


<p style="text-align: center;">Cabinet</p> <p style="text-align: center;">26 September 2018</p>	 <p style="text-align: center;">TOWER HAMLETS</p>
<p>Report of: Ann Sutcliffe, Divisional Director of Place</p>	<p>Classification: Part Exempt (Exempt Appendices)</p>
<p>Compulsory Purchase of an empty home</p>	

Lead Member	Councillor Sirajul Islam, Cabinet Member for Housing
Originating Officer(s)	Marc Lancaster, Private Housing Policy Officer
Wards affected	Bow West
Key Decision?	Yes
Forward Plan Notice Published	28 August 2018
Reason for Key Decision	Requires capital expenditure estimated at £960,000
Strategic Plan Outcome	A borough that our residents are proud of and love to live in

Executive Summary

The report recommends the compulsory purchase of an empty home (“the property”) and its subsequent disposal. The property is a terraced house located in a conservation area in Bow West. It has been empty for seven years, is in a poor state of repair, and has attracted crime and anti-social behaviour. The report recommends that following compulsory purchase, the property should be retained and used for homelessness relief over a period of five years before being sold on the open market.

The report sets out other options for bringing the property back into use, and for its disposal in the event of compulsory purchase.

Recommendations:

The Mayor in Cabinet is recommended to:

1. Approve the compulsory purchase of the property and its retention by the council for homelessness relief over a period of five years before its sale on the open market.
2. To note the specific equalities considerations as set out in Paragraph 4.1

1. REASONS FOR THE DECISIONS

The property has been empty for seven years

- 1.1 See Appendix 1 for detail, but the owner has not lived in the property since 2011.

The property is a blight on the area

- 1.2 See Appendix 1 for detail, but in summary:
- 1.3 Over the last five years there have been numerous complaints about the deteriorating condition of the property and the fact that it is empty.
- 1.4 The property was squatted through the spring of 2016. The squatters caused very considerable antisocial and criminal behaviour. They were evicted by the police.
- 1.5 In January 2017, the council served a notice under section 215 of the Town and Country Planning Act requiring the owner within six months of its effective date 25 February 2017 to remove overgrown vegetation, rubbish and debris and to clean, repair and repaint the front elevation. The notice has not been complied with and there has been no response from the owner. Building Control officers have to date taken no enforcement action.
- 1.6 Squatters moved in again during April 2018. Neighbours reported to the council on 15 May that the contents of the house were removed and its windows were smashed. Following ongoing complaints, the police removed the squatters on 3 June 2018.
- 1.7 On 16 June 2018 neighbours complained to the council that a fox had died in the garden and its decomposing body was causing a nuisance.
- 1.8 The property is currently in a visibly poor and deteriorating state of repair with many cracks to stucco to front bay and surrounds, loose and potentially dangerous decorative metalwork on the front bay, weeds growing from the roof and small front garden, broken window panes and boarded-up windows. The letter box is boarded up. Works in the region of £38,000 would be required to bring the property up to a minimum decent habitable standard. The back garden is extremely overgrown and potentially a hazard.
- 1.9 On 14 September 2018 four neighbours countersigned a letter to the Mayor asking the council to seek a CPO on the basis of the property's longstanding and ongoing negative impact on the amenity of the area.

The council has made attempts to engage with the owner but this has not resolved the situation.

- 1.10 See Appendix 1 for detail, but in summary:
- 1.11 Intermittent efforts were made by council officers ('officers') to trace the owner between 2014 and 2016. None were successful.
- 1.12 Having traced the owner, in October 2017 officers met the owner who confirmed that he had been living with family outside London since moving out of the property, and that he had no immediate plans to move back in, and that he did not wish to sell the property. He stated that he would like to apply for an Empty Property Grant and to let the property to tenants nominated by Housing Options. Because he did not wish to do it himself, officers agreed that the council would assist in procuring the building work for him through the Home Improvement Agency.
- 1.13 On 27 October officers met the owner at the property. He confirmed that he wished to proceed with the Empty Property Grant and would return a completed application in due course. Home Improvement Agency officers assisted a private surveyor to carry out extensive inspections of the property to provide an estimate of the works required to bring the property to decent homes standard.
- 1.14 Because he did not wish to give access himself, the owner agreed that he would provide a copy of the key in order that officers could give access for a second quote, as required by the terms of an Empty Property Grant. In spite of repeated assurances, this was not provided till it arrived by post on 23 February 2018. Officers subsequently gave access and a second quote was provided during March 2018.
- 1.15 On 4 June 2018 officers met with the owner to sign an Empty Property Grant application. However, he quickly said that he could not sign it immediately and needed a week to think about it. To date we have received no application and no response to our calls and emails about that.

The property is likely to remain unoccupied if there is no change in ownership.

- 1.16 The owner's failure to care for the house or respond to the council's and neighbours' concerns suggest strongly that the property is likely to remain unoccupied if there is no change in ownership.
- 1.17 The owner has clearly stated that he has no plans to live in the house, and that he wants to keep it. The property is therefore very likely to remain unoccupied if there is no change in ownership.

2. ALTERNATIVE OPTIONS

- 2.1 Having acquired the property through CPO, the Mayor in Cabinet could negotiate a reduced sale price with an accredited managing agent attaching a covenant that it is let at Local Housing Allowance rate to tenants nominated

by the council for an agreed period of time. The reduction would reflect the savings to the temporary accommodation budget that this would generate, rendering the process broadly cost neutral.

- 2.2 Having acquired the property through CPO, the Mayor in Cabinet could immediately sell the house on the open market with a covenant requiring it to be brought into immediate residential use. This would recover most of the compensation due to the owner but not the additional costs associated with the process. Though this option has the benefit of simplicity, it would be the least financially attractive option, and the option with the fewest social benefits.
- 2.3 Instead of seeking compulsory purchase, the Mayor in Cabinet could approve application for an Empty Dwelling Management Order (EDMO). This would enable officers after a three month notice period to apply to Residential Property Tribunal for an interim order of 12 months and then potentially a final EDMO. A final EDMO would give the council powers to let and manage the property for a period of up to seven years, retaining enough rental income to cover management costs. This is financially viable at either Tower Hamlets Living Rent or Local Housing Allowance rate. However, the slowness of this process and the failure of the owner to engage so far are significant factors weighing against this option.

3. **DETAILS OF THE REPORT**

Compulsory Purchase Orders

- 3.1 A CPO can only be made where there is a compelling case in the public interest. As set out above in part 1, this case seems to meet compellingly the public interest tests:
 - it has been empty for at least two years; and
 - attempts have been made to engage with the owner but this has not resolved the situation; and
 - the property is likely to remain unoccupied if there is no change in ownership.
- 3.2 There are a large number of powers enabling local authorities to compulsorily acquire land, each of which specifies the purposes of the power and the purposes for which the land can be acquired. The purpose for which an acquiring authority seeks to acquire land will determine the statutory power under which compulsory purchase is sought.
- 3.3 Section 226(1)(a) of the **Town and Country Planning Act 1990** provides that a local authority can obtain a Compulsory Purchase Orders (CPO) on any land or building if it thinks that the acquisition will facilitate its development, redevelopment or improvement - provided that this will also contribute to the promotion or improvement of economic, social or environmental well-being. In practice, this power may be available where an empty home requires improvement because of its poor condition; though compulsory purchase of single empty properties is more usual under the Housing Act 1985.

- 3.4 Section 17 of the **Housing Act 1985** empowers local housing authorities to acquire land, houses or other properties by compulsion for the provision of a quantitative or qualitative housing gain. The main uses of this power have been to assemble land for housing and ancillary development; to bring empty properties into housing use; and to improve substandard or defective properties.
- 3.5 Officers would serve notice on the owner providing full information about what the compulsory purchase process involves, the rights and duties of those affected and an indicative timetable of events; and make a written offer to purchase at independently valued price.
- 3.6 In the event that a voluntary purchase cannot be negotiated, officers would proceed with the CPO statutory process, the first steps of which are in summary:
- prepare statement of reasons and compulsory purchase order in conformity with the Compulsory Purchase of Land (Prescribed Forms) (Ministers) Regulations 2004.
 - serve notice of an order with minimum 21 day period on qualifying persons, along with a copy of the statement of reasons.
 - notify the general public through newspaper notices and site notices and invite the submission of objections to the relevant government minister.
- 3.7 A CPO is made by a local authority but is not effective until it is confirmed by the Secretary of State.
- 3.8 If no objections are made to a CPO and the confirming minister is satisfied that the proper procedure for serving and publishing notices has been observed, the minister can confirm, modify, or reject the CPO without the need for any form of hearing.
- 3.9 If there are objections to the CPO, the confirming minister will either arrange for a public local inquiry to be held or – where all the remaining objectors and the acquiring authority agree to it – arrange for the objections to be considered through the written representations procedure.
- 3.10 Acquiring authorities will be required to meet the administrative costs of an inquiry and the expenses incurred by the inspector in holding it. Likewise, the acquiring authority will be required to meet the inspector's costs associated with the consideration of written representations. Other administrative costs associated with the written representations procedure are, however, likely to be minor, and a confirming minister will decide on a case by case basis whether or not to recoup them from the acquiring authority. The daily amount of costs which may be recovered where an inquiry is held to which section 250(4) of the Local Government Act 1972 applies, or where the written representations procedure is used, is £630 per day.

- 3.11 If it is confirmed, the CPO gives the local authority the power to take ownership of the property.
- 3.12 Compensation is payable for compulsory acquisition. The level of compensation is assessed on various elements. However, in this case, the elements of compensation are likely to be limited to the market value of the property. An initial valuation estimates that the market value of the Freehold interest of the property is £860,000.
- 3.13 Basic Loss Payment as defined in s33 (A) Land Compensation Act 1973, equivalent to 7.5% of the value of his interest in the land to a maximum figure of £75,000, is payable where a non-resident owner has had their property compulsorily purchased. However, s33(D) Land Compensation Act 1973 sets out that Basic Loss Payment is not due where notice under s215 of the Town and Country Planning Act 1990 has been served, is operative, and has not been complied with in full. Such notice was served on the owner on 20 January 2017 and has not been complied with (see 3.41 below).
- 3.14 In addition to these costs, compulsory purchase would entail the costs of valuation (in the region of £500) and stamp duty (in the region of £62,000 presuming an effective tax rate of 6.89 % payable for buying a second home).
- 3.15 Where the purchase of a chargeable interest is by way of a compulsory purchase order made by the purchaser, the purchaser may claim relief from Stamp Duty Land Tax, if the purchase is to facilitate development by a third party. In order to obtain relief, the purchaser must be the person who made the compulsory purchase order. This would usually be the local planning authority. Any subsequent transfer of the chargeable interest to the third party is subject to Stamp Duty Land Tax in the normal way.
- 3.16 In the event that the council retained the property for letting across five years, renovation would add a minimum cost of £38,000.
- 3.17 Total costs of this CPO are therefore estimated as £960,000.

Empty Dwelling Management Orders

- 3.18 Chapter 2 of the Housing Act 2004 enables the council to take possession of an empty property for up to seven years and place tenants in it through an Empty Dwelling Management Order (EDMO).
- 3.19 The first stage is for the local authority to give the owner three months' notice of the intention to apply for an EDMO. Once this notice period has lapsed , application can be made to a Residential Property Tribunal for an interim order.
- 3.20 The property meets the criteria for grant of an interim EDMO: the tribunal will grant an interim EDMO if it is satisfied that the property has been empty for at least two years, that it has been vandalised or actively used for "antisocial" purposes, and that there is local support for the use of an EDMO. An EDMO

cannot be granted if the owner proves the properties are in the process of being sold.

- 3.21 Once an interim EDMO has been granted, it lasts for up to twelve months. During that period, the authority must try to work with the owner to agree a way to put the property back into use, including by putting tenants into the property and managing it.
- 3.22 If no agreement is reached, the authority may make a final EDMO, which lasts for up to seven years. A final EDMO differs from an interim EDMO in that the authority is not required to obtain the owner's consent before finding a tenant for the property.
- 3.23 When a tenant has been found under the EDMO, the rent is paid to the local authority, which is able to recover any costs they may have incurred by taking possession of the property and making it habitable. Any money over and above these costs is to be paid to the owner of the property.
- 3.24 A final EDMO would give the council powers to let and manage the property for a period of up to seven years, retaining enough rental income to cover management costs.
- 3.25 Management costs including maintenance assumed to be in the region of £6,500 pa alongside the £38,000 cost of bringing the property to Decent Homes standard would be recoverable in full over seven years at £994.04 pw. This makes an EDMO financially viable over seven years at either Tower Hamlets Living Rent or Local Housing Allowance rate, both of which are in excess of £994.04 pw.
- 3.26 In this case, the failure of the owner to engage so far is a factor weighing against this option.

4. EQUALITIES IMPLICATIONS

- 4.1 The recommended action and two of the three other options would result in the council managing the property either temporarily or in perpetuity and using it for homelessness relief. These would benefit those protected groups who are disproportionately affected by homelessness: 85.6 percent of Tower Hamlets homeless households in January to March 2018 were from an ethnic minority group. In 2015/16, 80 per cent of households accepted as homeless were from BAME groups. Similarly, BAME households accounting for over 70 per cent of households on the Common Housing Register: and the majority of those are living in overcrowded conditions. Retaining the property for homelessness relief would therefore have a positive impact on protected groups.

5. OTHER STATUTORY IMPLICATIONS

- 5.1 This section of the report is used to highlight further specific statutory implications that are either not covered in the main body of the report or are required to be highlighted to ensure decision makers give them proper consideration. Examples of other implications may be:
- Best Value Implications,
 - Consultations,
 - Environmental (including air quality),
 - Risk Management,
 - Crime Reduction,
 - Safeguarding.
- 5.2 Best Value would be achieved following compulsory purchase by retaining the property for a defined period: this would generate a surplus for the council. A back-to-back sale following CPO entails a financial loss. An Empty Dwelling Management Order would be cost neutral.
- 5.3 A CPO entails the risk of financial loss in any event: the owner may successfully challenge the process, or may sell the property before compulsory purchase is completed. In each case the council would bear unrecoverable costs.
- 5.4 The property is a blight on the amenity of the area: its return to residential use would have a positive impact in terms of the environment and in terms of community cohesion.
- 5.5 In the last twelve months, the property has been squatted twice. On each occasion the police have made multiple interventions including for drug dealing and there has been considerable noise nuisance. Returning the property to residential use would therefore have a positive impact in terms of Crime Reduction.

6. COMMENTS OF THE CHIEF FINANCE OFFICER

- 6.1 This report seeks approval to commence Compulsory Purchase Order proceedings to acquire an empty street property within the borough.
- 6.2 Officers have previously met the owner of the property with a view to offering an Empty Property Grant whereby ownership would not change, but the house would be brought back into use to be let to tenants nominated by Housing Options. As set out in the report however, this option has not been successful to date, and as a result it is proposed that CPO proceedings are initiated. Although proceedings may commence, negotiations with the owner will continue.
- 6.3 If compulsory purchase is ultimately necessary and the Council acquires the property, the total costs are likely to be in the region of £960,000. This includes the purchase costs, necessary renovation costs, fees, statutory home loss payments and SDLT. This will be financed from the capital estimate of £46.5 million that was adopted for the acquisition of properties to

be used as temporary accommodation. The acquisition will be fully funded from General Fund capital resources

- 6.4 If acquired, it is proposed that the Council will use the property for homelessness relief for a five year period prior to it being resold on the open market, although this option will be reviewed in future to ensure that disposal is still in the best interests of the Council. The capital resources generated from the sale of the property will be 100% usable if used for regeneration purposes. The Council would not usually consider purchasing properties of this value for use as temporary accommodation which is why future resale to recover the capital costs is proposed. The sale value will however be dependent upon the housing market at the time and therefore there is a risk that the Council will not recover the full value of the capital costs incurred, although if prices increase the Council will benefit from the surplus.
- 6.5 The short term use of the property as temporary accommodation will provide a revenue income stream that, after allowing for any maintenance costs, will partly contribute towards the capital financing charges that are incurred prior to sale. The management of the property will be undertaken by the Council's Housing Options service with costs contained within existing budgets.
- 6.6 Statutory CPO acquisition powers lie with the Council which must therefore acquire the freehold of the property itself. Due to its value, it is not considered that this property will be suitable to be leased or sold to one of the Council's Housing delivery vehicles (Mulberry Housing Society or Seahorse Homes Ltd).

7. COMMENTS OF LEGAL SERVICES

- 7.1 The report seeks approval on various recommendations relating to and including:
- i. The making, confirmation and implementation of a CPO; and
 - ii. Disposal of Council interest acquired pursuant to the above CPO after the initial five years.
- 7.2 As stated in the report above the statutory powers exist to acquire land in which the Council has no legal title for the provision of quantitative or qualitative housing gain pursuant to section 17 Housing Act 1985. One of the uses of this power has been to bring empty properties into housing gain and to improve substandard or defective properties.
- 7.3 If contested the case might take 18 months and a Public Inquiry may be needed. During this period it will always be possible for the Council and the owner to enter into a negotiated agreement to bring the property back into use at any stage of the compulsory purchase procedure prior to notice to treat or the vesting under a general vesting order.

- 7.4 There is a risk that the price of the property could fluctuate during the acquisition process. The statutory date of valuation is the date of entry onto the land after having served a notice of entry or on vesting at the end of the acquisition process.
- 7.5 The Planning and Compensation Act 2004 has added a supplemental payment of 7.5% “basic loss payment” in addition to the market value (subject to a maximum of £75,000) payable to persons who have a qualifying interest. Whether such a person has a qualifying interest would be determined on an individual basis. Legal and surveyors professional fees of the owner are also paid.
- 7.6 If the CPOs are authorised by the Council, the Council through its Officers are authorised to enter into a written agreement, if appropriate, whereby if the land owner does not object to the CPO and they undertake to get the property repaired and occupied within an agreed time, the Council will agree not to take action to take steps to obtain the property by compulsory purchase order within the period specified in such agreement.
- 7.7 A compulsory purchase order of a dwelling interferes with the Human Rights of the property owner under Article 8 of the European Convention (right to a home) (if they live there) and also breaches the right to property under Article 1 of the First Protocol to the Convention (this right includes the right to peaceful enjoyment of the 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). It is necessary to judge if these breaches are justifiable.
- 7.8 The Human Rights Act 1998 and the Convention makes it clear that such breaches can be justified if the gain for the public interest is sufficient; the public gain must be proportionate to, or exceed the individual loss. European case law establishes that the English system of proper regard to objection and fair compensation is proportionate and lawful, provided there is a good case for the CPO in the public interest. In general if the public interest case is well founded the human rights test will be met in English cases. Exceptional circumstances may need individual consideration. The Council is therefore required to consider whether the actions would infringe the human rights of anyone affected by the making of the CPO. The Council must carefully consider the balance to be struck between individual rights and the wider public interest. It is considered that any interference with the Convention rights caused by the CPO will be justified in order to secure the social, physical and environmental improvement to the local community that the CPO will bring. However at present as the property is and has been empty for seven years and has been neglected resulting in such a poor condition it is unlikely that there are to be any such breaches under The Human Rights Act and/or the Convention. In any event appropriate compensation will be available to those entitled to claim it under the relevant provisions of the national Compensation Code as referred to above.

Linked Reports, Appendices and Background Documents

Linked Report

- NONE

Appendices

- Appendix 1: Details of the council's attempts to date to bring the property back into residential use [Exempt]
- Appendix 2: Letter of 14 September from neighbours supporting the CPO on basis of its impact [Exempt]
- Valuation Report [Exempt]

Background Documents – Local Authorities (Executive Arrangements)(Access to Information)(England) Regulations 2012

- NONE.

Officer contact details for documents: Marc Lancaster, 6040