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Action on Empty Homes

Legal Toolkit

How to use the law to best effect to get empty homes back into use: a short guide on the legal options available to local authorities



Preface

According to official statistics there are now over 216,000 long term empty homes in England.¹ Anecdotal evidence from local authority Empty Homes Officers concerned about under-reporting and misreporting suggests this huge figure could underrepresent the true scale of the problem.

Most councils attempting to bring empty homes into use rely on a casework approach, addressing individual properties using persuasion and their statutory powers to cajole or force owners to take remedial action. The aim of this Legal Toolkit is to set out a comprehensive summary of the legislation available and the context in which statutory powers can be put to their best effect.

When reliant on the use of statutory powers, the individual casework approach to bringing empty homes into use can be time consuming and resource intensive. In our experience, the legislation can be most effective when it is used proactively and strategically, rather than in reaction to individual issues or public complaints. While some powers have to be used sequentially, in Section 3 we consider a combined approach, showing how powers can be used together to enhance their overall effectiveness. In each case we recommend a planned approach based on combining powers

or, where appropriate, a sequential use of powers with the clear aim of bringing the particular property back into use. Circumstances will vary but it is important not to look at the individual powers in isolation.



We also urge local authorities to consider using their statutory powers in the broader context of tackling empty homes in the overall area, working with local communities and with people in need of affordable housing. In our recent report *Community action on empty homes – Using empty homes to regenerate communities*² we show how when local authorities work in partnership with communities and other agencies, statutory powers can be used strategically to support collaborative effort. This can deliver better outcomes and return on investment than approaches based solely on individual casework.

We hope our ‘Action on Empty Homes Legal Toolkit’ will prove a useful resource and support for local authorities taking positive action to reduce the waste of empty homes and deliver secure good quality housing where people want to live and work.

Will McMahon,
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1 Action on Empty Homes: ‘Empty Homes England (2018)’. See our Publications and Research page: <https://www.actiononemptyhomes.org>

2 Action on Empty Homes: ‘Community action on empty homes: Using empty homes to regenerate communities’. See our Publications and Research page: <https://www.actiononemptyhomes.org>

- 
- 
- 1 Section 1:
Introduction
 - 2 Section 2:
Available Powers
 - 15 Section 3:
A Combined Approach
 - 16 Section 4:
What Works Best For You

Section 1

Introduction

There are estimated to be in excess of 216,000 homes empty for over 6 months in England according to official government data.³ The issue spans the length and breadth of the country and raises multiple concerns for communities, including anti-social behaviour, nuisance, and unauthorised entry. Local authorities need to be proactive in tackling this issue and key to that is understanding the tools available to them.

The aim

This toolkit aims to inform local authorities of the various methods of legal enforcement at their disposal to deal with this issue. It will not be a detailed examination of procedure, rather than overview of each of the available powers and the advantages and disadvantages attached to each of these.

Legal enforcement should be employed as a graduated approach to tackling the empty homes crisis. Whilst this toolkit will not discuss alternative remedies such as voluntary sale or grants and loans, these should still be recognised as key “tools” for local authorities and used as part of a carrot and stick approach alongside legal enforcement. Legal enforcement should be used in a timely way, not just as a last resort.

What we don't do

We will not tell you which power to use. This toolkit seeks to arm you with the knowledge required to make an assessment as to the most

appropriate method in all circumstances. The use of any of the legal enforcement powers should be undertaken on a case-by-case basis and it is anticipated that each local authority will have their own preferences depending on the housing stock at hand.

Who is it for and how to use it

The toolkit is aimed at local authority officers involved with bringing empty homes back into use, including empty homes officers. We have kept the toolkit deliberately short and concise with the expectation that it will feed into existing strategies. The overall aim is that this document generates thought and debate amongst you and your colleagues and widens your horizons in respect of the legal remedies at your fingertips.

Legals

The toolkit refers to English Law and does not reflect the position in the rest of the UK where different legal frameworks apply. The toolkit has been devised with legal input from solicitors but users should get their own legal advice where necessary and should not rely solely on this document to take legal action. That said, much of the toolkit does not require legal action. The threat of using one or more of the powers available to authorities is often sufficient to get a result and many local authorities have developed effective standard letters to do this. This is something to bear in mind in developing your own strategy.

³ Department for Communities and Local Government (2017) 'Council Tax base 2017 in England'

Section 2

Available Powers

The table below sets out the relevant powers available to you and the legislation that grants

you these powers. Each power will be discussed in further detail on the following pages:

Relevant powers available and the legislation that grants these powers

Problem	Legislation	Power Granted
Dangerous or dilapidated buildings or structures	<ul style="list-style-type: none"> – <i>Building Act 1984, ss77 & 78</i> – <i>Housing Act 2004, Part 1</i> 	<p>To require the owner to take steps to make a property safe (s77) or enable the local authority to take emergency action to make a property safe (s78).</p> <p>Enables evaluation to be undertaken to assess the risks of a property to health and safety</p>
Unsecured properties	<ul style="list-style-type: none"> – <i>Building Act 1984, s78</i> – <i>Local Government (Miscellaneous Provisions) Act 1982, s29</i> 	<p>To allow the Local Authority to fence off a property.</p> <p>To require the owner or allow the local authority to board up in an emergency.</p>
Blocked or defective drainage or private sewers	<ul style="list-style-type: none"> – <i>Local Government (Miscellaneous Provisions) Act 1976, s35</i> – <i>Building Act 1984, s59</i> – <i>Public Health Act 1961, s17</i> 	<p>To require the owner to address obstructed, blocked or defective drains.</p>
Statutory nuisance and vermin	<ul style="list-style-type: none"> – <i>Public Health Act 1961, s34</i> – <i>Prevention of Damage by Pests Act 1949, s4</i> – <i>Environmental Protection Act 1990, s80</i> 	<p>To require the owner to remove waste that may attract vermin to a property or to remove an infestation and any threat to public health.</p>
Unightly land and property	<ul style="list-style-type: none"> – <i>Town and Country Planning Act 1990, s215</i> – <i>Building Act 1984, s79</i> 	<p>To require an owner to address a property adversely affecting the amenity of an area.</p> <p>To require the owner to address unightly land or the external appearance of a property.</p>

In addition to the above, which can be used to address specific problems, local authorities can also use the enforced sale procedure or Compulsory Purchase Order (CPO) to force the sale of any empty property. The local authority can also take on the management of vacant properties with an Enforced Dwelling Management Order (EDMOs).

Section 2.1: Compulsory Purchase Order

This power allows Local Authorities to acquire land compulsorily which they can then develop or restore before using as part of their housing stock. Below is a list of statutory provisions that allow local authorities to acquire land for different reasons:

- For Estate regeneration or improvement: *Housing Act 1985, s17 and; Town and Country Planning Act 1990, s226(1)*
- For listed buildings: *Planning (Listed Buildings and Conservation Areas) Act 1990, s47*

How it works

Applying for a CPO is lengthy procedure and requires attention to detail and accurate drafting in order to avoid any delays or added expenditure. Once the CPO has been made and notice has been served on qualifying persons, allowing time for objections, it can be submitted to the Secretary of State for confirmation. It will not be effective until this point. Once effective, the acquiring authority must follow the implementation procedure, which will trigger negotiations for claims of compensation.

Power to enter

The *Housing and Planning Act s172* conveys the Right to Enter and Survey Land to an authorised representative of an acquiring authority at a reasonable time and without the use of force. Where force may be required, a warrant under s173(1) should first be obtained from a Magistrate's Court. The authorised representative must leave the property as secure against trespassers as when they entered it.

- For further detailed guidance on the procedure, please see MHCLG 'Guidance on Compulsory Purchase Process and the Crichel Down Rules' (2018)

Evidence required

Depending on which statute is relied on, the evidence required differs:

- *s226 (1)(a) Town and Country Planning Act 1990*: A clear strategic framework will be required and this should have been subject to consultation processes. There should be evidence that all those who may have objections have been given the opportunity to raise them and that any objections have been considered and responded to in a timely and appropriate manner. Consultation is not a power of veto but reasonable objections must be addressed and taken into account by those formulating the framework.
- *s17 Housing Act 1985*: This application must be accompanied by a statement of reasons which includes information regarding the need for further housing stock in the area, such as the number of dwellings, substandard dwellings and total number of households.
- *s47 Planning (Listed Buildings and Conservation Areas) Act 1990*: A repairs notice must have been served on the property and two months must have passed since service. A copy of this notice should accompany the CPO along with all supporting documents.

Typical circumstances

In line with Government guidance, CPOs should be used as a last resort and local authorities should not rely on the general power under s226(1) Town and Country Planning Act when a more appropriate enabling power is available. For example, in respect of a run down listed building, s47 of the Planning (Listed Buildings and Conservation Areas) Act 1990 can be used to compulsorily purchase when the owner of a listed building is not taking adequate steps to properly preserve the building. However, there needs to be a "reasonable likelihood" of the property being capable of repair in the opinion of the local authority for the CPO to be granted. For a CPO to be granted for the purpose of estate regeneration, the local authority must show there is a "compelling case in the public interest".

Pros	Cons:
<ul style="list-style-type: none"> • Can be used in a wide range of circumstances. • Allows the LA to take back control of the property and make any repairs necessary. • Generally guarantees a property will be brought back into use. • Possible to structure an agreement with a third party to purchase the property once the CPO is approved or 'confirmed'. 	<ul style="list-style-type: none"> • The special and onerous process required can take a significant amount of time, between 20-24 months. • Owners and anyone with a legal interest have a right to be heard and raise objections to the process. • Owners have a legal right to compensation, including reimbursement of surveyor's and solicitors' fees.

Case Study

<p>Great Yarmouth Borough Council exercised their CPO powers in respect of a large guest house, after it was forced to close in 1996 due to changes in fire regulations.</p> <p>The property was sold on with the intention that it would be developed back into residential housing, although the owners never undertook these works.</p> <p>Instead the property stood empty and was set on fire by arsonists in 2001.</p>	<p>As the property was not properly insured, the owners could not afford the repairs and all renovations works were abandoned.</p> <p>The council's attempts to negotiate with the owners received little response and after a year they took action. It alerted the owners of its intention to make a CPO and the owners made no objection. The council sold the property to Suffolk Heritage Housing Association who renovated the property into two large family homes, now occupied by local families.</p>
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Section 2.2:

Empty Dwelling Management Orders (EDMO)

EDMOs allow local authorities to take over the management of unoccupied properties and use them as part of their housing stock. They were introduced by the Housing Act 2004 to bring private sector property back into use if discussions and attempts to persuade the owners fail.

How it works

As with other legal remedies EDMOs should only be used once attempts to engage with the owner has failed. This includes making

reasonable efforts to solve the problem of vacancy, such as discovering what steps the owner is taking or intends to take. If the owner fails to engage, the threat of an EDMO may be sufficient to remedy this. Many local authorities have developed a series of standard letters to be sent to the owner before an application to the Residential Property Tribunal is made. These letters usually:

- Refer to previous contact made regarding the empty property, confirming insufficient or no action has been taken and the property remains empty,
- State the Council's commitment to resolving issues around empty homes and that it cannot allow homes to fall into decline.

- Advise that in the absence of action being taken by the owner, the Council will seek approval from the independent Residential Property Tribunal to allow the Council to seek an EDMO to gain possession of the property
 - Invite the owner to make contact to resolve matters and also to seek independent legal advice
- 6 Map of the property's location, including an Ordnance Survey map of the local area
 - 7 Floorplan of the property and extensive photographs, internally and externally
 - 8 Statement of the Council Tax Band of the property
 - 9 Statements of experts and witnesses or confirmation of preparedness to give evidence

If the owner does not take steps to bring the property into use, and you decide an EDMO is appropriate, you should then apply to the Residential Property Tribunal for an Interim EDMO, submitting the evidence detailed below. An Interim EDMO lasts for 12 months. Once the Interim EDMO has been granted, you will need the owner's consent to let the property and make any repairs or improvements. If you do not receive consent then you can move to an application for a Final EDMO which can last for a number of years.

- For further detailed guidance, please see MHCLG 'Empty Dwelling Management Orders Guidance (2006).

Some properties and circumstances may be eligible for exemption from an EDMO – see Housing (Empty Dwelling Management Orders) (Prescribed Exceptions and Requirements) (England) Order 2006.⁴

Evidence required

For an Interim EDMO application you will need to submit supporting documents to the Residential Property Tribunal, including the following:

- 1 Statement of reasons
- 2 Your outline plan for the property
- 3 Detailed survey of the property's condition
- 4 An outline of the costings, including a schedule of works
- 5 Statement of housing need in the area, including who is likely to be housed in the property

If a Final EDMO is required then this does not need to be re-considered by the Residential Property Tribunal. However, you will need to serve notice on the owner and observe a 14 day consultation period.

Affordable housing brought into use through EDMO's can help to meet local housing need. There are options for local authorities for the ensuing management arrangements. Hull City Council, for example, uses targeted EDMO's to bring long-term empty properties into use. The Council recognises that these properties can be more complex to manage than mainstream social housing. Working in partnership, the Council passes EDMO properties to a community-based housing provider, Giroscope, which manages five of the properties brought into use in this way.

Typical circumstances

An EDMO will be of most use when the owner is unable or unwilling to affect repairs or improvements themselves, or take steps to let the property. As stated previously, this should be a last resort if they cannot be persuaded to do these by other means. There is however considerable anecdotal evidence to suggest that many owners respond to pre-Tribunal warning letters and take remedial action without the need to commence formal EDMO proceedings.

⁴ Housing (Empty Dwelling Management Orders) (Prescribed Exceptions and Requirements) (England) Order 2006: <http://www.legislation.gov.uk>

Pros

- Owners may respond to initial warning letters and resolve matters before an EDMO is applied for
- Costs of maintenance/renovation can be recovered via income generated when the property is let.
- Allows the local authority to make repairs itself to get the property to a good standard.
- Final EDMO does not need tribunal approval and can be made during the period of the interim EDMO.

Cons:

- Property must be empty for at least 6 months.
- The expense of any maintenance/renovation work may not be met by income generated.
- Certain properties are exempt from EDMOs, regardless of how long they have been left empty.
- You cannot use an EDMO until you have offered other voluntary options to the owner(s).
- Must get the approval of the Residential Property Tribunal.
- Cannot let a property during Interim EDMO without owner permission.

Case Study

A property in Swale had been empty for 9 months. The owner had to relocate from the area and due to the number of charges against the property, they had been unable to secure a sale. The property was not in a lettable condition and the owner did not have the funds to carry out the works need to it.

Swale Borough Council used their powers to obtain an Interim EDMO to undertake the works. Whilst an objection was raised initially by the main lender of one of the charges, this was withdrawn after further negotiations. Works were commenced shortly after the Interim EDMO was awarded, taking only 4 weeks.

No Use Empty Case Studies: <https://www.no-use-empty.org.uk>

Case Study

Hull City Council have obtained a number of EDMOs in their most challenging regeneration areas where they took a zero tolerance policy approach to empty homes. They have used both voluntary and enforced EDMOs.

Once final EDMOs were in place the council undertook full refurbishments and then established a management agreement with a professional managing agent to manage the properties on the Council's behalf.

Source: Hull CC

Section 2.3:

Enforced Sale

The enforced sale procedure has been put to good use by local authorities to bring empty homes back into use. The power itself comes from the Law of Property Act 1925 and it can be exercised against properties where the local authority has a registered charge against the property that the owner has not discharged. The charge may arise from works in default (discussed in the following pages) or may be unconnected with the property itself eg Council Tax, social care debt or some other non-housing related debt where the local authority has obtained judgment and registered a charge against the property.

How it works

Once a local authority has a charge against a property, the local authority can pursue an enforced sale. On the expiry of the notice served on the owner, if the debt is still unpaid, the property can be sold. This may be at an auction or by other means but the local authority will have a duty to the owner to obtain the best price and not sell at under value.

Evidence required

There will need to be a charge registered against the property at the Land Registry to enable the local authority to enforce the sale. The owner must be invoiced for the debt owed and the local authority must serve a formal notice under s103 of Law Property Act 1925 giving the owner 12 weeks to pay. In cases where the debts are not land charged, such as council tax debt, the local authority can apply to the County Court for an interim charging order and then a final charging order and order for the sale of the property.

Typical circumstances

As the process will be halted if the debt is paid off, this power will be more relevant the bigger the charge against the property is. For this reason a number of local authorities have been known to set a minimum debt limit for cases where they will exercise this power. This power may also be of most use where the owner is completely uncommunicative and there is no prospect of them taking steps to keep the property occupied.

Pros

- Can be used in conjunction a number of other powers.
- Gives the local authority ultimate control of the property to sell on to an owner that is more likely to keep the property occupied.
- The property doesn't need to be empty to be used.
- The local authority will not be expected to give any covenants of title when selling.
- Can be used in a wide range of circumstances and on various properties, including listed buildings.
- Can be used on debts that are up to 12 years old.
- No court involvement is required if a land charge is successfully registered.

Cons:

- Requires the local authority to have a charge over the property, therefore cannot be used on its own.
- Notices must be served before power is exercised so the process is not immediate.
- The process will be halted if the debt is paid off, which is more likely in cases with smaller debts.
- Depending on the wording of the local authority's charge, it might not have priority over other existing charges on the title.

Case Study

A mid-terrace property in a row of 10 other properties in North Manchester superficially presented as empty due to its condition. The overall condition of the terrace was very good and the neighbours made several complaints about the property, which also had a number of local land charges attached to it.

On investigation it was discovered that an elderly owner was occupier the ground floor of the property.

He had allowed the other floors to fall into disrepair, with an infestation of pigeons and smashed windows. The council made contact with the owner who was relieved to dispose of the property, allowing an enforced sale to take place.

The owner was relocated to a property that better suited their needs and the property was occupied again after being sold at open auction.

Section 2.4:

Dangerous Buildings or Structures

There are two statutes that local authorities can rely on in respect of properties that are deemed to be dangerous. These powers either allow the local authority to carry out works themselves or require the owner to take steps to make their property safe. The relevant statutes are:

- *Building Act 1984, ss 77 & 78*
- *Housing Act 2004, Part 1*

How it works

The Building Act s77 and s78 distinguishes between buildings that the local authority considers dangerous and those which present an immediate danger respectively. In the first instance, the local authority would apply to the Magistrates Court for an order requiring the owner to take steps to make their property safe. If the owner does not carry out such works then the local authority may do so in default. If there is an immediate danger then s78 allows them to carry out remedial works without offering the owner the opportunity to do so themselves.

- For further guidance please see the following produced by RICS: ‘Dangerous Structures - Building Act 1984, section 77’ (Dec09/BBS/712PG)

The Housing Act 2004 can also be a useful tool to local authorities to enable evaluation of the potential hazards a property presents to health and safety, which will then dictate the appropriate enforcement action.

Evidence required

In order to serve an enforcement notice under s77 of the Building Act, the local authority will need to show that the building does not comply with the Building Regulations. When using s78 of the Building Act, it may be necessary for a notice to be served on the owner prior to the local authority exercising its powers.

Typical circumstances

This is most likely to occur when a developer has started to develop land and then has not completed works or the works are not satisfactory, requiring remedial works to make the development compliant with Building Regulations. This power can also be used on long-term vacant buildings that have fallen into such a state of dereliction and dilapidation that they have become hazardous.

Pros

- Reasonable expenses can be recovered from the owners
- S78 does not require court involvement in the first instance and therefore can be used without undue delay where an immediate danger is identified.
- Non-compliance with a s77 order can result in a summary conviction and fine, therefore it can be an effective motivational tool to get owners to act.

Cons:

- Certain expenses are not recoverable when removing the danger under s78 Building Act and the court has discretion to award any expenses.
- The owners have a right to claim full compensation for any damages incurred as a result of the local authority's actions, if the owner is not found in default of the obligations under the Building Act.
- Can only be used when the property is considered dangerous, and not just unsightly or defective.

Case Study

Thanet District Council served a notice under s78 Building Act 1984, requiring an owner to carry out works relating to a bay window on a first floor front elevation that was becoming detached. The owner failed to comply with the terms of the notice and the

council had to complete works in default.

The council subsequently had to use their powers to enforce a sale of the property after the negotiations with the owner failed.

No Use Empty Case Studies: <https://www.no-use-empty.org.uk>

Section 2.5: Unsecured Properties

Where a property poses a risk of unauthorised entry and vandalism, the local authority can use the following statutes to either take steps to secure the property directly or require the owner to take such steps:

- *Building Act 1984, s78*
- *Local Government (Miscellaneous Provisions) Act 1982, s29*

How it works

Under s29 of Local Government (Miscellaneous Provisions) Act 1982, the local authority can require the owner to take steps to secure the property from unauthorised entry or allow the local authority to board up the property

themselves. 48 hours' notice should be given to the owner unless the works are required immediately. Section 78 of the Building Act is an emergency measure that can be used to allow the local authority to fence off the property to avoid unauthorised entry or vandalism.

Costs incurred by the local authority under either section can be recovered from the owner on application to the Court. Any judgment for costs can be secured by a charge on the property which may in turn enable the local authority to proceed with an enforced sale (see "Enforced Sale").

Evidence required

The evidence required to exercise both these powers will depend on the circumstances but the local authority will need to show that there is

a real possibility that the property could be accessed or vandalised. Typical evidence would include photographs, police reports or complaints from local residents (preferably in the form of witness statements).

Typical Circumstances

This power is most likely to be of use where a property has clearly become a target, or is likely

to become a target, for vandalism or unauthorised entry. This may lend itself to properties that have only recently become vacant, as well as long-term vacant properties.

It will also be most helpful for properties that are more easily accessed, such as older houses with less sophisticated security systems.

Pros	Cons:
<ul style="list-style-type: none"> • Costs are recoverable under s29 Local Government (Miscellaneous Provisions) Act 1982 and may be recoverable under s78 Building Act 1984, although the court has discretion. • Both can be used without notice if the threat is immediate. • It is a flexible power as it allows the local authority to either carry out works themselves or require the owner to do so. • There is no limit on how long the property must have been vacant for. 	<ul style="list-style-type: none"> • S78 Building Act is an emergency measure and must not be used unless there is a real immediate danger. If used incorrectly the costs are unlikely to be recoverable. • Under s78 Building Act the local authority is only able to carry out works to remove the threat. • It is a limited power and will only be useful in certain circumstances.

Case Study

Thanet District Council were forced to use their powers under s78 Building Act 1984 on a property due its serious structural defects. Protected scaffolding was erected around the property so as to protect the public from falling masonry. Two chimney stacks were also structurally unsafe and in need of demolition.

The property had been allowed to fall into such disrepair after the death of the owner. The property was passed on to various family members in Saudi Arabia but as the ownership could not be established, it could not be sold on the open market.

The Council subsequently used their powers to enforce a sale of the property and recover costs for the remedial works they had undertaken.

No Use Empty Case Studies: <https://www.no-use-empty.org.uk>

Section 2.6:

Blocked or Defective Sewers, Drainage or Private Sewers

In instances where a drain or private sewer serving a property is caused to be blocked or defective, it will be for the owner to effect repairs. The following powers allow the local authority to force the owner to take remedial action.

- *Local Government (Miscellaneous Provisions) Act 1982, s35*
- *Building Act 1984, s59*
- *Public Health Act 1961, s17*

How it works

When exercising a power under any of these statutes, the local authority will be required to serve notice on the owner. The local authority should take steps informally to come to an agreement with the owner to remedy the work before formal action is taken. If a notice is not complied with then the local authority can carry out the works in default and recover its costs. Under s59 Building Act 1984, the owner may

be liable for summary conviction for non-compliance with an order.

Evidence required

The local authority will need to be satisfied that there is a degree of urgency required to address any underlying public health issues and what the likely effectiveness of the formal action will be.

Typical circumstances

This will be of most use where there are pressing public health concerns regarding a drain or private sewer and all negotiations and efforts to persuade an owner to take action. The power can be used on as little as 48 hours' notice where urgent action is required. A typical scenario would be a collapsed/blocked drain behind an empty home in a terrace sharing a common drain-run, thereby causing problems for neighbouring properties. In this situation, there will be a clear public health concern justifying urgent action. Use of the power may be a precursor to other longer term action to deal with the empty home.

Pros

- Reasonably incurred costs can be recovered under s35 Local Government (Miscellaneous Provisions) Act and s17 Public Health Act.
- The notice period can be as short as 48 hours, allowing for works to be carried out relatively quickly.
- Under s59 Building Act 1984, the owner may be liable for summary conviction for non-compliance with an order, therefore it is a good motivational tactic.
- It can be used for repair or unblocking of drains or sewers.

Cons:

- The powers are limited and will only be relevant in certain cases.
- There is no penalty for non-compliance with a notice so may not be an effective threat against an unwilling owner under the Public Health Act and Local Government (Miscellaneous Provisions) Act.
- Must be considered carefully and used only where absolutely necessary.

Case Study

Haringey London Borough Council served an enforcement notice under s59 Building Act 1984 after the owner(s) failed to comply with statutory requirements in relation to their property.

Further details of this case are not known at present but this case serves to demonstrate that councils have been successful in serving such notices.

Section 2.7:
Nuisance

Where a property poses a risk of attracting vermin, or there is a visible presence of vermin or other nuisance already on the property, the local authority can use the powers under the statutes below to require the owner to remove the threat to public health.

- *Vermin: Public Health Act 1961, s34 and Prevention of Damage by Pests Act, s4*
- *Statutory Nuisance: Environment Protection Act 1990, s80*

How it works

In exercising each of the above powers, the local authority will be required to serve a notice on the homeowner. This will require them to take steps to clear the property of vermin or remove the nuisance. If the notices are ignored then the Council can take steps to remove the vermin or nuisance in default.

- 'For further guidance please refer to the DEFRA publication: 'Statutory nuisances: how councils deal with complaints'.

Evidence required

When issuing an abatement notice under s80 Environmental Protection Act 1990, it must be demonstrated that a statutory nuisance is affecting another party. The local authority will have a duty to inspect the area to detect statutory nuisances⁵ and investigate complaints that are made to them.

Typical circumstances

This power may be of use to local authorities when the property is otherwise in a habitable condition, with the exception of an ongoing or potential nuisance. It will also be of use where the local authority has notice from a neighbour that the nuisance is affecting their property and it is not just confined to the empty property itself.

5 A statutory nuisance is something which unreasonably and substantially interferes with the use or enjoyment of a property or which is prejudicial to health. In the context of empty homes, typical examples are pest infestation, overgrown gardens (knotweed), and accumulation of rubbish.

Pros

- Powers allow the local authorities to execute works in default.
- Local authorities can recover reasonable expenses it has incurred plus interest by obtaining a charge of the property.
- Local authorities have a margin of discretion in the drafting of abatement notices.
- Failure to comply carries a criminal sanction and can therefore be used as an effective threat.
- The procedure of serving a notice is comparatively fast, effective and accessible.

Cons:

- It may take time and cost to ascertain whether a statutory nuisance is actually present, this can cause delay.
- Once a statutory nuisance has been proved, the local authority will have a duty to issue a notice.
- Must give the owner a period of time with which to comply with the order which may cause delay.
- There is an appeal procedure that may also cause further delay or added cost.

Case Study

A former hotel in Kent had been unoccupied for a number of years and had blighted the local community. The council had served a notice under s4 Prevention of Damage by Pests Act 1949 due to accumulation of rubbish at the property. No works had been carried out by the owner and the council had to undertake the works in default.

The council subsequently used the powers under s226 Town and Country Planning Act 1990 to start CPO proceedings which saw the property developed into a number of houses and flats available for shared ownership.

No Use Empty Case Studies: <https://www.no-use-empty.org.uk>

Section 2.8: Unightly Land and Property

Where a property has fallen into such a state of disrepair so as to affect the amenity of the area, the local authority can use their powers under the following statutes to tackle the problem.

- *Town and Country Planning Act 1990, s215*
- *Building Act 1984, s79*

How it works

The above powers allow the local authority to serve a notice on the owner to require them to take steps to address the issues with their property. The methods of compliance with this

notice could be restoring the property or demolishing it. In some instances it may involve bringing the external appearance of the property back into repair, whilst still leaving the property uninhabitable.

- For further guidance on using Town and Country Planning Act 1990, s215, please refer to the following publication: Office of the Deputy Prime Minister - 'Town and Country Planning Act 1990 Section 215 Best Practice Guidance' (2005)

Evidence required

The drafting of the notice to the homeowners must be clear and precise in identifying the

issue and setting out what the local authority requires the homeowner to do, and the deadline set for meeting these requirements.

Typical circumstances

Research shows that these powers, in particular s215 Town and County Planning Act,

have been effectively used for regeneration work. Due to the need to establish that the amenity of the area has/is being negatively affected, local authorities may find these powers useful for vacant unsightly property in areas that are largely occupied and in good condition.

Pros	Cons:
<ul style="list-style-type: none"> • These powers have been proven to be an effective threat to homeowners, forcing them into action. • They can also be used on a range of sites from large vacant industrial sites to residential property and overgrown gardens. • The scope of works that can be required of the owner is also wide. • Allows the local authority to carry out works when the owner has not complied. • Costs are normally recoverable against income from the property but a charge can be registered against the property if this is not possible. • Non-compliance can be dealt with via prosecution. 	<ul style="list-style-type: none"> • As amenity is not defined in s215 Town and Country Planning Act then a case-by-case analysis will need to be undertaken to see if this applies in all the circumstances. • Specialist input may be required when drafting notices to ensure they are clear and precise, which may increase the cost. • The timescale is typically 21 days which is not as quick as some of the other powers at the local authority's disposal. • s79 Building Act deals more specifically with external appearance so may not always assist in making a property habitable.

Case Study

<p>Bristol City Council took action against a property that had been left vacant for over 10 years. Local residents petitioned the council due to the state of the property, which had been covered in graffiti, the windows had been smashed and the garden was fly-tipped. Discussions with the owner proved unsuccessful as he was happy to leave the property vacant as the capital growth continued to rise. The council then served a</p>	<p>notice on the owner requiring them to take action. This was swiftly followed by exercise of their powers under s79 Building Act 1984 to enable them to deal with the ruinous and dilapidated building.</p> <p>It paid off and the owner completed a full renovation of the building costing £50,000 and rented the property soon after.</p>
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Section 2.9:

Community Protection Notice

Community Protection Notices (CPN) were introduced by the Anti-social Behaviour, Crime and Policing Act 2014 (Part 4) and can be used to deal with ongoing problems or nuisances which are having a detrimental effect on the community's quality of life by targeting those responsible. They are issued under s.43 of the Act and are intended to deal with repeated or on-going, not occasional or 'one-off', conduct which can be shown to be negatively and unacceptably affecting the quality of life of those in the locality.

How it works

CPN's were introduced to deal with a wide range of anti-social behaviours impacting on victims and communities. Their scope is deliberately not limited in the legislation to specific situations or types of behaviour. This means that they may be used to tackle empty properties that are attracting anti-social behaviour, or if they are verminous, rubbish-strewn or unsightly to the extent that they impact adversely on the local community. Local authorities, the police and social landlords with delegated powers can issue CPN's. They can be served on individuals over 16 years, businesses and organisations provided such a step is reasonable and there is sufficient evidence that the behaviour in question is:

- having a detrimental effect on the quality of life of those in the locality;
- persistent or continuing in nature; and
- unreasonable.

A CPN can be handed directly to the person in question or it can be posted. In circumstances where the owner is unknown, the issuing officer can post the CPN on the premises and it is considered as having been served at that point. In these circumstances, the issuing officer would need to demonstrate that reasonable enquiries had been undertaken to find the identity of the owner, for instance, checking with the Land Registry.

Before a Notice can be served, a written warning must be issued to the person committing the anti-social behaviour. The written warning must make clear to the individual that if they do not stop the anti-social behaviour, they could be issued with a CPN. The written warning should:

- outline the specific behaviour that is considered anti-social and which is having a detrimental effect on others' quality of life, as this will ensure there is little doubt over what needs to be done to avoid the formal CPN being issued;
- state the time by which the behaviour is expected to have changed in order to give the alleged perpetrator a clear understanding of when the CPN might be served, which should be a reasonable time in which to remedy the situation;
- set out the potential consequences of being issued with a CPN and in particular the potential sanctions on breach, which could act as an incentive for the individual to change their behaviour before a formal CPN is issued.

Failure to comply with a CPN is an offence and can result in a fixed penalty notice of up to £100 being served by the issuing body. Failure to comply with a CPN can also lead to a court summons and, on conviction, can result in a fine of up to Level 4, currently £2,500 for individuals, or £20,000 for businesses.

It is also possible to ask the court to impose a remedial order that requires the owner to carry out the remedial work or empowers the issuing body to carry out the works and reclaim the costs, for instance:

- the matter may be deemed so serious that a court order is warranted; or
- works may be required to an area that requires the owner's or occupier's consent and this is not forthcoming;

The recipient of a CPN has the right of appeal through the Magistrates Court.

Pros

- CPN's are 'victim centred'
- Where a statutory nuisance cannot be evidenced, a CPN can enable action to be taken
- CPN's provide a discretionary power, not a statutory duty
- They are a straightforward tool which do not require Court action to issue

If the local authority has recognised housing associations in their area as designated persons, those associations can also use CPN's (subject to appropriate training).

Cons:

- The ASB must be persistent or continuing
- To avoid taking conflicting or duplicated actions, local authorities should have a joint working protocol with the police and housing associations
- Except in exceptional circumstances, CPNs should not be used where a statutory enforcement duty exists.
- The fixed penalty notice is a low amount and effective enforcement still requires Court action

Case Study

In South Gloucestershire Council area, the owner of an empty homes was ordered to pay £2,000 in costs to the council and a £20 victim surcharge after pleading guilty to failing to comply with a Community Protection Notice (CPN) under the anti-social behaviour crime and policing act 2014. A Remedial Order was also issued by the court, stating that Bannerman must complete the work, as scheduled in the CPN, within

two months of the court date (by 28 May 2018). Any breach would now be considered under contempt of court. He was also handed a Conditional Discharge for 12 months (subject to the above), and the Magistrate told the court that any further charges will see this case considered again and a fine imposed. The case was heard at Bristol Magistrates' Court on Wednesday 28 March.

Section 3

A Combined Approach

There are certain powers that lend themselves to be used in conjunction. This section will look at which powers can be used most effectively in a combined approach. This list is not exhaustive but should give an idea of some powers that work well together.

An idea of some powers that work well together

Power 1	Power 2	Why?
<ul style="list-style-type: none"> (1) S59 Building Act 1984 (2) Housing Act 2004 (3) S4 Prev. of Damage by Pests Act 1949 (4) S79 Building Act 1984 (5) Housing Act 1985 (6) S80 Environmental Protection Act 1990 (7) S215 Town and Country Planning Act 1990 	<p>Enforced Sale</p>	<p>As discussed in the previous section, the enforced sale procedure can only be used when the local authority has a charge registered against the property at the Land Registry. All of these acts can be used to serve a notice on an owner. Non-compliance with that notice will allow the local authority to carry out work in default and register a charge against the property for their costs incurred.</p>
<p>Any reasonable power, such as:</p> <ul style="list-style-type: none"> (1) Building Act ss77 & 78 (2) S215 Town and Country Planning Act 1990 	<p>Compulsory Purchase Order</p>	<p>A local authority cannot make a CPO without first using all reasonable methods to return the property to use. Therefore, the exercise of any of the other powers discussed may be considered reasonable prior to a CPO.</p> <p>For example, it may be considered reasonable for the local authority to first take steps to secure or address the appearance of the property prior to making a CPO.</p>
<p>Building Act 1984, s78</p>	<ul style="list-style-type: none"> (1) Town and Country Planning Act 1990, s215 (2) Building Act 1983, s79 (3) Public Health Act 1961, s17 <p>Other powers may also be applicable.</p>	<p>As s78 Building Act 1984 is an emergency measure, local authorities might find this a useful first step to deal with problematic and unsafe properties. Further powers can then be used to require the owner to deal with more specific issues, such as vermin or unsightly land.</p>

Section 4

What Works Best For You

Ultimately, the powers that you decide to use will be a matter of your own preference. Depending on your administrative area and the housing stock at your disposal, some of the powers that have been discussed in this toolkit may not be relevant.

In each case you should have a planned approach based on combining powers (see above) or, where appropriate, a sequential use of powers, planned in advance, with the clear aim of bringing the particular property back into use. Circumstances will vary but it is important not to look at the individual powers in isolation. A strategic approach is required.

Remember that the threat of legal action using one or more of the powers discussed may be sufficient to get the owner to engage. A set of effective standard warning letters and letters before action is therefore an essential part of your own toolkit.

We recognise that costs are a major issue in establishing any Empty Homes strategy and following through with action (and legal action). However, there are opportunities to recover costs (including through enforced sale) and there is no reason why those costs should not be used to establish a recyclable pot to fund other action.

Regardless, it is imperative that local authorities are proactive in their methods of bringing vacant properties back into use. An Empty Homes Strategy is a must and the powers discussed in this toolkit would complement any strategy and add to its robustness.

We hope that this toolkit has proved useful reading and shown you some additional methods of legal enforcement that you may not have

previously been aware of. If you need detailed legal advice please contact your legal adviser.

- For local authority practitioners, the Empty Homes Network is a valuable support and advice network for discussing best practice. <http://www.ehnetwork.org.uk>
- If you're interested in discussing developing your work on empty homes. Please contact Action on Empty Homes: info@actionemptyhomes.org <http://www.actiononemptyhomes.org>



We offer Consultancy and Training in:

- Making the social and economic case for tackling empty homes
- Developing and refreshing local authority empty homes strategy
- Helping communities and Local Authorities work together to create change
- Advice for community groups who want to tackle empty homes in their area
- Improving performance in bringing empty homes into use



Email: brighid.carey@actiononemptyhomes.org for details

Action on empty homes

Action on Empty Homes campaigns for more empty homes to be brought into use for people in housing need. Our aims are to:

- Raise awareness of the waste of long-term empty homes.
- Campaign for changes to national policy.
- Support local communities in transforming their neighbourhoods.
- Provide advice for those seeking to bring empty homes back into use.
- Research and develop ideas for bringing long-term empty homes back into use for those in housing need.



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