
Meeting of the Executive Member for Housing and Adult Social Services and Advisory Panel

14th July 2008

Report by the Director of Housing & Adult Social Services

Empty Homes Policy

Summary

1. To update the Executive Member on the number of long term empty homes in York and of the work undertaken to bring properties back into use.
2. To brief the Executive Member on the use of Empty Property Dwelling Management Orders (EDMO's), including the resources implications in using these measures.

Background

3. Following the council motion on the 24th January 2008 a detailed field survey was undertaken to establish the number of the empty properties within the city. Three sources of information were used to provide the address list:
 - Council tax records - 761 homes were identified as being empty for more than six months;
 - Councillor's own knowledge - We asked each councillor to identify the number and location of long term empty properties in their ward that they were aware of. Twelve homes were brought forward, eight of which were homes that had already been identified. Two of the remaining four properties were also found to be commercial properties;
 - Properties already known to the Housing Standards and Adaptations team - 35 dwellings, again these were already included in the council records.
4. Each dwelling was visited at least once and information about the property was recorded using a standard survey form to ensure a consistent approach to recording the findings.
5. The key messages from the survey were that of the 761 properties:
 - 229 (30.1%) of the properties were occupied;
 - 181 (23.8%) were actively being marketed for sale or for rent; and
 - 20 (2.6%) properties were closed /brick up or in a derelict state.

Total number of properties	761	
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Total Occupied	229	30.1%
Unsure ¹	79	10.4%
Total empty	453	59.5%

6. Of the 453 empty properties:

Empty for sale /rent	181	39.95%
Empty - other ²	146	32.22%
Empty - repairs	106	23.39%
Empty - derelict	15	3.31%
Empty - closed / brick up	5	1.10%

7. When the empty properties were assessed against the current eligibility criteria for empty homes grants, 214 properties were identified as being eligible. The main criteria for the grant was established with our partnering organisation, York Housing Association. Suitable homes are those which are situated within the outer ring road and which have 2/3 bedrooms. We also took account of comments made by owners during the survey e.g. renovating the dwelling in readiness for their retirement.

8. Having obtained owners details from council tax records, postal questionnaires were sent out at the beginning of May 2008. The form was accompanied by a leaflet about the empty homes grant and an equalities monitoring form. 70 questionnaires were returned and the key messages from this survey were:

Reason	Numbers	%
Properties now occupied	21	30
Questionnaire returned as no longer at that address as the property had been sold	5	7
Properties remaining empty	44	63

9. Drilling down in to the information gathered about the 44 remaining empty properties we found that:

- 5 were empty as the owners classed them as second / holiday homes;
- 5 were empty as the owners were awaiting probate before selling;
- 23 were empty as the owners had put the empty dwelling on the market for sale / letting;
- 6 were empty as the owners were repairing their property

10. Only 5 owners requested information about the empty homes grants 37 declined further information. Officers are already actively pursuing these leads

¹ 13 were not found or demolished, 1 was a commercial property, 2 were caravans, 17 couldn't be accessed as they were in blocks of flats. The remaining 46 could not be classified either way despite two visits, all were left cards.

² Surveyors indicated that property was empty but didn't fall into one of the other categories e.g. property was in a reasonable order but not for obviously for sale

Empty Dwelling Management Order's (EDMO'S)

11. The Housing Act 2004 received Royal Assent in November 2004 and came into force in April 2006. From this date the council has had the discretionary power to use Empty Dwelling Management Orders (EDMO's). An EDMO allows a Local Housing Authority (LHA) to effectively 'step into the shoes' of the owner of an unoccupied dwelling. There are two types of order - interim EDMO and final EDMO. They allow a LHA to secure occupation and proper management of privately owned houses and flats that have been unoccupied for a specified period of time and where certain other conditions are met.
12. When an EDMO is in force, the LHA takes over most of the rights and responsibilities of the relevant proprietor and may exercise them as if it were the relevant proprietor. For example, it has the right to possession of the dwelling whilst the order is in force. However, it does not become the legal owner of it and hence cannot sell the property or take out a mortgage on it.
13. To make an interim EDMO, a LHA must apply for authorisation from a Residential Property Tribunal. There must be no one in occupation of the dwelling, whether the occupation is lawful or unlawful. The LHA must make reasonable efforts to notify the relevant proprietor that they are considering making an EDMO and ascertain what steps (if any) he is taking, or is intending to take, to secure occupation of the dwelling. The LHA must consider that making an interim EDMO is the most appropriate course of action taking account of the rights of the owner and the wider community in which the dwelling is located.
14. Before a Residential Property Tribunal can authorise the making of an interim EDMO it must be satisfied that:
 - the dwelling has been unoccupied for at least 6 months;
 - that there is no reasonable prospect that the dwelling will become occupied in the near future;
 - there is a reasonable prospect that the dwelling will become occupied if an interim EDMO is made; and
 - the LHA has complied with its duties in seeking to make an interim EDMO, including any matters that may be prescribed in regulations.
15. A LHA may make a final EDMO either to replace an interim EDMO or a previous final EDMO if it considers the dwelling would otherwise become or remain unoccupied. For example, if the relevant proprietor refused to allow the grant of occupation rights under an interim EDMO and the LHA considered that once the order ceased to have effect the dwelling would be likely to remain unoccupied, that would be grounds to revoke the interim order early and make a final EDMO to replace it.
16. If a dwelling subject to a final EDMO remains unoccupied, a LHA may make a new final EDMO to replace it provided it is satisfied it has taken all steps it was appropriate for it to take to secure occupation of the dwelling. The LHA must consider that making a final EDMO is the most appropriate course of action taking account of the interests of the community and the effect the order will have on the rights of the relevant proprietor and any third parties.

17. Central to government guidance on the use of EDMO's is that they are only to be used as one of a range of options, and only when other methods of bringing properties back into use are not appropriate or have failed. They are specifically for empty homes or "dwellings", and cannot be used for commercial properties.
18. It should be noted that not all properties are suitable for consideration of an EDMO, the following summarises the current exemption criteria:
- It has been occupied solely or principally by the relevant proprietor and is wholly unoccupied because:
 - (a) he is temporarily resident elsewhere;
 - (b) he is absent from the dwelling for the purpose of receiving personal care by reason of old age, disablement, illness, past or present alcohol or drug dependence or past or present mental disorder;
 - (c) he is absent from the dwelling for the purpose of providing, or better providing, personal care for a person who requires such care by reason of old age, disablement, illness, past or present alcohol or drug dependence or past or present mental disorder; or
 - (d) he is a serving member of the armed forces and he is absent from the dwelling as a result of such service;
 - It is used as a holiday home (whether or not it is let as such on a commercial basis) or is otherwise occupied by the relevant proprietor or his guests on a temporary basis from time to time;
 - It is genuinely on the market for sale or letting;
 - It is comprised in an agricultural holding within the meaning of the Agricultural Holdings Act 1986 or a farm business tenancy within the meaning of the Agricultural Tenancies Act 1995;
 - It is usually occupied by an employee of the relevant proprietor in connection with the performance of his duties under the terms of his contract of employment;
 - It is available for occupation by a minister of religion as a residence from which to perform the duties of his office;
 - It is subject to a court order freezing the property of the relevant proprietor;
 - It is prevented from being occupied as a result of a criminal investigation or criminal proceedings;
 - It is mortgaged, where the mortgagee, in right of the mortgage, has entered into and is in possession of the dwelling; or
 - The relevant proprietor of it has died and six months has not elapsed since the grant of representation was obtained in respect of such person.
19. The decision whether to grant an interim EDMO, which is the first stage in the process, is made by a Residential Property Tribunal (RPT - a housing tribunal which works on a similar basis to a small claims court). The Council must convince the RPT that there is a reasonable prospect of the property coming back into use as a result of the EDMO. The Council would have to do this by managing the property, as it has no right to sell or dispose of it as the owner can apply for the EDMO to be cancelled at any time.
20. The Council cannot let a property that is subject to an interim EDMO without the written consent of the owner. In a large number of cases this would not be possible as the owners, or their whereabouts are unknown. In these situations the Council could go through the process of obtaining a final EDMO, where

owners consent is not necessary in order to let the property, but if the owner has not been consulted at the interim EDMO stage, it is unclear whether the RPT would grant the final EDMO.

21. In order to let the property it must be in a habitable state and the Council would be responsible for ensuring that the necessary repairs were carried out.
22. The capital costs incurred by the Council in carrying out the necessary repairs and ensuring that the dwelling meets the decent homes standard could be registered as a legal charge against the property and would be recoverable, in a small amount through any excess rental income following the deduction of any management costs. The majority of the costs however would only be recoverable on the sale of the property at a future date.
23. Discussions with councils which have considered EDMO's have indicated that where the cost is more than £20,000 to make the house habitable then the cost is prohibitive as there is considerable uncertainty about when the money would be recovered. In addition the empty properties that present the most severe nuisance or other problems, would involve substantial costs to the Council and the repairs would take some time, thus further delaying re-occupation.
24. Revenue costs which would also need to be taken and offset against the rental income include:
 - Surveying time;
 - Officer time in preparing the interim EDMO;
 - Interim costs associated with preparing RPT case e.g. legal;
 - Building Insurance;
 - Any security costs associated with the dwelling;
 - Property management costs;
 - Furniture storage (if appropriate);
 - Maintenance of electrical goods / servicing of boilers etc;
 - Void loss periods;
 - Council Tax bills (for any void period);
 - Utility bills (linked to any usage whilst renovating the property).
25. Under current guidance the use of EDMO's is highly restrictive and the process complex. At the time that this report was prepared, 14 EDMO's have been implemented in the UK as a result of the Housing Act 2004 powers and nine of those by two councils.
26. It is the officers view that at the moment there is little evidence that EDMO's provide any advantage over other tools that are already being successfully used to deal with empty properties, especially when the associated costs are taken into account.
27. Annex 1 to this report outline in more detail issues that need to be taken into consideration of other enforcement powers available, these are:
 - Use of building act legislation and planning legislation to deal with unsightly and dangerous buildings
 - Compulsory purchase

28. Annex 2 outlines the councils current position with regard to empty properties. which is briefly to use a carrot and stick approach using a mixture of advice, grants and enforcement action.

Consultation

29. Consultation has taken place through the field survey of the property and subsequent postal questionnaire, and through discussion with other councils including the Regional Empty Property Forum and LACORS.

Options

30. The information provided by the field survey, the questionnaires and other sources of information on empty homes leads to the question of how best to balance the need to minimise the number of empty homes in the city with the level of resources that might be needed to bring more of these back into use to provide value for money for the council. There are three main options presented for the Executive Member to consider.
31. **Option One** - To maintain the current level of empty homes work and the resources attached to it.
32. **Option Two** - Increase the level of dedicated resources to empty homes through the employment of an Empty Property Officer with responsibility to lead on all of the initiatives and raise the profile of empty homes work in the city.
33. **Option Three** - Increase the level of resources to empty homes work through the Employment of a temporary officer on a fixed term, (as and when required) to release other staff within the team to take on the more proactive role in pursuing an EDMO as and when the need arises.

Analysis

34. **Option One** - The Housing Standards and Adaptation Team and local housing associations have a good record of working in partnership to bring homes back into use. This is achieved by using the following tools:
- Free advice and assistance including advice on how to get any necessary repairs, safety or modernisation works completed, the availability of grant funding and leasing schemes with local housing associations;
 - Information presented on our Website;
 - Forums for discussion of particular issues or concerns through the York Residential Landlord Association (for private landlords) and the York Housing Liaison Group (for housing associations);
 - The availability of grants to be used for the repair and modernisation of properties owned by private landlords. Grants are channelled through housing associations that lease the homes for a minimum of five years with the council nominating homeless households to them;
 - Enforcement powers to bring properties back to a reasonable condition (although this doesn't necessarily mean bringing them back into use);
 - Decent Home Grants which are aimed primarily at Houses in Multiple Occupation to bring them up to the Decent Home Standard. This can

include an empty flat, for example, within a larger house of multiple occupation (HMO).

35. The current low level of resources, which equates to about 300 hours per year of officer time put into empty homes work has produced good results especially when considering the very low numbers of long-term empty homes in York. In 2007/2008 24 properties were brought back in to use.
36. Using the most recent data from the Empty Homes Agency based on 2007 figures the national average for the percentage of homes being empty (both long and short term empty) was 3.02%. York's compares favourably to the national figure with 2.40%, which also is the second lowest in the Region.
37. If this option is chosen, it would mean that where the existing policy / procedures did not result in the property been brought back into use, the council would not be able to pursue an EDMO without adversely impacting on the other areas of work, which would affect the councils CPA (Housing) performance. This would also result in the council not being able to address any estate 'blight' associated with any such empty property.
38. **Option Two** - The Empty Property Officer would have responsibility for introducing and promoting new initiatives and for maximising the effectiveness of existing activities. Subject to identifying the necessary funding, these could include:
 - Production of an Empty Homes Information pack with details of the options and opportunities to bring homes back into use;
 - Establishing an empty property telephone 'hotline';
 - Continuing to working with the key partners to visit properties and verify they are empty. – including targeting the 144 properties which have been identified as possibly suitable to grant aid but which did not respond to our second questionnaire;
 - More frequent use of council tax records to identify empty homes and contact their owners;
 - Ensuring a more 'streamlined' service with better co-ordination between departments of the council (Street Environment, Planning, Building Control, Ward Committees etc);
 - A commitment to utilise the powers given in the Housing Act and in particular pursuing Empty Dwelling Management Orders.
39. It is extremely difficult to predict and measure with certainty what impact these additional activities might have.
40. It must be remembered too, that homes brought back into use, other than through grant aid may well be sold or rented on the open market or let at market rents. Only a small proportion would be affordable homes let to vulnerable households and those in housing need in the city.
41. In addition to the officer time associated with the works, there would be other costs associated with the use of EDMO's which would need additional financial provision to be made. These are legal costs, management and maintenance costs, some of which would be recoverable from the rent, subject to a surplus. Where a property also required capital improvements, the council would also

need to make provision for these costs within the General Fund Capital Programme. There is currently no capital provision.

42. **Option Three** - An alternative to employing a full-time Empty Homes Officer would be to release officer time spent within Housing Standards and Adaptations on empty homes work. By employing a technical officer on those occasions when an EDMO may be suitable, it may be expected that some additional homes could be brought back into use. However, it is difficult to predict how many this might be. This option would give a commitment to utilise the powers given in the Housing Act and in particular pursuing Empty Dwelling Management Orders, but the more wide ranging work outlined in option 2 would not be possible.

Summary

43. In conclusion we have now a good picture of the very low number of properties within the city. On balance the level of additional resources needed to significantly increase the number of homes brought back into use is difficult to justify.
44. Continuing current partnership work on empty homes will ensure that appropriate advice and information is given to owners on the options for bringing them back into use. The use of the York Landlord Grant will also ensure a proportion of the homes are leased to local Housing Associations for homeless families and those in housing need.
45. This policy can always be re-examined if future changes in the housing market results in an increase in the number of empty homes. We also play an active part in the regional empty property forum and will seek to use best practise.

Corporate Priorities

46. This report contributes to two of the Council's seven direction statements and four corporate priorities.

Direction statements

- We will seek to place environmental sustainability at the heart of everything we do.
 - Bringing empty homes back in to use improves the physical environment
- We will promote cohesive and inclusive communities
 - Empty homes are a cause, symptom and symbol of neighbourhood decline giving rise to environmental deterioration and acting as a focus for crime and anti-social behaviour

Corporate Priorities

- Reduce the environmental impact of council activities and encourage, empower and promote others to do the same
 - By using the existing stock to provide homes
 - By encouraging owners of empty properties to bring in them back in to use

- Improve the health and lifestyles of the people who live in York
 - Empty properties are a wasted resources of sustainable and decent homes which could support independent health lifestyles.
- Improve the quality and availability of decent, affordable homes in the city.
 - By ensuring that homes are brought back it use via the grant rout will ensure that they are at affordable rents
- Improve the actual and perceived condition and appearance of the city's streets and housing estates and publicly accessible spaces
 - Well maintained homes are central to creating safe, and thriving neighbourhoods

Implications

47. **Financial Implications** - The recommended option has no financial implications.
48. The additional staffing costs associated with options 2 and 3 are set out in the table below and show that the maximum cost would be £16k in the current financial year and £33k in 2009/10. There would be an ongoing cost of £33k per annum.

Staffing costs	2008/09		2009/10	
	Min £	Max £	Min £	Max £
Option 2	15,726	16,286	31,315	33,385
Option 3	12,025	14,430	6,013	7,215

49. In addition to the staffing costs identified above there would be further significant revenue costs associated with pursuing EDMO's with options 2 and 3, as outlined in paragraph 24 above. Whilst it is difficult to assess the exact costs it is anticipated that these revenue costs would be in the region of £10k per annum. In addition to the revenue there would be the capital costs of bring the empty property up to the required standard. Obviously the amount will depend on the condition of the individual property but the average is likely to be approximately £35k per property. As outlined in paragraph 23 it is thought that amounts in the region of £20k could be recovered through ongoing rental income. The council would still need to identify capital resources to fund the initial works required and to pay any excess that could not be recovered in the longer term.
50. The following is an example of the potential costs associated with pursuing an EDMO.

Expenditure

Remedial / Capital works	£35,000
7 years Management costs at 15%	£ 5,460
Maintenance (estimated at £500 pa)	£ 3,500
Fee for Rent Property Tribunal	£ 150
Legal costs associated with an EDMO	£ 2,000
Officer time associated with pursuing an EDMO	£ 7,215
Buildings insurance @ £200 pa	£ 1,400

Total Expenditure **£54,725**

Income

7 year social rent for 3 bed house (£433.33 per month) £36,400
Less 7 Years social rental void loss at 10% £ 3,640
Less bad debt provision (10%) £ 3,640
Total Income **£29,120**

Shortfall over 7 years **£25,605**

51. There is no approved budget for any of these additional revenue costs. If either option 2 or 3 were approved it would be necessary to identify existing revenue budgets within the department that could be reduced to fund this work. It is unlikely that any additional budget could be identified within housing and therefore the savings would need to be found within adult social services budgets.
52. The councils capital programme is predicated on receiving a number of high risk receipts and is currently fully committed, with no additional funding available until 2010/11 at the earliest. Again, should either option 2 or 3 be approved other capital programme schemes will need to be reduced to meet the funding available.
53. The total estimated costs of options 2 and 3 are summarised in the table below

Estimated costs	Option 2 £'000		Option 3 £'000	
	2008/9	2009/10	2008/9	2009/10
Staffing	16	33	14	7
Other running costs	10	10	10	10
Total revenue	26	43	24	17
Capital investment per property	35	35	35	35

54. **Legal Implications** - There are no immediate legal implications associated with either option. The use of Empty Dwelling Management Orders would require the involvement of the council's solicitors.
55. There are no Human Resources (HR), Equalities, Crime and Disorder, Information Technology (IT), Property or Other implications arising directly from this report.

Risk Management

56. In compliance with the Council's risk management strategy there are no risks associated with Option's 1 or 2 of this report. The main risk that has been identified in this report is about being able to maintain the current situation within the existing measure and resources
57. The risks associated with the recommendation of this report are assessed at a net level of below 16

Recommendations

58. That the Advisory Panel advise the Executive Member to approve:

Option One of this report, to maintain the current level of empty homes work and the resources attached to it.

Reason: With the low level of empty homes within the city the current approach provides value for money.

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Wards Affected: *List wards or tick box to indicate all*

All

Specialist Implications Officer(s) *List information for all*

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For further information please contact the author of the report

Background Papers:

EMAP report December 2004
Housing Act 2004
Government Guidance

Annexes

Annex 1 - Other Powers Available
Annex 2 - Current Empty Property Policy