



Vale of Glamorgan Council

Enforced Sale Policy (July 2021)

This document is available in Welsh / Mae'r ddogfen hon ar gael yn Gymraeg

1. Purpose

- 1.1 The Enforced Sale Policy was approved by Cabinet on the 19th July 2021 (minute no. [C638](#) refers). The purpose of this policy is to set out a framework for the Vale of Glamorgan Council to use the Enforced Sale Procedure utilising relevant statutory powers with a view of targeting long-term problematic empty properties, and to bring these properties back into use where possible.
- 1.2 The Vale of Glamorgan Council recognises the importance of bringing empty properties back into use, as they are a wasted resource and can be a source of many problems. Long-term empty properties can have a negative impact on the visual amenity in the immediate neighbourhood and cause nuisance to adjacent occupiers. They can also lead to increased fly-tipping, vandalism, arson, potential squatting, dangerous structures and other anti-social behaviour.

2. Background

- 2.1 The Enforced Sale Procedure is a method by which the Council recovers debt through the sale of a privately-owned property. It is used as a means to bring problematic long-term vacant property (being residential/commercial or land) back into use, in circumstances where the present owner is either unwilling or unable to comply with legal notices issued by the Council, or the ownership is unknown.
- 2.2 The process of Enforced Sale can be utilised for the recovery of debt owing to the Council, where the owner of a property has made no attempt to make payment in respect of problematic property. By enforcing the sale, it is anticipated that a new owner will be more willing and able to invest in the property, and ensure its likely reoccupation, upkeep, and proper use.

3. Benefits of the Enforced Sale

- 3.1 There are several benefits of utilising Enforced Sale which include the following:

- **Social Benefits**

By selling a property that is in a derelict condition to a new owner, there is a likelihood that the new owner will refurbish the property thus increasing the likelihood it will become inhabited again and will no longer have a negative visual impact on the street scene.

- **Financial Benefits**

Financial charges which could otherwise prove difficult to recover, can be discharged out of the proceeds of the sale.

- **Good Housekeeping Benefits**

Owners of properties may become aware of the Council's initiative and in future may discharge the debts more readily, carry out works pursuant to statutory notices served, and keep their properties in a reasonable state and condition.

This is expected to result in less time spent by the Council in dealing with long-term empty and problematic properties.

- **More Expedient than a Compulsory Purchase Order**

The Enforced Sales Procedure is presently more expedient and involves less effort than making a Compulsory Purchase Order.

4. Identifying and Prioritising Potential Properties for Enforced Sale

- 4.1 The Council uses several methods to identify empty private sector dwellings, including Council Tax information and referrals from members of the public, local Councillors, Police, Fire and Rescue Service, Planning Enforcement, Building Control, Regeneration and Shared Regulatory Services. When an empty property has been identified as a priority for intervention, steps will be taken to trace and contact the owner.
- 4.2 In line with the Council's Empty Homes Strategy 2019-24, Regeneration holds a database of empty homes which identifies each residential unit that is a long-term vacant, from information received annually from Council Tax. Empty Homes letters are issued annually to remind owners of the negative impact and wasted opportunities that empty properties present and how the Council can assist. Surveys are issued to establish the reason properties are empty and the assistance that is required. Efforts are made to provide empty property owners/parties relevant assistance in the form of information about interest free loans, reduced VAT on property renovation/conversion, letting and selling options. This helps to encourage engagement and actions to bring properties back into use.
- 4.3 Proactive external property inspections are also undertaken on long-term empty properties where no plan for bringing the property back into use is known and based on the condition of the properties, referrals are made to the enforcement teams whose work is pertinent to the issue, as required.
- 4.4 The Enforced Sale Procedure will not be limited to empty private sector dwellings, it will also allow the Council to use the powers on derelict commercial properties and land. **Each case will be assessed individually, and the use of the Enforced Sale Procedure should be a means of last resort.** Properties will only be selected for Enforced Sale when the Council has exhausted all other reasonable options to resolve the existence of the empty property.
- 4.5 Examples of matters to be considered include:
 - Involvement of enforcement teams such as Building Control, Planning Enforcement and Shared Regulatory Services (Environmental Health) and any other outstanding debt;
 - Removal of exemptions or relaxations for Council Tax and NNDR payments;
 - Debt Recovery processes including statutory debts, NNDR and Council Tax;

- Involvement of mortgage lenders (if appropriate); and,
- Title to the Property.

5. Criteria for Enforced Sale

- 5.1 For a property to be considered suitable for enforced sale, **all** the following criteria must be met:
- i. The total debt owed to the Council must exceed £500;
 - ii. The debt must not be statute barred;
 - iii. The debt must be more than 2 months old to give a property owner adequate time to redeem it;
 - iv. The property must be vacant with no prospect of it becoming occupied in the next 6 months;
 - v. The owner, if they can be traced, must have demonstrated non-compliance with legislation in relation to the property; and,
 - vi. No positive/acceptable response has been received to letters regarding the Enforced Sale.

6. Service of Notices & Registration of Charges

- 6.1 The lead officer or relevant Enforcement Officer will ensure all the Statutory Enforcement Notices have been correctly served and will ensure the notices are served in accordance with the statutory framework and legal procedures.
- 6.2 Where Works in Default have been undertaken to comply with a notice, and a debt is owed to the Council the said debt will be registered against the property as a local land charge where appropriate. A check with Local Land Charge(s) will need to be made before an Enforced Sales Procedure can commence.
- 6.3 Where debts are not Charges registered against the property, but are personal debts, the Council may be able to pursue the debt at the County Court and secure an Interim, final charging order and Order of Sale against the property.

7. Summary of the Legislative Basis for the Enforced Sales Procedure

- 7.1 This section provides a brief summary of the legal process, which allows the Council to use Enforced Sale. There are various Acts of Parliament which allow the Council to register appropriate debts as a Charge against a property (refer to Appendix A: Table of Statutes). These Acts give the Council the power to enforce that Charge, so that the Enforced Sale Procedure under the Law of Property Act 1925 can be used to enforce the sale.
- 7.2 Section 7 of the Local Land Charges Act 1975, provides that a financial Local Land Charge takes effect, as if it had been created by a Deed of Charge by way of a legal mortgage within the meaning of the Law of Property Act 1925

(refer to Appendix B: Flowchart Showing the Legislative Basis for the Enforced Sale Procedure).

- 7.3 Section 101(1) of the Law of Property Act 1925 confers on a mortgagee a power of sale. An Order of the Court is not necessary as the legislation itself provides that power.
- 7.4 Section 87(1) of the Law of Property Act 1925 confers a right of possession. In addition, many of the statutes used by the Council, which enable works to be carried out in default, also give the Council a power of sale and a right of priority over other Charges.
- 7.5 A summary of the Enforced Sale Procedure is shown in Appendix C. The Council must write to the Owner, and any other Chargee, stating that it intends to carry out an enforced sale. If another Chargee should pay the outstanding money, this prevents the Enforced Sale Procedure as there is no longer an outstanding charge. Likewise, if at any stage prior to the actual sale of the property the Owner should pay the outstanding debt, then Enforced Sale is no longer an option.
- 7.6 The Council may not exercise the power of sale until a notice under Section 103 of the Law of Property Act 1925 is served (requiring payment of the debt), and the payment of such debt and any interest has not been made for 3 months after the service of the Notice.
- 7.7 Once default of payment is apparent, the Council can apply to the Land Registry for registration of the charge if the property or land is registered. Once confirmation has been received from the Land Registry that the charge has been registered **and** the 3 months' notice under Section 103 Law of Property Act 1925 has expired, the property can be marketed for sale. It is good practice to send another letter to the Owner and any Chargees to warn them again that the charge is to be enforced.

8. Procedure where the Property is not Registered

- 8.1 In some instances, properties may be identified which are not registered with the Land Registry. This may apply in relation to older properties, particularly where no recent sales, mortgages or leases of 7 or more years have been created. The Enforced Sale Procedure can be applied to unregistered property.

9. Human Rights Act 1998

- 9.1 Consideration of the provisions of the Human Rights Act 1998 must be considered by the Council. In particular, the right (Article 8) of the property owner *to respect for your private life, your family life, your home and your correspondence*, and the right (Article 1 of the First Protocol) *to enjoy your property peacefully*. These rights need to be balanced against the general benefits and rights of neighbours and the surrounding community. For example, the need to deal with any dangerous or health risk conditions; the

desire to bring a long-term empty property back into use; and, to reduce crime, arson, fly tipping and the negative impact of the empty property on the locality.

- 9.2 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 the Statement of Reasons/Enforced Sale Instruction document seeking authorisation to pursue an Enforced Sale.

10.Recovery of Costs

- 10.1 A debt can be registered as a Local Land Charge if the debtor has failed to pay the bill in relation to the works required under the notice and the works have been completed in default.
- 10.2 If the statute says a debt can be enforced as a charge (refer to Appendix A) then the Council can enforce that debt whether it is registered as a Local Land Charge or not. In most cases, it is not important on whom the notice was originally served.
- 10.3 Once the charge has been established, the land continues to be subject to the charge even if it has passed to subsequent owners. As such, it does not matter whether the property has subsequently changed ownership.
- 10.4 Debts are affected by the Limitation Act 1980, in that any debts that are statute barred (generally 12 years old from the date when the expense was incurred) are no longer recoverable. Thus, any attempts to recover debts through Local Land Charges or by using the Enforced Sale Procedure, are generally not permissible after this time has passed.
- 10.5 All debts including reasonable interest (refer to the relevant statutes in Appendix A) owed to the Council on the property are recovered on sale. In addition, reasonable costs incurred by the Council in addressing the issues and pursuing the sale can also be deducted. This includes all legal, surveying, marketing and administrative costs.

11.Selling the Property

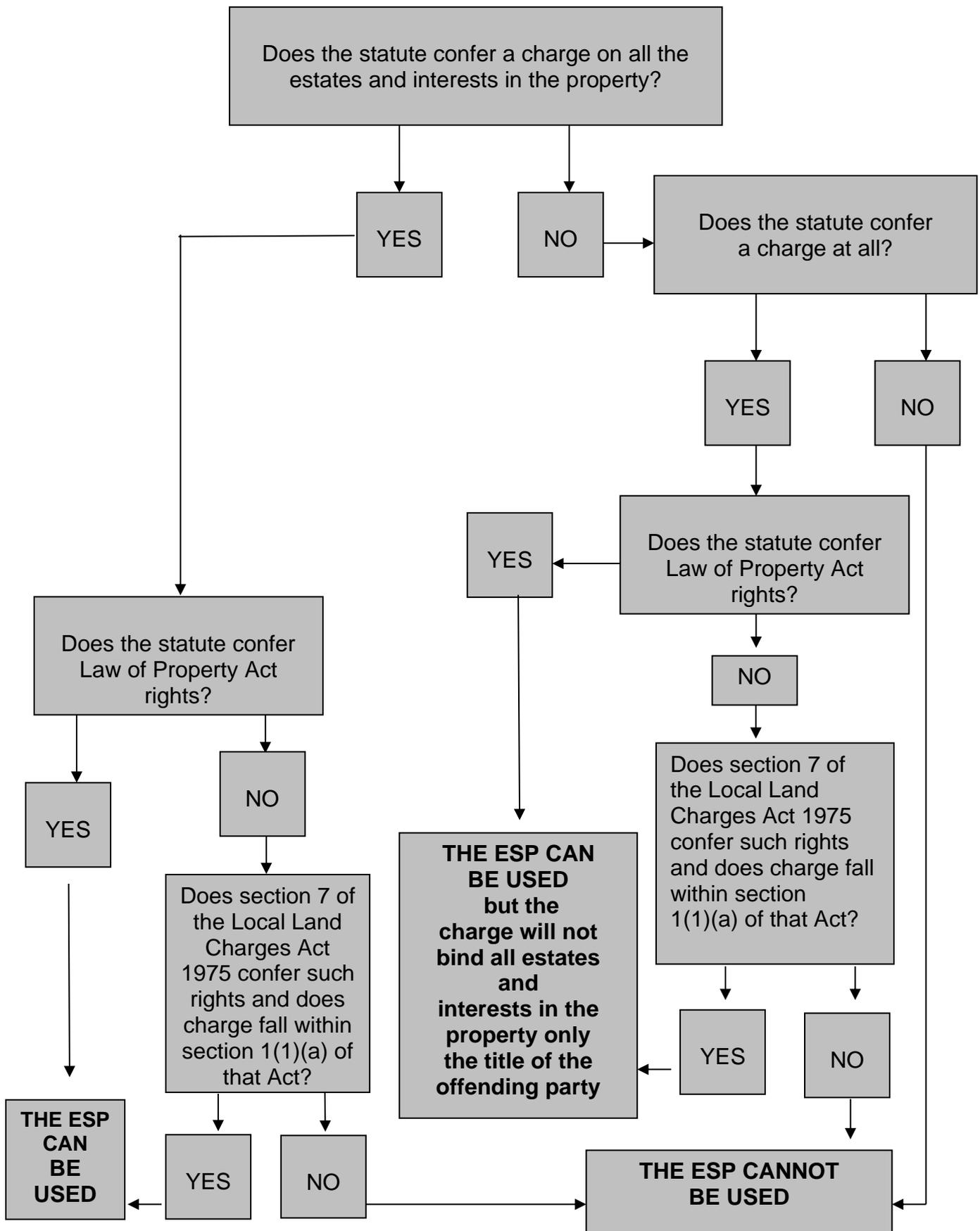
- 11.1 The Council has a duty to secure the best possible price on a sale. Following a valuation of the property by a suitably qualified surveyor, the appropriate method of sale will be determined by the relevant Head of Service linked to the initial Local Land Charge; the Head of Finance/Section 151 Officer; and, the appropriate Cabinet Member(s).
- 11.2 Where appropriate the Council may invite closed tenders from Registered Social Landlords that work in partnership with the Council, with the property being offered to the highest bidder if the valuation is met or bettered. The Council may also consider a sale by auction or other appropriate method.

- 11.3 Upon completion of sale, the proceeds of sale (less costs and charges) will be separately identified and ring-fenced in the Council's accounts with interest applied. Where the owner is known, they will be advised of any proceed from the sale that they are entitled to. Where the owner is not known, the proceeds of sale will be held by the Council or paid into Court.

Appendix A: Table of Statues

STATUTORY PROVISION	PRIORITY CHARGE (over other charges)	REASONABLE INTEREST (whether it accrues)
Building Act 1984 <ul style="list-style-type: none"> - Section 59 (leaking or insufficient cesspool, private sewer etc.) - Section 77 & 78 (dangerous structures) - Section 79 (ruinous or dilapidated building) 	Yes	No
Environmental Protection Act 1990 <ul style="list-style-type: none"> - Section 80 (Abatement of Statutory Nuisance) 	Yes	Yes
Housing Act 2004 <ul style="list-style-type: none"> - Section 11 (Improvement Notice – Category 1 Hazard) - Section 12 (Improvement Notice – Category 2 Hazard) - Section 40(2) (Emergency Remedial Action) 	Yes	Yes
Prevention of Damage by Pests Act 1949 <ul style="list-style-type: none"> - Section 4 (destroy rats or mice) 	Yes	Yes
Public Health Act 1936 <ul style="list-style-type: none"> - Section 83 (cleanse and disinfect premises) 	Yes	Yes
Town & Country Planning Act 1990 <ul style="list-style-type: none"> - Section 215 (land adversely affecting the amenity of an area) 	No	No
Local Government (Miscellaneous Provisions) Act 1982 <ul style="list-style-type: none"> - Section 29 (prevention of unauthorised entry) 	No	No

Appendix B: Flowchart Showing the Legislative Basis for the Enforced Sale Procedure (ESP)



Appendix C: Enforced Sale Procedure (Checklist)

Stage 1: Identify Property

- i. A long-term problem property is identified, title to the property may be investigated at this stage and all other efforts have been exhausted to trace and contact the owner. The issues with the property have been communicated and potential solutions have been offered (where possible).

Stage 2: Statutory Notices

- ii. The relevant Enforcement Team prepare a Property File/Case to include statutory Notices served.
- iii. Ensure that all notices have been correctly served in line with the statutory legislation and any formal demand procedure such as the Housing Act 2004 and Environmental Protection Act 1990 have been complied with.

Stage 3: Works in Default

- iv. Evidence non-compliance and undertake Works in Default (if appropriate). File to include invoices for Works in Default and staff and resource cost.

Stage 4: Debt Checks

- v. Check for any other Council debt e.g. Council Tax, NNDR arrears.
- vi. Check that there is sufficient debt owed to Council to breach the financial threshold of £500.
- vii. Inform Finance of the position. Notices of demand for payment in relation to the relevant statues are sent.

Stage 5: Local Land Charge

- viii. Check that the debt is registered with Local Land Charge. If not, then arrange for the debt to be registered.

Stage 6: Notify Owner

- ix. Notices of demand for payment in relation to the relevant statues are re-sent after 28 days. Additionally, send out letter to the owner and interested parties to advise that an Enforced Sale Procedure may be implemented if the debt is not cleared.

Stage 7: Section 103 Notice

- x. After 2 months, if the debt is not cleared, obtain authorisation for an Enforced Sale and co-ordinate with Legal Services. A notice pursuant to Section 103 of the Law of Property Act is then served to the owner and interested parties. This notice allows the owner 3 months to repay the debt, the property cannot be sold until the Section 103 Notice has expired.
- xi. Update Finance with this position and inform that an Enforced Sale will be implemented to recover the debt.

If the debt is cleared at any stage, arrange for the Charge to be removed and do not proceed with an Enforced Sale.

Stage 8: Land Registry Charge

- xii. Is the property registered at HM Land Registry? If 'Yes' check whether there are any charges registered against the title.

If 'No', a search of the index map is undertaken at Land Registry. Carry out a Land Charges Act 1972 search. If the searches provide information as to the identity of the owner and any chargees letters will be sent to all interested parties, advising them of the position. 28 days will be given for any persons served to respond or opportunity to repay the debt and proceed with the Enforced Sale if the debt is not paid.

- xiii. Prepare and send an application for registration to HM Land Registry. Prepare a resolution for the relevant charge(s), which would include statutory provisions, service of notices, registration of the charge and a certificate by the Council that it has all the necessary rights and powers to make the application for registration and that it has taken all appropriate steps in accordance with relevant statute. It would be then sealed by the Council.

Stage 9: Notify Owner

- xiv. Once notification of completion of the registration is received from Land Registry, a check is made that the charges have not been discharged.
- xv. Letters (including Section 103 letter) are sent to the owners and interested parties advising that charges are registered, and that the Councils intention is to pursue a sale of property.

Stage 10: Sell the Property

- xvi. A valuation will be undertaken to ascertain market value.
- xvii. The property will be put forward for sale (and sold) by an appropriate method.

Stage 11: Recover Costs

- xviii. All costs incurred during the Enforced Sale (less VAT on the cost of the works in default) and any other debts in priority of any other Chargee are deducted from the sale proceeds of the sale.
- xix. If the Council is aware of the owner(s), any balance proceeds of the sale will be paid over, after the satisfaction of any other charge that takes priority.

Where the proceeds do not cover the total costs of the sale and debts, the remaining debt may be pursued against the owner through the County Court.

If the Council are unaware of the owner(s), any balance will be held by the Council or paid into Court.

- xx. Once the debt has been fully repaid (this could take place at any stage), the Council will remove any Charges (which have been registered in favour of the Council), registered at the Land Registry and registered as Local Land Charges.