

# Flintshire County Council

## Vacant Private Sector Dwellings Enforced Sale Procedure

### Background

In order to address the growing issue of long term empty dwellings within the county borough, Flintshire County Council are developing a number of initiatives to return properties back into use. In the majority of cases, this will involve working with owners to bring properties back into use through providing both financial and practical support. However, in a number of cases it will not be possible to work in partnership with owners and in some cases this may result in a requirement for the Council to carry out works in default to secure a property or deal with specific issues with a debt then being owed to the Council by the owner for works carried out.

One of these initiatives which enable the council to recoup debts and bring properties back into use in the process is the Enforced Sale. The Enforced Sale Procedure ("ESP") sets out how this will be achieved. Without the use of an ESP, it's likely that a number of substantial debts owed to the council would remain owing with properties remaining empty and potential blights on communities for an indefinite period of time.

The purpose of this procedure is to highlight under what circumstances are the powers to use an Enforced Sale available and a step by step guide to utilising an Enforced Sale on a vacant property.

### Purpose of an Enforced Sale

The use of the Enforced Sale powers are statute based and when the necessary rights are conferred allows for Flintshire County Council to either recover expenses incurred through a debt recovery process or by charging the legal title(s) of a property with the debt and then selling the property in order to recover debt.

This power is available for use, where the statutory provisions allow, for the recovery of debts on:

- Land
- Occupied dwellings
- Empty properties
- Commercial properties

Though the intention of this document is to address the specific issues around vacant residential dwellings where powers are available through the various environmental, planning and highways legislation.

The Enforced Sale Procedure is part of a range of activities which are used to deal with empty properties and should be considered alongside other initiatives.

Where possible the Council works in partnership with a range of public, community and private sector organisations to bring properties back into use.

## **Human Rights Act 1998**

It is reasonable to assume that the ESP may affect human rights. In particular Article 8 of part 1 of The Convention provides that everyone has the right to respect for private and family life, his home and his correspondence. Paragraph 2 of Article 8 provides that there shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Further, Article 1 of the First Protocol provides that every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The second paragraph of Article 1 however provides that this shall not in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

Regard shall be had to these provisions in each case where use of the ESP is considered and the matter shall only be progressed where it is considered that interference with human rights (if any) is justified and proportionate in accordance with the Human Rights Act 1998.

## **Preliminary Considerations**

### **1. Benefits of an Enforced Sale**

#### **1.1 Social**

By selling a long term empty property that is in a poor state of repair to a new owner, it is anticipated that work will take place to return the property back into use.

#### **1.2 Financial**

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

The prospect of having the property sold could potentially bring about the settlement of the outstanding debt by the owner / mortgagee.

#### **1.3 Proactive property owners**

Some property owners may become more proactive in dealing with any substantial defects on their properties as awareness raises about the willingness of the council to use such steps instead of ignoring issues and expecting the council to carry out works in default.

#### **1.4 More realistic than a Compulsory Purchase Order**

Most complaints about problematic long term empty properties enquire whether or not the Council would be prepared to use a CPO in order to acquire a property and return the property into use. However, the reality of a CPO means that it is costly in terms of time, personnel and finance to take such steps. Whereas an Enforced Sale can be achieved in substantially less time and many costs reclaimed by the Council at the point of sale.

It is however important to remember that the use of an Enforced Sale is for when all other attempts to recover the money have been unsuccessful and should not be used without attempting to communicate and work with the owner in the first instance. In some cases, other options such as a CPO may be considered more realistic or worthwhile.

### **2. Criteria**

- Debt should be greater than £1,000 (or lower in exceptional circumstances).
- Property is vacant for 6 months or more
- There is not considered to be any interference with human rights or where interference is likely, it is justified and proportionate.

In cases of the debt being lower than £1,000, greater justification would be required for taking this action.

Justifiable reasons will include, but not be limited to

- Likely to cause danger to members of the public
- Likely to cause damage to adjoining or neighbouring properties

*Please note – in cases where the criteria are not met, it may still be possible to follow the procedure as a means of encouraging the owner to settle any outstanding debts and / or bring the property back into use within their own means.*

### **3. Legal Basis**

The primary consideration is whether the relevant statutes under which the default works were carried out provide the necessary rights and powers to use an Enforced Sale against an empty property.

If the statute(s) confer a charge on all the estates and interests in the property concerned and also confer the Law of Property Act 1925 rights in regard thereto (i.e. grant the powers and remedies available as if the charge had been created by deed) then the procedure may be used and the charge will bind any prior charges affecting the property.

Covenants and easements over the subject property will not be so bound.

If the statute(s) do not confer such rights, it will be necessary to consider whether Section 7 of the Local Land Charges Act 1975 applies.

If it does, the procedure may still be used but only the estate of the offending party will be bound, not all the estates and interests in the property. The existence of any prior charges and the quality of the offending party's title are major considerations when deciding whether or not to use the procedure under such circumstances.

If none of the above applies, then the procedure cannot be used. Other means of bringing the property back into use would therefore need to be considered.

Appendix 1 (page 23) sets out the details of the relevant statutes by which an Enforced Sale can be considered.

### **4. Validly serving statutory notices**

Notices are generally served by environmental health officers requiring works to be undertaken. Great importance is attached to ascertaining that such notices have been served in accordance with the relevant statutory provisions. The requirement as to the service of notices vary according to the statute pursuant to which the notices has been served.

It is essential that all notices are served correctly as per the relevant statutes. If a notice is not served correctly then this will have serious consequences on the ability to proceed with the Enforced Sale including the ability to recover the debt.

The Council will certify to the Land Registry that it has all the necessary powers to carry out the required action and has undertaken all steps in accordance with the relevant statute. The Land Registry will not decide on the merits on the application based on information provided but will instead rely on the relevant certifications given. If an owner disagrees with the action taken, the Land Registry may well wish the Council to clarify the position taken.

The serving officer will complete a 'Record of Serving of Notice' form on service of a statutory notice using the CIVICA System (or equivalent). This will provide a formal

record as to the method of service of the notice. Departments may use different forms

If any doubts exist about the validity of a notice being served it would be advisable not to proceed further with an Enforced Sale until issues have been addressed.

## **Environmental Protection Act 1990**

Where applicable, in the case of empty properties, a notice served under Section 80(2) of the EPA should only be served on the owner. If a notice is incorrectly served the consequences can be detrimental for the use towards an Enforced Sale.

Once it has been decided that the notice has been served on the appropriate person, it will be necessary to consider whether the notice has been validly served.

There is no provision with Section 160 of the EPA for service by affixing the notice to property. It will be remembered as we're dealing with empty and abandoned properties this may often be the preferred method of service.

However, Section 233 of the Local Government Act 1972 supplements the provisions of Section 160 of the EPA and provides for service by affixing to a property. This is the preferred method to be used by Flintshire County Council. The notice is affixed to property and copies sent to interested parties, if confirmed owner is found original is sent and copy affixed to property.

## **5. Necessary approval required**

The Council's Chief Officer, Community and Enterprise, has delegated authority to approve the use of an Enforced Sale. Before proceeding, necessary approval from the Housing Regeneration and Strategy Manager must be sought and the Authority Form (see Appendix 14 page 43) signed.

## **6. Land Registry**

If the property is already registered at Land Registry Wales, the charge(s) will need to be registered against the title(s) before a sale can proceed.

If the property is unregistered, enquiries need to be made with the Land Registry as to how they would deal with an application for first registration of title by a purchaser from the County Council so that information can be provided for the purchaser and requisitions avoided.

On receipt of an application for first registration by a purchaser, the Land Registry may, if no deeds or details of the incumbrances affecting the property are available, request further information on:

- The extent of the land to be registered (as affected by the charge). It is suggested that where the boundaries of the property are clearly defined on the ground there should be no problems.

Where the boundaries are unclear, a careful investigation will need to be undertaken and a plan prepared illustrating the extent of the property. It is suggested, for clarity, that a disposal plan is prepared by the Council's Chief Officer Governance illustrating the extent of the property to be disposed of.

A search of the index map of the Land Registry may assist in determining the extent of adjoining registered titles and may assist in determining the boundaries of the subject property.

- Incumbrances affecting the property – the Land Registry will probably make the usual ‘protective entry’ on the register to the effect that the property is subject to such incumbrances as affect the same at the date of registration, no details have been provided on first registration.

Once you’ve decided to adopt the ESP, it may be prudent to contact Land Registry Wales with regards to the proposals. This will assist to:

- Advise them of your proposals to commence the submission of applications for registration of charges arising from the statutes you have identified (where the property is registered).
- Agree which statutes confer the necessary rights and priorities (in view of the changes required by the Land Registry)
- Agree the format of such applications
- Agree how such registrations will be treated and the timescales to deal with them.
- Find out how the Land Registry will deal with applications for first registration by a purchaser from the Council under the procedure (where the property is unregistered).

## **7. Notices give prior to sale**

**Section 81A Environmental Protection Act 1990** – subject to comments on pages 4-5 of this guide, if default works have been carried out under this Act it would be prudent (if such notice has not already been served) to serve a notice under Section 81A. This will have the effect of ensuring the statutory charge will bind all the estates and interests in the property.

If no such notice is served, no charge will arise pursuant to Subsection 81A (4) of the Act. Also, Flintshire County Council can not charge any interest on the debt pursuant to Subsection 81A (i)(a) of the Act.

(See Appendix 2, page 24 for suggested form of notice)

**Section 103 Law of Property Act 1925** – despite the fact that Section 103 (ii) of the Act allows a mortgagee the right to exercise the power of sale if interest under the charge is in arrears for two months, it is nevertheless felt prudent to service a notice under Section 103 (i) of the Act (see Appendix 2, page .

The power of sale cannot be exercised until three months has elapsed from the date of service of the notice.

*NB. There is no reason why the notice of demand for payment of the debt cannot incorporate the necessary wording to satisfy the requirements of Section 103 and which notice can be served soon after the works have been completed. (See Appendix 2, page 24 for suggested form of notice)*

It will be necessary though to provide the first mortgagee (if any) with copies of the Section 103 notices in the usual way.

## **8. Is possession a factor?**

A power of sale is worthless unless the mortgagee can sell with vacant possession. When dealing with empty properties, it is expected that all properties will be vacant. A mortgagee assumes certain liabilities when taking possession, which extend further than a local authority's liabilities when undertaking their statutory rights and duties.

When possible, possession should be taken later rather than sooner in order to limit the liability of the Council. Immediately prior to exchange of contracts or in an auction, the property should be inspected by the relevant Empty Property Officer to ensure that possession has not been taken by any person or that work to bring the property back into use has not commenced.

*NB. If the property is occupied, it will be necessary to recover possession by court proceedings or for the occupier to agree to surrender up possession. This may have the difficulty of conferring a liability on the local authority as stated above and this must be taken into consideration in the decision process.*

## **9. Limitation Act**

A local authority's right to enforce a sale of property subject to an outstanding financial local land charge is time limited by the Limitation Act 1980 (Section 20); this provides that

*"no action shall be brought to recover the principal sum of money secured by a mortgage or other charge of property or the proceeds of the sale of the land after the expiration of 12 years from the date on which the right to receive the money is accrued."*

The right to receive the money accrues when the default works have been completed **not** when the demand is sent out.

The right to receive the money will depend on the legislation under which the local authority is acting. For example:

- the right to recover expenses under Section 81(4) of the Environmental Protection Act 1990 arises when the expense is incurred by the local authority.
- the right to recover interest under Section 81A of that Act arises only when the local authority has served notice under Section 81A
- the right to recover expenses under Section 5 or 6 of the Prevention of Damage by Pests Act 1949 arises when expenses have been incurred.
- the right to recover expenses under Section 99 of the Building Act 1984 arises when the expense is incurred by the local authority.

Therefore, it is the norm that the right to recover money arises when expense is incurred, but there may be some exceptions to this.

## **10. Which charges should be registered?**

The comments at point 4 (pages 4 - 5) should be considered, together with any other factors affecting the validity of a charge, when considering which charge(s) to register.

Strictly speaking it is only necessary for one charge to be registered pursuant to which a sale can then be effected or in respect of a sale of unregistered property, for the sale to be effected pursuant to one charge. The sale can then proceed and any other outstanding financial local land charges discharged from the proceeds of sale.

The drawback to registering only one charge is that an owner / charge could thwart a proposed sale by discharging the charge registered in which case it will then be necessary, assuming there are other charges capable of registration, to make a further application to register an additional charge or charges.

A minimum fee of £40-50 per charge (assuming the charge is less than £100,000) is required by the Land Registry. Where there are several charges it would avoid excessive registration fees to register only one or two charges. In these cases it may be advisory to register the highest value charges.



# The Housing Regeneration and Strategy Service's Role

## 1. Identifying Empty Dwellings

Vacant properties can be identified in a number of ways (subject to Data Protection Act Requirements):

- Council Tax Records
- Empty Property Database
- Other Databases
- Electoral Roll
- Housing Department Records – has anyone been re-housed from this address?
- Other Local Authority Departments
- Neighbours
- Elected Members
- Publicity and awareness campaigns
- Land Registry

The Empty Property officer will keep a record showing where the information came from and any costs incurred.

As soon as a property is identified, it is important that a site visit is made to assess the dwelling and identify any issues that may need addressing by the council.

## 2. Is a property suitable for enforced sale?

Once a property has been identified and put forward for consideration for Enforced Sale, the two following checks will be considered:

- **Is the property registered at the Land Registry?**

While this isn't essential for carrying out an Enforced Sale, it does make the process more complicated if the property isn't registered (see details in Pages 5-6).

- **Does the property have financial local land charges registered against it?**

Information on this can be obtained from the Land Charges Section of the Corporate and Customer Services Department.

## 3. Compiling a background file

Files will be prepared on an ongoing basis on all empty properties showing all relevant information, all action taken by the Council and any other relevant information. This will be done using the 'CIVICA' system (or equivalent) unless otherwise agreed.

For the purposes of an Enforced Sale, the file must specifically include:

- copies of all statutory notices served prior to the council carrying out the necessary works in default together with details as to how the notices were served.

- the record of service notice form (see point 4, page 4-5).
- the work instructions to the contractor for the work to be carried out.
- All the invoices from the contractors along with a breakdown of labour and material charges.
- Copies of all registered local land charges
- Record of consideration of human rights issues and justification for proceeding with ESP
- Record of consideration of any equalities issues

These are copied and filed with an unique reference number. An account summary sheet will also be produced which shows what is in the file, the notice number and the amount of financial charge in each case. All figures shown should be excluding any interest charged.

The file should also include copies of any ownership details, local land charge details and any correspondence sent or received in relation to the property.

#### **4. Re-service of Notice**

Copies of original notices and demands for payment will need to be re-served on the property. This will ensure that an owner of interested party is made aware of the debt and also ensures that there is adequate evidence available. The notices are all served and registered in a defined manner.

In addition, any notices needed to be served under section 81A Environmental Act 1990 are served at this point (see point 7 page 7).

Copies are taken of all the original notices served and then served on the property by hand, and also sent by first class post from an agreed post box to the listed owner and any other interested party of which the Council is aware.

After a period of 28 days if no appeal (as to the Section 81A notice) or payment is made, a notice pursuant to Section 103 of the Law of Property Act is then served. This notice gives the owner three months to repay the debt.

The property cannot be sold until the Section 103 notice has expired, but during this time the procedure is progressed through the various stages as far as possible.

A paragraph can be included in the notices served by environmental health officers when demanding payment of the debt following completion of the works to satisfy the provisions of Section 103 of the Law of Property Act. However, it is felt that to do so might lead the owners or recipients to treat the proposal of a property sale contemptuously.

Therefore, notices pursuant to Section 103 of the Law of Property Act are only served when the charges are not repaid after the 28 day notice expires.

## **The Section 103 notices are divided into two categories**

1. Where notices pursuant to Environmental Protection Act 1990 have been served.
2. Where no notices pursuant to Environmental Protection Act 1990 have been served

(See Appendix 2, page 24 for forms of the various notices)

When serving the notices, a photograph is taken of the property and copies of all notices served and confirmation of the method of service are attached to the background file.

### **5. Authorisation**

The Authority Form is prepared which, together with the background file, is passed to the Housing Strategy & Regeneration Manager for authorisation and signature under his delegated powers. This authority is delegated to him by resolution of the Council.

### **6. The Chief Officer Governance is instructed**

When the use of the procedure has been authorised by Chief Officer, Community and Enterprise, it is returned to the Empty Properties Officer at the Housing Regeneration & Strategy Team.

The Authority Form is attached to the file and forwarded to the Council's Chief Officer Governance. At this point an instruction is sent to the Council's Chief Officer People and Resources debt recovery section to:

- suspend all legal action regarding the debt
- check the account numbers of the outstanding debts to make sure no payments have been received to date.

## **The Chief Officer Governance Role – Property Registered**

The following guidelines are to be followed when the property **is** registered at HM Land Registry. For guidelines when the property has **not** been registered at HM Land Registry please go to page 17.

### **1. What charges are still outstanding and have all notices been served correctly?**

Upon receipt of the file from the Housing Department the first step is to go through the background file making a list of all the charges (See Appendix 3, page 25)

A check is then carried out to find out which charges are still outstanding.

This is done in order to ensure that the debt has not been repaid in one of any number of ways.

A check will be made to confirm that all statutory notices have been validly served.

### **2. Write to all interested parties**

Assuming the above checks have confirmed that the charges (not necessarily all of them), are still outstanding and notices have been served correctly, a letter is sent to all interested parties on the Land Registry Title Information Document advising them of the position (see Appendix 4, page 26). A letter is also sent to any mortgagee (see Appendix 5 page 27)

By doing this, the owner or any other interested parties are given fair notice of the steps the local authority proposes to take.

It is accepted that in many cases the whereabouts of the owner will be unknown. Even so a letter addressed to the property and any other address(es) is sent in an attempt to notify the owner.

As the steps to be taken are far reaching these steps will help to combat any potential criticism or challenges from an owner or other interested parties. Every attempt is made to give such persons notice of the Council's proposals and ample opportunity to repay the debt.

A period of approximately 21 days is allowed for the persons served to respond. In the event of such failure the next steps are then taken.

### **3. Registration of charge**

How the charge is registered will depend on the reaction received from the Land Registry (point 6, pages 6-7)

Below is the recommended procedure for registration of a charge with Land Registry Wales:

If there is no response to the letter(s) in point 2 a resolution is prepared. This records:

- the statutory provisions
- the service of necessary notices
- what work was done and when
- the registration of the charge in the register of local land charges (and claims priority over all estates and interests).
- that the Council has all the necessary rights and powers to make the application for registration of the charge(s) and that it has taken all appropriate steps in accordance with the relevant statute.

(See draft resolution applying to the Building Act 1984: Appendix 6, pages 28 – 30)

Resolutions for other statutes can be based on the form of this resolution with the appropriate amendments.

- The resolution is sealed by the Council
- Prepare application for registration form AP1

Provided each charge does not exceed £100,000 the current registration fee is £40 - £50 per charge

- Prepare a form SC

This is necessary to claim priority in favour of the Council's charge over any existing charge and registered against the title.

- Make application for registration at HM Land Registry

The completed AP1 application form is sent to the Land Registry together with:

- covering letter
- the sealed and dated resolution together with a certified copy of each resolution
- completed form SC

(See sample application for registration: Appendix 6, pages 28 – 30)

#### **4. Charges are registered**

Notification is received from the Land Registry on completion of the registration. Arrangements are then made for the sale of the property (see part 5 of this procedure commencing on page 18).

At this point:

- a check is made that the charges have not been discharged
- letters are sent to the owners and interested parties advising that the Council's charges are registered and it is the Council's intention to pursue a sale of the property. This gives the owner and interested parties notice of the Council's intentions so that they cannot claim steps were not taken to notify them (See Appendices 4 -5, pages 26 - 27)

- the background file is returned to the Housing Regeneration and Strategy Manager who is advised that the registration has been completed and is requested to consider how a sale is to be effected (see point 1 page 19)

## **The Chief Officer Governance Role – Property not registered**

The following guidelines are to be followed when the property is **not** registered at HM Land Registry. For guidelines when the property **is** registered at the Land Registry please go to page 14.

### **1. Are the charges still outstanding?**

A check is made that the charges have not been repaid and notices have been validly served (see point 1, page 14).

### **2. Check that the property is not registered**

Assuming the check in point 1 above has confirmed that the charges, or at least some of them, are still outstanding, and that notices have been validly served, a search of the index map is undertaken at the Land Registry to ensure that the property is not registered. The search also includes the adjoining properties; if they are registered, this might reveal what incumbrances affect the property and also that extent / limits of the title of the property in question.

### **3. Try to ascertain what incumbrances affect the property**

Using any information found as a result of the investigations in point 2 above and any information available as to the name(s) of the owner, the purported owner or any other interested party – a Land Charges Act 1972 search is carried out against the name of any such person(s) and the property concerned. This may give some clues as to incumbrances affecting the property, e.g. easements, covenants and charges.

Where the statutory charge binds all estates and interests in the property – any registered charges will be of no great significance (other than for the purposes of giving notice to any charge as to the Council's intentions).

However, where this is not the case it will be paramount importance to ascertain if any prior charges affect the property (see point 3, page 4). If the statutory charge does not bind all the estates and interests, it would be inadvisable to proceed with the procedure until it is certain there are no prior charges and the statutory charge binds all freehold or long leasehold.

As stated in point 2, if any of the adjoining properties are registered it may be possible to ascertain what incumbrances affect the same. This may give a purchaser some clues as to the matters affecting the property and make the property more marketable.

The alternative is that no such steps are taken and the purchaser is made aware, via the contract terms, that such is the case.

In both cases though, the contract for sale will need to contain special conditions covering the position. (see Appendix 10, Pages 34 - 39).

### **4. Write to all interested parties**

If the searches provide any information as to the identity or whereabouts of the owner of other interested parties in a similar manner to that as outlined (see point 2,

page 14). Letters are also sent to the property addressed to 'the owner' or owners and all parties interested',

If you can obtain possession of the title deeds this will assist with the disposal.

### **5. Enquiries Completed**

Once the investigations in point 1, 2 and 3 above have been completed and there has been no reply to any letters sent, as referred to in point 4 above, the file is returned to the Housing Regeneration & Strategy Service so that the property can be put forward for sale.

Once the method of disposal is known, a letter is sent to interested parties (see Appendix 7, page 31).



## **Selling the Empty Property**

### **1. Methods of selling the empty property**

#### **Auction**

Whatever the preferred method of sale, the same rules apply to a sale under the ESP as to any other sale of a property by a mortgagee. Reasonable care needs to be taken to obtain a proper price for the property.

Sale of the property through auction is considered to be the most expedient method of disposal and generally a mortgagee can safely accept the highest bid for a property described and advertised in a properly publicised auction.

#### **Sale by private treaty to a Registered Social Landlord**

Apart from the objective of recovering a debt, the renovation or improvement of a property is also a major factor. A sale by auction or on the open market does not guarantee a property will be improved. A sale to a registered social landlord will probably have the desired effect and may also influence or enable several properties to be renovated as a scheme of demolition and redevelopment to be implemented.

It may therefore be agreed to sell, where appropriate to a registered social landlord by private treaty without full exposure to the property market.

There is an obvious risk in taking this course of action due to the Council's legal obligation to obtain a proper price for the property. In order to reduce the risk, Flintshire County Council and the Registered Social Landlord will arrange for an independent valuation to be carried out on the property to determine the sale price.

It is anticipated this will give the Council a reasonable defence to any claim by an owner that the property has been sold at less than its value.

### **2. Valuation**

Whatever the method of sale, a valuation will also be undertaken by the Valuations & Estate Service. Once the Housing Strategy and Regeneration Manager has been advised that the charges have been registered against the title and / or that the property can be put forward for sale, the Housing Regeneration and Strategy Manager will instruct the Head of Assets and Economic Development accordingly.

### **3. Role of Valuations & Estates**

The Valuations & Estates Service will undertake the valuation of the property and consider how the sale is to be effected in accordance with the Council's Property Procedures and Standards Policy (where appropriate). Although it is recognised that properties sold under the ESP are not council assets, the Property Procedures and Standards Policy is good practice which should be followed wherever possible. Once the method of sale and sale price and purchaser (where the property is not being sold at auction) have been determined, the Valuations & Estates Service will instruct the Chief Officer Governance to commence the appropriate conveyancing process.

## **4. Contract**

### **Registered Property**

The contract for sale will be prepared by Legal Services and will be similar to a contract for sale by a mortgagee in possession.

### **Unregistered property**

There will probably be no deeds or details of any incumbrances affecting the property and the contract for sale needs to reflect this (see Appendix 10, pages 34 – 39 for a form of suggested special condition of sale).

In such cases the form of the resolution prepared in respect of registered land (see point 4, page 16) is incorporated in the contract as a recital as a convenient method of settling out where the Council's power to sell is derived from and to assist with the purchaser's application for first registration.

Additionally, on completion of the sale the Land Registry will require the Council to provide a letter containing certification by the Council that it has all the necessary rights and powers to dispose of the property and that it has taken all appropriate steps in accordance with the relevant statute (a draft of such letter is contained in Appendix 13, page 42). This contains the same certification as the resolution referred to above.

It will be necessary to make the purchaser's solicitor aware that the letter needs to be submitted with their clients' application for first registration.

## **5. Title**

Where the title deeds have not been recovered the following should be borne in mind.

**Registered Title** – copies of the document referred to on the title can usually be obtained from the Land Registry. Where they are not available, an appropriate clause must be included in the contract to cover the position. Whilst it is not the practice of the Land Registry to supply copies of registered leases, it may be possible for Land Registry Wales to do this.

**Unregistered Title** – As stated in point 3 (page 19 – 20), there will probably be no deeds or details of the encumbrances affecting the property.

## **6. Are the charges still outstanding?**

Immediately prior to auction / exchange of contracts, a further check is made to ascertain whether the charges have been paid.

A conveyancing process will then be undertaken in order to achieve completion of the sale, depending on the method of sale.

## 7. Post sale

The position is similar to a sale by a mortgagee in possession. Fees are deducted from the proceeds of sale that cover the costs of selling the property and the original debts.

The following fees can be deducted following the sale of a property:

- auctioneer's fee
- independent valuation fee
- legal fees
- surveyor's fee
- Housing Regeneration & Strategy Service administration fee

If the debts are greater than the proceeds of sale, it will be necessary to consider which fees (if any) have first call on the proceeds or not. It is recommended that external fees – auctioneers, independent valuation etc are prioritised, with internal fees waived if necessary. Where the proceeds do not cover the total costs of the sale and the outstanding debt (including interest), the remaining debt will be taken off the property and placed against the owner of the property prior to the enforced sale being implemented. This then takes the form of a personal debt, which may be pursued in the normal manner, if economically viable.

If there is any balance from the sale, and the Council is aware of the whereabouts of the owner / the person first entitled, the balance is paid over in the usual way. If the whereabouts of the owners is unknown, the money can be paid into Court.

Alternatively, the money can be held in an interest bearing account so that if the person first entitled comes forward, the money can be paid over.

As these monies will be held on the trusts provided for by Section 105 of the Law of Property Act 1925, the Limitation Act 1980 does not apply and, therefore, a claim by a person entitled to recover the surplus proceeds of sale from the Council, or their personal representative, will never become statute barred. Accordingly, the Council will need to continue to hold the moneys on trust indefinitely.

It is, therefore, a matter of choice whether the proceeds of sale are held as above or, as an alternative, the proceeds of sale are paid into Court under Section 63 of the Trustee Act 1925. It is recognised that payments into Court by Trustees is discouraged but where a beneficiary cannot be found a payment into Court can be justified.

### Appendix 1 – Table to list relevant statutes

Statute	Service	Priority Charge
<b>Environmental Protection Act 1990</b> Sec. 80 (statutory nuisance)	Public Health Housing Standards	
<b>Building Act 1984</b> Sec. 59 (block/defective drain) Sec. 60 (soil pipes) Sec. 76 (defective premises) Sec. 77/78 (dangerous building) Sec. 79 (disrepair of property affecting the area) Sec.84 (yards)	Building Control Housing Standards Public Health	
<b>Housing Act 2004</b> Sec. 11 (Improvement Notice Category 1) Sec.12 (Improvement Notice Category 2) Sec. 40(2) (emergency remedial action) Sec. 49 (power to charge for certain enforcement action)	Housing Standards	
<b>Local Government (Misc. Provs) Act 1976</b> Sec. 33 (restoration or services) Sec. 35 (private sewer)	Public Health Housing Standards	
<b>Local Government (Misc. Provs) Act 1982</b> Sec. 29 (boarding up)	Housing Standards	
<b>Planning (Listed Buildings and Conservation Areas) Act 1990</b> Sec. 48 (repairs notice) Sec. 54 (urgent works)	Conservation	
<b>Prevention of Damage by Pest Act 1949</b> Sec. 4 (rats or mice infestation)	Public Health	
<b>Public Health Act 1936</b> Sec. 45 (works to closets) Sec. 83 (Filthy or verminous)	Public Health	
<b>Public Health Act 1961</b> Sec. 17 (un-block drain) Sec. 34 (remove waste from property)	Public Health	
<b>Town &amp; Country Planning Act</b> Sec. 215 (untidy land or property)	Planning	

**Appendix 2 – Suggested form of Notice under Section 81A Environmental Protection Act 1990 relating to Property**



**ENVIRONMENTAL PROTECTION ACT 1990  
Section 81**

**NOTICE AS TO RECOVERY OF EXPENSES**

To<sup>(1)</sup> [NAME]

of [CONTACT ADDRESS]

**1** On <sup>(2)</sup> the<sup>(3)</sup> Flintshire County Council ("the Council") served on you an Abatement Notice in respect of a statutory nuisance under section 79 of the Environmental Protection Act 1990 ("the Act") at<sup>(4)</sup>

**2** The Abatement Notice [required you within from the service of that notice to abate the nuisance] [[and also] [prohibited] [restricted] the [occurrence] [recurrence] of the nuisance] [and for that purpose required you to<sup>(5)</sup>

]

**3** The said Abatement Notice was not complied with [within the period specified] and the Council has therefore [abated] [prevented the recurrence of] the nuisance [and for that purpose has<sup>(6)</sup>

**4** In doing so the Council has incurred expenses amounting to £ and, in accordance with section 81(4) of the Act, HEREBY REQUIRES YOU TO PAY that sum to the Council.

**[5** Such expenses shall carry interest at the rate of % per from the date of service of this notice until the whole amount is paid and, subject to the provisions of section 81(A) of the Act, the expenses and any interest shall be a charge on the premises known as

]

**[6** Your attention is drawn to the provisions of section 81A(4) to (6), which are set out overleaf.]

**[7** The expenses referred to in paragraph 4 above, together with any interest accrued, may be paid by instalments within a period of<sup>(7)</sup> from the date of service of this notice, until the whole amount is paid.]

Dated:

Signed .....  
*For Housing Regeneration and Strategy Manager*

Please address any communications to:

Flintshire County Council, Housing Regeneration and Strategy Chapel Street, Flint, Flintshire CH6 5BD

Delete any words in brackets which do not apply

**Paragraphs 5, 6 and 7 apply only where the expenses are recoverable from the owner of any premises which were the subject of the Abatement Notice.**

- (1) This notice must be given to the person by whose act or default the nuisance was caused and, if that person is the owner of premises which were the subject of the Abatement Notice, on any person who is for the time being the owner thereof. Where the expenses are recoverable from such owner, on the date on which the authority serves such person with this notice it shall also serve a copy on every other person who, to the knowledge of the authority, has an interest in the premises capable of being affected by a charge on the premises.
- (2) Insert date of the Abatement Notice. (3) Insert name of local authority (4) Insert address of premises (or if under s.79(ga), name of street). (5) Set out any requirements specified in the Abatement Notice. (6) Specify anything done by the Council in execution of the Abatement Notice. (7) This must be a period of thirty years or less. **Sections 81, 81A and 81B of the Environmental Protection Act 1990 provide as follows:**

#### **Section 81**

- (3) Where an abatement notice has not been complied with the local authority may, whether or not they take proceedings for an offence under section 80(4) above, abate the nuisance and do whatever may be necessary in execution of the notice.
- (4) Any expenses reasonably incurred by a local authority in abating, or preventing the recurrence of, a statutory nuisance under subsection (3) above may be recovered by them from the person by whose act or default the nuisance was caused and, if that person is the owner of the premises, from any person who is for the time being the owner thereof; and the court may apportion the expenses between persons by whose acts or defaults the nuisance is caused in such a manner as the court consider fair and reasonable.

#### **Section 81A**

- (1) Where any expenses are recoverable under section 81(4) above from a person who is the owner of the premises there mentioned and the local authority serves a notice on him under this section:-
- (a) the expenses shall carry interest, at such reasonable rate as the local authority may determine, from the date of service of the notice until the whole amount is paid, and
- (b) subject to the following provisions of this section, the expenses and accrued interest shall be a charge on the premises.
- (2) A notice served under this section shall –
- (a) specify the amount of the expenses that the local authority claims is recoverable,
- (b) state the effect of subsection (1) above and the rate of interest determined by the local authority under that subsection; and
- (c) state the effect of subsections (4) to (6) below
- (3) On the date on which a local authority serves a notice on a person under this section the authority shall also serve a copy of the notice on every other person who, to the knowledge of the authority, has an interest in the premises capable of being affected by the charge.
- (4) Subject to any order under subsection 7(b) or (c) below, the amount of any expenses specified in a notice under this section and the accrued interest shall be a charge on the premises –
- (a) as from the end of the period of twenty-one days beginning with the date of service of the notice, or
- (b) where an appeal is brought under subsection (6) below, as from the final determination of the appeal, until the expenses and interest are recovered.
- (5) For the purposes of subsection (4) above, the withdrawal of an appeal has the same effect as a final determination of the appeal.
- (6) A person served with a notice or copy of a notice under this section may appeal against the notice to the county court within the period of twenty-one days beginning with the date of service.

#### **Section 81B**

- (1) Where any expenses are a charge on premises under Section 81A above, the local authority may by order declare the expenses to be payable with interest by instalments within the specified period, until the whole amount is paid.
- (3) Subject to subsection (5) below, the instalments and interest, or any part of them, may be recovered from the owner or occupier for the time being of the premises.
- (4) Any sums recovered from an occupier may be deducted by him from the rent of the premises.
- (5) an occupier shall not be required to pay at any one time any sum greater than the aggregate of –

- (a) the amount that was due from him on account of rent at the date on which he was served with a demand from the local authority together with a notice requiring him not to pay rent to his landlord without deducting the sum demanded, and
- (b) the amount that has become due from him on account of rent since that date.

-----





## Appendix 4 – Draft letter to Owner / Liable Parties

Dear

Re: Property.....

Flintshire County Council has been made aware of the above empty property.

The Council has, pursuant to its statutory powers, carried out certain works to the above property, the costs of which have been registered in Part 2 of the Register of Local Land Charges as financial charges.

Despite continued efforts to secure repayment of these charges, no settlement has been forthcoming. As a result of this the Council now intend to register the financial charges against the title of the property. Thereafter the Council may exercise its power of sale over the property and apply the proceeds of sale towards the discharge of the debt due to the Council.

If you wish to repay the outstanding debt due to the Council I will provide details of the outstanding amounts.

If you wish to discuss this matter further please do not hesitate to contact me.

Yours faithfully



**Appendix 6 – Draft resolution applying to Section 76,  
Building Act 1984**

**Premises:**

**Building Act 1984**

**Flintshire County Council**

1. **WHEREAS** the Council the Flintshire County Council is a 'local authority' within the meaning of S.126 of the Building Act 1984 ('the Act').
2. **AND WHEREAS** a local authority, if it considers that any premises are in such a state as to be prejudicial to health or a nuisance, and unreasonable delay in remedying that defective state would be occasioned by following the procedure prescribed by S.80 of the Environmental Protection Act 1980 may, under S76 of the Act, serve notice on the owner or occupier of those premises stating that the local authority intended to remedy the defective state and may do so, subject to there being no counter-notice served by the owner or occupier.
3. **AND WHEREAS** a notice under Section 76 of the Act is to be served in accordance with Section 94 of the Act.
4. **AND WHEREAS** the expense of such works may, by virtue of Subsection (2) of S.76 of the Act, be recovered from the owner or occupier of the premises and such expense plus interest thereon, by virtue of S.107 of the Act, from the date of completion of the works shall, until recovered, be a charge upon the premises and all estates and interests in them and gives a local authority, for the purposes of enforcing such a charge, all the powers and remedies under the Law of Property Act 1925 and otherwise as if they were mortgagees by deed.
5. **AND WHEREAS** such charge is, by virtue of S.1 (1) (a) of the Local Land Charges Act 1975, to be registered as a local land charge.
6. **AND WHEREAS** under S.7 of the Local Land Charges Act 1975 a local land charge falling within the aforementioned S.1(1)(a) takes effect as if it has been created by deed of charge by way of legal mortgage within the meaning of the Law of Property Act 1925, but without prejudice to the property of the charge.
7. **AND WHEREAS** S.101 of the Law of Property Act 1925 provides that a mortgagee by deed shall have inter alia the power of sale of the property so mortgaged.
8. **AND WHEREAS** pursuant to a notice dated [ ] Flintshire County Council gave notice to the owner or owners of the property known as [ ] ('the Premises') under Section 76 of the Act by serving the notice in accordance with Section 94 of the Act by

**ALTERNATIVE 1** addressing the notice to [ ] and delivering it to that person **and / or**

**ALTERNATIVE 2** addressing the notice to [ ] and leaving it or sending it in a prepaid letter addressed to that person at [ ] being the usual or last known residence of that person **and / or**

**ALTERNATIVE 3** addressing the notice to the Secretary or Clerk of [ Limited] at [ ] being registered or principal office of [ Limited] and delivering it or sending it in a prepaid letter to that address **and / or**

**ALTERNATIVE 4** (if not being practicable after reasonable inquiry having been made to ascertain the name and address of the person to or on whom the notice should be given or served) addressing the notice to the owner or owners of the Premises (naming the Premises) and either delivering it to some person on the Premises or (there being no person on the Premises to whom it can be delivered) affixing the notice or a copy of it to some conspicuous part of the Premises.

**ALTERNATIVE 5** (the Premises at the date such notice is given or served being unoccupied) addressing the notice of the owner or owners of the Premises (naming the Premises) and affixing the notice or a copy of it to some conspicuous part of the Premises stating that Flintshire County Council intended to remedy the defective state of the Premises after the expiration of [ ] days from the date of service of the notice by carrying out the following works;

].

9. **AND WHEREAS** there being no counter-notice served upon Flintshire County Council within the period prescribed by S.76(3) of the Act, that Flintshire County Council executed the said works between the [date] and the [date] at a cost to Flintshire County Council of £ .
10. **AND WHEREAS** on the [date] Flintshire County Council registered the cost of the works in Part II of the Flintshire County Council Local Land Charges Register as a specific financial charge against the Premises such charge attracting interest at such a rate from time to time applying.
11. [Repeated for further charges] **AND WHEREAS** pursuant to a notice dated [ ] Flintshire County Council gave notice to the owner or owners of the property known as [ ] ('the Premises') under Section 76 of the Act by serving the notice in accordance with Section 94 of the Act by

**ALTERNATIVE 1** addressing the notice to [ ] and delivering it to that person **and/or**

**ALTERNATIVE 2** addressing the notice to [ ] and leaving it or sending it in a prepaid letter to that person at [ ] being the usual or last residence of that person **and/or**

**ALTERNATIVE 3** addressing the notice to the Secretary or Clerk of [ Limited] at [ ] being the registered or principal office of [ ] and delivering it or sending it in a prepaid letter to that address **and/or**

**ALTERNATIVE 4** (it not being practicable after reasonable inquiry having been made to ascertain the name and address of the person to or on whom the notice should be given or served) addressing the notice to the owner or owners of the Premises (naming the Premises) and either delivering it to some person on the Premises or (there being no person on the Premises to whom it can be delivered) affixing the notice or a copy of it to some conspicuous part of the Premises.

**ALTERNATIVE 5** (the Premises at the date such notice is given or served being unoccupied) addressing the notice to the owner or owners of the Premises (naming the Premises) and affixing the notice or a copy of it to some conspicuous part of the Premises stating that Flintshire County Council intended to remedy the defective state of the Premises after the expiration of [9] days from the date of service of the notice by carrying out the following works:

12. **AND WHEREAS** there being no counter-notice served upon Flintshire County Council within the period prescribed by S.76(3) of the Act, Flintshire County Council executed the said works between the [date] and the [date] at a cost to the Council of [£ ].
13. **AND WHEREAS** on the [date] that Flintshire County Council registered the cost of the works in Part II of the Flintshire County Council Local Land Charges Register as a specific financial charge against the Premises such charge attracting interest at such a rate from time to time applying.
14. **AND WHEREAS** the said monies continue to remain outstanding.

Flintshire County Council, being now desirous of exercising their aforementioned power of sale over the Premises to recover the costs they have incurred in relation thereto,

## 1. HEREBY RESOLVES

1(i) to make application to the Land Registry Wales under the land Registration Act 1925 to register its charge against the Premises.

1(ii) to claim affirm and avow in said application the binding nature of Flintshire County Council's charge on all estates and interests in the Premises and the priority of Flintshire County Council's charge over all existing and future charges affecting each and every title in the Premises (whether or not they be registered)

1(iii) to affix the Flintshire County Council seal hereto.

## 2. HEREBY CERTIFIES to HM Land Registry

2 (i) as recited in paragraph 4 of this resolution the Act contains provisions conferring a charge on the Premises and on all estates and interests therein

2 (ii) as further recited in paragraph 4 of this resolution the Act confers on Flintshire County Council all the powers and remedies under the Law of Property Act 1925 and otherwise as if it is a mortgage by deed.

2 (iii) Flintshire County Council has followed the procedure in the Act as to service of notices and the carrying out of the works

2 (iv) the charge(s) for which an application for registration is made pursuant to 1(i) above affect(s) the whole property known as [ ] and registered under the title number(s) [ ]

2(v) as recited in paragraph(s) 10 and 13 of this resolution for which an application for registration is made pursuant to 1(i) hereof was/were registered in Part 2 of the Flintshire County Council Register of Local Land Charges on the [ ] and the [ ]

Dated this day of [Year]

THE COMMON SEAL OF FLINTSHIRE  
COUNTY COUNCIL was  
hereunto affixed in the presence of:

Housing Regeneration & Strategy Manager

**Appendix 7 – Sample Letter to HM Land Registry enclosing Application for registration**

Dear Sir

Application for Substantive Registration of Financial Local Land Charges as Charges created by Deed in respect of:

Title Number:.....

Property:.....

In enclose duly completed Form AP1 and the documents contained in the List of Documents referred to therein at Section 4.

The Council is thereby making application to register the financial Local Land Charges as if they have been created by Deed as referred to in the sealed resolutions mentioned on the said List of Documents. Such registration should, by virtue of the legislation referred to in those resolutions, be registered (where relevant) in priority to any other charges presently registered against that title. (For that purpose I also enclose a completed Form SC.)

I look forward to hearing from you.

Yours faithfully

## **Appendix 8 – Sample Application for registration (Forms AP1 + SC )**

To be included

**Appendix 9 – Letter to Owner / First Mortgagee advising of Council’s intentions to sell**

Dear Sirs

Re: Property: .....

Your charge dated: .....

I refer to the above and my letter dated requesting the Title Deeds and advising you of the Council’s statutory powers in relation to the charges outstanding in respect of the above property.

In that letter I advised you that the Council has the power to sell the above property, for the purposes of enforcing the charge, and to deduct from the proceeds of sale the debts due to Flintshire County Council.

The Council’s charge has now been registered at HM Land Registry and it is now the Council’s intention to market the property with a view to a sale thereof.

Yours faithfully

Housing Strategy and Regeneration Manager



## Appendix 10 – Suggested Special Conditions

### Building Act 1984 (Section 76) Charge – Unregistered Property

#### 1. The Property

All that property situate at and known as [ ] in the County of Flintshire shown for identification purposes only edged red on the attached plan

#### 2. Recitals

**2.1 WHEREAS** the Vendor is a 'local authority' within the meaning of S.126 of the Building Act 1984 ('the Act') and the steps taken by the Vendor as referred to in these recitals were taken in their capacity as a local authority within the meaning of the Act.

**2.2 AND WHEREAS** a local authority, if it considers that any premises are in such a state as to be prejudicial to health or a nuisance, and reasonable delay in remedying that defective state would be occasioned by following the procedure prescribed by S.80 of the Environmental Protection Act 1980, may under S.76 of the Act, serve notice on the owner or occupier of those premises stating that the local authority intend to remedy the defective state and may do so, subject to there being no counter-notice served by the owner or occupier.

**2.3 AND WHEREAS** a notice under Section 76 of the Act is to be served in accordance with Section 94 of the Act.

**2.4 AND WHEREAS** the expense of such works may, by virtue of Subsection (2) of S.76 of the Act, be recovered from the owner or occupier of the premises and such expense plus interest thereon, by virtue of S.107 of the Act, from the date of completion of the works shall, until recovered, be a charge upon the premises and all estates and interests in them and give a local authority, for the purposes of enforcing such a charge, all the powers and remedies under the Law of Property Act 1925 and otherwise as if they were mortgagees by deed.

**2.5 AND WHEREAS** such charge is, by virtue of S.1 (1)(a) of the Local Land Charges Act 1975, registerable as a local land charge.

**2.6 AND WHEREAS** under S.7 of the Local Land Charges Act 1975 a local land charge falling within the aforementioned S.1 (1)(a) takes effect as if it had been created by deed of charge by way of legal mortgage within the meaning of the Law of Property Act 1925, but without prejudice to the priority of the charge.

**2.7 AND WHEREAS** S.101 of the Law of Property Act 1925 provides that a mortgagee by deed shall have inter alia the power of sale of the property so mortgaged.

**2.8 AND WHEREAS** pursuant to a notice dated [ ] the Vendor gave notice to the owner or owners of the Property (in these recitals described as 'the Premises') under Section 76 of the Act by serving the notice in accordance with Section 94 of the Act by

**ALTERNATIVE 1** addressing the notice to [ ] and delivering it to that person **and/or**

**ALTERNATIVE 2** addressing the notice to [ ] and delivering is to that person **and/or**

**ALTERNATIVE 3** addressing the notice of the Secretary or Clerk of [ Limited] at [ ] being registered or principal office of [ Limited] and delivering it or sending it in a prepaid letter to that address **and/or**

**ALTERNATIVE 4** (if not being practicable after reasonable inquiry having been made to ascertain the name and address of the person to or on whom the notice should be given or served) addressing the notice to the owner or owners of the Premises (naming the Premises) and either delivering it to some person on the Premises or (there being no person on the Premises to whom it can be delivered) affixing the notice or a copy of it to some conspicuous part of the Premises.

**ALTERNATIVE 5** (the Premises at the date such notice is given or served being unoccupied) addressing the notice to the owner or owners of the Premises (naming the Premises) and affixing the notice or a copy of it to some conspicuous part of the Premises stating that the Vendor intended to remedy the defective state of the Premises after the expiration of [9] days from the date of service of the notice by carrying out the following works:

**2.9 AND WHEREAS** there being no counter-notice served upon the Vendor within the period prescribed by S.76 (3) of the Act, the Vendor executed the said works between the [ ] and the [ ] at a cost to the Vendor of [£ ].

**2.10 AND WHEREAS** on the [date] the Vendor registered the cost of the works in Part II of the Flintshire County Council Local Land Charges Register as a specific financial charge against the Premises such charge attracting interest at such a rate from time to time applying.

**2.11 AND WHEREAS** the expenses incurred by the Vendor as referred to in Recital 2.9 have become a charge on the Premises by virtue of Section 107 of the Act as more particularly referred to in Recital 2.4 and the said expenses continue to remain outstanding.

### **3. Title**

- 3.1** The title of the Property is unregistered and the Vendor does not have in its possession any of the title deeds or documents relating to the Property and the Purchaser shall raise no requisition thereon or objections thereto and shall not be entitled to postpone or delay completion as a result thereof.
- 3.2** The Vendor cannot produce an up-to-date receipt in respect of any yearly rent (if any) payable on the Property nor any other evidence that any such rent has been paid to date (and in which respect the Vendor shall not be liable for any arrears such rent up to the date of Actual Completion and which liability the Purchaser will assume on Actual Completion) and the Purchaser shall raise no requisition nor be entitled to delay or postpone completion as a result thereof.
- 3.3** The Purchaser purchases with full knowledge of the fact that on first registration of the title to the Property at HM Land Registry the Chief Officer, Community and Enterprise will make an entry against such title on the following (or similar terms) and the Purchaser shall make no claim or demand against the Vendor in regard thereto:

“the Property is subject to such restrictive covenants and to such rent charges as may have been imposed thereon before [date of application for first registration] and are still subsisting and capable of taking effect”

### **4. Possession**

Vacant possession of the Property will be given to the Purchaser on Actual Completion.

### **5. Covenants for Title**

- 5.1** The Vendor is selling all the estates and interests in the Property as are bound by the Charge(s) arising under Section 107 of the Building Act 1984 as referred to Recital 2.11 of these Special Conditions but freed and discharged from the said Charge(s)
- 5.2** Section 1 to 9 of the Law of Property (Miscellaneous Provisions) Act 1994 shall not apply to this Agreement and the Transfer of the Property to the Purchaser (‘the Transfer’) and the Transfer shall contain the following provisions:
- 5.2.1.** In consideration of £ [naming the amount of the consideration] (receipt of which is acknowledged) the Vendor transfers the Property to the Purchaser.

**5.2.2** The parties agree and declare that the covenants by the Vendor implied by Section 1 to 9 of the Law of Property (Miscellaneous Provisions) Act 1994 shall not apply to this transfer

## **6. Matters affecting the Property**

The Property is sold subject to and (as the case may be) with the benefit of:

- 5.1** all rents rights exceptions and reservations and covenants and conditions provisions and agreements and declarations or otherwise as subsist and relate to the Property without any obligation or liability on the part of the Vendor (whether as a result of its inability to produce the title deeds or documents to the Property or otherwise) to define or provide details of the same
- 5.2** all Local Land Charges whether registered or not before or after the date hereof and all matters capable of being registered as such
- 5.3** all notices served and orders demands proposals or requirements made by any local or public authority whether before or after the date hereof
- 5.4** all actual or proposed orders directions notices charges restrictions conditions agreements or other matters arising under the town and country planning legislation and environmental law
- 5.5** all covenants exceptions and reservations of whatever nature all rights of way light air and other rights easements quasi easements liabilities and public or private rights whatever and to any liability to repair or contribute to the repair of sewers drains fences or other like matters as the Purchaser shall have notice of or shall be apparent on inspection of the property.

## **6. Indemnity covenant by the Purchaser**

The Transfer will contain a covenant by the Purchaser with the Vendor that the Purchaser and its successors in title will henceforth observe and perform all such matters subject to which the property is expressed to be sold in Clause 6.1 of these Special Conditions the breach of which would or could expose the Vendor to liability (either direct or indirect) and will contain an indemnity by the Purchaser in favour of the Vendor against all actions proceedings costs claims and demands which may be made against the Vendor in connection with the breach non-performance or non-observance of the same.

## **7. Subsales**

The Vendor will not be required to execute a Transfer of the property to any person other than the Purchaser and in one parcel and by one transfer.

## **8. General Conditions**

**8.1** 'The General Conditions' means the Standard Conditions of Sale (Fourth Edition)

**8.2** The General Conditions are deemed to be incorporated herein so far as the same are applicable to a sale by private treaty and are not varied by or inconsistent with these Special Conditions and the 'contract rate' will be four per cent (4%) per annum above the Base Rate for the time being of the Nat West Bank plc.

**8.3** The General Conditions are amended as follows:

**8.3.1** Standard Conditions 2.2.5 and 2.2.6 shall not apply and the Deposit shall be paid to the Vendor's Solicitor as agent for the Vendor.

**8.3.2** In Standard Condition 3.1.2 subclause (c) the words "and could not reasonably" shall be deleted

**8.3.3** Standard Condition 3.4 shall not apply

**8.3.4** Standard Condition 4.6.2 shall not apply

**8.3.5** Standard Condition 5.1.1 shall not apply and the buyer assumes the risk when the contract is made.

**8.3.6** Standard Condition 5.1.2 shall not apply and the buyer must buy the Property whatever the physical state it is in at completion

**8.3.7** Standard Condition 5.2.2 (b), 5.2.2. (e), 5.2.2.(g) shall not apply

**8.3.8** Standard Condition 5.2.3 shall not apply

**8.3.9** Standard Condition 5.2.7 shall not apply

**8.3.10** In Standard Condition 5.2.2 (f) the words "not change its use and is to comply with all statutory obligations relating to the property and indemnity the seller against all liability arising as a result of any breach of such obligation" shall be added at the end

**8.3.11** In Standard Condition 7.1.1 the words "or in negotiations leasing to it" and "or was" shall be deleted.

**8.3.12** Standard Condition 7.3.2 shall be deleted and the following substituted:

Compensation is calculated at the contract rate on all sums payable under the contract (other than pursuant to Standard Condition 6.3) for the period between the completion date and actual completion.

## **9. Non-merger**

The contract will not merge in the Transfer on completion but will continue in full force and effect in relation to any matters outstanding at completion.

## **10. Condition of the Property**

The Purchaser is deemed to have made a full and complete inspection of the Property and to have full knowledge and notice of the state of repairs and condition thereof in all respects and the Purchaser shall make no claim or demand whatsoever against the Vendor in respect of any matter or thing arising out of or in connection with the state of repair and condition of the Property or any part thereof

## **11. Transfer to take effect subject to General and Special Conditions**

The Transfer is to take effect as if the disposition is expressly made subject to all matters to which the Property is sold subject under the General Conditions and Special Conditions of sale.

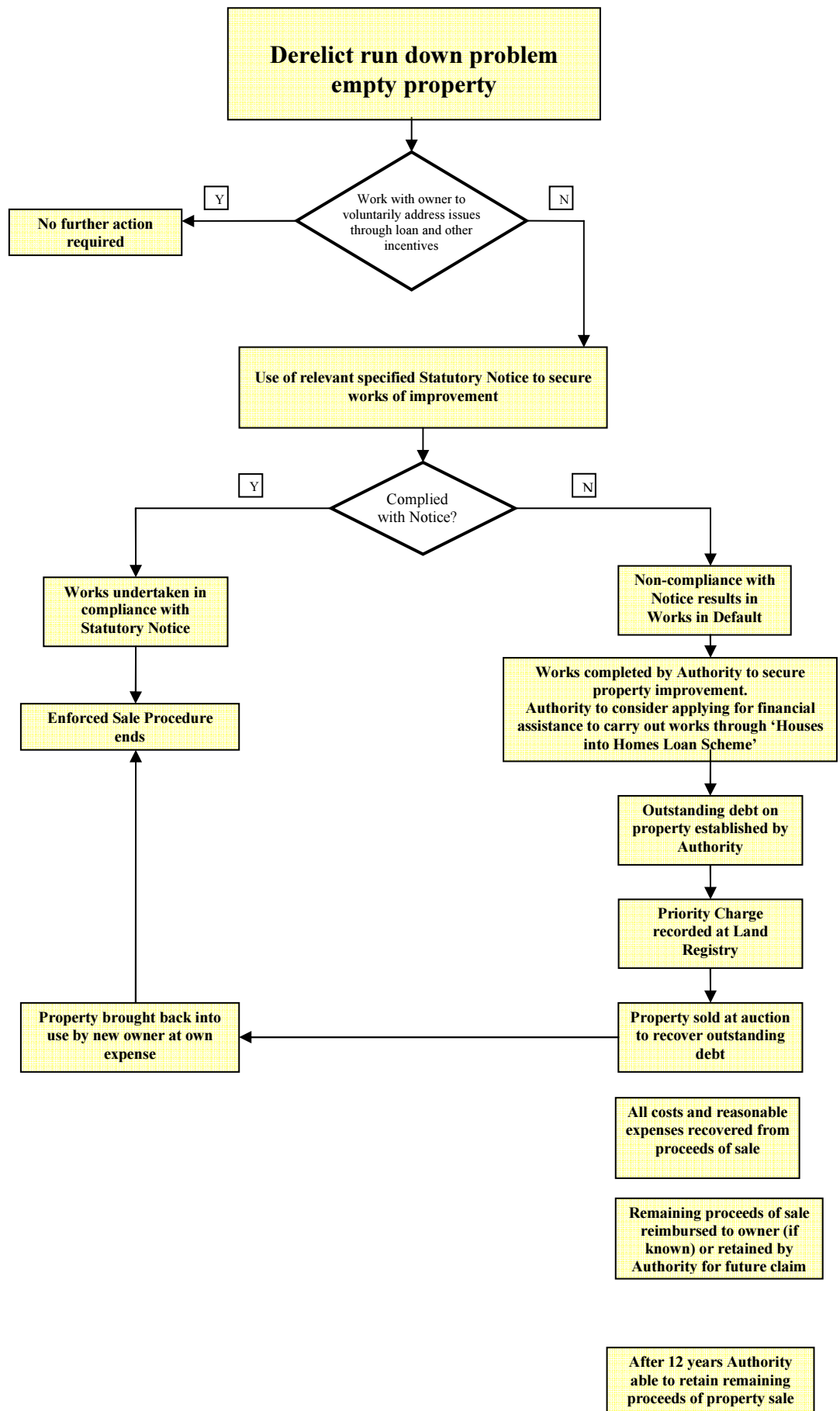
## **12. Completion Date**

The sale will be completed at the office of the Vendor's Solicitor before 2:30pm on [ ]

## **13. Restriction on Assignment**

This Agreement is personal to the Purchaser and shall not be capable of assignment.

## Appendix 11 – Flow Chart



**12 – Record of Service of Notice**

**RECORD OF SERVICE OF NOTICE  
THE PREVENTION OF DAMAGE BY PESTS ACT 1949  
AND THE BUILDING ACT 1984**

PROPERTY: (‘the Property’)

1. ....confirm that I have given / served a notice in respect of the Property under the Prevention of Damage by Pests Act 1949, Building Act 1984 and certify that:

(a) Property unoccupied – registered / unregistered title

The Property was at the date of giving / service of the said notice, unoccupied and the notice was served by addressing it to the owner or occupier of the Property and affixing it, or a copy of it, to some conspicuous part of the Property and a notice was also given / served by *[detail any other method of service]*

Signed:.....

Designation:.....

Date:.....



**Appendix 13 – Letter to Land Registry  
in respect of unregistered property**

Dear Sir

Property:

I refer to the above property which has today been transferred by the Council under the Enforced Sale Procedure.

In accordance with the procedure agreed with you I, on behalf of the Council and being duly authorised to DO so, hereby certify that:

1. as recited in clause [ ] of the Contract for Sale dated [ ] the Act (as referred to therein) contains provision conferring a charge on the Premises and all estates and interests therein.

2. as further recited in clause [ ] of the said Contract for Sale the Act confers on the Council all the powers and remedies under the Law of Property Act 1925 and otherwise as if they were mortgagee by deed.

3. the Council has followed the procedure in the Act as to service of notice and the carrying out of the works.

4. the charge(s) pursuant to which the Council has disposed of the property affect(s) the whole of the property known as [ ] today disposed of by the Council.

5. as recited in clause [ ] of the Contract for Sale the charge(s) pursuant to which the Council has disposed of the property was / were registered in part 2 of the Register of Local Land Charges on the [ ]

Yours faithfully

For Housing Regeneration & Strategy Manager

## Appendix 14 – Authority Form

Flintshire County Council

Authority to Use Enforced Sales Procedure

Premises:

I, Gavin Griffith, Housing Regeneration and Strategy Manager, having considered the information contained in the background file attached, hereby authorise, in accordance with powers delegated to me, the enforced sale of the above Premises in accordance with the Council's Enforced Sales Procedure.

Signed: -----  
Housing Regeneration & Strategy Manager

Date: -----