

Empty Property Review - Additional information requested by the Chair of the Equality, Local Government and Communities Committee

1. The panellists agreed to provide data on the location of empty properties within local authority areas and whether there is a link with areas of social deprivation.

- Carmarthenshire has plotted this on the county map, as appended. Past trends have indicated increased empty property volumes at the 3 townships of Ammanford, Llanelli and Carmarthen. High volume typically follows the Amman Gwendraeth valley, and this is reflected within the denominator and map for 2019/2020.
- In Ceredigion there is no correlation between the percentage of empty dwellings per ward and WIMD deprivation in the area of housing deprivation and income deprivation. The closest correlation is with the access to services, where the greater percentage of empty properties is in areas with poor access to services, however since most of the County is in the top 10% for poor access to services there is no particular pattern to observe here. Rather, our empties are spread fairly evenly across the County.
- In Swansea, officers are currently working with our systems consultants to see if there is a way of transposing the empty property data onto the Council's mapping system. Once this has been done we should have a clearer picture of the distribution. However, it is not felt that this is an issue as the vast majority of properties in Swansea have the potential to be profitable for either owner occupiers or achieve a decent rental income.

2. The panellists agreed to write in response to a number of questions on the effectiveness of the enforcement powers available to local authorities in dealing with empty properties.

- There are limits in the use of enforcement powers for tackling empty properties due to the fact that very little legislation specifically relates to empty properties. This means we have to find other specific issues with properties rather than just tackle an empty property because it's empty and represents a wasted resource. Not every empty property does fall foul of Environmental Health, Planning or Building Regulations.
- These nuisance and health and safety laws are not guaranteed to bring an empty back into use (though can be a means of bringing the owner to the table, or securing debt against an empty). The owner can, if minded, address the issue (eg. dangerous disrepair) and the property will remain empty. Also it is difficult to deal with empty properties which are in reasonable condition as the LA has little cause to intervene.
- The only specific measure designed for empty properties – EDMOs are seen as too onerous and risky for Local Authorities (as mentioned below). Enforced sale can only be implemented when the Council has a debt against the dwelling, and the owner can stop the sale by paying the debt.
- Due to pressure on resources, Local Authorities often have to prioritise occupied properties over unoccupied properties. Local Authorities are risk averse and have other priorities so legal and finance teams can be reluctant to pursue cases, in particular where there is no harm to the public.

3. Why have local authorities made so little use of Empty Dwelling Management Orders (EDMOs)? How could EDMOs be improved or should an entirely new process be introduced?

- There is a wide variety of legislation that can be utilised for empty property work, a lot of which is not used by LAs to tackle problematic empty properties for various reasons such as powers of delegation, staff resources/capacity, protracted processes etc. Competing demands on resources can mean that empty property work is a lower priority than for example poor condition housing.

- The use of legislation can be resource intensive, and is very rarely the final step a LA would take to bring a property back into use. Enforcement action is usually taken following unsuccessful informal action. Owners of empty properties can often be 'accidental owners', having inherited a property and do not have the means to address defects and property improvement. In circumstances such as this, enforcement action can result in the need for a LA to undertake works in default of a notice. This again, can be very labour intensive and requires staff and financial resources.
- To recover debt, LAs must then consider further enforcement action, either by creating charging orders through the County Courts, enforcing the sale of a property or by undertaking an EDMO.
- The use of an EDMO can be a complicated and protracted mechanism for dealing with an empty property. Often there are better solutions, such as an informal route of utilizing the Houses into Homes scheme in tandem with an In-house lettings agency, or an enforced sale.
- EDMOs can be considered the middle ground between leasing schemes and compulsory purchase orders. They are cumbersome, protracted and not without risk to the Local Authority.
- There are a broad range of exemptions available to owners and owners can sell the property at any time in the process, thus stalling significant work undertaken by LAs.
- Due to this fact, and that LAs require capital funds to improve such properties, many LAs are reluctant to use them. Given the financial risk, they are not suited to properties in a poor condition. They can however be suitable for properties that are in reasonable condition and need minimal works.
- EDMOs are registerable as a local land charge and the LA can place a restriction at the Land Registry (restriction to form a leasehold), as a trigger, but they offer no priority over any existing mortgages, thus placing the LA's funds at risk.
- A LA would have to adopt a management/landlord role i.e. estate management, insurance, tenancy agreements, tenancy disputes. This could be delegated to an RSL but nonetheless requires a lot of oversight and on-going resource to manage
- LAs are restricted by charging market rent for properties, once improved, thus moving away from local policies to increase the number of affordable homes.
- All costs associated with the process prior to the Interim EDMO are non-recoverable.
- An example of an EDMO is below, as administered by Carmarthenshire. This particular case was administered, utilising Housing Act 2004 Improvement Notices, with a Work in Default mechanism, to secure funds by placing a first charge with the Land Registry, ahead of an existing mortgage. A more protracted, but safer route to secure funds:
 - Property empty for 5 years following damage caused by previous tenants. Landlord in negative equity following a purchase during the housing market peak and unable to re-finance the property. Houses into Homes considered initially, but loan to value ratio outside of the scheme parameters. Owner on-board, wishing to work with LA. To secure funding, Improvement Notice served by agreement, as a mechanism of covering improvement works required to bring the property up to a habitable standard. Owner in agreement and conceded that LA would have to undertake works in default, by agreement. Improvement works project managed by LA, through to completion. Financial charge secured, which takes the form of a priority charge and moves ahead of the existing mortgage. EDMO applied for, as a mechanism of recovering debt incurred through improvement works. Property handed to in-house letting agency and rental income offset against debt by agreement. Property currently offered as an affordable home, to prospective tenants on the Housing Choice Register and will be debt free within 5 years. Property improved and restored as an asset to the landlord. Landlord continues to pay mortgage liability.
 - Total duration of time from enforcement action, works in default, to property being tenanted – **3 years**.
 - Interim EDMO application submission to RPT – **481 pages**.

- Swansea Council secured an Interim EDMO in May 2009 and later went on to serve a Final EDMO. In May 2016 a new Final EDMO was served for the same property to extend the original EDMO by a further 7 years. No contact has been received from the owner in the 10 year period that the EDMO has been in place.
- Throughout the time that Swansea Council has managed the property the LA has arranged renewal of the central heating boiler, renewed the double glazing, upgraded the insulation, upgraded the bathroom, painted the outside of the house and is currently looking at options with the kitchen. All of the above required considerable officer resources. It is felt that the resources needed to apply for and manage an EDMO property is prohibitive to rolling out use of them on an regular basis.
- There is also no definitive final action plan in the EDMO legislation or guidance for a property where an EDMO has been applied and where there is no engagement from the absent owner. As mentioned, the EDMO on this particular property has been renewed, but if the owner does not come forward, other action, such as CPO, may need to be considered in due course. That is not necessarily practical if the property is isolated from other LA owned stock, or where the LA is non-stock holding.

4. Written evidence from the South East Wales Empty Property Working Group suggested that enforced sale is more straightforward than EDMOs or Compulsory Purchase Orders. Why is this the case and how could the enforced sale process be made easier or more flexible?

- An enforced sale is not an empty property nor housing specific piece of legislation. It is used by LAs as a mechanism for recovering debt. LAs utilise legislation to tackle works on an empty property which may pose a risk to adjoining properties or the general public. Should owners fail to comply with such notices, the LA has the option to carry out works in default, thus creating a financial charge. Should this go without being settled by the owner, it becomes a debt.
- LAs use the Law of Property Act 1925 to enforce the sale of a property, thus recovering the debt from the proceeds of sale. It is a relatively straight forward approach, with a small time frame for completion (3 month notice under Law of Property Act).
- The disadvantage of this procedure is, that whilst LAs can use works in default to tackle works, they will be relatively small scale, to minimise the financial risk and commitment for the LA. This means, in the case of a poor condition property, whilst the property is placed into the ownership of someone new, the property still remains empty and will likely require further financial investment.
- The Enforced Sales Procedure is more efficient than a Compulsory Purchase Order (CPO), but it is noted that it is a mechanism for manufacturing a change of ownership only. It does not, by itself, bring an empty property back into use. This is done by enforcement tools such as Housing Act 2004 Improvement / Suspended Improvement notices, at the outset, almost in anticipation of an enforced sale before an owner defaults.
- In theory a straight-forward Enforced Sale could take 6-8 months to completion and the property is moved on to another owner. The case preparation for applying to the RPT for an EDMO is substantial and there is no guarantee it will be successful.
- The likelihood is, that the new owner will require the same support as the previous owner, and be given an appropriate time frame for property improvement, have access to loan schemes and the extensive advice, guidance and support that LAs can offer.
- The significant benefit an Enforced Sale has is that it places the property in the hands of an owner, who purchases a property with the full understanding that they know what needs to be done, to improve the property, fit for occupation.
- In summary, Enforced Sale allows us to recover debt and facilitate the sale of a long-term empty property without the need to manage that property or take liability for it and there is little risk to the LA. Even if the owner pays the debt prior to going to auction we at least have recovered costs.

- There is a clear process in place for following an enforced sale (the Manchester Guide was further developed by Swansea Council who also carried out training sessions on it for other LAs some years ago). The process included examples of letters, notices and an easy-to-use guide. This makes proceeding with an enforced sale more straightforward, particularly if a LA officer only completes one or two a year, as it helps to guide them through each stage of the process.

5. Several consultation responses mentioned Scottish Government plans to introduce a Compulsory Sales Order process where land that has been vacant or derelict for an undue period will be sold by public auction to the highest bidder. Would this type of process be useful in Wales and what advantages would it bring?

- Any measure that makes it easier for an empty property to be brought back into use would be appreciated. However this would need to be linked to adequate resources to carry out the work and manage the increased expectation that would go with such a move amongst members of the community and elected politicians.
- Having had the opportunity to consider the Compulsory Sale Order legislation that is used in Scotland, it would appear that this is similar to an Enforced Sale, without the need to create and affix a debt to a property. This could be a useful tool to have, particularly when LAs have long-term empty properties with no apparent imminent risks, but non-engaging owners with no designs to return these to use. Carmarthenshire has a few example properties, where EDMOs / WID / CPOs are too costly, and a change of ownership would be welcomed.
- It must be noted that this mechanism does not resolve empty properties, it just creates a change in ownership, and a lot of work is still left from the LA's perspective, to support the new owners.
- Naturally, it is foreseeable that criteria / restrictions will be imposed to such a piece of legislation. Whilst new legislation is welcomed, it must be considered that exhaustive and protracted processes (such as EDMOs), would make the legislation prohibitive to Local Authorities.

6. To what extent have local authorities been able to enable or encourage owners of empty homes to provide affordable housing? Has partnership working with housing associations been successful?

- The option to administer an In-house social lettings agency, offering advice and support with minor property improvement works, tenant finder schemes and a full property management service for affordable homes, can be beneficial, but again is heavily reliant on staff resources. This is not yet available in all LAs and therefore is not a standard approach across Wales.
- LAs are also able to utilise the Houses into Homes fund, by extending the repayment term to 10 years, where nomination rights are offered to the LA to offer properties as affordable homes on completion. In addition there is the ability to reduce administration fees in return for the provision of affordable housing. Each case is different and the business case may not always stack up.
- Wrexham was recently able to work with the Crown (Treasury Solicitors) to enable an empty property to be acquired by a Housing Association and the site redeveloped for Affordable Housing. This was a long process due to the complex nature of the ownership and the Treasury Solicitors being unwilling to exercise any authority until additional checks on the previous owners had been carried out. However once these were addressed they were able to move relatively quickly and effectively.

7. Where a local authority or housing association wants to buy or lease an empty property to refurbish and then manage or sell, what challenges do projects like this face? Are there examples of good practice in this area?

- Carmarthenshire – Creating / operating a Leasing scheme in tandem with the in-house lettings agency, Simple Lettings. This scheme enables a long term leasing of private sector housing, thus

bringing the property under the council umbrella, which can subsequently access funds from the HRA. Each property is improved and offered as an Affordable Home on completion, managed by Simple Lettings. The Owners are offered a monthly lease payment, with voids, repair and maintenance costs covered. The scheme is in its infancy, with legalities being worked on.

- The LA received expert opinion on the use of HRA funding, to finance works on private sector empty homes. It was concluded that, where a property was brought under the Council umbrella for a minimum of 5 years, the HRA fund could be accessed for such purposes.
- By setting up a Lease Agreement, the LA becomes the tenant and subsequently sub-lets the property to a tenant from the Housing Choice Register.
- Complications arise, as any LA is unable to offer an AST, only secured tenancies. As a result, the LA is unable to offer vacant possession at the end of the lease term.
- Naturally, the LA will support any and all re-housing if required, and will assist, mediate, and indemnify the owners accordingly.
- Difficulties have arisen when there are existing mortgages affixed to the properties in question. Mortgage companies require the LA to enter into tripartite agreements, which conflicts with the LA's lease agreements. Subsequently, mortgaged properties have been determined as unsuitable for such schemes.

8. The Committee's consultation received evidence that the impact of bringing an empty property back into use in a rural area can be more significant than elsewhere. Does turning empty properties in rural areas into affordable homes present any specific challenges? How can these challenges be overcome?

- There is a tendency for there to be lower housing need in rural locations, which could be attributed to lacking local amenities, transportation difficulties etc.
- A large portion of tenants looking for affordable homes are reliant on benefits, and may not have the affordability for vehicles. To be in a central location, with good access to shops, schools and the support of families, is therefore preferred over rural locations.
- From an enforcement perspective, empty properties in rural locations tend to be in isolated areas, situated within their own grounds, posing little to no risk to neighbouring properties nor the general public. Justification of such enforcement action by a LA is subsequently difficult.
- Properties in rural areas can also form a part of large working farm land, where owners do not wish to improve such properties, only farm the land.
- Rural properties tend to be older and detached so are more expensive to return back into use. As they are larger properties also then less affordable from a rental/move on perspective.
- In some cases, the owners of rural empty properties will also occasionally be holding on to the properties for the next generation. There may be opportunities to work with these owners to enable an interim use for the properties.
- Rural Housing Enablers, where they still operate, could play a key role in bringing forward these properties (also including chapel houses and other formerly tied accommodation) for affordable housing, RHEs could provide additional evidence on housing needs as well as developing a relationship with local communities (individuals and organisations) to create a means to bring forward and even manage these properties.