type of work necessary. The Council has statutory powers to enforce repair works (Housing Act s11 and 12). Where an owner remains unwilling to undertake these works, the Council can step in and undertake the works itself, reclaiming the costs from the owner.

6.3.2 If there is an imminent risk of harm to persons and to others' residential premises the Council can take Emergency Remedial Action (Housing Act 2004 s40).

6.4 Enforced sale procedure

6.4.1 The Enforced Sale Procedure enables the sale of a property to be forced via auction to enable the recovery of costs incurred in dealing with an empty property, the procedure is as follows; -

- Request to owner to carry out remedial work (Improvement Notice, Housing Act 2004 s11 and 12)
- Works in default carried out by the Council following non compliance with requests to the owner to carry out remedial work
- Legal charge attached to the title of the property
- Application to HM Registry to enforce the sale of the property (Law of Property Act 1925)

6.5 Compulsory Purchase Orders (CPO)

6.5.1 The Housing Act 2004 gives Councils the power to apply to compulsory purchase empty homes to bring them into use where there is a proven housing need. This option may be pursued where owners are reluctant to take action to bring their property back into use, where an owner of a property cannot be traced or where a property has been empty for a long time and is causing a nuisance or danger to the public. A Compulsory Purchase Order will only be sought as a last resort or where other actions have failed.

6.5.2 The CPO procedure can be very lengthy especially if objections are received. It is advisable to take photographic evidence of the condition of the property and damage being caused to neighbouring properties and the

surrounding area, in order to demonstrate the negative impact on the area. In addition it will be necessary to demonstrate that attempts were made to work with the owner on a voluntary basis and that the human rights of the owner are not being contravened.

6.6 Back to back sale

6.6.1 This is a transaction that immediately follows a CPO and involves selling the property as quickly as possible to another buyer in order to recover the costs. The buyer could be Registered Social Landlord enabling the property to be offered to a household in housing need. Alternatively sealed bids can be invited from private buyers. Attempts would be made to secure a purchaser before taking action to CPO a property, this will reduce the risk to the Council and enable it to recoup the money spent in taking the action and in purchasing the property.

6.7 Empty Dwelling Management Orders (EDMO's)

6.7.1 The 2004 Housing Act enables Councils to secure occupation of long term empty properties by applying for an Empty Dwelling Management Order. There are two types of order – Interim EDMO and Final EDMO. They allow the Council to secure occupation and proper management of privately owned houses and flats where the following conditions apply:

- The dwelling has been unoccupied for at least six months
- There is no reasonable prospect that the dwelling will become occupied in the near future
- There is a reasonable prospect that the dwelling will become occupied if an EDMO is made
- The Council has complied with its duties in seeking to make an EDMO including any matters that may be prescribed in regulation

- 6.7.2 An Interim EDMO must be approved by a Residential Property Tribunal before it can have effect. Once approved it will usually last for a maximum period of 12 months (but can be extended). With an Interim EDMO the council cannot arrange occupation of the dwelling without seeking the consent of the owner. This means that the owner has a final opportunity to reach an agreed solution. If an agreement cannot be reached, an Interim EDMO can be revoked and replaced with a Final EDMO.
- 6.7.3 The making of a final EDMO does not require the approval of a Residential Property Tribunal. Once in force an EDMO lasts for a fixed period of not more than 7 years. The Council does not require the consent of the owner to grant occupation rights under a Final EDMO.
- 6.7.4 Properties will revert to their owners on an agreed date or sooner if the owner so requires – provided due notice is given and arrangements to repay any reasonable costs incurred by the Council are settled. The Council has the right to possession of the property whilst the EDMO is in force which enables it to undertake the management of the property. The Council however does not acquire a legal interest or estate.
- 6.7.5 The Council must notify the owner of the property of its intention to apply for an EDMO and ascertain the intentions of the owner in respect of the future use of the property in question. If the EDMO is the most appropriate course of action, the Council must seek the authorisation of the Residential Property Tribunal which must be satisfied that the property has been unoccupied for in excess of 6 months and that there is no reasonable prospect of the property being occupied in the near future. In addition the Council must demonstrate that it has a reasonable prospect of securing the properties occupation and must have complied with all of the duties and procedures.

6.7.6 An EDMO will not be approved if the following exemptions apply:

- the property has been empty for less than 6 months
- the property is the principal home of an absent owner
- the property is a second home or holiday home
- the property is undergoing repair or renovation
- the property is awaiting planning or building regulation approval
- the property is being marketed for sale
- the owner has died within specified time period

6.7.7 To obtain a Final EDMO the proposed order must be served on the owner and representations invited. A Management Scheme is required which must set out how the dwelling will be managed with details of any work the Council proposes to carry out with expenditure estimates, open market rent and proposed rent (where different) and how and when any surplus income will be passed on to the owner.

6.7.8 All income / expenditure must be accounted for and facilities for inspecting accounts must be made available. The rent collected must be used to offset the expenditure incurred by the Council and any surpluses must be paid to the owner on the expiry of the order. The Council cannot recover any deficit from the owner unless this forms part of any agreement reached with the owner in respect of the early revocation of the order or if the deficit relates to a service charge.

6.7.9 The owner may seek revocation at any time and the Council may seek revocation if;

- It fails to secure occupation of the property
- The dwelling will be occupied following revocation
- The dwelling is to be sold

- The Final EDMO is replacing an Interim EDMO
- The EDMO interferes with the rights of a third party
- Other circumstances the Council considers appropriate

6.7.10 If there are tenants in occupation the consent of the owner would be required before revocation and the Council may refuse the revocation if the property is likely to remain unoccupied.

6.7.11 A person affected may appeal to Residential Property Tribunal against;

- The decision of the Council to make a Final EDMO
- The terms of the Final EDMO (including the terms of the management scheme)
- The terms of the Interim EDMO (relating to payment of rent / compensation)
- The decision of the Council to vary or revoke / refusal to vary or revoke the EDMO
- The decision of the Council not to pay compensation / the amount of compensation

6.7.12 The Council may work in partnership with a Registered Social Landlord or other agency to manager any properties for which it has taken responsibility through the EDMO process.

7.0 Recovery of costs associated with bringing empty properties back into use

7.1 The Council will seek to recover all of its costs where possible in bringing empty properties back into use.

8.0 Resources

8.1 The Council has a capital programme to finance housing projects over a 3 year period. This programme is financed from housing capital receipts and

- grants and subsidy received from central government. The amounts received are subject to change and therefore the amount available to finance housing projects over the 3 year period could be increased or decreased and the housing capital programme will have to be scaled accordingly.
- 8.2 Currently £150,000 is made available for empty homes grants and this could be made available to finance the costs of capital related enforcement activity. If this is insufficient and more capital is required this would have to be considered alongside other housing priorities requiring capital funding.
- 8.3 The extent of enforcement activity undertaken by the Council will be determined by the resource available to fund both the revenue and capital related elements of the activity.
- 8.4 Officers within the Strategic Housing Team will work closely with officers in the Finance and Legal Teams prior to taking enforcement action to ensure that the Council is not being subjected to unnecessary risk.
- 8.5 Where responsibility for taking enforcement action falls within the remit of another Council department (i.e. dangerous structures - Environmental Health) the Strategic Housing Team will liaise with these departments as appropriate.
- 9.0 Complaints and appeals process**
- 9.1 Any complaints will be dealt with in accordance with the Council's Corporate Complaints Procedure. If an owner wants to appeal against the Council's intention to take enforcement action the appeal will be considered by the Council's Judicial Board.

10.0 Start date

10.1 This policy will become effective from 1 January 2009.

11.0 Review

11.1 This policy will be reviewed annually.