



EAST STAFFORDSHIRE BOROUGH COUNCIL

REPORT COVER SHEET

Title of Report:	Progress Report on Reducing the Number of Empty Homes in the Borough	To be marked with an 'X' by Democratic Services after report has been presented
Meeting of:	Corporate Management Team – 16 February 2021	X
	Leader and Deputy Leaders - 22 nd February 2021	X
	Leader's / Leader of the Opposition's Advisory Group / Independent Alliance Advisory Group 3 rd & 4 th March 2021	X
	Cabinet 15 th March 2021 / Council [DATE]	
	Scrutiny Audit and Value for Money Council Services Committee [DATE] / Scrutiny Community Regeneration, Environment and Health and Well Being Committee [DATE]	



Is this an Executive Decision:	[YES/NO]	Is this a Key Decision:	NO
Is this in the Forward Plan:	NO	Is the Report Confidential:	NO
If so, please state relevant paragraph from Schedule 12A LGA 1972:	NA		

Essential Signatories:

ALL REPORTS MUST BE IN THE NAME OF A HEAD OF SERVICE

Monitoring Officer: **Angela Wakefield**

Date Signature

Chief Finance Officer: **Sal Khan**

Date Signature

EAST STAFFORDSHIRE BOROUGH COUNCIL

Report to Cabinet

Date: 15th March 2021

REPORT TITLE: Progress Report on Reducing the Number of Empty Homes in the Borough

PORTFOLIO: Environment and Housing

HEAD OF SERVICE: Sal Khan

CONTACT OFFICER: Brett Atkinson Ext. No. x1123

WARD(S) AFFECTED: Multiple

1. Purpose of the Report

1.1. To review the first 18 months of the Council's Empty Homes Service provided by Grafton UK, and consider what approach the Council will take to secure enforcement against selected intractable empty homes where necessary.

2. Executive Summary

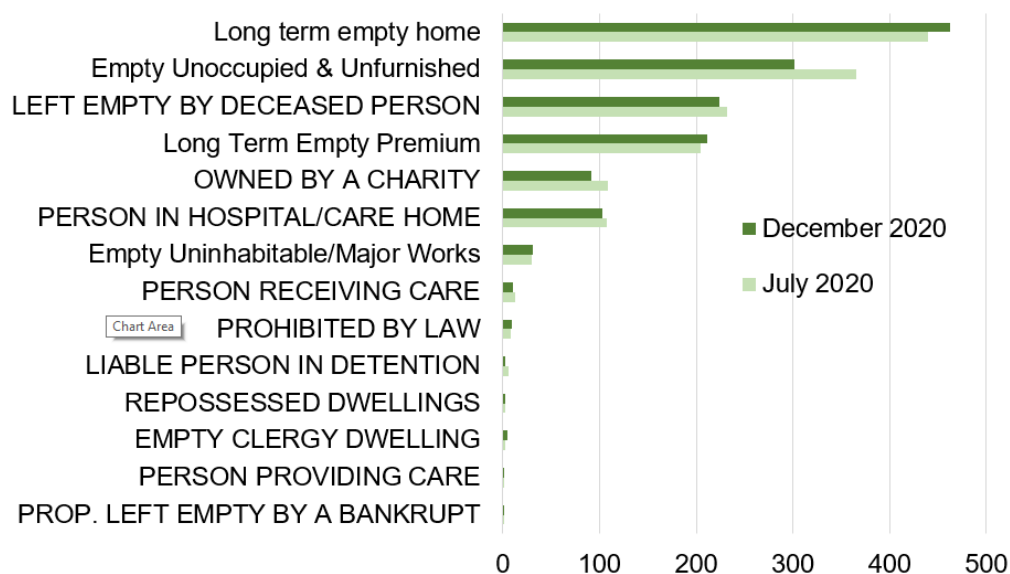
2.1. The Council significantly expanded the programme to tackle empty homes in May 2019 when it appointed Grafton (UK) Ltd to provide an Empty Homes Service following a competitive tender exercise.

2.2. Since the service was mobilised it has responded to a total of 320 empty homes, of these 101 homes have been successfully brought back into use exceeding the KPI. Of the remaining 219 empty homes, a small minority need to be considered for enforcement in order to bring the home back into use.

2.3. It is proposed that the Council endorse the plan to utilise the enforced sale procedure to change the ownership of problematic empty homes that are proving intractable. If endorsed, a future report will seek Cabinet authorisation for this action to be taken against a specific set of empty homes.

3. **Background**

- 3.1. High levels of empty homes are recognised as having a detrimental impact to the viability of communities; consequently restoring empty homes can have social, regenerative, financial and strategic benefits.¹
- 3.2. Empty homes are identified by liability for Council Tax,² and this is also how we have measured the performance of the Council’s Empty Homes Service. This is also the mechanism by which reoccupied former empty homes which are eligible for contributing to the New Homes Bonus³ baseline are identified. All empty properties are visited each year to ensure the Council Tax records show the correct liabilities and state whether the properties are occupied or not.
- 3.3. The Service targets homes that reach 2 years or more of having been registered as empty, this attracts the Long Term Empty Council Tax Premium. Homes that are empty for less than 2 years are not targeted, as this shorter period can be regarded as part of the normal churn of the housing market.
- 3.4. Figure 1: Breakdown of all listed Empty Properties



- 3.5. Figure 1 provides figures for July 2020 as well as December 2020 to demonstrate the way the numbers can fluctuate over a relatively short period of time. There was a small increase in the number of empty homes over this period, with a total of 1455 in July 2020 rising to 1524 in December 2020. It is to be noted that these totals include all empty homes regardless of length of time empty. Therefore the totals include properties which have recently become empty for the first time, and properties where the Long-Term Empty Premium is payable because the property has been empty for 2 years or more.

¹ <http://researchbriefings.files.parliament.uk/documents/SN03012/SN03012.pdf>

² Local Government Act 2003, Section 85

³ <https://www.gov.uk/government/publications/new-homes-bonus-calculator-2020-to-2021>

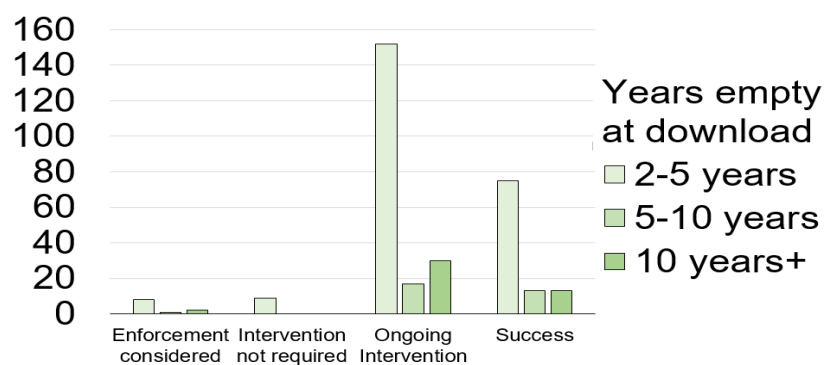
- 3.6. Grafton UK were recruited for their experience in this area of work, and references were sought from other local authorities to whom they provide a similar service. For this reason mobilisation was reasonably straight forward, although the Council sought to refine certain areas of delivery to suit our needs.
- 3.7. There remains a substantial level of housing need and homelessness within the borough; homes which are currently empty and therefore wasted could be utilised to meet this need. There are currently over 3000 households on the East Staffordshire Housing Register seeking accommodation,⁴ and in each of the last 5 years the Council has had in excess of 1,000 separate enquiries seeking assistance with housing and homelessness.⁵

4. Contribution to Corporate Priorities

- 4.1. Environment, Health and Wellbeing

5. Overview of Service Delivery

- 5.1. Since the service was mobilised in May 2019 a total of 320 properties have been identified as paying the Long Term Empty Premium, and 101 properties have been successfully brought back into use exceeding the KPI. A further 9 require no intervention (e.g. because they have been demolished).
- 5.2. Of the remaining 210, 11 are proving intractable and enforcement will need to be considered. The remaining 199 are the subject of ongoing support, meaning that Grafton communicates with owners regularly to monitor the progress that is being made towards bringing the home back into use. During the pandemic this work has been somewhat hindered as owners have had legitimate barriers to accessing the materials and trades people they need.
- 5.3. The graph below breaks down these figures by showing how they are distributed according to the number of years the property was empty at the time the data was downloaded from the Council Tax system.
- 5.4. Figure 2: Empty Homes Service Activity since May 2019

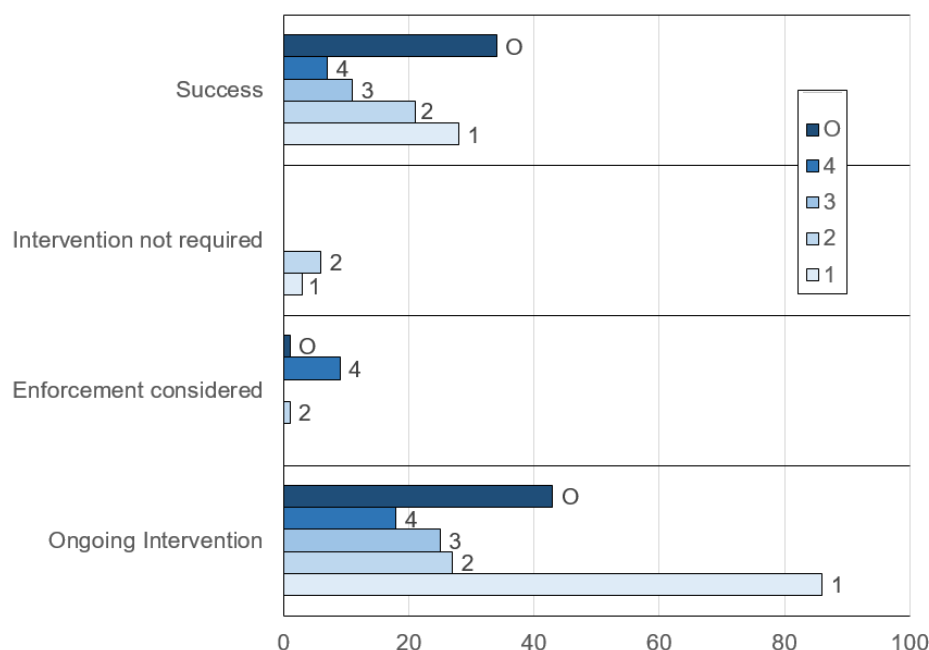


⁴ Due to a new system for managing the Housing Register it is difficult to provide an exact number at the present time.

⁵ ESBC Housing Options Team records for homelessness approaches.

- 5.5. The challenges posed by empty homes vary significantly dependant on the length of time they have been empty, as homes which have been empty for more than 10 years are frequently in a very poor state of repair and therefore the investment required to bring them back into use is greater.
- 5.6. Grafton’s contact with owners is based on an escalating approach which is measured by a series of letters, ending with letter 4. The content of the letters can be summarised as follows:
- 5.6.1. Letter 1 – Introductory letter offering help and assistance, requests contact.
- 5.6.2. Letter 2 – Chasing letter suggesting actions and requesting contact by date.
- 5.6.3. Letter 3 – Letter notifying that enforcement action is possible, requests contact.
- 5.6.4. Letter 4 – Final letter notifying they are being considered for enforcement action.
- 5.6.5. Other (O) – Suspicion that no intervention is necessary, for example because the home is in fact occupied.⁶

5.7. Figure 3 - Outcome by Stage in the Escalating Approach



5.8. As can be seen most owners engage well at the letter 1 stage, but there are a number of properties at letter 3 stage who may spill over to letter 4 in the near future. For this reason a process needs to be agreed for the activity at completion of the letter 4 stage; Section 6 contains a proposal for how this might be handled.

⁶ Such findings are regularly reported to Council Tax.

- 5.9. There is every reason to be satisfied with the performance of the contract to date, and as Covid 19 restrictions are eased it is believed that the pace of activity will increase.

6. Approach to Enforcement

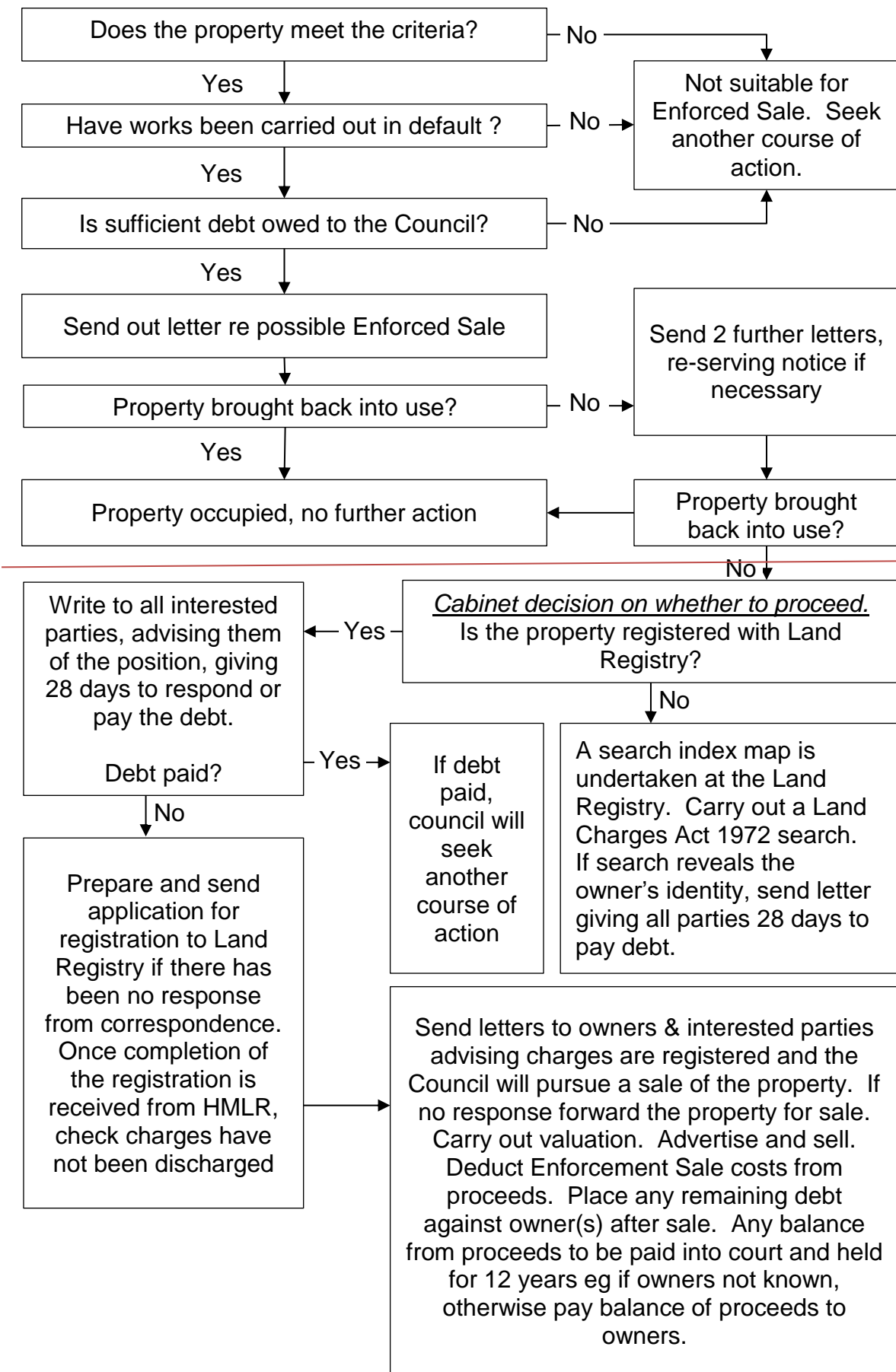
- 6.1. As has been described above, the Council has an approach to tackling empty properties using a combination of advice, guidance, and persuasion. If there is insufficient response to a series of contacts culminating in letter 4 (based on the measure of contact set out at para. 5.6), it is unlikely that any additional informal contact will yield a result. It is at this point that the Council would need to consider enforcement action if the home is to be brought back into use within a reasonable timescale. The Enforced Sale procedure is used by many other local authorities,⁷ and seems to offer the best route to securing the occupation of troublesome empty homes.
- 6.2. Enforced Sale⁸ is used to bring about a change in ownership. The key prerequisite is that there is an outstanding debt against the property owed to the Council, it is the presence of a charge on the property that provides the basis for the enforced sale procedure. The Council has all the powers and remedies available to a mortgagee under the Law of Property Act 1925, which includes the power to sell property with all secured debts being paid out of the sale proceeds.
- 6.3. Charges are created in a number of ways. Many statutes⁹ allow the Council to serve a notice on an owner of property calling on the owner to carry out works. It may be, for example, that works are needed to deal with the dangerous or untidy condition of the property. Sometimes failure to comply with a notice amounts to an offence; often the council has the right to carry out the works in default and to recover the cost. Some statutes provide that the cost of carrying out the works in default is a charge on the property.
- 6.4. The proposal is to establish which of the empty homes that reach letter 4 also have a local land charge owed to the Council, thus making them suitable for an application enforced sale procedure. The following criteria will apply in assessing suitability for enforced sale:
- 6.4.1. It is an empty home that has been empty for over 2 years.
 - 6.4.2. The property or land has outstanding financial local land charges registered in Part 2 of the Local Land charges register of over £1,000. However, if there are exceptional circumstances and the debt is below £1,000 the empty home may still be considered.
 - 6.4.3. The debt has been owed to the Council for more than three months.
 - 6.4.4. The owner has been afforded every opportunity to improve the empty home or dispose of it, but has shown no inclination to do either (letter 4).

⁷ Rushcliffe Borough Council, Nottingham City Council, Newcastle under Lyme Borough Council, Merthyr Tydfil County Borough Council.

⁸ The Council has all the powers and remedies available to a mortgagee under the Law of Property Act 1925, which includes the power to sell property with all secured debts being paid out of the sale proceeds.

⁹ A list of the applicable statutes is provided at Appendix 1.

- 6.4.5. The particular circumstances of the empty home indicates that sale and occupation would be readily achieved.
- 6.5. Adopting this approach will mean that some empty homes which reach letter 4 will not be subject to enforcement imminently, however prioritisation within the letter 4 cohort is necessary. Those empty homes without any / insufficient local land charges will continue to receive contact from the Empty Homes Service, and will be made aware that the Council is undertaking enforcement on other empty homes.
- 6.6. Figure 4: Flowchart for Enforced Sale Procedure



- 6.7. The enforced sale procedure offers a number of significant advantages over the other tools for taking enforcement against empty homes (a full list of the tools can be found at Appendix 2). Advantages that have been identified are as follows:
- 6.7.1. The problem property is passed onto a new owner, and does not become the responsibility of the Council.
 - 6.7.2. The existence of the land charge means that the empty home has been a problem in the past, and may be a problem again in the future if the property is not brought back into use.
 - 6.7.3. The Council will recoup outstanding charges.¹⁰
 - 6.7.4. The Enforced Sale procedure does not involve a lengthy court process, or a huge volume of evidence and legal argument. It is therefore comparatively quick and less administratively arduous.¹¹
 - 6.7.5. The costs of enforcement can be deducted from the proceeds of the sale.
 - 6.7.6. Owners of empty homes who are not subject to this action will nonetheless recognise the risk of enforcement in the future, which may increase compliance both with statutory notices and the Empty Homes Service.
- 6.8. In order to ensure that a case is viable a 'property file' will be prepared prior to seeking a Cabinet decision to proceed with an enforced sale, the horizontal red line indicates this point on the flowchart at Figure 4. The property file will contain:
- 6.8.1. A chronology of the case with significant milestones, including dates of decisions, inspections carried out, and letters sent etc.
 - 6.8.2. Copies of all the statutory notices served prior to the Council carrying out the necessary works in default together with details as to how the notices were served.
 - 6.8.3. Copies of the work instructions to the contractor for the work to be carried out;
 - 6.8.4. Dates work was carried out and copies of all the invoices from the contractors;
 - 6.8.5. Cost of any fees, charges and expenses incurred by the council;
 - 6.8.6. Name of current owner and address (including source of information);
 - 6.8.7. Copies of any relevant correspondence sent to, or received from, the owner and/or interested parties in respect of the notice(s) or the debt.
 - 6.8.8. Details of any inspections and interviews with the property owner;
 - 6.8.9. An up to date copy of the local land charges register for the property.
- 6.9. If Cabinet decides to proceed with the Enforced Sale procedure against specific empty homes, the procurement policy will be used to identify a suitable legal

¹⁰ Many of the Council's charges have priority over any others registered. Thus, the Council's ability to recover costs will not be affected by the amount of equity the owner has in the property.

¹¹ Lancaster City Council have indicated that enforced sale takes 9 months on average to complete.

service to undertake this work, there are a number of potential providers. The steps that the appointed legal professional would need to undertake on the Councils behalf are:

- 6.9.1. Once a check has been made that the charge has not been paid off a formal letter will be sent to the current owner telling him or her of the existence of the charge and that if it is not paid off the council will be taking steps to sell the property. This letter should include a copy of the original notice and give 21 days for the owner to pay the money owing.
 - 6.9.2. If there are other mortgages on the property the relevant bank or building society should be notified too of the proposal to sell the property if the debt is not paid.
 - 6.9.3. Where Section 81A of the Environmental Protection Act 1990 applies, because the debt has arisen from works following the service of an abatement notice, the relevant notice will also be served at this time.
 - 6.9.4. If the debt is not paid (and no appeal has been received where Section 81A applies) then a notice pursuant to Section 103 of the Law of Property Act 1925 is then served in accordance with normal rules of service.¹² This gives the owner three months to repay the debt.
 - 6.9.5. If there is no response to the letter, s.103 Notice and no debts have been repaid then a charge must now be registered with the Land Registry, and there are specific forms to facilitate this alongside the provision of evidence.¹³
 - 6.9.6. Once the charge is registered at the Land Registry, the property can be sold. It is good practice to write to the owner and any bank or building society with an existing charge to tell them that you will now be selling the property.
 - 6.9.7. Upon selling the empty home, the contract will make clear that the council is selling in exercise of its power of sale under a mortgage. No covenants for title are given and it is made clear that the council does not warrant the class of title that the buyer will be able to obtain at the Land Registry.
- 6.10. It is proposed that any empty homes that are subject to this action are auctioned to transparently achieve the best price. Once the debts, costs and charges have been recovered any surplus will then be reimbursed to the owner (or sent to any other person entitled to the surplus) if they are known. If the Owner is not known the monies will be paid into Court in accordance with Section 63 of the Trustee Act 1925. However, if the monies are not claimed within a 12 year period, the Local Authority may retain it for "allocation".

7. Financial Considerations

This section has been approved by the following member of the Financial Management Unit: Anya Murray

- 7.1. The main financial issues arising from this Report are as follows:

¹² Posted to property, posted to last known address, affixed onto the property.

¹³ <https://www.gov.uk/government/publications/change-the-register-ap1>

- 7.1.1. It is intended that there will be no impact on the Medium Term Financial Strategy as the programme is to be funded from S106 balances.
- 7.1.2. The availability of the monies for this scheme depends on the precise wording of the individual S106 agreement and whether these are achieved by the results of this scheme.
- 7.1.3. It is proposed that an initial sum of £500.00 is made available for this programme to cover sundry costs such as local land charge searches. Funds would then be drawn down as required.

8. Risk Assessment and Management

- 8.1. The main risks to this Report and the Council achieving its objectives are as follows:
- 8.2. **Positive** (Opportunities/Benefits):
 - 8.2.1. Empty Homes Service is performing well, and is likely to perform even better following the easing of restrictions.
 - 8.2.2. The Enforced Sale procedure offers the opportunity to deal with problematic empty homes and recover outstanding debts.
 - 8.2.3. Endorsing the Enforced Sale procedure would signal the Council's commitment to addressing the issue of empty homes.
- 8.3. **Negative** (Threats):
 - 8.3.1. The current contract for provision of an empty homes service is due to end on the 30 April 2022.
 - 8.3.2. Risk of bad publicity if an Enforced Sale process is not managed correctly.
- 8.4. The risks do not need to be entered in the Risk Register. Any financial implications to mitigate against these risks are considered above.

9. Legal Considerations

*This section has been approved by the following member of the Legal Team:
Angela Wakefield*

- 9.1. The main legal issues arising from this Report are as follows:
 - 9.1.1. Enforced sale is a legal process prescribed by the Law of Property Act 1925 and it requires strict procedural adherence. The owner, if they can be identified, will be kept fully informed of the process and of their rights. The owner may at any stage stop the Enforced Sale process by paying the debts owed to the Council or by voluntarily selling the property. More detail on the legislative basis for enforced sale is provided at Appendix 3.

9.1.2. The procurement policy will be followed to appoint a relevant legal practitioner to undertake this work should Cabinet approve application of the enforced sale procedure against specific empty homes in the future.

9.1.3. The ability to use S106 monies in this way will depend on the precise wording of each S106 agreement and whether any necessary deeds of variation can be secured. There are S106 funds in excess of the proposed £500.00 the terms of which do not prohibit expenditure for the purpose described in this report.

10. Equalities and Health

10.1. **Equality impacts:** The subject of this Report is a policy, strategy, function or service that is new or being revised. An equality and health impact assessment is attached as Appendix 4.

10.2. **Health impacts:** The outcome of the health screening question does not require a full Health Impact Assessment to be completed. An equality and health impact assessment is attached as Appendix 4.

10.3. The main equality or health issues arising from this Report are as follows:

10.3.1. Reducing the number of empty homes will contribute to the regeneration of local areas; improving mental health and environmental living conditions.

11. Human Rights

11.1. There are no Human Rights issues arising from this Report.

12. Sustainability (including climate change and change adaptation measures)

12.1. Does the proposal result in an overall positive effect in terms of sustainability (including climate change and change adaptation measures) N/A

13. Recommendation(s)

13.1. To endorse Enforced Sale as the Council's preferred mechanism for taking enforcement action against problematic empty homes.

14. Background Papers

14.1. The Housing Strategy 2021 – 2025

15. Appendices

15.1. Appendix 1: Relevant Statutes.

15.2. Appendix 2: Options for Enforcement.

15.3. Appendix 3: Legislative Basis for Enforced Sale.

15.4. Appendix 4: EHIA