

Meeting of:	<b>Cabinet</b>
Date of Meeting:	<b>Monday, 19 July 2021</b>
Relevant Scrutiny Committee:	Corporate Performance and Resources and Homes and Safe Communities
Report Title:	Enforced Sale Policy
Purpose of Report:	To present the proposed Enforced Sale Policy and Equality Impact Assessment for consideration and to make recommendations for the next steps.
Report Owner:	Executive Leader and Cabinet Member for Performance and Resources
Responsible Officer:	Rob Thomas - Managing Director
Elected Member and Officer Consultation:	Individual Ward Members have not been consulted on this report as this is a strategic issue and its impact is Vale wide. Committee Reports Inbox - Legal Services Operational Manager (Accountancy) Operational Manager (Property) Operational Manager (Exchequer Services) Finance Support Manager (Regeneration and Planning) Operational Manager (Planning and Building Control) Head of Shared Regulatory Services Operational Manager (Neighbourhood Services) - Shared Regulatory Services Operational Manager (Regeneration) Head of Housing and Building Services Operational Manager, Public Housing Services Equality Co-ordinator
Policy Framework:	This is a matter for Executive decision by Cabinet.

Executive Summary:

1. This Cabinet report presents the proposed Enforced Sale Policy (attached at Appendix 1) and the Equality Impact Assessment (attached at Appendix 2) for consideration. The report also recommends delegated powers to finalise the Enforced Sale Policy (Recommendation 2) and to authorise the use of the Enforced Sales Procedure (Recommendations 3 and 4), subject to the views of Corporate Performance and Resources and Homes and Safe Communities Scrutiny Committees (Recommendation 5).
2. The Council engages actively in the Welsh Government's Empty Property Management Support Programme and the proposed Enforced Sale Policy is a result of this workstream.
3. Long-term problematic empty properties can have a negative impact on the visual amenity in the immediate neighbourhood and cause nuisance to adjacent occupiers. They can also lead to increased fly-tipping, vandalism, arson, potential squatting and other anti-social behaviour.
4. The proposed Enforced Sale Policy is a mechanism by which problematic, long-term empty private sector dwellings, derelict commercial properties and land are brought back into beneficial use where Council debts have been registered against the property but not discharged.
5. The Enforced Sale Procedure is used as a means of last resort, where owners have abandoned the empty property or land or it's not clear who the owner is.
6. The Enforced Sale Procedure is a means of recovering debt and of bringing about a change of ownership. A new owner will be more able and willing to invest in the property, ensure its occupation and maintain its upkeep in order to bring such properties back into use.
7. Each case will be assessed individually and is subject to financial viability.

## **Recommendations**

1. That Cabinet notes the details of the proposed Enforced Sale Policy and Equality Impact Assessment.
2. That the Head of Regeneration and Planning be authorised to agree the final format of and any necessary typographical changes and minor amendments to the Enforced Sale Policy prior to its publication, and thereafter update it with any factual updates in response to policy or legislative changes as appropriate.
3. That authority be granted to the relevant Head of Service linked to the initial Local Land Charge, in consultation with the Head of Finance / Section 151 Officer and the appropriate Cabinet Member(s) to approve the use of the Enforced Sale Procedure and the appropriate method of sale.
4. That authority be granted to the Monitoring Officer / Head of Legal and Democratic Services to prepare, execute and complete all legal documentation required to use the Enforced Sale Procedure and to facilitate the appropriate method of sale.
5. That this matter be referred to the Corporate Performance and Resources and Homes and Safe Communities Scrutiny Committees for their consideration. Should no comments or objections be received, Cabinet would consider the Enforced Sale Policy and Equality Impact Assessment as agreed.

## **Reasons for Recommendations**

1. To note the proposed Enforced Sale Policy (and Equality Impact Assessment), which is a mechanism for recovering debt and to bring long-term problematic empty properties back into use where possible.
2. To obtain authority for the Head of Regeneration and Planning to make typographical or other minor changes as necessary to the Enforced Sale Policy, without the need to seek further Cabinet approval.
3. To obtain authority for the relevant Head of Service, in consultation with the Head of Finance / Section 151 Officer and the appropriate Cabinet member(s) to use the Enforced Sale Procedure.
4. To obtain authority for the Monitoring Officer / Head of Legal and Democratic Services to prepare, execute and complete all legal documentation required to facilitate the delivery of the Enforced Sale Procedure.
5. To allow consideration of the matter by the relevant Scrutiny Committees prior to any final decisions being taken.

## **1. Background**

- 1.1 Problematic, long-term empty private sector dwellings, derelict commercial properties and land can have a negative impact on the visual amenity in the immediate neighbourhood and cause nuisance to adjacent occupiers. They can

also lead to increased fly-tipping, vandalism, arson, potential squatting and other anti-social behaviour.

**1.2** During 2019 the National Assembly for Wales (Equality, Local Government and Communities Committee) undertook an inquiry into the issue of empty properties. The aim of the inquiry was to better understand the scale and impact of the empty properties issue and to assess the effectiveness of the measures to deal with the situation.

**1.3** Links to the Final Empty Properties Report (published in October 2019) and the Welsh Government response (published in November 2019) can be found in Section 5 (Background Papers) of this report. The Final Empty Properties Report (paragraph 103, page 41) concludes that:

*Although there is a general belief among stakeholders that the powers available to local authorities are the right ones, it is evident that the bureaucracy and complexity associated with them are hampering their use. Their infrequent use has resulted in further apprehension as local authority officers have not developed the expertise necessary to exercise the powers. This has been acknowledged and we welcome the recent commitment by the Welsh Government to arrange training packages for local authority members and officers on the enforcement options available to them.*

**1.4** Recommendation 8 (page 41) of the Final Empty Properties Report, states:

*We recommend that the Welsh Government presses ahead with its proposed training for local authority officers and members on the enforcement options available to assist them in tackling empty properties, and updates the Assembly on progress in delivering the sessions by Easter 2020.*

**1.5** In November 2019 the Minister for Housing and Local Government announced that Welsh Government will be rolling out a support programme of training for all local authorities to participate in, known as the Empty Property Management Support Programme. The key themes of this support programme will be empty properties, town centres, housing and enforcement powers.

**1.6** Despite the constraints caused by the pandemic, the Council engages actively in the Welsh Government's Empty Property Management Support Programme. A virtual training event for Cabinet members and officers was held in November 2020, and the proposed Enforced Sale Policy is a result of this workstream.

## **2. Key Issues for Consideration**

**2.1** This is the first Enforced Sale Policy to be developed by the Vale of Glamorgan Council, although similar policies have been developed by several Councils across Wales and England.

- 2.2** Cabinet will recall that the Empty Homes Strategy 2019-24 was adopted in March 2020 (Cabinet minute C285, 23rd March 2020, refers). The said Strategy identifies the use of the Enforced Sale Procedure as a means of bringing empty private sector homes back into use. A link to the adopted Strategy (refer to Appendix 8, Aim 4.2, page 62) can be found in Section 5 (Background Papers) of this report.
- 2.3** The proposed Enforced Sale Policy is attached at Appendix 1. As well as problematic, long-term empty private sector dwellings, derelict commercial properties and land are also included in the scope of the proposed Enforced Sale Policy. This is in line with the Welsh Government's Empty Property Management Support Programme.
- 2.4** The purpose of the proposed Enforced Sale Policy is to set out a framework for the Council to use statutory powers under the Enforced Sale Procedure with a view of targeting long-term problematic empty properties and to bring these properties back into use where possible.
- 2.5** The Enforced Sale Procedure is a means of recovering debt where the Council has placed a charge on the property e.g. for works carried out in default or outstanding Council Tax; and, of bringing about a change of ownership. It is anticipated that a new owner will be more able and willing to invest in the property, ensure its occupation and maintain its upkeep in order to bring such properties back into use.
- 2.6** The Enforced Sale Procedure will be used as a means of last resort where owners have abandoned the empty property or land or it's not clear who the owner is. Each case will be assessed individually and is subject to financial viability. Properties will only be selected for Enforced Sale when the Council has exhausted all other reasonable options to resolve the existence of the empty property.
- 2.7** For a property to be considered suitable for enforced sale, all the following criteria must be met:
- 1.** The total debt owed to the Council must exceed £500;
  - 2.** The debt must not be statute barred;
  - 3.** The debt must be more than 2 months old to give a property owner adequate time to redeem it;
  - 4.** The property must be vacant with no prospect of it becoming occupied in the next 6 months;
  - 5.** The owner, if they can be traced, must have demonstrated non-compliance with legislation in relation to the property; and,
  - 6.** No positive/acceptable response has been received to letters regarding the Enforced Sale.
- 2.8** Following adoption, a cross service working group will be created to finalise procedural arrangement details within the Enforced Sale Policy. Each case will

be reviewed by the manager of the service area dealing with the subject property before being further reviewed by Legal Services when they are instructed, to ensure that future use of the Enforced Sale Procedure is lawful, necessary and proportionate.

### **3. How do proposals evidence the Five Ways of Working and contribute to our Well-being Objectives?**

**3.1** The proposed Enforced Sale Policy has been developed (and once adopted will be used) through the five ways of working, as follows:

**1. Long Term** - It is more efficient and sustainable to make the best possible use of our existing building stock and land and to use statutory powers when necessary to bring empty properties back into beneficial use.

**2. Prevention** - To prevent issues from escalating, a voluntary way forward to renovation and re-occupation is always the preferred option. The Council will seek to work with owners of empty properties in the first instance, offering advice, assistance and options designed to help owners with the process of returning properties back to use. It is hoped that when empty property owners become aware of the Enforced Sale Policy, they may maintain their properties in a reasonable state and condition resulting in less time spent by the Council in having to deal with this problem.

**3. Integration** - Use of the Enforced Sale Procedure to bring properties back into beneficial use can align with and impact upon the well-being goals of partner organisations such as Registered Social Landlords (zoned by Welsh Government to develop in the Vale of Glamorgan) and the Local Health Board.

**4. Collaboration** - Use of the Enforced Sale Procedure can enable collaboration with Registered Social Landlords, property developers and private investors, and is an opportunity to align investment strategies with priority areas to bring about a mutually beneficial outcome.

**5. Involvement** - Addressing problematic properties under the Enforced Sale Policy will be done in conjunction with property owners and local communities to bring about a mutually beneficial outcome.

### **4. Resources and Legal Considerations**

#### **Financial**

**4.1** The proposed Enforced Sale Policy enables the Council to recover outstanding debts, which is financially beneficial to the Council.

**4.2** All debts owed to the Council on the property are recovered on sale (less VAT on the cost of the works in default). In addition, reasonable costs incurred by the

Council in pursuing the sale can also be deducted. This includes all legal, surveying, marketing and administrative costs.

- 4.3** Debts are affected by the Limitation Act 1980, in that any debts that are statute barred (generally 12 years old from the date when the expense was incurred) are no longer recoverable. Thus, any attempts to recover debts by using the Enforced Sale Procedure, are generally not permissible after this time has passed.
- 4.4** The Council has a duty to secure the best possible price on a sale following a valuation of the property by a suitably qualified surveyor. There are various Acts of Parliament which allow the Council to register appropriate debts as a Charge against a property (refer to Appendix 1 (Appendix A: Table of Statutes)). These Acts give the Council the power to enforce a Charge, so that the Enforced Sale Procedure under the Law of Property Act 1925 can be used to enforce the sale. It is therefore recommended (Recommendation 3 in this report) that authority be granted to the relevant Head of Service linked to the initial Local Land Charge, in consultation with the Head of Finance / Section 151 Officer and the appropriate Cabinet member(s) to approve the use of the Enforced Sale Procedure and the appropriate method of sale.
- 4.5** Upon completion of sale, the proceeds of sale (less costs and charges) will be separately identified and ring-fenced in the Council's accounts with interest applied. Where the owner is known, they will be advised of any proceed from the sale that they are entitled to. Where the owner is not known, the proceeds of sale will be held by the Council or paid into Court.

### **Employment**

- 4.6** There are no employment implications in relation to this report.

### **Legal (Including Equalities)**

- 4.7** Section 7 of the Local Land Charges Act 1975 provides that a financial Local Land Charge takes effect, as if it had been created by a Deed of Charge by way of a legal mortgage within the meaning of the Law of Property Act 1925. Section 101(1) of the Law of Property Act 1925 confers on a mortgagee a power of sale. An Order of the Court is not necessary as the legislation itself provides that power. Section 87(1) of the Law of Property Act 1925 confers a right of possession. In addition, many of the statutes used by the Council, which enable works to be carried out in default, also give the Council a power of sale and a right of priority over other Charges.
- 4.8** The Council must write to the owner, and any other Chargee, stating that it intends to carry out an enforced sale. If another Chargee should pay the outstanding money, this prevents the Enforced Sale Procedure as there is no longer an outstanding charge. Likewise, if at any stage prior to the actual sale of

the property the owner should pay the outstanding debt, then Enforced Sale is no longer an option.

- 4.9** The Council may not exercise the power of sale until a notice under Section 103 of the Law of Property Act 1925 is served (requiring payment of the debt), and the payment of such debt and any interest has not been made for 3 months after the service of the Notice.
- 4.10** Once default of payment is apparent, the Council can apply to the Land Registry for registration of the charge if the property or land is registered. Once confirmation has been received from Land Registry that the charge has been registered, and the 3 months' notice under Section 103 Law of Property Act 1925 has expired, the property can be marketed for sale. It is good practice to send another letter to the Owner and any Chargees to warn them again that the charge is to be enforced.
- 4.11** An Equality Impact Assessment has been undertaken and is attached at Appendix 2. The assessment concludes that there is no indication that there is a negative protected characteristic issue associated with the proposed Enforced Sale Policy. The provisions of the Human Rights Act 1998 must be considered by the Council. In particular, the right (Article 8) of the property owner *to respect for your private life, your family life, your home and your correspondence*, and the right (Article 1 of the First Protocol) *to enjoy your property peacefully*. These rights need to be balanced against the general benefits and rights of neighbours and the surrounding community. A statement that the intended action of the Council in exercising its power of sale is considered to be proportionate in accordance with the Act should be included in the Statement of Reasons/Enforced Sale Instruction document seeking authorisation to pursue an Enforced Sale.
- 4.12** The finalised Enforced Sale Policy and Equality Impact Assessment will be published on the Vale of Glamorgan Council website Empty Homes pages.
- 4.13** In accordance with the Well-being of Future Generations (Wales) Act 2015 and the Welsh Language (Wales) Measure 2011, the finalised Enforced Sale Policy will be translated into Welsh prior to being published on the Council's website.

## **5. Background Papers**

National Assembly for Wales: Equality, Local Government and Communities Committee (October 2019), Empty Properties Report:

<https://www.assembly.wales/laid%20documents/cr-ld12797/cr-ld12797%20-e.pdf>

Welsh Government (November 2019), Written Response:

<https://www.assembly.wales/laid%20documents/gen-ld12892/gen-ld12892%20-e.pdf>

Vale of Glamorgan Council, Empty Homes Strategy 2019-2024 (adopted March 2020, Cabinet minute C285 refers):

<https://www.valeofglamorgan.gov.uk/Documents/Living/Housing/Empty-Homes/Empty-Homes-Strategy-2019-2024-English.pdf>





**Vale of Glamorgan Council**

**Enforced Sale Policy  
(June 2021)**

## 1. Purpose

- 1.1 The purpose of this policy is to set out a framework for the Vale of Glamorgan Council to use the Enforced Sale Procedure utilising relevant statutory powers with a view of targeting long-term problematic empty properties, and to bring these properties back into use where possible.
- 1.2 The Vale of Glamorgan Council recognises the importance of bringing empty properties back into use, as they are a wasted resource and can be a source of many problems. Long-term empty properties can have a negative impact on the visual amenity in the immediate neighbourhood and cause nuisance to adjacent occupiers. They can also lead to increased fly-tipping, vandalism, arson, potential squatting, dangerous structures and other anti-social behaviour.

## 2. Background

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

## 3. Benefits of the Enforced Sale

- 3.1 There are several benefits of utilising Enforced Sale which include the following:
  - **Social Benefits**  
By selling a property that is in a derelict condition to a new owner, there is a likelihood that the new owner will refurbish the property thus increasing the likelihood it will become inhabited again and will no longer have a negative visual impact on the street scene.
  - **Financial Benefits**  
Financial charges which could otherwise prove difficult to recover, can be discharged out of the proceeds of the sale.
  - **Good Housekeeping Benefits**  
Owners of properties may become aware of the Council's initiative and in future may discharge the debts more readily, carry out works pursuant to statutory notices served, and keep their properties in a reasonable state and condition. This is expected to result in less time spent by the Council in dealing with long-term empty and problematic properties.

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

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

#### **4. Identifying and Prioritising Potential Properties for Enforced Sale**

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

## **5. Criteria for Enforced Sale**

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

## **6. Service of Notices & Registration of Charges**

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

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

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

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

## **8. Procedure where the Property is not Registered**

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

## **9. Human Rights Act 1998**

- 9.1 Consideration of the provisions of the Human Rights Act 1998 must be considered by the Council. In particular, the right to respect for private and family life, home and correspondence and peaceful enjoyment of possessions. These rights need to be balanced against the general benefits and rights of neighbours and the surrounding community. For example, the need to deal with any dangerous or health risk conditions; the desire to bring a long-term empty property back into use; and, to reduce crime, arson, fly tipping and the negative impact of the empty property on the locality.

- 9.2 A statement that the intended action of the Council in exercising its power of sale is considered to be proportionate in accordance with the Act should be included in the Statement of Reasons/Enforced Sale Instruction document seeking authorisation to pursue an Enforced Sale.

## **10.Recovery of Costs**

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

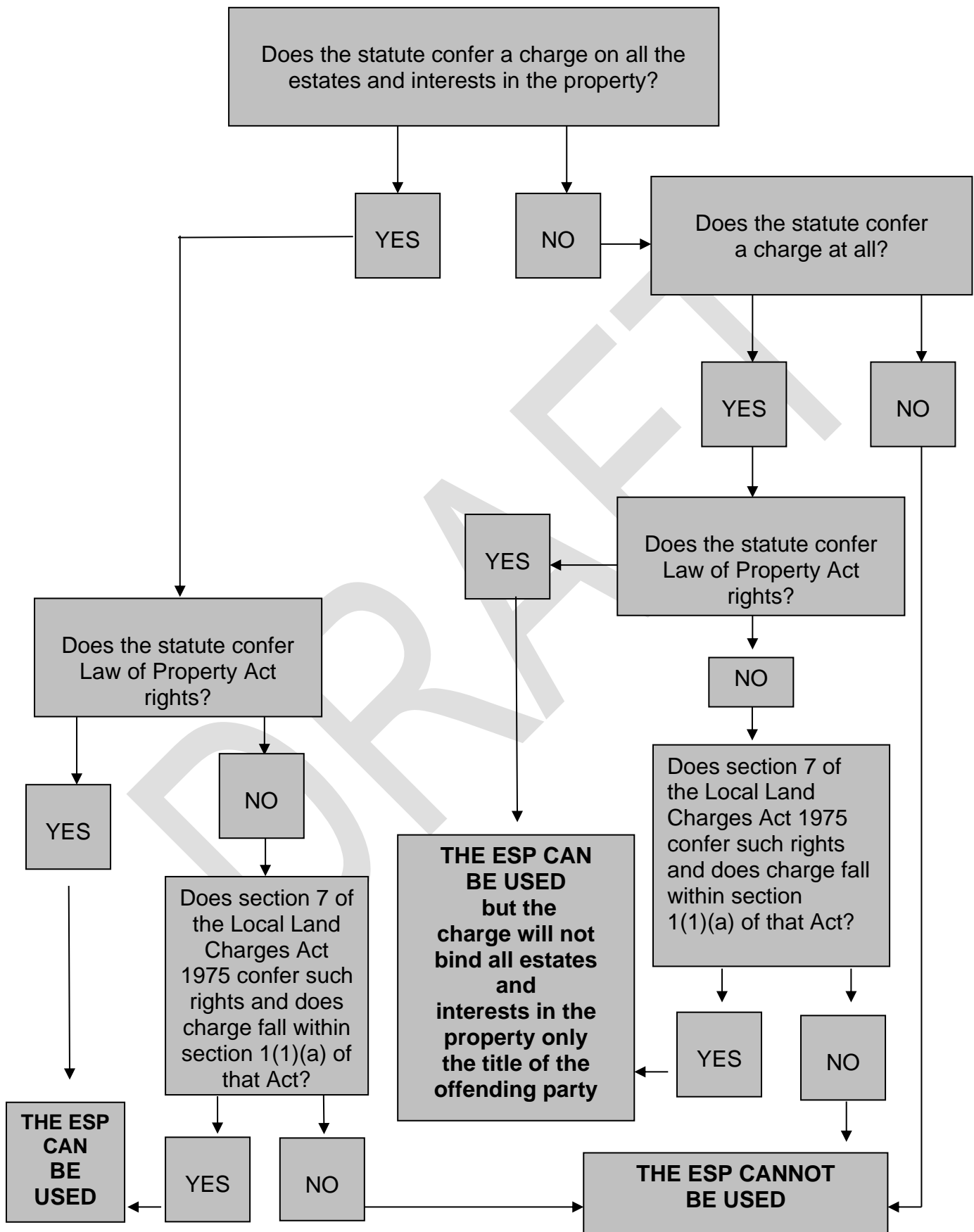
## **11.Selling the Property**

- 11.1 The Council has a duty to secure the best possible price on a sale. Following a valuation of the property by a suitably qualified surveyor, the appropriate method of sale will be determined by the relevant Head of Service linked to the initial Local Land Charge; the Head of Finance/Section 151 Officer; and, the appropriate Cabinet Member(s).
- 11.2 Where appropriate the Council may invite closed tenders from Registered Social Landlords that work in partnership with the Council, with the property being offered to the highest bidder if the valuation is met or bettered. The Council may also consider a sale by auction or other appropriate method.
- 11.3 Upon completion of sale, the proceeds of sale (less costs and charges) will be separately identified and ring-fenced in the Council's accounts with interest applied. Where the owner is known, they will be advised of any proceed from the sale that they are entitled to. Where the owner is not known, the proceeds of sale will be held by the Council or paid into Court.

## Appendix A: Table of Statues

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

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





## **Appendix C: Enforced Sale Procedure (Checklist)**

Following adoption, a cross service working group will be created to finalise procedural arrangement details within the Enforced Sale Policy.

### **Stage 1: Identify Property**

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

### **Stage 2: Statutory Notices**

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

### **Stage 3: Works in Default**

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

### **Stage 4: Debt Checks**

- v. Check for any other Council debt e.g. Council Tax, NNDR arrears.
- vi. Check that there is sufficient debt owed to Council to breach the financial threshold of £500.

### **Stage 5: Local Land Charge**

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

### **Stage 6: Notify Owner**

- viii. Inform Finance of the position. All notices originally served and notices of demand for payment are re-sent with an invoice for the debt (demand for payment 28 days). To accompany this, send out letter to the owner and interested parties to advise that an Enforced Sale Procedure may be implemented if the debt is not cleared. Evidence delivery of the re-sent notices, invoice and letter by hand and sent by 1<sup>st</sup> class post.

### **Stage 7: Section 103 Notice**

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

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

### **Stage 8: Land Registry Charge**

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

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

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

### **Stage 9: Notify Owner**

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

### **Stage 10: Sell the Property**

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

### **Stage 11: Recover Costs**

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

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

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

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

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Including the Welsh Language and Socio-economic Duty

Please click on headings to find general guidance or section guidance with an example.

You will find supporting information in appendices at the end of the guidance.

When you start to assess your proposal, arrange to meet Tim Greaves, Equality Co-ordinator, for specific guidance. Send the completed form to him for a final check and so that he can publish it on our Vale of Glamorgan equality web pages.

Please also contact Tim Greaves if you need this equality impact assessment form in a different format.

**1. What are you assessing?**

Vale of Glamorgan Council, Enforced Sale Policy (June 2021)
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**2. Who is responsible?**

<b>Name</b>	David Williams	<b>Job Title</b>	Principal Regeneration Officer
<b>Team</b>	Regeneration	<b>Directorate</b>	Managing Director and Resources

**3. When is the assessment being carried out?**

<b>Date of start of assessment</b>	17 <sup>th</sup> May 2021
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**4. Describe the proposal?**

<p><b>What is the purpose of the proposal?</b></p> <p>This is the first Enforced Sale Policy to be developed by the Vale of Glamorgan Council, although similar policies have been developed by several Councils across Wales and England.</p> <p>The purpose of the proposed Enforced Sale Policy (copy attached) is to set out a framework for the Council to use statutory powers under the Enforced Sale Procedure with a view of targeting long-term problematic empty properties i.e. where owners have</p>
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# Equality Impact Assessment

## Including the Welsh Language and Socio-economic Duty

abandoned the empty property or land or it's not clear who the owner is, and to bring these properties back into use where possible.

The Enforced Sale Procedure will be used as a means of last resort to bring long-term empty and problematic properties back into use (residential, commercial or land), where the Council has placed a charge on the property e.g. for works carried out in default or outstanding Council Tax.

Each individual property will be considered on its own merits and financial viability. It is proposed (subject to Cabinet approval) that delegated authority be granted to the relevant Head of Service linked to the initial Local Land Charge (in consultation with the Head of Finance / Section 151 Officer and the appropriate Cabinet member(s)) to approve the use of the Enforced Sale Procedure and the appropriate method of sale.

### **Why do you need to put it in place?**

Long-term problematic empty properties can have a negative impact on the visual amenity in the immediate neighbourhood and cause nuisance to adjacent occupiers. They can also lead to increased fly-tipping, vandalism, arson, potential squatting and other anti-social behaviour.

Bringing empty properties back into use makes better use of existing private sector dwellings, derelict commercial properties and land.

The Enforced Sale Procedure is a means of recovering debt and of bringing about a change of ownership. It is anticipated that a new owner will be more able and willing to invest in the property, ensure its occupation and maintain its upkeep in order to bring such properties back into use.

During 2019 the National Assembly for Wales (Equality, Local Government and Communities Committee) undertook an inquiry into the issue of empty properties. The aim of the inquiry was to better understand the scale and impact of the empty property issue and to assess the effectiveness of the measures to deal with the situation. Links to the Final Empty Properties Report (published in October 2019) and the Welsh Government response (published in November 2019) can be found here:

National Assembly for Wales: Equality, Local Government and Communities Committee (October 2019), Empty Properties Report

<https://www.assembly.wales/laid%20documents/cr-ld12797/cr-ld12797%20-e.pdf>

Welsh Government (November 2019), Written Response

<https://www.assembly.wales/laid%20documents/gen-ld12892/gen-ld12892%20-e.pdf>

The proposed Enforced Sale Policy is a result of the Councils on-going participation in the Welsh Government's Empty Property Management Support Programme (refer to Recommendation 8, page 41 in the abovementioned National Assembly for Wales report).

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Furthermore, the use of the Enforced Sale Procedure is also identified in the Council's Empty Homes Strategy 2019-2024, which was adopted in March 2020 (Cabinet minute C285, 23<sup>rd</sup> March 2020, refers). A link to the said Strategy can be found here (refer to Appendix 8, Aim 4.2, page 62):

<https://www.valeofglamorgan.gov.uk/Documents/Living/Housing/Empty-Homes/Empty-Homes-Strategy-2019-2024-English.pdf>

### Do we need to commit significant resources to it (such as money or staff time)?

Each individual property will be considered on its own merits and financial viability.

### What are the intended outcomes of the proposal?

The intended outcomes are:

1. The recovery of debts owed to the Council;
2. A change of ownership; and,
3. The empty property is brought back into use.

### Who does the proposal affect?

**Note:** If the proposal affects lesbian, gay, homosexual, or transgender people, ensure you explicitly include same-sex couples and use gender neutral language.

The owners will be impacted through the sale of their property in order to repay a debt incurred in securing, making safe or otherwise managing a property that they have failed to maintain or manage effectively. The debt recovery process and the enforced sale process means that they will have already been given many months to pay the debts off or engage with the Council to explore other repayment options. Each case will be reviewed by the manager of the service area dealing with the subject property before being further reviewed by Legal Services when they are instructed.

There is no recorded data relating to whether the owners of long-term problematic empty properties are likely or unlikely to fall into any specific protected group. However, in cases where the owner is vulnerable or lacks capacity to make decisions, it is highly unlikely that the Enforced Sale Procedure would be pursued. The preferred approach would be to work with relatives and other partners involved with the owner to resolve the situation by an alternative process.

The adoption of an Enforced Sale Policy has the potential to bring many benefits to the residents of the Vale of Glamorgan in a number of ways. Bringing the property back into use will eliminate any associated issues (as outlined in the answer to **Why do you need to put it in place?** above), which are often the subject of complaints from neighbours,

# Equality Impact Assessment

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local ward members and other members of the public. In the case of existing private sector dwellings, the property will also become available again for occupation, and therefore contribute to meeting local housing need.

### **Will the proposal affect how other organisations work?**

The Enforced Sale Policy aligns with the Welsh Government's well-being goals and the five ways of working. Using the Enforced Sale Procedure to bring properties back into beneficial use can align with and impact upon the well-being goals of partner organisations such as Registered Social Landlords (zoned by Welsh Government to develop in the Vale of Glamorgan) and the Local Health Board.

Furthermore, using the Enforced Sale Procedure can enable collaboration with Registered Social Landlords, property developers and private investors, and is an opportunity to align investment strategies with priority areas to bring about a mutually beneficial outcome.

### **Will the proposal affect how you deliver services?**

Once adopted a cross service working group will be created to finalise procedural arrangement details within the Enforced Sale Policy.

It is hoped that when empty property owners become aware of the Enforced Sale Policy, they may maintain their properties in a reasonable state and condition resulting in less time spent by the Council in having to deal with this problem.

### **Will the proposal impact on other policies or practices?**

The proposal aligns with the following Vale of Glamorgan Council policies and practices:

1. Empty Homes Strategy 2019-2024;
2. Corporate Plan 2020-2025;
3. Local Development Plan 2011-2026;
4. Local Housing Strategy 2015-20 (pending an update);
5. Housing Regeneration Policy 2018;
6. Local Housing Market Assessment 2019; and,
7. Council Tax Policy 2021-2022.

### **Can you change the proposal so that it further promotes equality of opportunity and fosters good relations?**

The proposed Enforced Sale Policy is subject to internal consultation, consideration by the Homes and Safe Communities Scrutiny Committee and Cabinet approval.

# Equality Impact Assessment

## Including the Welsh Language and Socio-economic Duty

**How will you achieve the proposed changes?**

This is a matter for Executive decision by Cabinet.

**Who will deliver the proposal?**

The Vale of Glamorgan Council (Head of Service linked to the initial Local Land Charge).

**How will you know whether you have achieved the proposal's purpose?**

Refer to the answer (above) to **What are the intended outcomes of the proposal?**

### 5. What evidence are you using?

**The Gunning Principles, established from past court cases, can be helpful in ensuring we apply fairness in engagement and consultation:**

**Principle 1:** Consultation must take place when the proposals are still at a formative stage. You must not have already made up your mind.

**Principle 2:** Sufficient reasons must be put forward to allow for intelligent consideration and response. Have people been given the information and opportunity to influence?

**Principle 3:** Adequate time must be given for consideration and response. Is the consultation long enough bearing in mind the circumstances?

**Principle 4:** The product of consultation must be conscientiously taken into account when finalising the decision.

**Have you complied with the duty to engage as described above and are you sufficiently informed to proceed?**

<b>Yes</b>	X	<b>No</b>	
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**Engagement (with internal and external stakeholders)**

Consider communities of interest or place (where people are grouped together because of specific characteristics or where they live).

Please include engagement with internal networks where appropriate – GLAM and Ethnic Minority Network.



# Equality Impact Assessment

## Including the Welsh Language and Socio-economic Duty

The scope of the proposed Enforced Sale Policy (i.e. long-term problematic empty private sector dwellings, derelict commercial properties and land) aligns with the Welsh Government's Empty Property Management Support Programme. The proposed Enforced Sale Procedure is comparable with other Local Authorities in the South East Wales who utilise such a procedure. Continued input from Legal Services is required to ensure the process is legally sound.

Prior to its adoption in March 2020, the abovementioned Empty Homes Strategy 2019-2024 (Cabinet minute C285, 23rd March 2020, refers), was subject to both internal consultation and consultation with relevant external partners and stakeholders. For completeness a link to the Equality Impact Assessment can be found here:

<https://www.valeofglamorgan.gov.uk/Documents/Living/Housing/Empty-Homes/Equality-Impact-Assessment-Empty-Homes-Strategy-2019-2024.pdf>

### **Consultation (with internal and external stakeholders)**

Consider communities of interest or place (where people are grouped together because of specific characteristics or where they live).

Please include consultation with internal networks where appropriate – GLAM and Ethnic Minority Network.

Please refer to the answer (above) to **Engagement (with internal and external stakeholders)**.

### **National data and research**

Including Equality and Human Rights Commission's 'Is Wales Fairer 2018' Report, its Measurement Framework, the Future Generations Report 2020, Welsh Index of Multiple Deprivation, Census.

Using the Enforced Sale Procedure is a means of last resort. It provides a method for getting long-term problematic empty properties back into use and has been adopted by several Councils across both Wales and England as an effective way of dealing with empty properties.

### **Local data and research**

Including Vale of Glamorgan Council's Community Impact Assessment.

There is no recorded data relating to whether the owners of long-term problematic empty properties are likely or unlikely to fall into any specific protected group. Each case will be reviewed by the manager of the service area dealing with the subject property before being further reviewed by Legal Services when they are instructed.

# Equality Impact Assessment

## Including the Welsh Language and Socio-economic Duty

The adoption of an Enforced Sale Policy has the potential to bring many benefits to the residents of the Vale of Glamorgan in a number of ways. Bringing the property back into use will eliminate any associated issues (as outlined in the answer (above) to **Why do you need to put it in place?**), which are often the subject of complaints from neighbours, local ward members and other members of the public.

### 6. How robust is the evidence?

#### Does it show what the impact will be (positive and negative)?

On balance it is considered that the blight on a community caused by a long-term problematic empty property is significantly greater than the property rights of the owner, particularly where an owner has abandoned the empty property or land or it's not clear who the owner is.

The proposed Enforced Sale Policy therefore has no negative impacts on any group with protected characteristics.

#### What are the gaps?

No equalities impact has been identified where action is required.

#### What will you do about this?

Each case will be reviewed by the manager of the service area dealing with the subject property before being further reviewed by Legal Services when they are instructed.

#### What monitoring data will you collect?

The Enforced Sale Policy is a new practice for the Vale of Glamorgan Council. Following adoption, a cross service working group will be created to finalise procedural arrangement details within the Enforced Sale Policy. This work will inform future decisions regarding monitoring data, analysis and reporting.

#### How often will you analyse and report on this?

To be agreed. The Enforced Sale Policy is a new practice for the Vale of Glamorgan Council. Only one case is expected (subject to the debt not being repaid) during the first 12months following adoption of the Policy.

# Equality Impact Assessment

## Including the Welsh Language and Socio-economic Duty

**Where will you publish monitoring data and reports?**

To be agreed.

### 7. Impact

**Is there an impact?**

It is considered that the proposed Enforced Sale Policy will have a positive impact in terms of recovering debt; bringing about a change of ownership; and, bringing problematic empty properties back into use.

There is no indication that there is a negative protected characteristic issue.

**If there is no impact, what is the justification for thinking this? Provide evidence.**

Where no equalities impact is identified, it is considered that this is due to the scope and purpose of the proposed Enforced Sale Policy.

**If there is likely to be an impact, what is it?**

**Age (positive)**

Existing cases of problematic and/or long-term empty properties highlight that older people can feel more vulnerable in relation to associated issues such as anti-social behaviour. Bringing such properties back into use by enforcing the sale will eliminate these issues and as a result allow older local residents to feel safe and comfortable in their own homes.

**Disability (positive)**

As above, some residents living with a disability (physical or mental) may feel particularly vulnerable. Bringing properties back into use by enforcing the sale will eliminate associated issues and as a result allow residents to feel safe and comfortable in their own homes.

In cases where the owner is vulnerable or lacks capacity to make decisions, it is less likely that the Enforced Sale Procedure would be pursued. The preferred approach would be to work with relatives and other partners involved with the owner to resolve the situation by an alternative process.

# Equality Impact Assessment

## Including the Welsh Language and Socio-economic Duty

### **Gender reassignment, including gender identity**

Ensure policies explicitly include same-sex couples and use gender neutral language.

No impact foreseen.

### **Marriage and civil partnership (discrimination only)**

No impact foreseen.

### **Pregnancy and Maternity**

No impact foreseen.

### **Race**

No impact foreseen.

### **Religion and belief**

No impact foreseen.

### **Sex**

No impact foreseen.

### **Sexual orientation**

Ensure policies explicitly include same-sex couples and use gender neutral language.

No impact foreseen.

### **Socio-economic considerations (positive)**

Socio-economic disadvantage can be disproportionate in both communities of interest and communities of place – think about how this leads to further inequality of outcome and how intersectionality can exasperate this.

Long-term problematic empty properties can have a negative impact on the visual amenity in the immediate neighbourhood and cause nuisance to adjacent occupiers. They can also lead to increased fly-tipping, vandalism, arson, potential squatting and other anti-social behaviour. Bringing problematic empty properties back into use will play a significant part in eliminating many of the aforementioned issues which are often the subject of complaints from neighbours, particularly in areas of deprivation.

### **Welsh language (positive)**

# Equality Impact Assessment

## Including the Welsh Language and Socio-economic Duty

How does your proposal ensure that you are working in line with the requirements of the Welsh Language Standards (Welsh Language Measure (Wales) 2011), to ensure the Welsh language is not treated less favourably than the English language, and that every opportunity is taken to promote the Welsh language (beyond providing services bilingually) and increase opportunities to use and learn the language in the community?

Bilingual correspondence is issued in accordance with Welsh Language Standards and correspondence is welcomed in Welsh or English. The adopted Enforced Sale Policy will be available both in Welsh and English.

### Human rights (positive)

Consideration of the provisions of the Human Rights Act 1998 must be considered by the Council. In particular, the right to respect for private and family life, home and correspondence and peaceful enjoyment of possessions. These rights need to be balanced against the general benefits and rights of neighbours and the surrounding community. For example, the need to deal with any dangerous or health risk conditions; the desire to bring a long-term empty property back into use; and, to reduce crime, arson, fly tipping and the negative impact of the empty property on the locality. A statement that the intended action of the Council in exercising its power of sale is considered to be proportionate in accordance with the Act should be included in the Statement of Reasons/Enforced Sale Instruction document seeking authorisation to pursue an Enforced Sale.

### How do you know?

**Explain this for each of the relevant protected characteristics as identified above.**

Explained above, where positive impact is identified.

### What can be done to promote a positive impact?

**Explain this for each of the relevant protected characteristics as identified above.**

A positive impact can be promoted by preparing a case study for the Vale of Glamorgan Council website *Empty Homes* pages.

It is hoped that when empty property owners become aware of the Enforced Sale Policy, they may maintain their properties in a reasonable state and condition resulting in less time spent by the Council in having to deal with this problem.

# Equality Impact Assessment

## Including the Welsh Language and Socio-economic Duty

**What can be done to lessen the risk of a negative impact?**

**Explain this for each of the relevant protected characteristics as identified above.**

There is no indication that there is a negative protected characteristic issue.

**Is there a need for more favourable treatment to achieve equal outcomes?  
(Disability only)**

None identified.

**Will the impact be positive, negative or neutral?**

**Explain this for each of the relevant protected characteristics as identified above.**

There is no indication that there is a negative protected characteristic issue.

### 8. Monitoring ongoing impact

**Date you will monitor progress and outcomes**

To be agreed. The Enforced Sale Policy is a new practice for the Vale of Glamorgan Council. Only one case is expected (subject to the debt not being repaid) during the first 12months following adoption of the Policy.

**Measures and outcomes that you will monitor**

To be agreed.

**Date you will review implemented proposal and its impact**

To be agreed.

# Equality Impact Assessment

## Including the Welsh Language and Socio-economic Duty

### 9. Further action as a result of this equality impact assessment

Possible Outcomes	Say which applies
No major change	There is no indication that there is a negative protected characteristic issue.
Adjust the policy	
Continue the policy	
Stop and remove the policy	

### 10. Outcomes and Actions

<p><b>Recommend actions to senior management team</b></p> <p>None. There is no indication that there is a negative protected characteristic issue associated with the proposed Enforced Sale Policy.</p>
<p><b>Outcome following formal consideration of proposal by senior management team</b></p> <p>Agreed, that no major change is necessary.</p>

### 11. Important Note

<p><b>Where you have identified impacts, you must detail this in your Cabinet report when seeking approval for your proposal.</b></p> <p>It has been identified that the proposed Enforced Sale Policy has no negative impacts on any group with protected characteristics.</p>
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### 12. Publication

<p><b>Where will you publish your approved proposal and equality impact assessment?</b></p> <p>The approved proposal will be published on the Vale of Glamorgan Council website <i>Empty Homes</i> pages.</p> <p><b>In addition to anywhere you intend to publish your approved proposal and equality impact assessment, you must send a copy to Tim Greaves, Equality Co-ordinator, to publish on the equality pages of the Vale of Glamorgan website.</b></p>
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# Equality Impact Assessment

## Including the Welsh Language and Socio-economic Duty

### 13. Authorisation

<b>Approved by (name)</b>	Marcus Goldsworthy
<b>Job Title (senior manager)</b>	Head of Regeneration and Planning
<b>Date of approval</b>	1 <sup>st</sup> July 2021
<b>Date of review</b>	To be agreed

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