

Council – 9 July 2012

Empty Properties

1. Introduction

It was agreed at the meeting of Council on 23 February 2012 that:

“This Council instructs appropriate officers to prepare a report detailing options to enable a more effective and pro-active approach to combat the blight caused in all areas of the Borough by derelict buildings, and in particular vacant public houses (pubs).

Furthermore, to investigate when planning permission is granted at these sites, as to whether conditions could be added to ensure that the area must be cleared, maintained and not left to become unsightly.”

This report responds to the council resolution by attempting to address four questions:

- What is the extent of the problem of empty properties, particularly public houses?
- What is the council currently doing to bring these properties back into use?
- What are the further options we could consider?
- What scope is there for using planning conditions to assist?

2. What is the Extent of the Problem?

On the 1 January 2012, there were a total of 4,937 empty properties in the Borough, 2,811 of which have been empty for longer than six months. This figure excludes properties which have nil rateable value and are therefore not recorded on the Council's lists and includes 393 empty properties owned by social landlords that are likely to be re-let in a timely fashion.

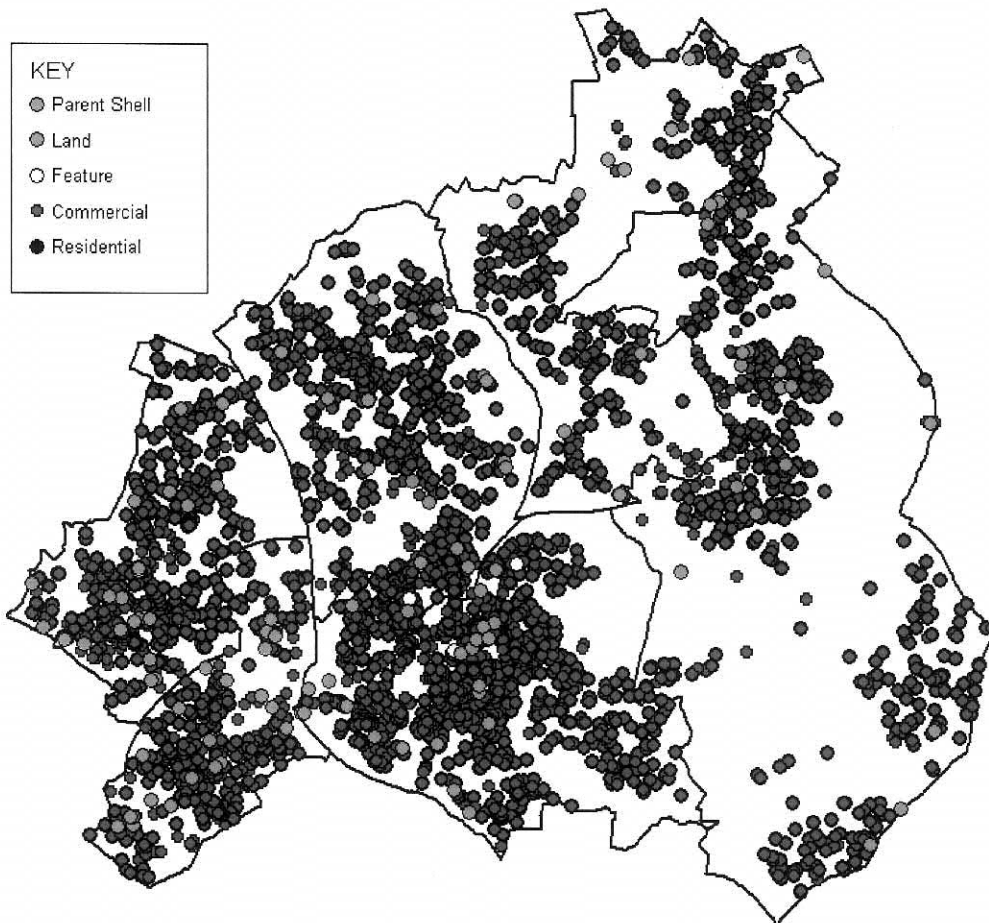
A breakdown of vacant properties by landlord, is shown in table 1 below and the distribution across the borough, is shown in Diagram 1.

Table 1: Properties Vacant at 1 January 2012

	Empty >6 months	Empty <6 months
Private Individuals	1202	1279
Housing Associations	170	423
Walsall MBC	18	14
Other Companies / Organisations	255	210
Total Residential Properties	1645	1926
Business (at 1 March 2012)	1166	200
Total Properties	2811	2126

Diagram 1

LLPG Empty Properties Split by Type



There are a total of 68 empty public houses within the borough according to the available data (using the commercial properties listed on the Gazetteer and are ones which remain of rateable value, indicating that there are further empty public houses which are no longer rateable, due to their condition, eg, *Lane Arms, Bentley*). These are indicated on the map below. The highest numbers are based within the Walsall South Area Partnership (30.9%), followed by the North Walsall Area Partnership (27.9%).

Diagram 2 – Distribution of Empty Public Houses



A number of these vacant public houses have planning applications either approved or in progress (including demolition). However, due to the current economic climate, some owners are not in a position to progress with building works. For others, they are not in a sufficient state of disrepair to warrant any statutory enforcement to be applied.

Properties that have been empty for more than six months are often in a poor state of repair, boarded up with overgrown and untidy land. They often act as a magnet for anti-social behavior, damage the visual amenity of an area and represent a waste of valuable housing / commercial resources.

There are a number of factors which are influencing the number of empty properties across the borough:

- 1 The survival rate of new businesses in Walsall beyond the third year of trading is 65%. This is significantly lower than the region's average of 70.2% (the failure rate may be higher after the recent recession as these figures are based on 2007 statistics)
- 2 Particularly in the current climate, new occupiers are struggling to commit to expensive property transactions on a long-term basis. The nature of the market demand is typically for short-term leasehold, flexible arrangements (Market Assessment Report, November 2010) - businesses are struggling to meet unrealistic rent levels and inflexible lease terms
- 3 The recent Local Economic Assessment (LEA) highlights that Walsall lacks business space to encourage and sustain start-up business. Inadequate premises for new business may also contribute to the lower levels of start-ups within the borough and higher amounts VAT de-registrations mainly due to business failure
- 4 Walsall's employment space is shrinking and a high proportion of the borough's remaining space suffers from poor location and is in need of modernisation. Walsall currently only has 12.9% of class a/b buildings available within the area, this is the lowest within the region (Focus report 11 February 2010) and the majority of this space is too large and is in a poor state of repair for a new business. The Business Needs Survey, conducted by Walsall Council, highlighted that many of Walsall's current businesses are considering moving premises within the next 2 years - nearly 50% would consider moving elsewhere in the West Midlands or Black Country
- 5 It is also evidenced that demand for employment space outstrips supply – but developers will not develop due to the poor overall environment of the industrial areas of the Black Country, and the nature of the existing stock of industrial premises. The lack of available land has restricted private sector investment and resulted in a poor employment growth record, pre-recession, which is now exacerbated by substantial jobs losses, including public sector redundancies. Industrial sales values in the Black Country are already at a level where development is marginal in current market conditions, but when the higher abnormal costs are added in for the area in comparison to the likely sale/rental values the development may aspire to, development in the area is restricted.

Walsall town centre has suffered the most with the majority of empty properties being located in out of date shopping centres and gateways into the centre. Many of these empty properties result from numerous national retailers going into administration as more retail is sold via the internet and from increases in on-costs relating to sourcing resources, labour costs and tax implications. Some units remain under administration for years, resulting in these units lying empty until legalities are formally dealt with.

The five strategic district centres suffer from empty units within their core retail geographical areas although Aldridge, Brownhills and Bloxwich have seen a significant upturn in new tenants and vacancies are very low. Other local centres tend to suffer less from empty properties as the number of units is comparable to the local community demand.

Evidence collected from businesses state that high business and rental charges deter new end users together with lack of footfall and low public expenditure income (clearly linked to high unemployment figures for the borough).

Other units are simply in such a state of disrepair, that developers and investors cannot make sufficient returns on their investment. The retail sector generally is shrinking and the town and district centres struggle to compete with out of town retail parks providing a better shopping experience. Lastly, some empty properties are simply being neglected by landlords with some being part of pension portfolios leading to a lack of commitment and will to regenerate these units.

3 What is the council doing to bring properties back in to use?

Because of the complexity of the problem there are many council services involved and a wide range of approaches. These include:

Tackling residential empty properties

These are the biggest volume of empty properties and cause the concern from members of the public, as the empty properties have a direct impact on how people live their lives. The Council has appointed an Empty Homes Officer to create some additional focus on the problem, as well as identifying additional capital funding. The housing team, with support from Working Smarter will be working closely to design an intervention strategy to tackle the problem. Officers will be working closely with partners to find the most appropriate way to tackle the issues.

Work with owners

Many empty commercial properties in the Borough have been, and continue to be, the subject of work undertaken through the Regeneration Team, where officers work with the owners and future investors, to bring forward development and re-use of these properties.

Budget Available

The Council has a statutory obligation to make safe, buildings that are deemed to present a safety risk to the public. Under Section 215 (Town and Country Planning Act) and Sections 77, 78 and 79 (Building Act) the Council can take enforcement action to make safe a property. Any costs incurred are recoverable from the owner. Recovery of the costs can take a variety of forms, from simple invoicing to a charge held against a property until sale.

In the majority of cases where enforcement notices have been served previously, the owner has undertaken the work themselves. However, there will still have been a cost to the Council, eg, staff time, legal notices.

In order to meet this obligation, the Council established a reserve of £100,000 to cash flow the initial enforcement expenditure and meet any bad debt costs that may arise out

of non-recovery of costs. The responsibility for ensuring enforcement action is taken and costs recovered lies with the Head of Planning and Building Control.

Enforcement

Once a building becomes empty (unused) a number of environmental problems are likely to arise and develop over time. What may start as some litter on the grounds, can attract fly-tipping, graffiti and arson. An occasional broken pane of window glass, poorly painted windows and walls, and slightly damaged roof coverings, can develop into serious dereliction, for example, involving decayed or missing window frames, walls with missing render, and collapsed areas of roof. The unsupervised property can also attract mischievous or anti-social behaviour, or pose a danger to people (eg children) who may be tempted to explore it.

Empty houses represent a waste of housing stock and contribute to homelessness. The decline in public house trade has added to the problems arising from vacant properties. There is no law against property being empty, but various legislation is available to tackle its harmful effects. The table below lists powers available to the Council.

Legislation	Criteria	Action	Responsible Service Area
Local Government (Miscellaneous Provisions) Act 1982, Section 29	Not effectively secured against unauthorised entry and/or is likely to become a danger to public health	Requires the owner to take the steps to secure the property. Allows the local Authority to board up property in an emergency	Environmental Health
Prevention of Damage by Pests Act, and Public Health Acts 1936 and 1961	Tackle waste on land in various ways	Allow notices to be served, direct actions, and claim costs, except when using 'amenity' powers under section 34 of 1961 PHA, when waste removed at Council expense	Environmental Health
Town & Country Planning Act 1990, Section 215	Amenity of an area is adversely affected by the condition of land. (Land includes buildings)	Requires the owner to address unsightly land and the external appearance of a property	Planning
Building Act 1984, Section 79	"Ruinous or dilapidated" and is "seriously detrimental to the amenities of the neighbourhood"	Requires the owner to address dilapidated buildings detrimental to the amenity of an area. Allows Local Authority to demolish property in default	Building control
Building Act 1984 Section 77& 78	Where it appears that a building or structure or part of a building or structure is in such a condition to be considered as dangerous	In Securing the health safety, welfare and convenience of persons in or about buildings. Owner to make safe the building or part of, allows local authority to make safe the building or part of or demolish in the case of a building in default	Building Control

Housing Act 2004.	Various powers to issue Notices and Orders in respect of hazards or emptiness itself	Allow notices to be served, direct actions, and claim costs,	Housing Standards
Environmental Protection Act 1990	Issue abatement notice against nuisance	Allow notices to be served, direct actions, and claim costs	Housing Standards
Empty Dwelling Management Orders ('EDMOs') Housing Act 2004	The property is vacant for at least six months	Application to Residential Property Tribunal to apply for an interim EDMO and then again, for final EDMO	Housing Standards
Compulsory Purchase Order Town and Country Planning Act 1990, Section 226	Acquisition of land to improve social, environmental and economic well-being	Make a CPO and submit to Secretary of State	Planning
Compulsory Purchase Order Housing Act 1985, Section 17	Acquisition of land for housing purposes	Make a CPO and submit to Secretary of State	Housing Standards

Co-ordination

The Void Property Group brings together agencies such as the Police, Fire Service, Planning, Building Control, Housing Standards, Environmental Health, Legal and Council Tax, in order to improve / share information, develop policy and provide a forum to monitor and discuss particular sites.

Compulsory Purchase

When making a Compulsory Purchase Order (CPO), usually, the Council finds a private body to purchase the property from the Council as soon as the Council acquires it. CPO's have had limited use because of the lack of budgets to support the initial purchase, but it can be an effective power if supported by a capital sum.

A CPO was used in 2008, with a large block of flats and shops whose exterior condition had become harmful to local amenity. The CPO was not issued because the commencement of the process and consultations was a sufficient threat to trigger the remedial works by the owners.

Direct action

This is available via section 219 of the Town and Country Planning Act when a section 215 'amenity' notice is not complied with. The Council can carry out the work required by the section 215 notice and reclaim the costs from the owner. The direct action process is not complex and compliance with 215 notices, through this process has transformed the properties. Availability of funding in 2009 and early 2012 meant direct action was then successfully used in two cases and a further case is in hand. Debt recovery can be lengthy, and in the 2009 case this was taken to Enforced Sale of the house in 2011. This would have offered an additional benefit, the house ceasing to be

controlled by the original owner, however, the owner paid for the works at the last minute stopping the auction of the house. The experience of using this legislation was useful and will be applied to other debt recovery cases in future.

Housing Standards have also taken direct action under this planning legislation.

Building Control completed a direct action under section 79 in 2010, and commenced the process on another in 2011, this leading to full remedial work by the owner.

Direct Action has been carried out by Environmental Health to secure buildings under the Local Government (Miscellaneous Provisions) Act 1982, and to remove waste under various Public Health acts.

4 How could we use Working Smarter Principles to Improve how we Tackle Empty Properties?

Using Working Smarter principles, a number of avenues are being considered to test whether we are able to improve the current processes the Council has in place / uses to deal with empty properties. These include:

- Testing out how quickly our enforcement powers can be used, so we can understand where the delays in the process occur and how they can be expedited;
- Identifying newly notified commercial empty properties and issuing them a letter, requesting their intentions with the property and where the Council could assist them in progressing with this. Issuing a follow up letter setting out what powers the Council has to deal with empty properties (if they become an issue);
- Exploring how the relevant services (and external agencies) can work more effectively together. A pilot approach is underway in Willenhall Town Centre testing whether we are able to progress on a number of issues, using different ways of working in partnership (there are a high number of long-standing commercial empty properties in close proximity);
- Working with owners to identify how the Council / partners could improve how it supports businesses to ensure vacant properties do not become problematic to the local neighbourhood;
- Identifying where systems can be better joined up to avoid waste and duplication across service areas and that progress with properties are better monitored and staff are kept up-to-date with progress
- Developing an Enforcement Strategy / Service Standard to avoid overlap of legislation and provide a route map for dealing with empty properties
- Assigning a Lead Officer with support from the Business Change Team to re-design the end to end process having regard to customer demand in order to drive out waste and deliver an improved service that improves significantly the place where residents live and businesses operate.

4 What scope is there for using Planning conditions?

Planning officers have considered whether conditions can be attached to new planning permissions granted for public houses to ensure their end of life use, the buildings are either, properly maintained and not left unsightly, or demolished and the site cleared and secured. The current problem arises from long-standing pubs that have failed to prove viable. The opportunity to impose planning conditions arises when proposals to extend pubs or build new pubs. Only three planning permissions for extensions for pubs and none for new build pubs have been granted in the last five years.

Circular 11/95 requires planning conditions satisfy 6 tests and this generates additional points discussed below.

- The availability of wide ranging legislation, can specifically address problems of amenity, public health and danger arising from the condition of a property meaning, the imposition of planning conditions duplicates these controls, failing the '**necessary**' test. Other controls include Section 215 'amenity' notices and the legislation set out in the table at Appendix 1)
- Planning applications to extend a pub, would directly affect part of the site in visual terms. Conditions seeking to control the visual amenity of the whole site would not be '**relevant to the development permitted**'
- Conditions attached to new pub permissions, requiring 'clearance' of the area in terms of demolishing a pub building if it becomes empty, pre-judges whether the buildings could be used for another purpose and may not be considered to be sustainable. Planning regulations allow pubs to change their use to shops, professional or financial offices (eg estate agents, building society's), or restaurants, without the need for a new planning application. Officers consider that such conditions would fail the test of being '**reasonable in all other respects**'.
- In not meeting the tests of circular 11/95 a planning condition can be considered unsound and unenforceable. If challenged at appeal the Council could be at risk of significant costs.

For these reasons it is considered that recourse to other legislative controls available to the Council should ensure continued effective action to remedy problems that arise at vacant sites.

5 Conclusion

The problem of empty properties remains a serious one which is exacerbated by the economic situation. The council has a number of tools at its disposal to try and influence this situation and bring more vacant properties (commercial and residential) back into use. There is considerable work underway to ensure that all the relevant services work effectively together to use these tools and to maximise the impact that is made. In doing this we are looking to use systems thinking principles to drive out waste and duplication. Members may wish for a further progress report on this work to be made to the appropriate scrutiny panels.

A handwritten signature in black ink, appearing to read 'Jamie Morris', with a stylized flourish at the end.

Jamie Morris
Executive Director - Neighbourhood Services

29 June 2012