

Report to:	CABINET
Report of:	ACTING STRATEGIC DIRECTOR – PLACE DIRECTORATE
Date of Decision:	28 June 2016
SUBJECT:	ACQUISITION OF PRIVATELY OWNED EMPTY PROPERTIES
Key Decision: Yes	Relevant Forward Plan Ref: 001897
If no in the Forward Plan: (please “X” box)	Chief Executive approved <input type="checkbox"/> O&S Chairman approved <input type="checkbox"/>
Relevant Cabinet Members:	Councillor Ian Ward, Deputy Leader Councillor Peter Griffiths, Cabinet Member for Housing and Homes
Relevant O&S Chairman:	Councillor Victoria Quinn, Housing and Homes
Wards affected:	Aston, Billesley, Bordesley Green, Bournville, Brandwood, Hodge Hill, Kings Norton, Kingstanding, Longbridge, Lozells & East Handsworth, Moseley & Kings Heath, Northfield Oscott, Perry Barr, Quinton, Shard End, Sheldon, Soho, Sparkbrook, Springfield, South Yardley, Stockland Green Sutton Four Oaks, Sutton New Hall, Tyburn

1. Purpose of report:
<p>1.1 To seek approval to purchase, compulsorily or through negotiation, the privately owned empty properties identified in the Private Report on this agenda. These properties have been empty for a considerable period of time, removing sustainable units of housing from the market and have a negative impact on local communities and neighbourhoods. Acquisition by negotiation or through compulsory action will enable the Council to bring these properties back into use.</p>

2. Decision(s) recommended:
That Cabinet
<p>2.1 Authorise the Director of Property to negotiate terms for the acquisition of the properties listed in the Private Report either voluntarily or through use of a compulsory purchase order or orders (CPO) if required including appropriate compensation.</p> <p>2.2 Authorise the Acting Strategic Director of Place to incur expenditure for the potential acquisition of property up to £4.633million from the Empty Homes Strategy capital receipts budget, with subsequent capital receipts being recycled within this programme.</p> <p>2.3 Authorise the City Solicitor, where instructed by the Acting Strategic Director of Place, to make a compulsory purchase order or orders (CPO or CPOs) under section 17 of the Housing Act 1985 for acquisition of the properties listed in the Private Report in order to bring these properties back into use and to authorise withdrawal of the properties from the CPO in the event that (after making the CPO) the properties are improved and re-occupied to the satisfaction of the Acting Strategic Director of Place.</p>

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| 2.4 | Following any acquisition, of properties listed in the Private Report, authorise the Service Director of Housing Transformation to instruct the Director of Property to either dispose of each property on the open market on a leasehold basis or to a Registered Provider with a condition that it is improved and reoccupied within twelve months to the satisfaction of the Acting Strategic Director of Place or to retain the properties for Council housing stock if considered strategically appropriate. |
| 2.5 | Authorise the City Solicitor to take all necessary steps to give effect to the above recommendations including (but not limited to) the making, confirmation and implementation of the CPO or CPOs including the service of notices to give effect thereto including High Court Enforcement Officer's notices and (if granted power to do so by the Secretary of State) to confirm the CPO or CPOs and to complete acquisitions of land and rights in respect of the properties listed in the Private Report. |

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3. Consultation

3.1 Internal

The proposal has been consulted with relevant District Executive Members and Chairs of Ward Committees concerning properties in their wards. Officers from Birmingham Property Services, Legal and Democratic Services, City Finance and Planning Directorate have been involved with the preparation of this report.

3.2 External

Individual owners have been given many opportunities to bring their properties into use and have been provided with advice and guidance to avoid the use of compulsory purchase which is a method of last resort. If compulsory purchase is considered necessary owners will be provided with advice and guidance on that procedure.

Local residents, particularly the neighbours of the empty properties listed in the Private Report have been consulted and encouraged to share their views about the solutions they require.

The Birmingham Empty Property Team is represented at West Midlands Empty Property Group and the National Empty Property Network which ensures dialogue between authorities in order to share best practice.

4. Compliance Issues:

4.1 Are the recommended decisions consistent with the Council's policies, plans and strategies?

The Council Business Plan and Budget 2016+ sets out the Housing Challenge facing the city. These recommendations contribute to those objectives by using enforcement or the threat of enforcement to encourage and enable the return to use of long-term empty homes; thereby increasing the supply of housing in the city and contributing to the housing aspirations contained in the Birmingham Development Plan. Action to bring the properties back into use also improves the local environment and reduces the community safety risks associated with empty dwellings.

The use of compulsory purchase is consistent with the current Empty Property Strategy and the Private Sector Enforcement Policy.

4.2 Financial Implications. **(Will decisions be carried out within existing finances and resources?)**

The proposed acquisition of empty properties, including compensation payments where appropriate, up to the value of £4.633million, will be funded from specific resources available within the Empty Homes Strategy budget for such purposes.

The properties will only be acquired (see 5.5 below) where owners do not take adequate steps to bring the dwellings back into use in a reasonable timeframe. In the event that it is necessary to proceed with acquisitions, the properties will subsequently be sold, with any receipt being recycled back into the Empty Homes Strategy budget to allow for future similar purchases to bring empty properties back into use in accordance with existing Council policy.

It should be noted that receipts generated in such a way are not subject to Government pooling or set-aside arrangements, and are therefore 100% useable by the Council.

This and previous approvals will form an overall programme to be managed to ensure that acquisition and disposals are phased to ensure delivery remains within the limit of revolving fund identified for this purpose at all times. The maximum funding available at 31 March 2016 for this programme was £0.604million

4.3 Legal Implications

Housing Compulsory Purchase Orders are exercised under the powers set out in Section 17 of the Housing Act 1985. Section 18 of the Housing Act 1985 covers the holding of the land and Sections 32 -34 of the Housing Act 1985 contains housing land disposal powers. DCLG 'Guidance on Compulsory Purchase process and the Crichel Down Rules for the disposal of surplus land acquired by, or under the threat of compulsion' (October 2015) specifies that the acquisition of land under Section 17 of the Housing Act 1985 must achieve a qualitative or quantitative housing gain. The case for making the CPOs is set out in more detail in section 5, and Appendix 2.

The list of addresses of the empty properties is appended to the private report in compliance with the principles of the Data Protection Act 1998 and Human Rights Act 2000 and in accordance with Information Commissioner's Office and Information Tribunal decisions. A vacant property address falls under the remit of personal data as individual owners and their addresses can be identified from the property address by obtaining a land registry search. The result of disclosure of empty properties owned privately by individuals without the consent of the owner would be a breach of the Data Protection Act in respect of those individuals, and unfair as their properties could be targeted by criminals and squatters.

4.4 Public Sector Equality Duty and Human Rights

A summary of the Human Rights considerations is set out in Appendix 1. In exercising their compulsory purchase and related powers the Council must have regard to the effect of any differential impacts on groups with protected characteristics. It is recognised that many of the properties listed in the Private Report are located in areas where there are significant Black and Minority Ethnic communities. It is not considered, however, that action to CPO properties and bring them back into use will significantly disadvantage BME groups in the areas. The aim to bring the properties back into residential use may well benefit BME (and other protected group) residents looking for accommodation as well as improving the local environment where properties are derelict or subject to vandalism or fly tipping. A summary of the Equality Analysis is set out in Appendix 3.

5. Relevant background/chronology of key events:

- 5.1 There are currently in excess of 5,000 properties, privately owned, in Birmingham that have been vacant for more than 6 months, with approximately 1900 that have been empty for over 3 years. When set in the overall context of the significant shortfall in housing in Birmingham it is clear that bringing these empty properties, many of which are family homes, back into use could have a significant positive impact on housing provision in the City.

- 5.2 Over the last 6 years, the Council has been very successful in persuading owners to bring their properties back into use through a combination of provision of advice and guidance, warning of the potential use of compulsory acquisition powers and the actual exercise of those powers. Since 2010 authority has been obtained to make a CPO in respect of 132 empty properties. Of these only 43% have needed to proceed as a CPO, with actual acquisition of just 9% of cases – demonstrating the effectiveness of this process. The most recent CPO acquisition report dated 5 April 2012, targeted 43 properties. Of these 9 were re-occupied and 12 commenced work to renovate the property without further CPO intervention. 1 was demolished by the owner and it was agreed not to proceed with 1 property as it was within a regeneration area. The remaining 20 properties proceeded for CPO however the Council only had to compulsorily acquire 3 properties, (with owners commencing action on the remaining properties) which was approved by Government following a Public Local Inquiry.
- 5.3 Whilst the provision of advice, support and guidance is often successful in encouraging owners to bring empty properties back into use in the majority of cases, the properties identified in the Private Report have been empty for a considerable period of time and are nuisance properties that have a detrimental impact upon their communities.
- 5.4 The Council has written exhaustively to the owners of the listed properties encouraging the re-occupation of their properties, offering advice and help and clearly explaining the compulsory purchase procedure and potential of a CPO if the properties remain unoccupied. The owners of these properties have so far failed to bring them back into use.
- 5.5 Following acquisition by the City, owners are entitled to full compensation as required by the Land Compensation Acts 1961 and 1973. Each property would then be sold on the open market and brought back into use or held by the Place Directorate Portfolio.
- 5.6 Compensation payments are funded through the Empty Homes Strategy budget, and the onward sale of these properties recycles the funding, ensuring the programme can continue as an ongoing intervention.
- 5.7 There are a number of options available to the Council once a property has been acquired, these include: open market sale on a leasehold basis and subject to a covenant that the property is improved and reoccupied within 6-12 months of the purchase; to work with a preferred partner to bring the property back into use for social housing; or to retain the property and improve it to the decent homes standard to house tenants on the City's housing accommodation waiting list.
- 5.8 In line with Department for Communities and Local Government (DCLG) 'Guidance on Compulsory Purchase process and the Crichel Down Rules for the disposal of surplus land acquired by, or under the threat of compulsion' (October 2015) (providing guidance for local authorities on the use of compulsory purchase powers), a CPO should only be used as a last resort e.g. where an owner refuses to bring a property back into use despite the local authority's encouragement. However, obtaining the authority for a CPO does not automatically require the Council to exercise its powers as owners often recognise that this is their final chance and seek to improve their property or sell it on the open market of their own accord. Where a CPO has been made the Council can choose not to implement it if improvement and reoccupation is carried out within a prescribed time.

6. Evaluation of alternative option(s):

- 6.1 The main alternative to proactive intervention is to make Empty Dwelling Management Orders in respect of the properties listed in the Private Report, which despite recent changes remains a complex procedure. However, the substantial cost required to repair these properties to a Decent Homes Standard is not cost-effective compared to leveraging private sector finance to improve properties not owned by the Council.
- 6.2 The properties could be allowed to remain empty with limited further intervention by the Council. This is likely to result in the properties continuing to be unimproved and uninhabited, impacting negatively on local neighbourhoods, and property values while continuing to be a wasted housing resource. The City Council is unable to attract New Homes Bonus if the properties are not returned to use.

7. Reasons for Decision(s):

- 7.1 To bring about the improvement and reoccupation of the empty properties listed in the Private Report. To provide much needed housing accommodation as well as facilitate improvements to the local neighbourhoods which are negatively affected by the current state of these properties. This course of action is in accordance with current Council strategies as set out in 4.1.

Signatures**Date****Councillor Ian Ward**

Deputy Leader.....

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Councillor Peter GriffithsCabinet Member for Housing and
Homes:.....

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Jacqui Kennedy

Acting Strategic Director of Place:.....

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List of Background Documents used to compile this Report:

Council Business Plan and Budget 2016 +
Empty Property Strategy 2013-18
National Planning Policy Framework 2012
Birmingham Unitary Development Plan 2005
The Emerging Birmingham Development Plan

List of Appendices accompanying this Report (if any):

1. Human Rights Considerations
2. Justification for CPO
3. Equality Analysis

Report Version**Dated**

8 May 2016

Consideration of Human Rights Issues

Section 6 of the Human Rights Act 1998 prohibits public authorities from acting in a way, which is incompatible with the convention of Human Rights. The main articles of the Convention which are of importance in circumstances where the Council is making a Compulsory Purchase Order (CPO) are:

- Article 1 of the First Protocol - the protection of property
- Article 8- the right to respect for private and family life and his/her home

The approach to be taken to give effect to rights under the convention is also reflected in paragraph 2 of 'Guidance on Compulsory Purchase process and the Crichel Down Rules for the disposal of surplus land acquired by, or under the threat of compulsion' (October 2015):

"Acquiring Authorities... should be sure that the purposes for which it is making a CPO justify interfering with the human rights of those with an interest in the land affected.."

The European Court of Human Rights has recognised in the context of Article 1 of the First Protocol that: *"regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole"* i.e. a compulsory purchase must be proportionate. Both public and private interests are to be taken into account in the exercise of the Council's powers.

Similarly, any interference with Article 8 rights must be *"necessary in a democratic society"* i.e. proportionate. In pursuing a CPO, the Council has to carefully consider the balance to be struck between individual rights and the wider public interest having regard also to the availability of compensation for compulsory purchase. Article 8(1) provides that everyone has the right to respect for his/her property but Article 8(2) allows the State to restrict the rights to respect for the property to the extent necessary in a democratic society and for the certain listed public interest purposes.

In considering Article 8 in the context of a CPO it is necessary to consider the following questions:

- a) Does a right by this article apply?
- b) Has an interference with that right taken place or will take place as a result of the CPO being made?

Clearly Article 8 does apply and therefore it is necessary for the Council to consider the possible justifications for the interference (Article 8(2)) as follows:

- Is the interference in accordance with the law? There is a clear legal basis for making the CPO under Section 17 of the Housing Act 1985.
- Does the interference pursue a legitimate aim? The CPO is necessary to bring empty homes back into use and to improve the condition of the properties in order to provide housing in an area of high demand.
- Is the interference necessary in a democratic society? This requires a balanced judgment to be made between the public interest and the rights of individuals. The CPO is considered to be both necessary and proportionate in that the land to be acquired is necessary to provide housing in an area where there is a shortage of accommodation.

The second relevant article is Article 1 of the First Protocol, which provides that:

- Every natural or legal person is entitled to the peaceful enjoyment of his possessions
- No one shall be deprived of those possessions except in the public interest and subject to the conditions provided for by law.

The Council has considered the effect of the above articles of the Human Rights Act and decided that on balance it is in the interest of the community to make the CPO over and above the interest of the individuals affected. Interference with Convention rights is considered by the Council to be justified. The Council, in making this order, also had particular regard to the rights of the individuals to compensation.

Justification for Compulsory Purchase Order – Empty properties listed at Appendix 1

DCLG 'Guidance on Compulsory Purchase process and the Crichel Down Rules for the disposal of surplus land acquired by, or under the threat of compulsion' (October 2015) provides fundamental principles that a confirming Minister should consider when deciding whether or not to confirm a compulsory purchase order and which acquiring authorities ought to take into account.

The compulsory acquisition of any necessary interests in the Empty Properties listed in Appendix 1 meet the tests for justification as set out in the Guidance as follows:-

- The compulsory purchase of land is intended to be a last resort (paragraph 2 of the Guidance). The Council has attempted over periods of years to encourage owners to bring the properties back into use themselves and the owners have been warned of the possibility of CPO. The Council will continue to try to encourage the owners to bring the properties back into use themselves without the need for CPO.
- There must be a compelling case in the public interest (paragraph 12). Empty properties attract anti-social behaviour, cause damage to neighbouring properties, detrimentally affect local amenity and represent a wasted housing resource. Bringing them back into use addresses these problems in the public interest.
- The acquiring authority should have a clear idea of how it intends to use the land and be able to show that all necessary resources are likely to be available to achieve that end within a reasonable timescale (paragraph 13). Further, the acquiring authority should be able to show that the scheme for which the land is sought is unlikely to be blocked by any physical or legal impediments to implementation (paragraph 15).
- Once acquired, the properties will either be improved and retained by the Council, or auctioned with covenants to bring them back into use within 12 months of purchase. There are no planning or other impediments to this happening and the Council has the money to acquire the properties. The Council has many years of experience of following this format for bringing properties back into use this way.
- Compulsory purchase if required is consistent with relevant planning policy as follows:-
- There are further specific requirements in respect of CPOs made under Part II Housing Act 1985 for empty property. Section 5 of the Guidance (paragraph 106) states that acquisition should achieve a quantitative or qualitative housing gain. CPO of empty properties may be justified as a last resort in situations where there appears to be no other prospect of a suitable property being brought back into residential use (paragraph 110). As many of the houses are in poor condition, as well as unoccupied, the programme to be authorised by this report will provide better quality housing in many cases as well as houses that are occupied, rather than left empty.