

Subject:	Empty Properties: Pilot Enforcement scheme.		
Date of Meeting:	15 March 2017		
Report of:	Executive Director Neighbourhoods Communities & Housing		
Contact Officer:	Name:	Patrick Gordon / Emma Kumar	Tel: 01273 293297
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Ward(s) affected:	All		

FOR GENERAL RELEASE**1. PURPOSE OF REPORT AND POLICY CONTEXT**

- 1.1 Returning long term, privately owned empty properties to use is a priority as part of Improving Housing Supply and Housing Quality in the council's Housing Strategy 2015. This was also highlighted as a key priority for residents in the Fairness Commission report of June 2016. Return of empty properties to use each year forms part of the New Homes Bonus (NHB) return, with empty properties currently being responsible for bringing significant NHB earnings to the council since 2010.
- 1.2 The council's Empty Property Strategy has stated aims of increasing housing supply and improving neighbourhoods and is based on a system of 'Identify – Encourage – Enforce'. The aim is for owners to return their property to use themselves at minimal cost to the council. Most properties are returned to use this way, but the longer term, and/or more problematic properties can require additional incentive / disincentive. Our enforcement based approach is most effective for the longer term/ problem empty homes.
- 1.3 This report outlines proposals for a pilot low risk and cost neutral delivery of enforcement, Works in Default/ Enforced Sale model, whereby essential safety / environmental improvement works are undertaken to longer term empty homes and owners charged for these works.
- 1.4 Following sustained contact with owners, and where a property remains empty, each property is 'scored' based on time empty, neighbourhood impact and nuisance caused. Properties are then rated depending on the score with the highest being considered at EPEG (Empty Property Enforcement Group). At present there are 52 properties which score 'HIGH' (out of 200 properties on the scored list). These would not all necessarily be suitable for this action but some of them will be.
- 1.5 Enforcement powers and funding for works have historically been used but the previous funding stream for grants (Private Sector Renewal Funding) has now ended. Additional options for owner incentives can be considered at some future point.

- 1.6 Knowing that the council does take enforcement action would have a positive effect on owners' actions and the ability to follow these cases through to a conclusion is essential.

2. RECOMMENDATIONS:

- 2.1 For Housing & New Homes Committee to support this pilot as part of the Empty Property Strategy, to address those empty property issues in the city not resolved through existing interventions.
- 2.2 For Housing & New Homes Committee to support the implementation of the funding mechanism for the Empty Property Enforcement pilot proposal as outlined in the body of the report and Finance comments.
- 2.3 That a review of the pilot is undertaken after one year and the results are reported to Housing & New Homes Committee.

3. CONTEXT/ BACKGROUND INFORMATION

- 3.1 The Empty Property Team (EPT) works to bring privately owned empty residential property back into use with the key aims of increasing housing supply and improving neighbourhoods. Most long term empty properties (around 90%) in the city are privately owned by either individuals (70%) or companies (20%). The remaining 10% are owned by housing providers, Registered Providers 8% and Brighton & Hove City Council (General Fund) 2% [snapshot at 1 Oct 2016].
- 3.2 The Empty Property Team is well established and successful with 806 properties returned to use in past five years and significant New Homes Bonus allocations relating to the return of empty properties. The Team bring over 150 long term empty homes back into use annually, exceeding targets with 156 long term empty homes returned to use in 2015/16.
- 3.3 Enforcement options are available through various pieces of legislation (Appendix 1) the suitability of each option is dependent on property / owner type and condition. A Notice which forces the owner to spend money can in itself be enough for some owners to act, but escalation to a charge on the property may be essential for others. This can then lead to Works in Default/Enforced sale. Removal of property ownership is the ultimate sanction against an owner and only considered as a last resort.
- 3.4 Works in Default (WID) are those works carried out by a council department (or their contractor) on a property, following non-compliance with a formal Enforcement Notice served on the owner requiring them to carry out those works. Works can include improvements to the appearance of the property, boarding up etc. It would not involve complete refurbishment but rather cover essential safety or neighbourhood improvement related costs to use as leverage for the enforcement action. Costs are estimated to be around £1500 to £2,000 per property.
- 3.5 In effect the council carries out the works in lieu of the owner. Once works are completed and the council has paid for them, then a charge can be taken against the property to allow the council to reclaim its funds.

- 3.6 Enforced Sale is a mechanism that allows the council to insist on sale of the property to repay a legally enforced charge.
- 3.7 As part of preparing this report other teams who currently use such legislation were consulted. This is an established legal process already used elsewhere in the council, including Planning Enforcement, Building Control and Council Tax.
- 3.8 A cost neutral mechanism for this process was set out by the President of the Chartered Institute of Environmental Health, in a presentation entitled 'Works in Default - the Option that Pays for Itself' – details shown in flowchart and summary form as Appendix 2.
- 3.9 The council Finance Team have looked at this model and agreed that it could be utilised within this council for Works in Default/Enforcement purposes, subject to certain considerations, as detailed in the 'Risks and mitigations' section of this report.

Potential Benefits of an enforcement pilot:

Options beyond chasing could increase return of properties increasing housing supply and improving neighbourhoods;
Potential increase in New Homes Bonus income;
Positive publicity as action on empty homes generally seen in a positive light by local residents.

Risks & mitigations of enforcement pilot

There are some issues to be considered regarding the collection of income. There is always a risk that some owners won't pay their invoices, and the courts may not uphold a charge against the property, which would result in the costs incurred not being recovered.

This will be mitigated by ensuring that the debtors invoices are raised in a timely manner, that the collection of payments is monitored regularly and that any debts raised will be enforceable as a charge on the property. We will only undertake works that would be recoverable as deemed by the courts.

Risks will be further mitigated by close management by the Empty Property Team who would remain in contact with the owner and also be immediately active in seeking a charge on the property which can lead to the Enforced Sale. This will effectively be the continuation of a long conversation with the owner which will not stop at this stage.

4. ANALYSIS & CONSIDERATION OF ANY OPTIONS

- 4.1 The alternative option is to continue with current approach wherein enforcement actions depend on the availability of time resource and funding within separate departments and consequently is effectively not used.

5. COMMUNITY ENGAGEMENT & CONSULTATION

- 5.1 None has been carried out related specifically to the proposal at this time however a recent national survey by the charity 'Empty Homes' has revealed '*Strong public support for the Government to place a greater priority on tackling empty homes.*'

6. CONCLUSION

- 6.1 This proposal is envisaged to bring more empty properties back into use by motivating owners to take independent action more quickly.

7. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 7.1 The report proposes undertaking essential safety/environmental improvement works to empty properties and charging the owners for these works. There is a risk of non-payment by the owner, however, this is mitigated by the ability to issue enforcement notices which will be upheld by the courts with a charge against the property. This allows the council to recover the debt from the proceeds once the property is sold. It will be the responsibility of the Empty Property Team (EPT) to ensure that only enforceable works are charged for. This scheme should then be cost neutral to the council. However, were any amounts to be written off, (which should be rare) the cost would need to be met from current budget resources within Housing general fund. The report proposes to pilot the scheme on a small scale during 2017/18 (invoicing up to £6000) with a view to expanding, if successful. The small risk of non-recovery is offset by the deterrent effect on owners and the ability to get empty properties back into use.

Finance Officer Consulted: Monica Brooks

Date: 03/03/2017

Legal Implications:

- 7.2 Input from Legal Services will be available to develop processes for recovery action, in particular for new remedies, such as remedial action under the Anti-social Behaviour, Crime and Policing Act 2014.

Lawyer Consulted: Name

Liz Woodley

Date: 03/03/17

Equalities Implications:

- 7.3 Working to bring back long term empty properties back into use and improving housing supply is aligned to the corporate priority of increasing equality through offering further options to meet identified needs of disadvantaged groups in the city to whom the council owes a housing duty.

Sustainability Implications:

- 7.4 Bringing empty properties back into use helps tackle poor property conditions. Actions to tackle this are expected to improve the quality of the city's housing stock thereby improving its sustainability.

Any Other Significant Implications:

- 7.5 None identified.

Public Health

- 7.6 Brighton & Hove Joint Strategic Needs Assessments highlight the relationship between poor housing and health outcomes. Improvements to housing quality will have a positive health impact on new residents and neighbours.

Crime & Disorder Implications:

- 7.7 Empty properties are recognised as having a high potential to attract ASB and crime such as graffiti and fly tipping which can add have a negative effect on the local neighbourhood and add to a sense of insecurity. Action to tackle this is expected to reduce ASB and nuisance associated with these properties.

Risk and Opportunity Management Implications:

- 7.8 The key risk of not adopting the scheme is a delay in bringing some long term properties back into the use. Returning additional long term empty properties to use will also have a positive impact on neighbourhoods and could increase income into the council through the New Homes Bonus.

Corporate / Citywide Implications:

- 7.9 The return of empty properties was a key message identified from residents during the consultation for the Fairness Commission report 2016 which suggested that the council should 'strengthen its nationally recognised approach to bringing empty homes and properties back into use.' This proposal enables us to increase the ways we are able to achieve this and forms part of the council's Empty Property Strategy.

SUPPORTING DOCUMENTATION

Appendices

Appendix 1 - Legislation that can lead to a charge to an empty property

Appendix 2 – Flowchart/ financial summary for Works in Default rechargeable works code

Documents in Members' Rooms

None

Appendix 1 - Legislation that can lead to a charge to an empty property

(taken from Empty Property Strategy update 2016)

ENFORCEMENT ACTIONS FOR OWNER TO IMPROVE PROPERTY		
S215 of Town & Country Planning Act 1990	Requires the owner to undertake works to improve the appearance of the building/ site. Council recoups costs	Financial cost : council can carry out Works in Default and place charge on the property which could lead to Enforced Sale (see below)
Improvement Notice HHSRS (Housing Health & Safety Rating System) Housing Act 2004	Requires the owner to undertake work to remedy any Cat 1 Or 2 hazards as defined in the HHSRS	The priority of the charge varies across the legislation types – with some it leaps to the top (above even mortgage) but others is stays in queue behind others
Building Act structure issues; S77, 78 & 79	Require specific works to the property (Emergency and non-emergency)	
Prevention of Damage by Pests	Require specific works to the property	Many empty properties do not have mortgage charges and are debt free
Council Tax debt	Is a personal charge requiring court order converting to property debt.	Magistrates court often offers stronger support for action against empty property as it is not somebody's home.
NEW Community Protection Notices From Anti-social Behaviour, Crime and Policing Act 2014	Applies to the owner – person who is having a detrimental effect on the quality of life of those in the local area (i.e. consistent fly-tipping in their own garden). Ongoing.	This is relatively new power –limited opportunities for the council to undertake remedial works in default but it does threaten a criminal record which can be a disincentive to some owners.
ENFORCEMENT ACTIONS WHICH CAN REMOVE OWNERSHIP		
Enforced Sale	Allows the council to require sale of a property to recover a debt / charge held against the property (i.e. where the council has carried out works through another action). Owner can just pay debt then further action would be needed.	Loss of property – owner receives market value of the property as agreed / when sold, less any outstanding charges to the council. Fees / costs retrieved by council.
CPO (Compulsory Purchase Order)	S17 Housing Act 1985 – CPO on basis of both quantitative and qualitative gain.	Loss of property – owner receives market value of the property as agreed / when sold Council cannot retrieve fees spent so usual budget £6-£8k per property.

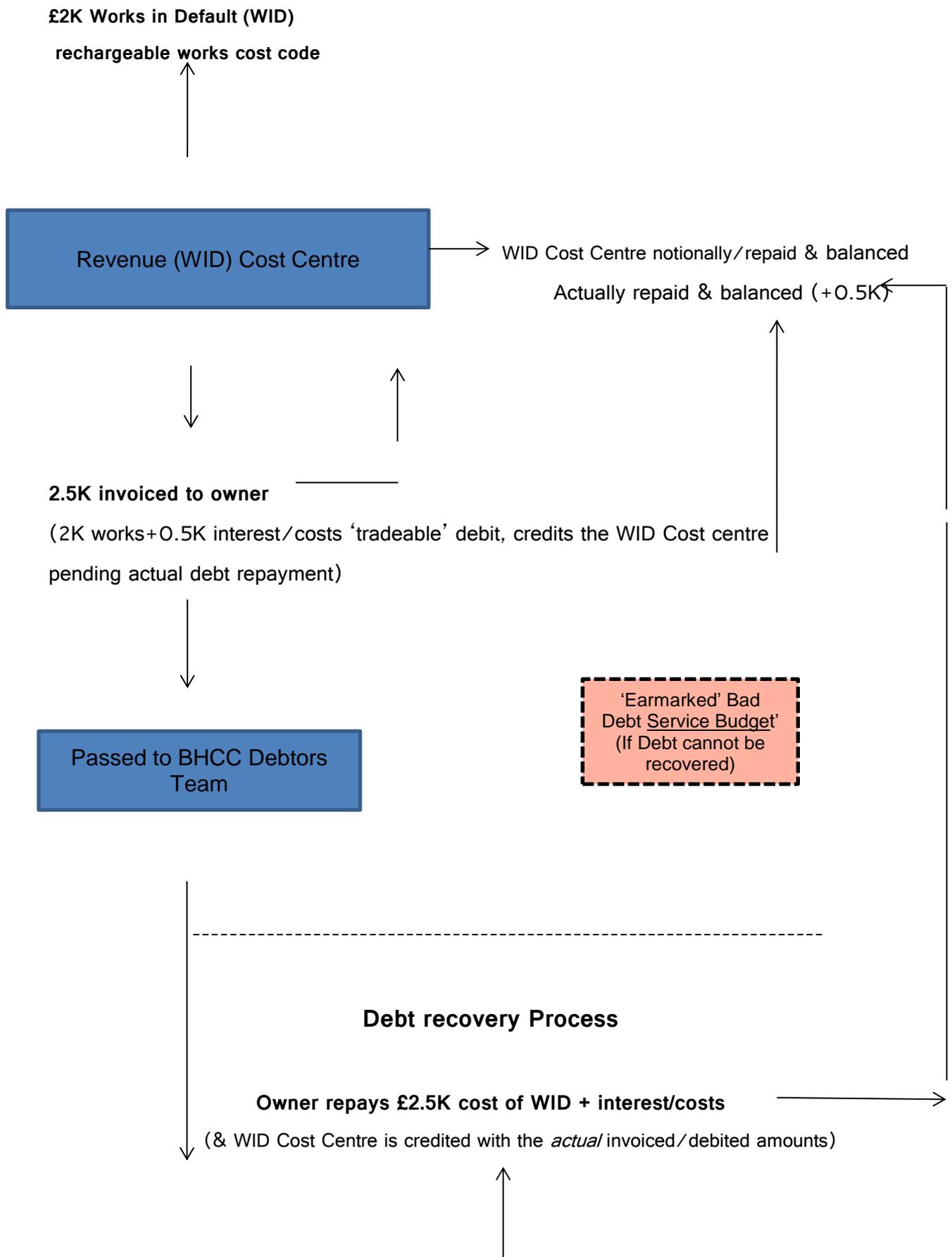
Enforcement action is only taken after sustained contact with owners. A range of actions can be taken in parallel.

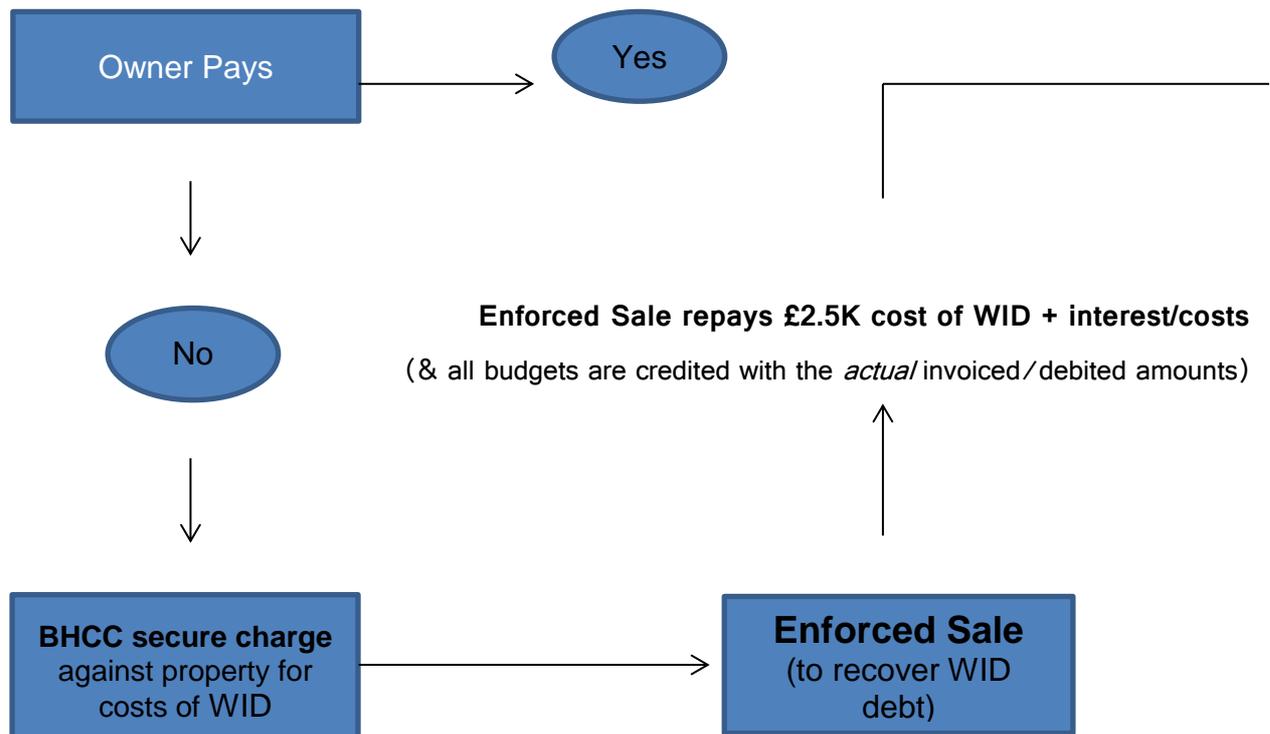
Many of the improvement options involve issuing pre-Notice (i.e. warning letter) which could be undertaken by EPTeam with agreement from the relevant departments.

Courts tend to be more sympathetic/ supportive of action against empty properties in recognition that it is not someone's home.

Appendix 2 - Flowchart/ financial summary for WiD rechargeable works code

FINANCIAL MECHANISM FOR WORKS IN DEFAULT





Financial mechanism commentary to flowchart:

- To account for the expenditure and income relating to works in default a revenue cost centre is set up which would then be used to pay for works (expenditure) and for invoices raised to recover costs (income) from the property owner (debtor).
- In theory, the expenditure and income should offset each other and there would be a zero balance to the council.
- An additional charge would be applied to the cost invoiced to the empty property owner, this would relate to officer time and council resource in arranging for the works and the process associated.
- When an invoice is raised, the income is credited to the cost centre immediately and the debt is passed to the corporate Debt collection team who pursue payment.
- If debt is not paid a Charge can be made on the property as a way to recover debt.
- The council can then require the sale of the property to pay the debt = Enforced Sale (owner receives any residual value after payment of legal charges).
- Magistrates' courts generally supportive of this action – less sympathy for owners as it does not affect their primary home.
- This would be for a limited number of properties – a last case option where several attempts at persuasion has failed [offer of funding if applicable / available refused]
- A maximum spend can be set – needs to be high enough to meet legislative needs / justify the action. Would not be major building works but more, making safe, security and tidying up.

- On confirmation of charge Empty Property Team would immediately start work towards Enforced Sale (as this is the end of a process not the start of it).
- Standard procedures require a bad debt provision for cases where the debt cannot be recovered.

