

BRIEFING REPORT FOR CABINET MEETING

Compulsory Purchase of 36 Whitsoncross Lane



This report seeks to provide justification for initiating compulsory purchase proceedings in relation to 36 Whitsoncross Lane, Plymouth.

Background

The Council is committed to achieving a reduction in the number of empty homes in the city. The Plan for Homes supports a range of housing delivery and service initiatives which includes reusing empty homes. The focus on reoccupying empty properties will help us to meet several of our priority objectives including improving housing conditions for those in private rented housing and improving communities through regeneration.

The property

36 Whitsoncross Lane is situated in Tamerton Foliot. The property was empty in 2019 when it was first visited by the Housing Delivery Team (HDT), however it has been empty since at least 2013 according to reports from neighbours. This is a three bedroom home with an extensive rear garden. Both the front and rear gardens are substantially overgrown and are causing a nuisance to the neighbours. There has previously been an issue with rubbish being left in the front garden. The property is covered in Ivy which is also growing inside the conservatory. The shed in the back garden has collapsed and is mostly obscured by brambles.

A history of action taken

The owner was first contacted in May 2019, however despite numerous attempts to contact him no response was received. A section 215 Untidy Land Notice was issued in September 2020 which was not complied with. Following this a Prevention of Damage by Pests notice was served in June 2021 which was also not complied with. As a result works in default were carried out and registered as a local land charge. In November 2021 a notice under section 103 of the Law of Property Act 1925 was issued to recover this debt.

The owner first got in contact in response to this notice and claimed not to have received any previous correspondence which was disputed by our legal team. He then paid off the debt in full by the deadline in February 2022. Following this the owner was contacted again by email to try and find a way to reoccupy his property. A second advice and support leaflet was provided outlining how we could help. The Financial Assistance and Repair and Rent Schemes were highlighted as possible options if he required assistance with the renovation. The owner declined and said either himself or local contractors would commence the work by 1st April 2022. This deadline was not met and to date no work has been undertaken at the property. The owner is no longer engaging and he has not responded to requests to arrange a meeting.

The HDT is receiving a large volume of complaints regarding this property. The neighbours are most affected and as a result of the condition of the property one of the neighbours has now lost two sets of tenants. Also despite works in default being carried out by the Council to clear the garden it has now grown back again and is causing a nuisance. Despite our attempts to engage with the owner and work with him on a voluntary basis the property remains empty and in a poor state of repair.

Due to the increased lack of contact from the owner all informal means of encouraging him to take action have so far failed. A compulsory purchase order (CPO) was first considered in 2022 after

discussions with Legal. A letter was issued from the Council's Legal team enclosing a Statutory Request for Information pursuant to Section 5A of the Acquisition of Land Act 1981 on the 10th February 2023. This questionnaire is used for preparing a CPO if necessary and it is an offence not to comply with the notice. The questionnaire was returned, however there has been no contact from the owner since then.

The proposed CPO action is now considered to be the only action left to take that will result in the renovation and reoccupation of this property. It is considered that there is a compelling case in the public interest due to the ongoing distress it is causing the neighbours. It has now been empty for at least 10 years with no action taken by the owner in this time to take any action to resolve the ongoing issues.

Other options have been considered including an Enforced Sale as the Prevention of Damage by Pests notice did generate a debt, however this was paid off by the owner so is no longer an option. An Empty Dwelling Management Order has also been considered, however a substantial amount of work is required so this would not be a feasible option as the Council would not be able to recover its costs. The HDT activity log shows in more detail how much officer time has been spent on this case and demonstrates how all other options have been exhausted.

Legal

The Council will need to be satisfied 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, and 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.

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.

In making decisions Members therefore need to have regard to the Convention. The rights that are of particular significance to Cabinet's decision are:

- First Protocol Article 1: Peaceful enjoyment of possessions. This right includes the right to peaceful enjoyment of property and is subject to the State's right to enforce such laws as it deems necessary to control the use of Property in accordance with the general interest.
- Article 6: Entitlement to a fair and public hearing in the determination of a person's civil and political rights. This includes property rights and can include opportunities to be heard in the consultation process.
- Article 8: Protects the right of the individual to respect for private and family life.

The court has recognised 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". Both public and private interests are to be taken into account in the exercise of the Council's powers and duties. Any interference with a Convention right must be necessary and proportionate.

CPO is a last resort, and purchases should always be attempted by negotiation in the first instance.

The Council must show that negotiations with the landowner to purchase the property have been pursued and that an on-going dialogue has been maintained, but that the use of the property as housing accommodation cannot be achieved unless a CPO is made and confirmed.

The powers to acquire properties either by agreement or compulsorily with the consent of the Secretary of State are contained in section 17 of the Housing Act 1985 which are specifically designed for acquisition in these circumstances.

In acquiring property by way of a CPO, the Council is required to comply with and have regard to Government guidance contained in the MHLG Guidance on Compulsory purchase process and The Crichel Down Rules updated in 2018, and to justify how the Council can demonstrate a compelling interest in the circumstances in the compulsory acquisition of the property, sufficient to defend its proposals at public inquiry (or written representations), or in the courts.

Members should note that compensation will be payable to the owners and anyone with a legal interest in the property where they are entitled.

In this case it is considered that there is a compelling case in the public interest for the CPO. The public interest is served by the Council acquiring this unsafe property, arranging for its sale so it can be brought back into use and this future qualitative housing gain outweighs the necessary interference with the private rights and interests.

In addition, the individual affected by the CPO has the right to object and have their objection heard at a public inquiry and, additionally, appropriate compensation will be available to those entitled to claim it under the relevant provisions of the CPO Compensation Code.

Therefore, it is considered that in making the CPO the Council has struck a fair and proportionate balance between the interests of those whose Convention rights will be affected and the wider public interest.

Equality

The Council has a Public Sector Equality Duty under the Equality Act 2010 to have due regard to the need to:

- Eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act.
- Advance equality of opportunity between people who share those protected characteristics and people who do not.
- Foster good relations between people who share those characteristics and people who do not.

The three parts of the duty apply to the following protected characteristics: age, disability, gender reassignment, pregnancy/maternity, race, religion/faith, sex, and sexual orientation. Marriage and civil partnership status apply to the first part of the duty.

Although it is not enforced in legislation as a protected characteristic, the Council also treats care experience as a protected characteristic.

The decision refers to the Council's compulsory purchase of one property. Due to the fact that the property is vacant and has been for many years and that the property's value means it will most likely be returned to the private market, it is not anticipated that this decision will have a positive or negative effect on those with protected characteristics and the equalities impact will therefore be neutral.

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