

## CABINET

12 JUNE 2012

### 254 WALDESLADE ROAD, CHATHAM

Portfolio Holder: Councillor Howard Doe, Housing and Community Services  
Councillor Jane Chitty, Strategic Development and Economic Growth

Report from: Robin Cooper, Director of Regeneration, Community and Culture

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#### Summary

254 Walderslade Road Chatham is a privately owned derelict, empty property situated in the Lordswood and Capstone ward. It has been subject to numerous complaints to the Council since 2004. The Private Sector Housing team has previously attempted to work with the owner to encourage its renovation. This failed and consequently an enforcement notice was served on the owner requiring him to either undertake improvement works or demolish the property. The owner failed to comply.

The Council has the statutory power to undertake the works specified in the enforcement notice and demand repayment of its costs from the owner. This report seeks authority to demolish 254 Walderslade Road in default of the enforcement notice and clear the site. If the owner does not repay the Council the cost of demolition, this report also seeks authority to undertake an enforced sale under section 103 Law of Property Act 1925 in order to recoup its costs.

#### 1. Budget and Policy Framework

- 1.1 There is no specific budget to fund the costs that will be incurred in the demolition of 254 Walderslade Road. However, the Council has statutory powers to reclaim the costs, including officer time, which it incurs through taking this proposed course of action. Initially the Council will raise an invoice against the owner demanding repayment of its costs including any administration costs. If the owner fails to repay the Council's invoice then it has the legal power to undertake an enforced sale to recover its total costs. Therefore, on conclusion, the proposed course of action should be cost neutral to the Council. However, it needs to be stressed that that the only costs that can be reclaimed are those incurred in carrying out works in default of the BA84 notice i.e. the demolition of the property and removal of the demolition waste. If works were required to other parts of the site e.g.

- fencing to prevent unauthorised access these would not be covered. There is no identified budget for any other additional works.
- 1.2 Any proceeds remaining from enforced sale after the Council's costs have been reimbursed must be paid to the current owner.
  - 1.3 The upfront costs i.e. for the demolition and site clearance will be met from existing budgets, which will then be cleared either through repayment by the owner or through the proceeds of an enforced sale.
  - 1.4 The Council approved its Corporate Enforcement Policy in 2006. The policy details how and when enforcement will be undertaken and the guidance with which it will comply. Specifically it creates four key principles at section 5.4 that guide how the Council will undertake its enforcement role. In determining the need for the proposed course of action the Corporate Enforcement Policy has been followed.

## **2. Background**

- 2.1 254 Walderslade Road, also known as Lanteglos, (the property) is a long-term derelict property situated in the Lordswood and Capstone ward. Photographs showing the front elevation and adjacent properties are attached at appendix one. In response to numerous residents' complaints the property was identified as appropriate for proactive action to encourage the owner to either bring back into use or sell. In accordance with the Private Sector Housing Empty Property Procedure a series of letters were sent to the owner at his correspondence address provided by the Council's Council Tax team. No response was received to these letters. In the third letter, sent March 2009, it was clearly stated that the Council would be considering the use of its enforcement powers.
- 2.2 In April 2010 a further letter was sent to the owner, again advising of the Council's intention to take enforcement action and requesting the owner to complete an "undertaking" to confirm his intentions for the property. This resulted in a meeting with the owner, at which the owner indicated he was to sell the property. A completed "undertaking" followed this from the owner in June 2010, which stated that the property was to be put up for auction. A recent land registry search confirms that the property ownership has not changed.
- 2.3 After no further contact from the owner, or any works being undertaken at the property detailed discussions took place with the Council's Legal Services to assess the most appropriate course of enforcement action. Consequently a notice was served on the owner under S79 Building Act 1984 (BA84) requiring the owner to either carry out a scheme of works to renovate the property, or demolish it. This notice was served on the property and at the correspondence address provided to Council Tax. The notice gave a time period for compliance and detailed the owner's rights of appeal. The owner neither complied with the notice, nor appealed. The property remains in a derelict condition despite the owner having given undertakings that he is to sell the property. Council Tax have confirmed that the correspondence address they hold for the owner remains the same as that used to serve the BA84 notice.

- 2.4 The Council has powers under the BA84 to undertake the works itself in default of the owner and reclaim the costs. If the Council takes this course of action it can make a claim against the owner for its costs. If the owner does not repay the costs the Council has the power to use the Law of Property Act 1925 to enforce the sale of the property to recover its costs.
- 2.5 The BA84 notice required the owner to either carry out a scheme of works to improve the visual impact of the property, or demolish it. A photograph showing the front elevation to the property is attached at appendix one. If the improvement works were carried out, but the owner continued to do nothing with the property, it is likely that the property will deteriorate again and potentially be subject to further vandalism and graffiti. Therefore it is considered that demolition is the most appropriate course of action.
- 2.6 A tender process has been carried out to determine the costs in demolishing the property. Four tenders have been received and following an evaluation of these tenders the cost of demolition has been assessed. Information on the tender costs is provided in the exempt appendix to this report. The actual cost of demolition may vary due to unforeseen works, but on completion an invoice for the final cost will be sent to the owner in accordance with BA 84. Until such time as the costs are repaid the Council has a power to register the debt as a charge against the property with the Land Registry.
- 2.7 If the owner does not pay the resulting invoice from the demolition the BA84 provides the Council with the power to undertake an enforced sale. The Council's Valuation and Asset Management Manager has provided a valuation for the cleared site. Information on the valuation is provided in the exempt appendix to this report. Assuming this valuation is achieved through an enforced sale sufficient funds will be realised from which the Council's costs will be deducted. Any remaining amount must be reimbursed to the current owner.

### **3. Options**

- 3.1 Do nothing. Appendix One provides an up to date photograph of the front elevation to 254 Walderslade Road. The first complaint received about this property dates back to 2004. In 2008 the property was identified as a long-term empty property for proactive enforcement action due to its dilapidated condition. Despite informal attempts to encourage the owner to renovate or sell the property and the subsequent service of the Building Act notice the owner has not undertaken any remedial works to the property or any other potential courses of action to bring it back into use. In October 2011 a final letter was sent to the owner informing him of the Council's proposed action, but this elicited no response. If the Council does not take some form of action it is extremely likely that the property will continue to deteriorate.
- 3.2 Prosecute the owner for non-compliance with the statutory notice. The owner's failure to comply with the notice is a summary offence under Section 99(2)(b) of the Building Act 1984. On conviction the owner would be liable for a fine up to £2,500 and to a further fine not

exceeding £2 for each day on which the default continues after he is convicted.

- 3.3 Taking court proceedings could take up to several months during which time it is likely that the property would continue to deteriorate. There is no indication that taking this action would prompt the owner to sell, renovate, or demolish the property himself. So, even after taking a prosecution there is a strong likelihood that the Council would still need to undertake works in default if the decision was made to remedy the property's detrimental impact on the local neighbourhood. Even if successful in prosecuting the owner it is unlikely that the Council would recover all its costs in taking a prosecution.
- 3.4 Undertake the demolition of the property, but not exercise the right to recover its expenses by way of an enforced sale in the event of non-payment by the owner. Under this option the derelict property would be removed and therefore would no longer be having a detrimental effect on the local amenity. The owner would receive an invoice for the works, and if he refused to pay then the invoice costs would be recoverable as a simple contract debt. The main concern if this option was pursued would be that the land would remain in the same ownership. If the owner did nothing with the site then it could become a target for fly tipping.
- 3.5 Undertake the demolition of the property and recovery of the Council's expenses by way of an enforced sale in the event of non-payment by the owner. This option will ensure that the property is removed and the site cleared of all demolition waste. (It will not however include removal of the overgrown vegetation around the site). This will then give the Council the opportunity to sell the site on for redevelopment. Consultation with the Planning team indicates the most likely redevelopment would be the provision of new housing.
- 3.6 Compulsory Purchase the property. Under section 17 Housing Act 1985 the Council has the power to compulsory purchase the property. If successful compensation would be payable to the owner, but the Council would secure ownership of the site. The Council's Valuation and Asset Management Manager has provided a valuation for the market value of the property in its current condition. Details of this valuation are contained in the exempt appendix to this report. Under the Land Compensation Act this is the minimum amount that would need to be paid to the owner if the Council were successful in securing a compulsory purchase order for the property.
- 3.7 If the Council made a decision to make a compulsory purchase order the owner would be entitled to object, which would then require a local public enquiry to be held. The Council would be responsible for all costs, including those for the appointed inquiry inspector, for which there is currently no identified budget. This could lead to substantial additional costs for the Council. Assuming the Compulsory Purchase was successful the property could then be sold on to a third party. However, there would be no guarantee that any new owner would promptly demolish the property and redevelop the site and it is unlikely that the sale of the property would recoup all the Council's costs in proceeding with a CPO.

#### **4. Advice and analysis**

- 4.1 The Council recommends the demolition of the property and recovery of the Council's expenses by way of an enforced sale in the event of non-payment by the owner. This option will ensure that the property is removed and the site cleared of all demolition waste. (It will not however include removal of the overgrown vegetation around the site). This will then give the Council the opportunity to sell the site on for redevelopment.
- 4.2 Sustainability: at present 254 Walderslade Road is an empty derelict house and as such represents a loss to the total housing stock in Medway. If Members agree to the proposed course of action it will release a development site that is most likely to be used for the provision of new housing.
- 4.3 Diversity Impact Assessment: this report is not recommending any policy and/or service changes and therefore no Diversity Impact Assessment is required

#### **5. Risk Management**

- 5.1 Detailed risk management advice is set out in the Exempt Appendix.

#### **6. Consultation**

- 6.1 All reasonable steps have been taken to contact the property owner at all stages of the informal and enforcement process.
- 6.2 The purpose of this report is not to introduce or change any of the Council's policies. Therefore no public consultation has taken place. Additionally it does change any Council policy, nor affect any service provision by the Council and therefore no Diversity Impact Assessment has been carried out. The proposed course of action will, however, affect an individual's rights and therefore the Council's Head of Legal Services has been consulted to ensure that the Council's proposed actions are compatible with Human Rights legislation. This is detailed for fully at section 7.

#### **7. Financial and legal implications**

##### **7.1 Legal Implications**

- 7.1.1 The Council has the power under s99 Building Act 1984 to carry out work in default of a landowner not complying with a notice served under s79 Building Act 1984. If the Council's costs are not repaid by the owner, the Council can enforce a sale of the property, as if it were a mortgagee, in accordance with s103 Law of Property Act 1925.
- 7.1.2 In determining whether to undertake the demolition of the property the Council needs to have regard to landowner rights under the Human Rights Act 1998.

7.1.3 The human rights relevant under the Human Rights Act 1998 are those set out in Article 8 and the First Protocol, Article 1 of the European Convention on Human Rights.

7.1.4 Article 8 states as follows:

*(1) Everyone has the right to respect for his private and family life, his home and his correspondence.*

*(2) 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.*

7.1.5 The property at 254 Walderslade Ropad is not the owner nor any other person's home and so Article 8 is not applicable.

7.1.6 Article 1 of the First Protocol states as follows:

*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 preceding provisions shall not, however, 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.*

7.1.7 In relation to the First Protocol, Article 1 rights, no person may be deprived of his possessions (including property) unless:

- The action is in the public interest and subject to the conditions provided for by law. Section 79 of the Building Act 1984 permits the Council to serve a notice requiring works or demolition to be undertaken by the owner of a building where the Council considers by reason of the building's ruinous or dilapidated condition that it is seriously detrimental to the amenities of the neighbourhood. The Council served a s79 notice in relation to this property following numerous complaints to the Council regarding the property's condition. The legislation provides the owner with a right of appeal against the notice, but the owner did not exercise this right. Where the owner does not comply with a 79 notice, the Council has the legal power to carry out works in default (s99 of the Building Act 1984). Based upon the matters set out in this report, it is the Council's contention that carrying out such works in default would be in the public interest.
- The second paragraph of Article 1 of the First Protocol states that this right does not impair the right of the State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest. The owners have neither complied with nor appealed against the service of the s79 notice and it is the Council's contention that it is in the

general interest to proceed with works in default in the absence of any action by the landowner.

- The action proposed is proportionate to the aim pursued. In weighing up the rights of the landowner and the detriment to the amenities of the area, together with the fact that the owners were advised of the Council's concerns by the issuing of s79 notice and had an opportunity to either comply with the notice or to appeal against it, but chose not to do so, it is considered that undertaking works in default is a proportionate action.
- If the Council are required to proceed to an enforced sale, it is considered that this action would also be proportionate so as to secure the return of the Council's costs. Where an enforced sale process is used (see below), the proceeds of sale, less any costs incurred by the Council would be paid to the owner/other mortgagees.

## 7.2 Financial Implications

7.2.1 It is expected that the proposed course of action will be cost neutral to the Council.

7.2.2 Under s99 Building Act 1984 the Council may recover the Council's reasonable expenses incurred in carrying out the works in default from the person served with the notice. Under s106 Building Act 1984 the Council must pay compensation to any person who suffers damage as a result of the exercise of the power to undertake works in default, other than to any person who is himself in default (e.g. the person on whom the notice was served is in default and therefore cannot claim compensation in respect of works undertaken by the Council to comply with the notice). It is not considered that any other person will suffer damage as a result of the demolition of the property.

7.2.3 Where the Council is able to recover expenses under s99, the expenses and any interest accrued will be a charge on the premises. In default of payment, the Council may enforce a sale of the property, in accordance with s103 of the Law of Property Act 1925. The owner will be given the opportunity to repay the costs prior to sale. If the monies are not paid within a specified period of time the Council can effectively act as a mortgagee and bring the property to sale on the open market. All charges would be cleared from the proceeds of the sale, allowing the Council to recover the cost of the works previously carried out, and the remainder would be paid to the owner/other mortgagees.

## 8. **Recommendation**

8.1 It is recommended that Cabinet delegates authority to the Director of Regeneration, Community and Culture, in consultation with the Portfolio Holders for Housing and Community Services and Strategic Development and Economic Growth to take all necessary steps including: -

- The demolition of 254 Walderslade Road in default of the notice served on the owner on 12 December 2010 under section 79 Building Act 1984, incurring all associated costs.

- In the event of non-repayment of the Council's costs in undertaking the demolition seek to place a charge against the property with the Land Registry and pursue an enforced sale using the power under section 99 Building Act 1984.

to ensure the property does not remain seriously detrimental to the amenities of the neighbourhood.

## **9. Suggested reasons for decision**

- 254 Walderslade Road is a long-term empty and derelict property that has been determined to be seriously detrimental to the amenities of the local neighbourhood.
- Despite considerable effort by Council officers over a number of years to encourage the owner to do something positive with the property it is still in a ruinous and dilapidated condition.
- The owner has failed to respond to a notice served under s79 Building Act 1984 requiring works to be carried out at the property and the Council now has the power under s99 of the Building Act 1984 to undertake works in default of the enforcement notice.
- Demolishing the property will remove a building that is seriously detrimental to the amenities of the neighbourhood.

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### **Background papers**

Medway Council Corporate Enforcement Policy Available on line at: -  
<http://www.medway.gov.uk/councilanddemocracy/enforcement/corporateenforcementpolicy.aspx>

Building Act 1984. Available on line at  
<http://www.legislation.gov.uk/ukpga/1984/55/contents>



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