

## 1. Introduction

Many statutes allow a council to serve a notice on an owner of property calling on the owner to carry out works. It may be, for example, that works are needed to deal with the dangerous or untidy condition of the property. Sometimes failure to comply with a notice amounts to an offence; often the council has the right to carry out the works in default and to recover the cost. Some statutes provide that the cost of carrying out the works in default is a charge on the property. It is the latter scenario that provides the basis for the enforced sale procedure. In essence the local authority exercises the power of sale conferred by the charge to recover the money it is owed for carrying out the work in default. It is the same power that a bank or building society uses to sell a house when the owner has defaulted on the mortgage payments. (This guide does not cover the right to sell a property because of council tax arrears. That process, unlike the enforced sale procedure covered in this guide, requires an application to court and an order for sale).

## 2. What are the relevant statutes?

2.1 Set out below are some of the most common statutory provisions that enable the enforced sale procedure to be used. (There are many others too). Also identified are some differences between the various statutes.

<b>Statute</b>	<b>What notice is used for</b>	<b>Type of charge</b>	<b>Comments</b>
Section 4 Prevention of Damage by Pests Act 1949	Requiring land to be kept free of rats and mice	On the premises and on all estates and interests therein	Charge arises from date of completion of work. Reasonable interest can be claimed from date of service of demand for costs.
Section 79 Building Act 1984	Requiring works to remedy ruinous and dilapidated buildings and neglected sites	On the premises and on all estates and interests therein	Charge arises from date of completion of work. Reasonable interest can be claimed from date of service of demand for costs.

Section 80 Environmental Protection Act 1990	Requiring abatement of statutory nuisance	On the premises	Charge arises 21 days after service of demand under s81A (unless an appeal is made against the notice, when the period is extended). Reasonable interest can be claimed.
Section 215 Town and Country Planning Act 1990	Requiring steps to be taken for the purpose of remedying the adverse effect on amenity caused by detrimental condition of land and buildings	Binding on successive owners of the land	Charge arises from date of completion of the works.
Sections 11 and 12 Housing Act 2006	Requiring the taking of action to deal with category 1 or 2 hazards in residential premises	On the premises	Charge arises 21 days after service of demand (unless an appeal is made against the notice, when the period is extended). Reasonable interest can be claimed.
S55 Planning (Listed Buildings and Conservation Areas) Act -  Change proposed by Historic Environment (Wales) Bill	Urgent works to a listed building	On the land	Charge arises from date the notice under s55(2) becomes operative

2.2 When the charge has arisen (either immediately the works in default have been carried out or following service of a demand - as set out in the table) it should be registered as a local land charge by the council's Local Land Charges Team. This is an administrative step familiar to Local Land Charges staff.

2.3 The charge takes effect as if created by a deed of charge by way of legal mortgage within the meaning of the Law of Property Act 1925. This is what provides the power of sale.

### 3. Exercising the power of sale

- 3.1 The first thing to do is to check that the original notice was properly drawn up and served. This is unlikely to be a problem as nearly all officers serving statutory notices will be aware of the requirements for service. You will also want to check who the present owner of the property is, just in case it has changed hands recently. A Land Registry search will, if the land is registered, provide this information.
- 3.2 You will, of course, want to check that the charge has not been paid off. Assuming it has not, you will then want to write to the current owner telling him or her of the existence of the charge and that if it is not paid off the council will be taking steps to sell the property. This letter, which is really sent as a matter of courtesy, should include a copy of the original notice and give, say, 21 days for the owner to pay the money owing. If there are other mortgages on the property (and this will be revealed by a Land Registry search) it is sensible if the relevant bank or building society is notified too of the proposal to sell the property if the debt is not paid).
- 3.3 If the letter is ignored you can then go on to serve a notice under section 103 of the Law of Property Act 1925. This is a legal requirement before you exercise a power of sale under a mortgage/charge. This notice explains that money is owed under a mortgage/charge and that if it is not paid off within 3 months, the council may then sell the property to recover the money. It is probably a good idea to send a copy to any relevant bank or building society that has an existing mortgage over the property.
- 3.4 Assuming the section 103 notice is ignored you can then get ready to sell the property. If the property is registered at the Land Registry you will need to prepare a declaration, and have it sealed, setting out: the service of the original notice; the carrying out of works in default; the registration of the costs as a local land charge; and the service of the section 103 notice. You will then apply to the Land Registry on form AP1 to have the charge noted on the registered title. If the charge is to have priority over existing charges you will also need to complete and submit form SC. If the property is unregistered you will need to include the same information in a statutory declaration, probably sworn by the officer who originated the enforced sale action. Once you have registered the charge at the Land Registry or sworn your statutory declaration it is good practice to write to the owner and any bank or building society with an existing charge to tell them that you will now be selling the property.
- 3.5 The property can then be sold. It is common to place enforced sale properties in an auction but it is important that you seek to obtain the best price. The council owes a duty to the owner of the property (as does any bank or building society selling a property where there has been mortgage default) not to sell at under value.

## 4. Settling the account

When the property has been sold you can deduct from the sale proceeds the original works in default costs, the legal costs in undertaking the enforced sale procedure, conveyancing costs in connection with the sale, auctioneer's or other marketing costs, and other officer time in relation to the enforced sale process. If there are any other debts owed to the council these can be deducted too. The balance is then paid over the ex-owner of the property or, if there is another mortgage on the property, you will pay them off first before handing the balance over. If you do not know the identity of the owner, the money will be retained by the council. After 12 years the right to claim it will be lost.

## 5. Practical issues

### 5.1 Can you use the enforced sale procedure if the property is occupied?

Whilst the answer is "yes", nearly all enforced sale cases relate to empty properties or vacant land. If you use the procedure in respect of occupied land or property you will need to make an application to court for a possession order and if the property in question is residential there will be further restrictions on when a possession order can be granted. No court application is required in connection with unoccupied property.

### 5.2 What size of debt is necessary to do an enforced sale?

The enforced sale process will be halted if the owner of the property pays the council the amount owed. The smaller the debt, the more likely it is that this will happen. Furthermore it may be considered unduly harsh for a council to seek to sell someone's property for a small debt. For this reason some councils have a policy of not using the enforced sale process unless the debt is above a certain amount. I have seen figures of £300, £500 and £1,500 quoted so there is a fair bit of flexibility. On the other hand, if the owner of the property cannot be identified it may be considered appropriate to use the enforced sale procedure for a much smaller debt, perhaps even as low as £100. Remember that in calculating the sum owed, any VAT you have paid a contractor to do the works in default can be deducted. This is because the council will already have reclaimed the VAT and it is the net cost that you are reclaiming.

### 5.3 What about other mortgages registered against the land?

- (a) Where the charge against the land is binding on the "premises and on all estates and interests therein" (see table) it is a priority charge. This means that the council's charge takes precedence against all other existing charges.
- (b) In the case of a section 215 Town and Country Planning Act 1990 charge it should be noted that the charge is only binding on successive owners of the land. This means that if there is already a charge registered against the title

it will probably not be worth doing an enforced sale. This is because the council charge will rank behind the existing charge. (You would only want to do an enforced sale in this situation if there was sufficient equity in the property to cover both charges and the bank or building society with the prior charge was happy for you to sell the property).

- (c) In the case of those charges stated to be a “charge on the premises” (see table) the position is more complicated. Some commentators suggest that these are not priority charges. However there are two cases that suggest the wording is sufficient to create a priority charge. These are *Paddington Council v Finucane* (1928) and *Bristol Corporation v Virgin* (1928). Further support for this view is provided in the later case of *Westminster City Council v Haymarket Publishing Ltd* (1981). Certainly at nplaw we work on the basis that these charges are priority charges.

#### 5.4 Selling the property

When we sell a property the contract makes clear that the council is selling in exercise of its power of sale under a mortgage. No covenants for title are given and it is made clear that the council does not warrant the class of title that the buyer will be able to obtain at the Land Registry. This has not posed a problem to date and buyers have still been willing to proceed.

#### Conclusion

The enforced sale process is relatively straightforward. It has the benefit of recovering money owed to the council and passing a problem property onto a new owner.

**If you have any queries relating to this guide or wish to seek legal advice, please contact:**

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