

# **APPENDIX 8**

**WIRRAL COUNCIL**

**DELIVERY SERVICES**

**HOUSING STANDARDS  
ENFORCED SALES**

**PROCEDURE**

**2019**

## **Introduction**

Wirral Council Housing Strategy sets out the long term strategic direction for delivery of the environmental pledges contained within the Wirral Plan. A specific priority within the Wirral Plan is to facilitate the provision of good quality housing that meets the needs of Wirral residents and focuses on the delivery of attractive, sustainable and safe environments. In order to enable improvement in the quality and supply of Wirral's housing stock a distinct target has been included within the Wirral Plan to bring 1,250 empty homes back into use by 2020. To help achieve this target Wirral Council will focus on working with partners to target empty property interventions which bring long term empty properties back into use and support improvements within neighbourhoods and the housing offer in Wirral.

Wirral Council utilises a number of approaches within its empty property 'toolkit' of resources to assist owners of long term empty properties to bring their properties back into residential use including; advice and guidance, financial assistance, private sector leasing and the use of a developers list. The majority of long term empty cases are brought back into use through working in partnership with owners to achieve a positive outcome for the owner and the property. In some cases, the threat of enforcement action and subsequent serving of Statutory Notices does not produce the desired conclusion and necessitates works in default being undertaken and the associated costs for the works being incurred by Wirral Council. The Enforced Sales Procedure will provide a clear and transparent process for the recovery of such costs and hopefully result in the property being brought back into use.

The Enforced Sale Procedure aims to provide a clear method for determining which long term empty property cases are taken forward for enforced sale through an appraisal process which establishes evidence of continuing problems attributable to long term empty residential properties along with confirmation of a continuing lack of action by the property owner (if known) to return the property to use following interaction with Wirral Council.

Wirral Council's Enforced Sale Procedure has been established as a process to enable recovery of outstanding debts owed by owners of long term (6 months and over) empty residential properties. These debts were incurred as a consequence of non-compliance with enforcement legislation or non-payment of Council Tax which has resulted in a charge(s) being registered on the property following either the undertaking of works in default or non-payment of Council Tax or, sometimes both, whichever is relevant. The intention of the procedure is to formalise a consistent approach to help resolve issues created by problematic long term empty residential properties and to minimise impacts on the environment and neighbouring premises whilst also facilitating the return to use of long term empty properties in order to provide much needed housing resource within local communities.

Wirral Council's Council Tax Team will also pursue the non-payment of Council Tax related to empty properties. This can result in a legal charge being registered against the property equal to the amount owed to the Council. The Enforced Sales Procedure will also provide a clear and transparent process for the recovery of such costs.

The Enforced Sale Procedure forms part of Wirral Council's approach to dealing with non-compliance contained within Wirral Council's Enforcement Policy and supporting Housing Standards and Renewal Enforcement Policy Statement. The overarching Enforcement Policy provides detail of the objectives and methods for achieving compliance and the criteria to be considered when deciding the most appropriate response to a breach of legislation ensuring Officers of Wirral Council act in accordance with the policy.

## Procedure

The procedure may be used to recover debt arising from the exercise of any statutory powers that;

- Confer a charge on all the estates and interests in the property
- Confer Law of Property rights (i.e. grant the powers and remedies available as if the charge had been created by deed).

Any such charge will bind any prior charges affecting the property, i.e. the council's charge will have a priority over other charges. However, covenants and easements over the property will not be so bound. If the statutory powers under which the debt has arisen do not confer the above mentioned rights, then it will be necessary to consider whether Section 7 of the Local Land Charges Act 1975 applies. If it does then the procedure may still be used but only the estate of the offending party will be bound not all the states and interests in the property. Other charges may therefore take priority over the council's charge.

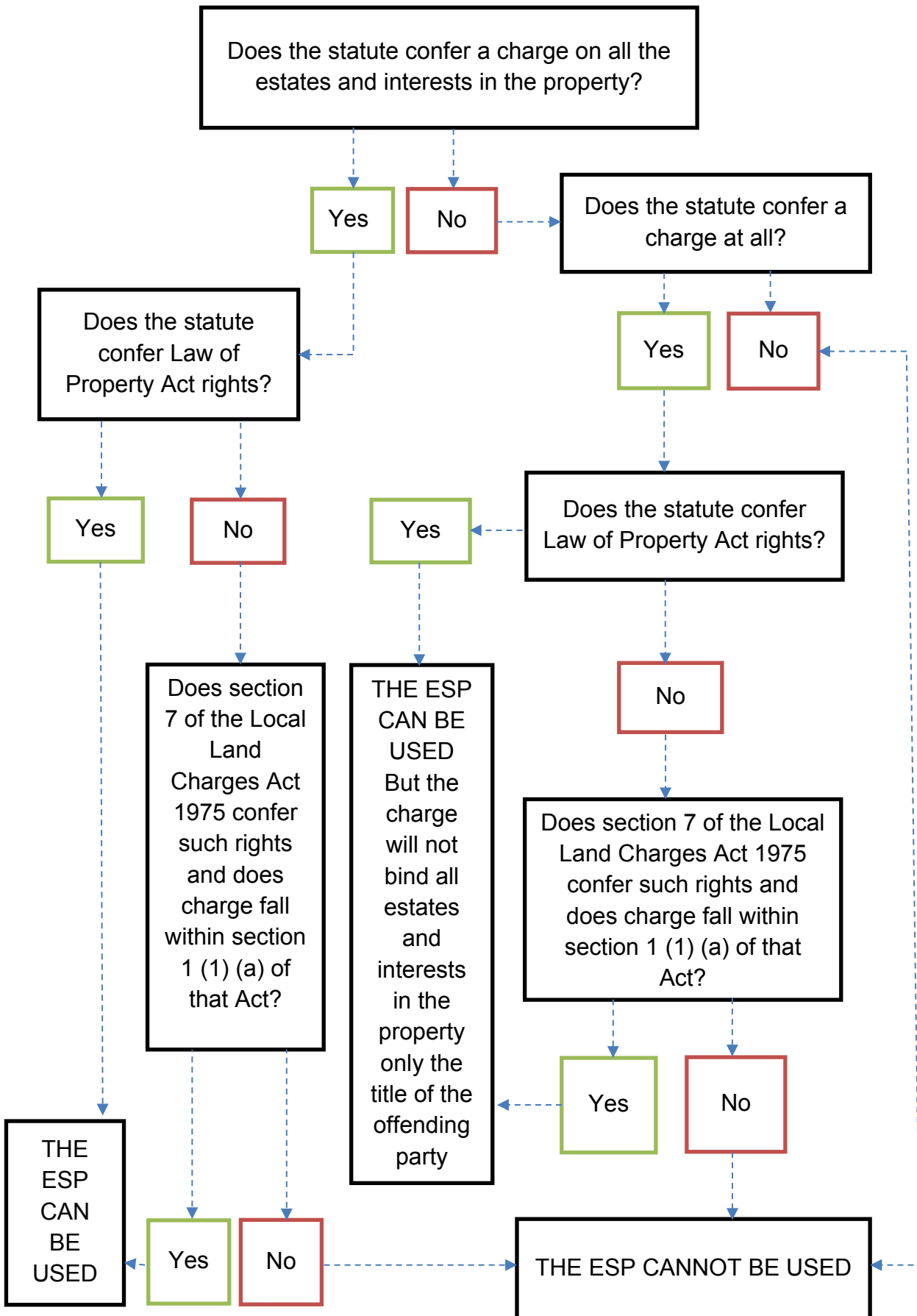
Principally, the statutory powers that will enable the procedure to be used are: -

- Prevention of Damage by Pests Act 1949
- Housing Act 1985
- Building Act 1984
- Public Health Act 1936
- Public Health Act 1961
- Environmental Protection Act 1990

Actions in relation to the service of statutory notices under these provisions are most likely to have given rise to the relevant debt(s).

The flowchart below outlines the direction of the process to follow to determine how to progress procedure on the basis of the legal rights permitted under statutory powers;

### Flowchart of Process



Additionally, the following criteria will be applied when considering whether to instigate the procedure;

- The principle sum of the original work carried out in default must be at least **£1,000**. (This can be the total of a number of combined principle sums)
- The statutory notice(s) must have been served correctly. Refer to the relevant statute for the requirements relating to service. All copy notices must have been signed by relevant authorised signatories. The procedure cannot be employed if the notices have not been served in this manner.
- The serving officer must complete a 'Record of Service of Notice' form on service of the statutory notice.
- There should be no proposed Compulsory Purchase Order (CPO) action within a 2-year period.
- The property must not be the subject of any bankruptcy action. (This would usually be noted on the title if registered).

It should be noted that the right to enforce a sale in order to recover land charges is limited by section 20 of the Limitation Act to 12 years from when the right to receive the money accrued, not from when the demand was sent out or the local land charge registered. However, where the owner has attempted to repay and any amount has been received, the 12 year period starts afresh from that date.

## **Land Registry**

If properties are shown as unregistered at Land Registry then the process should not be considered suitable for such properties.

## **Human Rights Act 1998**

Consideration of the provisions of the Human Rights Act 1998 must be taken by the Council. In particular, Part 1, Article 8; everyone has the right to respect for his private and family life, his home and his correspondence. And also Protocol 1, Article 1; every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

This need is to be balanced against the general benefits and rights of neighbours and the surrounding community.

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 letters to the Owner and Charges. This will be covered by correspondence issued by Legal Services.

## **Determination of Enforced Sales Cases**

Determination of properties which are suitable for pursuing enforced sale option should be agreed via an Enforced Sales Group (ESG). The ESG shall consist of representatives from Legal Services, Housing Standards and any other relevant department as judged by Housing Standards Team and will agree which properties are suitable for development of enforced sales cases. In deciding which properties to progress through enforced sale the group will consider a number of factors including; number of complaints received, amount of debt owed to Wirral Council and nuisance caused in the local neighbourhood.

### **Housing Standards Team Role**

#### **1. Produce a background case file for property including;**

- 1) External photographs of property before any default work has been undertaken (front and rear if possible)
- 2) All statutory notices served prior to the Council carrying out the necessary works in default together with the details as to how the notices were served.
- 3) Proof of Service of Notice
- 4) Details of Works in Default commissioned
- 5) All invoices from contactor for Works in Default including breakdown of labour and material charges
- 6) Photographs of property following completion of Works in Default
- 7) Copy of memo to Land Charges – Work in Default completed and paid including invoice number and amount
- 8) Copy of invoice generated for property owner for Work in Default amount plus administration fees
- 9) Comprehensive known address(es) document produced for owner e.g.. Land Registry entry, Council Tax records etc.
- 10) Evidence of charge(s) from the Land Charges Team
- 11) Council Tax ownership details status and statement of any arrears
- 12) Land Registry entry for property with a copy of any lease if the property is registered leasehold. The Land Registry will generally supply a copy of the lease if they have it in return for a fee.
- 13) If Council Tax arrears but the Land Registry does not show the debt has been secured via a charge then the Council Tax Team to be asked if they plan to progress securing this so that if the enforced sale is to proceed the debt is recoverable out of sale proceeds. If the debt does not show on the Land Registry title then recovery will not be possible without further action
- 14) If there are Council tax Arrears and the Land Registry entry shows the Council has an equitable charge for those arrears and there is no mortgage then Council Tax Team to be asked if they intend to apply to court for an 'Order for Sale' and then sell via that process rather than through reliance on Local Land Charge(s) and give time estimate for that process.
- 15) M3 database worksheet for property detailing action, activity and correspondence
- 16) A check then needs to be carried out to find out which charges are still outstanding. This is done as there are many ways debts can be paid and there is little point undertaking work where a charge has been repaid.

The ESG will determine whether or not to develop the Enforced Sale process further.

## **2. Resend Original Notices**

All the notices originally served and notices of demand for payment are re-served on the property with a covering letter. This will ensure that an owner or interested party is made aware of the debt and also ensures that there is adequate evidence available. Notices will be served by the following methods:

- i) One must be served on the listed owner or owners by first class post, or by hand, or by affixing it to the property
- ii) One must be posted to any other address(s) shown on the Land Registry and to any other interested party of which the Council is aware.
- iii) Copies must be stamped and signed by the serving officer. A 'Record of Service of Notice' form must be completed for each by the serving officer.
- iv) A photograph must be taken as evidence of any notices affixed to the property and weekly visits should be made in order to replace any notices that have been removed.

## **3. Section 103 Notice**

- i) After a period of 28 days if no payment is made, a notice pursuant to Section 103 of the Law of Property Act 1925 is then served. This notice gives the owner three months to repay the debt.
- ii) The property cannot be sold until the Section 103 notice has expired, but during this time the procedure is progressed through the various stages as far as possible.
- iii) The Section 103 Notices are divided into 2 categories:
  - i. Where notices pursuant to Section 79 Building Act 1984 have been served.
  - ii. Where no notices pursuant to Section 79 Building Act 1984 have been served.

When serving the notices, a photograph is taken of the property and copies of all the notices served and confirmation of the method of service are attached to the property file and onto the M3 database.

## **4. Authorisation**

- i) Following the expiry of the 3 month period a check needs to be made with the Council's Finance Team to ascertain whether or not the debt has been paid.
- ii) If the debt has not been paid the serving officer should review the case with the Housing Standards Manager.
- iii) If, following review, it is decided that the Enforced Sales Procedure should be followed to its conclusion, the Senior Housing Standards Officer / Team Leader must prepare an authorisation form which, together with the background file, is passed to Assistant Director with responsibility for Housing Services for authorisation under delegated powers.
- iv) Authorisation and file returned to Case Officer.

## **5. Legal Services / Finance Investment Team instruction**

- i) A copy of the authorisation and the file are then forwarded to the appropriate Debt Recovery Team / Legal Team.



- ii) Case Officers should continue to make on-going checks at weekly intervals in order to ensure no re-payment has been made.

## **Legal Team Role when Property is registered at Land Registry**

### **1. Do Charges Remain on Property?**

- i) Upon receipt of the file from the Housing Standards Team, compile list of all charges.
- ii) Checks should also be made that the statutory notices have been correctly served

### **2. Write to all Interested Parties**

- i) If charges are still outstanding a letter is sent to all persons on the register who have an interest in the property advising them of the position. This will include others who have a charge registered against the property.
- ii) The letter must be copied to the Housing Standards Team for information, who must take a photograph of any letters or notices affixed to the property and carry out weekly visits in order to replace any notices that may have been removed.
- iii) This letter gives the owner and any other interested parties fair notice of the steps the Local Authority proposes to take. It is accepted that in most cases the whereabouts of the owner may not be known. Even so, a letter addressed to the property and any other address(s) is sent in an attempt to notify the owner. Every attempt is made to give such persons notice of the Council's proposals and ample opportunity to repay the debt is conveyed to the owner
- iv) A period of 28 days is allowed for the persons served to respond.

### **3. Registration of Charge**

- i) If there is no response to the letter and no debts have been repaid then a charge must now be registered with the Land Registry.
- ii) A resolution for the relevant charge(s) must be prepared and be sealed by the Council. This must record:
  - (a) The statutory provisions
  - (b) The service of the necessary notices
  - (c) What work was done and when
  - (d) The registration of the charge in the register of local land charges and claims priority over all estates and interests
  - (e) A certificate made by the council that it has all the necessary rights and powers to make the application for registration of the charges and that it has taken all appropriate steps in accordance with the relevant statute
- iii) An application must be prepared for registration of the charge and a fee paid to the Land Registry on submissions of the application registered.
- iv) Form SC must also be completed in order to claim priority in favour of the council's charge over any existing charge registered against the title assuming the charge binds all estates and interests in the property.
- v) The completed application must be sent to Land Registry. This comprises of:
  - (a) A covering letter
  - (b) The sealed and dated resolutions together with a certified copy of each resolution
  - (c) The land/charge certificate or copies of the correspondence requesting the same

- (d) Completed form SC
- vi) Confirmation of the completed application must be provided to the Housing Renewal Team.

#### **4. The Charges are Registered**

- i) Notification of completion of the registration is received from Land Registry on completion of the registration – arrangements are then made for the sale of the property.
- ii) At this point:
  - i. A check is made that the charges have not been paid
  - ii. The Housing Renewal Team must be informed of the registration and must be asked whether the property is to be sold at auction or to a preferred purchaser.
- iii) Letters are then sent to the owners and interested parties advising them that the Council's charges are registered and it is the Council's intention to pursue a sale of the property. This gives the owner and interested parties notice of the Council's intentions so that they cannot claim steps were not taken to notify them.
- iv) The letter must be copied to the Housing Standards Team for information and they must take a photograph as evidence of any notices affixed to the property and weekly visits should be made in order to replace any notices that have been removed.

### **Selling the empty property – Valuation/Asset Management**

#### **1. Methods of Selling the Empty Property**

- i) Once the Assistant Director having responsibility for Housing Services has been advised that the charges have been registered against the title and/or that the property can be put forward for sale and instructs Asset Management Team accordingly. A sale by a mortgagee has to be at the best price reasonably obtainable and the usual way to achieve that in a mortgage situation is via an auction. Other than where there is particular justification therefore, the property will be offered for sale at auction.

Whatever the method of sale, an independent valuation should be obtained to ensure an estimate of market value or fair value of the property

#### **1. Contract**

- i) For a registered property the contract for sale will be on standard terms for a contract for sale by a mortgagee so no warranties will be given about title.
- ii) In the case of an unregistered property there will probably be no deeds or details of any encumbrances affecting the property and the contract for sale will need to reflect this.

#### **2. Title**

- i) Registered titles: copies can be obtained of the documents referred to on the title from the Land Registry. Where they are not available, include an appropriate clause in the contract to cover the position.

### **3. Check Charges**

- i) Immediately prior to auction/exchange of contracts a further check by the Housing Standards Team is undertaken with the Finance Investment Team to ascertain whether the charges have been repaid.
- ii) The property should also be inspected from the outside to check it is vacant as far as can be ascertained given that the Council will not have secured it or taken possession of it.

### **4. Post Sale**

- i) The post-sale procedure is generally the same as that for any other sale.
- ii) The following deductions will be made from the proceeds of the sale:
  - (a) Any auctioneer's fee
  - (b) The legal fee
  - (c) The surveyor's fee
  - (d) Housing Standards & Renewal Teams administration fee
  - (e) Monies due to mortgagees with registered charges on the property
  - (f) Any outstanding ground rent/ service charge
- iii) These sums will be processed in the same manner as for a normal sale. If the debts are greater than the proceeds of sale, the fees will have first call on the proceeds. The auctioneer's fees will have to be paid in any event and the other fees will also have first call on the proceeds. Any remaining debt is taken from the proceeds and anything outstanding is placed against the former owner as a personal debt, to be pursued in the normal manner if economically viable.
- iv) 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 to them in the normal way.
- v) If the owner's whereabouts are not known, then the balance must be paid into an interest bearing account. If no valid claim is made within a period of 12 years, the money reverts to the Council.