

Scottish Empty Homes Partnership

Response to the Scottish Law Commission's Discussion Paper on Compulsory Purchase

The Scottish Empty Homes Partnership welcomes the opportunity to respond to the Scottish Law Commission's Discussion Paper on Compulsory Purchase. Our interests relate specifically to how compulsory purchase powers play a role in bringing empty homes back into use.

The Scottish Empty Homes Partnership is funded by the Scottish Government and hosted by Shelter Scotland. We work with councils and their partners to help them develop policies and processes to bring private sector empty homes back into use. There are over 27,000 long term private sector empty homes in Scotland.

The best practice process promoted by the partnership has several interlinked steps, the last of which is the plausible use of enforcement:

- 1) data collection – finding out where the empty homes are and who owns them
- 2) prioritising – which empty homes to spend time/resources on to meet council goals
- 3) advice and information – providing signposting advice to empty home owners as standard, how to rent, how to sell, how to refurbish
- 4) negotiation – more involved pro-active engagement with owners to encourage them to bring their property back into use
- 5) incentives – using council schemes such as Private Sector Leasing (PSL), rent deposit guarantee, empty homes loans, or grants to encourage owners to bring their property back into use
- 6) enforcement – where all else fails and the property is still presenting an issue for the community, using enforcement to encourage or force an empty home owner to bring their property back into use.

Empty Homes Officers across the country have effectively used the first 5 steps to bring empty homes back into use but have reported that even where all positive steps to bring empty homes back into use have failed and the property is causing a detriment to the

community they still find it difficult to use Compulsory Purchase powers to acquire individual empty homes.

A consistent theme in the feedback the Scottish Empty Homes Partnership has received from councils has been the desire for more empty homes enforcement tools in Scotland. This year we have sought to support councils who are looking to use existing powers, namely Compulsory Purchase. However, the message we are receiving from councils continues to be that they don't think the existing tools are fit for purpose. They raise with us concerns about both the cost, timescales and risks of pursuing a Compulsory Purchase Order (CPO).

"Time taken to carry out searches/advertise/ negotiate with owners if we can find them/prepare a statement of reason / liaise/satisfy with Scottish Gov etc . The process on average takes more than 2 years which can be delayed further if owner appeals the CPO or appeals the valuation and we have to go to a PLI or a Land Tribunal. The whole process in some cases have taken up to 5 years." Duncan Thomson, Group Manager – Private Sector, Housing & Regeneration Services, Glasgow Council.

"222 High Street, a C listed building in the Leslie Conservation Area has been empty for at least 25 years. Council officers were very reluctant to take action but I eventually got Fife Council to agree to go for a CPO in 2006, having been asking since 1992. This request got lost with the Scottish Executive and then the Scottish Government for 6 years despite repeated complaints via an MSP. Even when a reporter was appointed it took over a year to actually have the hearing due to a series of illnesses suffered by the defendant. The CPO was finally granted in February 2015 but the property is still not actually for sale. It is in a very poor condition, basically only the walls and roof remaining. Nobody has been helped by the multiple delays in reaching this stage." – Cllr. Fiona Grant, Fife Council

We survey Scotland's empty homes practitioners each year in April and May. In this year's survey we asked councils if they had used enforcement as a method to bring empty homes back into use. Only one council reported having used CPO powers to bring a long term problem empty property back into use. This is despite the fact that a number of councils have highlighted to the Partnership outside the survey process that they have lists of 'no hope' empty homes where the property is causing issues in the community, the owners are non-engaging or non-contactable. They report that even for these cases councils are not prepared to pursue Compulsory Purchase due to the perceived risks around cost, timescales and the potential of ending up as owners of a property with no set end use.



Empty Property in East Ayrshire. Empty since 2008. Owner uncooperative.

Empty Property in Perth & Kinross. Unknown length of time empty. Owner can't be found.



Example case stories from Empty Homes Officers:

"a first floor flat in the centre of town which has been empty for 14 years. The elderly resident of the ground floor flat struggles to cut the grass on the entire garden whereas she is only responsible for half of the rear garden. Lengths of guttering are hanging off the building which should be common repairs. When I last stopped to look at this flat, a builders van pulled up to ask if the property was on the market. There is strong demand for this type of property from either a developer or an owner occupier"

"A cottage is adjacent to a large detached house. It has been empty for 18 years and is in serious disrepair. There would be significant demand for this property as it is close to the River"

"A property is in the centre of a small village and has broken windows and is in a poor state of repair. It is causing problems to the neighbouring owners. The owner who lives in USA bought the property for development purposes and applied for planning consent to demolish the cottage and build 2 new properties on the site. The consent has now lapsed."

"The property was a private let and as far as I can tell from the documentation it has been empty since 2008. We have lettered the owner constantly and went to the extent of having a letter hand delivered by an officer from another local authority. At the time of the delivery of the letter the owner spoke to the officer, she explained that her husband dealt with all the finances and he works away. She said that the property was left in a poor state by the previous tenant and they haven't done anything with it. I have sent the empty homes information but have still had no response. Building control have advised that they do not have any powers available to deal with this property."

"We had an issue with a property that had been empty since 1999 and was in a serious state of disrepair. The council spent thousands of pounds repairing the property and stopping it from causing further damage to the two adjoining properties. Thousands of officers' hours were also used chasing the owner and trying to deal with the state of the property. The council were reluctant to use CPO as they had already spent a large amount of time and resource on the property, and has also had bad experiences using it previously, when the order had not been granted, despite all the effort put in."

In this year's survey, for those who had not used CPO but who indicated an empty homes enforcement power was needed, we asked 'What has stopped you using a CPO?'

Answers included:

'Lack of resources, too time consuming'

'Local authorities don't have the budget to CPO'

'Legal services don't seem to consider this a clear cut option'

'Cost and time constraints'

'Lack of funding and legal expertise'

'Lack of knowledge on how to implement this and internal reluctance to pursue this'

Through discussions with Empty Homes Officers more specific issues with using Compulsory Purchase have also been raised including:

- No clear guidance on what constitutes reasonable efforts to contact or engage with an owner before pursuing Compulsory Purchase.
- The requirement to pay market price to the owner represents a direct cost to the council which may not be able to be recouped.

90.9% of this year's survey responders indicated that a specific Scottish empty homes enforcement tool would be 'very useful' (63.6%) or 'useful' (27.3%). We also asked councils what type of enforcement tool they would find useful, and received the following ideas:

'Glasgow believe that the power of Enforced sale would be invaluable'

'Enforced sale would be useful'

'Like the idea of the Specific Scottish Empty Homes Enforcement Tool'

'A compulsory sale order – may be useful for cases of 'empty home hoarders'

'Something that could be used as a stepping stone to CPO process, Anything that would assist the legal process when owner deceased and no identified beneficiary or someone dealing with estate.'

'It is still too early for me to pinpoint this – however, I have already come across 4+ properties with large council tax arrears where owners are unresponsive.'

'Simplified EDMO' [Empty Dwelling Management Order – English Power]

'Maybe the Scottish Government making it clear that they fully endorse the use of CPOs to aid tackling the empty homes problems and maybe doing something to reduce the timescales for a CPO and therefore making it a more cost effect and user friendly tool'

'Compulsory sale order'

In England, Empty Homes Officers have recourse to both Empty Dwelling Management Orders (to take over the lease of an empty home for up to 7 years), and Enforced Sale (under the Law and Property Act 1925). There are issues with both of these powers including long bureaucratic processes (Empty Dwelling Management Orders) and the requirement for there to be a debt against the property (Enforced Sale) that make them less than desirable for the Scottish context. However what they do offer, that Compulsory Purchase at the moment does not, are powers that councils are actually willing to pursue for single empty homes. The end goal of course is to not have to use the power. However having a power that the council feels confident it could follow through on if needed has been shown to make the other steps in the process above – especially those around negotiation and problem solving with owners – more effective.

The Scottish Empty Homes Partnership have recommended the introduction of a ‘Housing Re-use Power’ (see Appendix) for councils which would allow them to either lease or force the sale of long term empty homes as a last resort and under strict conditions. This proposal was endorsed by the Land Reform Review Group in their final report.

We would expect the use of such a power to be at the discretion of councils only after all other options in terms of advice, information and incentives have been offered. Not all councils would choose to use an enforcement power, but what we do know is that for those councils who see enforcement as a necessary part of their empty homes approach, the powers that exist are not as accessible or as effective as they would like.

The Land Reform Review Group also made a recommendation for the creation of a Compulsory Sale Order which would enable councils to force vacant and derelict land on to the open market if it remains unused for 3 years¹. The Scottish Empty Homes Partnership is in favour of the adoption of a Compulsory Sale Order Power provided that any definition of vacant and derelict land also included vacant and derelict buildings. We believe such a power would achieve much of what we have been seeking through our proposal for a Housing Re-Use Power, namely a change of ownership where properties have got ‘stuck’ and owners are missing or not engaging. Change of ownership has time and time again proven the key to unlocking many an empty homes case and a power that councils can realistically use at low cost would be invaluable in tackling some of the worst problem empty homes.

The key for the Partnership is that local councils have an enforcement tool that they feel is viable in terms of cost and effectiveness. While we will continue to advocate that

¹ The Land of Scotland and the Common Good. Report of the Land Reform Review Group.
<http://www.gov.scot/Resource/0045/00451597.pdf>

enforcement is used as a last resort, we believe it is important that councils have an effective enforcement power as a final option for problem empty homes where incentives and negotiation fail.

Summary

As the Scottish Law Commission's Discussion Paper proposes that the Compulsory Purchase statutes be repealed and rewritten we think this would be an opportune time to consider adding to the suite of property powers to better allow them to be used to achieve the policy goals of the statutory bodies who hold them.

In the first instance, the Scottish Empty Homes Partnership would advocate for our proposed Housing Re-Use Power to be among a new suite of powers.

We recognise that the proposed Compulsory Sale Order power is another option. While it would not achieve everything we think a Housing Re-use power could, we do see much merit in it and from the feedback we have received it is a power that councils would use. We would therefore also support the adoption of a Compulsory Sale Order Power should it emerge as the most viable option.

The Scottish Empty Homes Partnership would be happy to discuss further any of the points raised in our response and/or to cascade specific questions to the Scottish Empty Homes Officer Network.

Appendix

Housing Re-Use Power Proposal

The Scottish Empty Homes Partnership at Shelter Scotland proposes a new tool for Councils to take action on behalf of neighbours and the wider community on property which is empty and causing problems and where other action to address it has not been successful.

In England and Wales the two existing tools – enforced sale and EDMOs – have quite different origins and have evolved quite separately. In our view, the starting point for discussion should be a single unified approach with the decision as to sale or renting regarded as a form of action towards the end of the process.

So an overview of the process might be:

- A long term empty property is manifestly causing problems in a neighbourhood.
- The local authority seeks to engage with the owner, offering advice and assistance; possible access to funding to bring it up to standard if needed; and access to other parties who might help with its re-use.
- If all of these approaches fail to resolve the problem, the local authority seeks to use the powers outlined here, by first making a declaration that the property is long term empty and that the best way to address problems it is causing is to secure its re-use.
- The owner then is given a final specified period to bring the property into use
- If and when that period elapses, the council then has the power to apply an order to secure the property for re-use, either for letting or for sale.
- The property is brought up to a specified standard as part of the process – for example, the repairing standard and in a way which addresses the detriment.
- The sale price and the level and length of letting allows the Council to cover its costs of taking action and any ongoing management costs, with the remaining receipts or rental income going to the owner.
- At the point of the council declaring the property to be long term empty and at the point of securing its re-use the owner can apply to the court or another form of tribunal to challenge that process.

How this tool is described is important. In our view use of terms like ‘enforcement’ or ‘compulsory’ describe the process in relation to the public authority and are liable to be misrepresented. What we are talking about is positive action to bring a property into

productive use which is otherwise affecting the amenity of neighbours or is against the public interest; AND where reasonable efforts to bring it into use by other means have been exhausted. It is about ensuring that owners take responsibility for property.

A crucial point is that the owner will receive an income from either sale or rent. In other words the exercise is allowing the owner to realise an asset that is currently not being realised. It is a win-win for both the owner and the wider public and community interest.

The way the new measure is described should reflect that public and community interest.

New Tool

Proposed Name

Housing Re-use Power

Trigger point

In considering a potential trigger point for a Housing Re-use Power it is important to balance the need to make this tool streamlined enough that the council can readily take action on behalf of the community or in the public interest; but also allows space for the property owner's case to be heard and fully taken into account. For this reason we would suggest any tool be accompanied by guidance from the Scottish Government setting out what a robust case for use looks like and allowing recourse for appeal to the courts or tribunal for the owner. However the decision about whether or not to use the tool should be in the hands of councils, rather than requiring approval by Ministers or a court order.

There are three core conditions which we believe should be met before the new powers we suggest are exercised:

1. The property has been empty for at least 12 months; and
2. It is causing detriment. Most obviously, this would be problems in the neighbourhood – such as reduced amenity; risk of criminal, anti-social or nuisance behaviour; or is in poor repair or at risk of falling into poor repair. But it could also include problems of debt owed to public authorities, such as council tax debt or non-payment of costs associated with necessary repair. And
3. The local authority has taken all reasonable steps to engage with the owner in order to secure the re-use of the property and considers that the powers available through this mechanism are the best way to secure its re-use.

These core conditions could be on the face of any legislation; further criteria could then be amplified in guidance or regulations.

Declaration

If all of the above conditions were met then the authority could declare a property to be long term empty and in need of remedial action. The declaration should include a period by which the owner should form a plan to secure the property's use. Such a plan may include bringing it up to a standard at which it can be let. It would then be only after such a plan is not carried out that this new power would actually be exercised.

Action

In our proposal the local authority has two potential executions of the power, to require it to be sold or to be rented out. In either case the authority would be required to demonstrate it had secured best value. It should also be able to show that it had sought and taken account of the views of the owner.

It may be that sale is the more common option – the council would do so at auction, in much the same manner as properties are sold by lenders following repossession.

The renting option may be attractive as market conditions dictate – i.e. in the area is demand likely to be higher for renting than for purchase? It may also be regarded as a less significant intervention than sale and therefore used in cases where there are more potentially mitigating factors to take into account. For the renting option it is likely that the Council would contract with a third party, such as a Private Sector Leasing Scheme, a reputable letting agent or even a Registered Social Landlord, letting in the intermediate market.

Key to encouraging councils to use either of these routes in appropriate circumstances is the ability to recover any costs incurred either through the sale of the property or through rental income (see below re lenders issues).

Appeal/Redress

It is the view of the Scottish Empty Homes Partnership that requiring every case to go through the courts or other form of tribunal as a matter of course would result in the exercise of power being significantly slowed or seldom used. We suggest that the process be pursued by a clear set of notices being provided coupled with rights of appeal to court or tribunal². As well as giving owners clear rights to challenge the exercise of the powers it would also ensure that councils only embarked on this course of action when they had exhausted other, more informal options. Appeal could be at two stages:

- When the property is first designated – either challenging the detriment cited or, less often, whether it is, in fact, actually empty.

² Analogy here with properties abandoned when let under SST. The courts are only involved through appeal not as a matter of routine.

- At the point at which action is taken to sell or lease the property – the conditions or price could be challenged as well as the process itself.

The appeal could be directed to the Sheriff Court; however, we do not recommend that as the best option: alternatives could be the Scottish Lands Tribunal, the Private Rented Housing Panel – with changes to its remit – or the proposed new housing tribunal.

We believe that clear powers to challenge the process at specified points strikes the best balance between the powers being used and the rights of the owner being heard.

Next Steps

As well as in what way to allow for a right to appeal, there are a number of other questions that still need to be answered.

- For instance, how do we define what constitutes reasonable efforts to contact an owner, in the case of abandoned property? This could be included in guidance and would include things like land registry searches, letters to the property and any other known addresses. It would not be difficult to find an accepted practice for this from England.
- When do we determine that all other efforts to work with an owner on a voluntary basis have been exhausted? This would probably vary, but would need to take into account things like attempts to engage and/or action plans drawn up and lapsed and overall staff time/resources spent on the case.