

**EMPTY PROPERTY**  
**ENFORCED SALE POLICY &**  
**PROCEDURE**

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## **Introduction**

The enforced sale policy and procedure ('ESP') aims to improve the living conditions, quality of life and the physical environment of the residents of Bury. It has been developed to tackle empty, derelict problem properties, which have become a general nuisance to the surrounding area, local residents and a general blight to the community.

It is considered important to adopt a fair, transparent and consistent approach to dealing with empty properties in the Borough, in support of our vision to lead, shape and maintain a prosperous, sustainable Bury that is fit for the future. It is our intent that the implementation of this policy and procedure will assist in making Bury a better place to live and directly contributes to the Lets Do It Strategy 2030 (*More green spaces and environmentally friendly, and A better quality of life*). Similarly it contributes to Corporate Objectives including '*Achieving Economic Growth (EG) & Reducing Deprivation (RD) through Sustainable Inclusive Growth, Improving Children's Lives and Tackling Inequalities*' and the Public Protection Service Plan Item no.13 '*Work with owners of empty properties within Bury to encourage bringing them back into use*'.

The ESP should be used as a last resort. It is expected that all possible alternative options have been considered and/or exhausted.

### **Benefits of the Procedure**

#### **Social Benefits**

The purpose of the procedure is not only to recover unpaid debts but to bring the property back into use. Empty properties have a detrimental effect on the local environment, impact on local resources (including the council's Public Protection Service) and can devalue neighbouring properties.

A new owner is likely to be willing and able to invest in the property which should encourage occupation and use.

Alternatively, a clear message is sent to any absent owner who avoids an enforced sale by making payment which may encourage them to deal with any empty and/or derelict property by either a voluntary sale or investment.

#### **Financial Benefits**

The procedure is primarily a debt recovery process. Charges secured against the Property which may have been difficult and/or timely to recover can be paid from the proceeds of sale.

If enquiries made internally reveal other debts due to the Council before commencement of the ESP, it may be possible to secure those debts prior to sale to increase recovery of all Council debts.

In the event any empty/derelict property is sold, there is a reasonable prospect that the new owner will undertake renovation works to encourage occupation which in turn could see increased revenue by way of Council Tax.

### Environmental Benefits

A change in ownership can contribute towards improving a property's condition, which should reduce any ongoing nuisance/risk caused by the property remaining in an empty and/or derelict state.

### **Risks of the Procedure**

This procedure has a serious financial risk to the absent property owner, as a sale is undertaken at a lower rate than would ordinarily be achieved through a private sale. Therefore, if there is any error or failure on the part of the Authority in bringing about a sale, such as a failure to properly serve any Abatement Notice, there is a risk to Bury Council of an action being brought by the absent owner for any loss incurred.

It is therefore imperative that each case is reviewed thoroughly to ensure compliance before a sale takes place.

Further, the enforced sale procedure is fundamentally reliant upon a sale being achieved. If there is no interest to purchase the Property, the process will ultimately fail and alternatives must be considered which are likely to create additional challenges (for example, Empty Dwelling Management Orders).

### **Legal Basis for the Procedure**

Where a Local Land Charge is registered in Part 2 of the Local Land Charges Register, the Authority has power to enforce the Charge and has all the powers and remedies available to a mortgagee under the Law of Property Act 1925.

This power is confirmed in the relevant Statute which gives the Authority the right to register the Local Land Charge (e.g. Environmental Protection Act 1990) or, more generally, by way of Section 7 Local Land Charges Act 1975 which confirms that a Local Land Charge takes effect as if it had been created by a Deed of Charge within the meaning of the Law of Property Act 1925.

Pursuant to section 101(i) Law of Property Act 1925, the Authority has the power of sale in respect of any Local Land Charge without the necessity of Court proceedings. Further, Section 87(1) of the Law of Property Act 1925 confirms a legal right of possession.

Where the relevant statute confers Law of Property rights, any charge raised on the premises *and 'on all estates and interests therein'* will rank in priority to any other charges on the Property. If the charge is a "charge on the premises" only then case law still suggests the wording is sufficient to create a priority charge (*Paddington Council ~v~ Finucane (1928)*; *Bristol Corporation ~v~ Virgin (1928)*; *Westminster City Council ~v~ Haymarket Publishing Ltd (1981)*).

If the right is only granted by the general provision set out at Section 7 of the Local Land Charges Act 1975 then the Council's charge will not necessarily take priority over other charges.

### **Will the Limitation Act 1980 apply?**

Section 20 of the Limitation Act 1980 provides that:

*"no action shall be brought to recover the principal sum of money secured by a mortgage or other charge of property or the proceeds of the sale of the land after the expiration of 12 years from the date on which the right to receive the money accrued".*

Generally, the right to receive money accrues when the default works have been completed and not when any invoice or demand is sent out.

## **SECTION A – PUBLIC PROTECTION ROLE**

### **Nomination for the ESP**

Properties are nominated for the ESP from various sources:

- Environmental Health Officer/Empty Property Officer
- Council Officer
- Council Tax
- Local Councillors
- Member of the public

All nominations must be made in writing, this can include e-mail. Once a nomination has been received, checks will be made on the property to ascertain whether or not it is suitable for the ESP.

### **Criteria for the Procedure**

The property will be deemed unsuitable for the ESP if:

- The property is subject or proposed to be subject to a Compulsory Purchase Order (CPO);
- The Local Land Charges are over 12 years old (if there has been a part-payment in this period as the 12 year period commences from the date of the last payment) as an action to recover property will be statute barred in accordance with Section 20 of the Limitation Act 1980;
- An Order for Possession is required from the Court, for example where:
  - Any part of the property is currently occupied;
  - Any part of the property has been occupied in the last 6 months;
  - The property is the owners main home and is empty because they are temporarily living elsewhere (e.g. member of the armed forces) or they are being cared for or are caring for someone away from home and there is a reasonable prospect of their return;
  - The property is subject to ongoing probate, insolvency or matrimonial action.

The property may be deemed unsuitable for the ESP if:

- It is the opinion of the Authority that the owner lacks capacity to conduct proceedings within the meaning of the Mental Capacity Act 2005 unless an appropriate Deputy or Litigation Friend has been appointed;
- After thorough investigation and consultation with appropriate services, it is the opinion of the Authority that the owner is considered a vulnerable person in accordance with any policy or procedure currently adopted by the Authority;
- The property is currently being actively marketed for sale at a value which the Council considers reasonable for the property. If the Council

is of the opinion that the owner is unnecessarily delaying a sale (for example, by marketing the property at an unreasonably high cost, unreasonably refusing offers to purchase the property, stalling the progress of a sale without reasonable cause, continually changing Estate Agent without reasonable cause etc.), the Council will be at liberty to set a reasonable deadline for the sale of the property failing which it will be at liberty to implement the ESP.

Wherever possible, there must be at least two Local Land Charges registered against the Property for a total debt exceeding £1,000.00. Expenses incurred as a result of works in default under the following statutes can be secured by way of a Local Land Charge:

*Charges over all estates [and interests] – rank in priority*

- Environmental Protection Act 1990 s.80
- Housing Act (HA 2004 s11, s12, s28, s29, s20, s21, s40, s43)
- Prevention of Damage by Pests Act (PDPA 1949 s4)
- Building Act (BA 1984 s59, s76, s77, s78 s.79)

*Charge falls within Section 1(1)(a) Local Land Charges Act 1972 - do not rank in priority*

- Planning (Listed Buildings and Conservation Areas) Act 1990 s38  
(in accordance with Regulation 11(2) Planning (Listed Buildings and Conservation Areas) Regulations 1990)
- Town and Country Planning Act 1990 s.172, s215  
(in accordance with Regulation 14(2) and (3) Town and Country Planning General Regulations 1992)

Any claims for expenses incurred for works in default under the following Acts cannot be secured as a Local Land Charge, so cannot be considered under the ESP:

- Public Health Act 1961 s17
- Local Government (Miscellaneous Provisions) Act 1982 s29
- Planning (Listed Buildings and Conservation Areas) Act 1990 s54

In the event expenses are incurred for works carried in default of a Statutory Notice not detailed above, enquiries must be made with Legal Services to establish that the debt can be secured by way of Local Land Charge and that any such charge can be enforced by way of the ESP.

### **Can the Authority use the ESP if the debt is less than £1,000?**

The Authority can consider using the ESP where the debt is less than £1,000.00 if:



- An empty and/or derelict property is deemed to be causing an excessive and persistent problem which affects others in the area;
- The owner cannot be traced or is refusing to co-operate with the Authority;
- It is likely that further expenses will be incurred by the Authority against the Property if action is not taken.

In order to proceed where the value of the security is less than £1,000.00, authorisation from a senior officer within the Authority must be sought and an operational decision form outlining why such action must be taken should be completed and approved.

### **What Happens if an Order for Possession is required?**

If, in the opinion of Legal Services, an Order for Possession is required then the property will be deemed unsuitable for the ESP.

In such cases, a claim for possession will be brought before the Court in accordance with the Civil Procedure Rules 1998 seeking an Order.

An Order for Possession is at the discretion of the Court and it is therefore recommended that the Council only consider such action in the event there is a significant reason to seek possession, such as but not limited to a history of repeated failures or default by the owner/occupier.

## **Enforced Sale Procedure – Pre-Action**

An ESP file must be opened and the checklist at Appendix B secured to the front of the file for completion as the case progresses. The following initial enquiries must be undertaken.

### **1. Identifying the Owner**

Every effort must be made to trace and contact the owner of the Property. Examples of facilities available to the Council to conduct a trace include:

- If the property is registered at HM Land Registry:
  - A search is undertaken against any registered title at HM Land Registry (Legal Services can provide this service if required);
- If the title to the land is believed to be unregistered:
  - An index map search must be undertaken to ensure the property is not registered (Legal Services can assist if required);
  - Using any known information in respect of the identity of the owner(s), a Land Charges Act 1972 must be carried out;
- Service of Notice pursuant to Section 16 Local Government (Miscellaneous Provisions) Act 1976 upon any party with an interest in the property (an example Notice and form of reply is included in Appendix A to this procedure);
- Council Tax records (last payer);
- Electoral Register search;
- Search of Empty Property Database;
- Request to Customer Accounts to conduct trace through Experian;
- Enquiries with neighbours or known relatives/acquaintances.

It is not fatal if the owner cannot be traced but additional conditions will be required within the contract for sale.

### **2. Inform Customer Accounts**

Customer Accounts (generic email account) must be informed of the proposed action to ensure that any recovery action they are undertaking and/or considering in respect of the same debt is put on hold.

An example e-mail to be sent to Customer Accounts is included at Appendix C.

### 3. Certify Case Suitable for ESP

A proper officer in the department which issued an Abatement Notice and arranged any requisite works must review each Abatement Notice served and certify that:

1. they have been properly served in accordance with the relevant statutory authority;
2. that the works have been carried out by the Authority in default and all relevant documents such as invoices and purchase orders can be provided;
3. that the expenses have been properly raised (inclusive of service of any requisite notice for expenses);
4. that a Local Land Charge has been recorded in Part 2 of the Register.

Particular attention must be given to any Notice served under the Environmental Protection Act 1990, as the procedure for service under this Act is more involved than other public health statutes. In particular, there is no provision within section 160 of the Act for service by way of affixing a notice to the property. However, Section 233 of the Local Government Act 1972 supplements the Environmental Protection Act by permitting service by affixing to the property if, following reasonable enquiry, the name or address of any owner, lessee or occupier of land whom the notice is to be served cannot be ascertained.

The reviewing officer should be satisfied that service has been properly effected, subject to any relevant enquiries under Section 233, before approving the case for the ESP. There is attached at Appendix D a certification form that must be completed by the proper officer and included in the ESP file.

### 4. Review Local Land Charge Register

A review should be undertaken to ensure all Local Land Charges are properly recorded on the register.

In addition, where a Property has been sold or transferred since the original Statutory Notice was served, the proper officer must be satisfied that any relevant Local Land Charges upon which we intend to enforce were registered prior to sale and/or transfer.

In the event a Local Land Charge was not recorded properly prior to the sale and/or transfer, Legal Services should be consulted to consider if the Charge is binding on any successive owner.

### 5. Consider Serving further copies of all Notices

All the notices originally served and notices of demand for payment may be re-served on the property to ensure that an owner or interested party is made aware of the debt and ensures there is adequate evidence of service available. Service should comply with the relevant statutory provisions.

To avoid confusion, the Notices should be served separate to and prior to referral to Legal Services for service of the Section 103 Notice (at least 28 days before).

## **SECTION B – LEGAL SERVICES FILE**

### **Referral to Legal Services**

If no payment is received and a decision is made to refer the matter for ESP then the matter should be referred to the Dispute Resolution Team. An example memo to Legal Services is provided at Appendix E.

If the steps referred to above have not been followed Legal will take no action but return the file to the instructing department for further action. If Legal are satisfied that the instructing department has complied with this procedure they will assign a Legal File reference to the matter.

#### **1. Section 103 Notice to owner**

Where the owner has been identified, notice must be sent pursuant to Section 103 Law of Property Act 1925 before the ESP can be implemented. An example Section 103 Notice is attached at Appendix F.

If the Notice is affixed to the Property a photograph must be taken with time and date stamp as evidence of service.

The ESP cannot be commenced until at least three months has elapsed since the date of service of the Section 103 notice.

#### **2. Final Notice to Owner and Chargeholder requesting Deeds**

If there is no satisfactory response to a Section 103 notice, Legal will consider sending a letter to the owner. A letter can also be sent to any Chargeholders noted on the HM Land Registry extract of title if the Property is registered. If the land is unregistered this letter can be sent to any party with the benefit of a caution against First Registration

The purpose of these letters is as follows:

- a) to provide final notice of intention to register our interest at HM Land Registry and thereafter proceed with sale;
- b) to grant a final opportunity for payment to be made prior to proceeding;
- c) to try and obtain copies of the Deeds to the relevant Property.

Examples of the letter to the owner and Chargeholder are attached at Appendix G and Appendix H.

No further action will be taken by Legal Services for at least 28 days to allow the person(s) served to respond. If the original Deeds are received they are to be stored with the Legal ESP file.

### 3. Final Registered/Unregistered Title Action – Legal L&D

#### a. Registered Property

If the Property is registered at HMLR the charge(s) due to the Council will need to be registered against the title before a sale can take place. In order to register the charge, it is necessary for a sealed resolution to be prepared which will include statutory provisions, service of notices, registration of the charge and certification that the Council has all necessary rights and powers to apply for registration.

An example Resolution is included at Appendix I.

The following forms are then forwarded to HM Land Registry:

- The sealed form of resolution;
- Form AP1 (application to change the register);
- Form SC (application for noting the overriding priority of the statutory charge);
- The Land/Charge Certificate or a copy of the letters sent requesting the same;
- Registration fee (currently £50 per charge).

Legal will await confirmation of Registration from HM Land Registry. Upon receipt a final letter is to be sent to the owner and any other interested party advising of our intention to sell (Appendix J).

#### b. Unregistered Property

If Title to the Property is believed to be unregistered:

- i) Legal will undertake a further index map search to ensure the Property is not registered;
- ii) Legal will use any available information regarding the identity of the owner and carry out a Land Charges Act 1972 search;
- iii) If the searches reveal any new or additional information about the owner(s), Legal will undertake the re-serve any notices as necessary before proceeding with a sale;
- iv) If the identity of the owner is unknown or there is no reply to all notices served upon the last known owner then Legal will provide certification that all necessary enquiries have been made (an example is attached at Appendix K) and then proceed with a sale of the Property on the basis any contract for sale will need to contain special conditions to assist any purchaser in registering Title.

Example special conditions of sale are included at Appendix M.

#### 4. Referral to Property Services for Valuation and Sale

Legal will check no payment has been received since delivery of any additional notices/letters and thereafter refer the matter for valuation and sale by the Property Services Department (an example memorandum for this purpose is attached at Appendix L).

A copy of this memorandum must also be delivered to Legal Services Land & Development department who will create a sale file. Land & Development will also be provided with copies of all relevant papers from Dispute Resolution, including

- Any original deeds;
- (if registered land) confirmation of registration of the charge from HMLR;
- (if unregistered land) confirmation of all enquiries made;
- Copies of all relevant correspondence;
- Details of the total secured debt due to the Council (this can include not only the charge registered at HMLR but any other secured debt (e.g. Local Land Charges, Charging Orders etc.);'
- A schedule of costs prepared by Dispute Resolution for legal costs in preparing the case for sale, such costs to be included in the total costs recovered following sale.

#### 5. The Sale

##### Sale by Auction

The same rules apply to a sale under the ESP as to any sale by a mortgagee. It is considered that sale by way of auction or sealed offers with a guide price is the most expedient method of disposal, as we are entitled to accept the highest bid for the Property if it has been advertised in a properly published auction.

Prior to sale, a valuation is required to enable the Council to ascertain an appropriate guide price sale figure.

##### Sale by Private Treaty to a Preferred Purchaser

As a key reason for implementing the Enforced Sale Procedure is to encourage the renovation or improvement of a Property, the Authority is entitled to consider a sale by private treaty to a preferred purchaser, particularly registered social landlords without full exposure to the property market. A sale to a registered social landlord will probably result in the improvement of the subject property and may also influence or enable several properties to be renovated.

In order to avoid any claim that the property has been sold at an undervalue, the Authority must obtain two independent valuations of the property which will then be considered by the Authority's surveyor who will determine an appropriate sale price.

## 6. Contract of Sale

The contract of sale will be the same as any contract for sale by a mortgagee and will be prepared by Legal Services Land & Development Department.

Where the property is unregistered and we have no deeds or details of any incumbrances affecting the land, the contract of sale will need to reflect this and an example of such a contract is attached at Appendix M.

Further, following the sale HM Land Registry will require the Council to provide certification that they have the necessary rights and powers to dispose of the property. An example of this letter is attached at Appendix N.

## 7. Following Sale

Following a sale, the following will be discharged from the proceeds of sale (listed in order of priority):

1. auctioneers fees;
2. the costs of and occasioned by the sale of the Property including legal fees, surveyors fees and any administration charges;
3. the statutory secured debt due to the Council if in priority;
4. if sufficient surplus remains, any other secured debts (both to the Council or other creditors) or any part thereof are paid in accordance with the usual priority afforded following registration;

If the proceeds of sale are not enough to clear the total secured debt due to the Council, we are at liberty to commence County Court debt recovery proceedings to recover the balance from the owner (if known).

If, following sale and discharge of all secured debts and costs, any surplus remains it must be returned to the owner. If the Council is unaware of the owner(s) whereabouts, the balance must be held against the property in an interest bearing account indefinitely, as the monies are held on the trusts provided by Section 105 of the Law of Property Act 1925 and will never become statute barred.

Alternatively, any surplus monies can be paid into Court under Section 61 of the Trustee Act 1925. It is recognised that payment into Court by Trustees is discouraged but where a beneficiary cannot be found a payment into Court can be justified.



## **APPENDIX A**

### **Section 16 Local Government (Miscellaneous Provisions) Act 1976** **Notice and Reply**

IMPORTANT – THIS COMMUNICATION AFFECTS YOUR INTEREST IN PROPERTY

SECTION 16 OF THE LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS)  
ACT 1976

To: [insert name]  
Of: [insert address]  
Re: Premises at: [insert description of relevant property]

Function: In order to ascertain details of ownership to discharge duties under [detail relevant Statutory Authority e.g. section 80 Environmental Protection Act 1990].

TAKE NOTICE that pursuant to the above provisions you are hereby required within 14 days of the date of service of this notice upon you, to furnish to the Council the particulars requested on the attached form relating to the above property.

Dated: [insert date]

.....  
(Signature of proper officer)

## **NOTES**

**If you require any help in completing the reply form, please telephone [insert number] and quote reference [insert reference].**

By Section 16(1) of the Local Government (Miscellaneous Provisions) Act 1976, the Council is empowered to require the information requested on the attached form from you. If you fail to comply with the requirements of this notice or if you furnish any information which you know to be false, or recklessly make a statement which is false you will be guilty of an offence and liable on summary conviction to a fine not exceeding Level 5 (£5,000).

Additional copies of this notice may be purchased at a cost of £1.25 per page.

DEPARTMENT [insert name]

## **Appendix A – EXPLANATORY NOTE IMPORTANT INFORMATION**

### Why you're receiving this notice:

The Council is trying to find out who owns or is responsible for a particular property. This is part of its legal duty to deal with issues like housing conditions, environmental concerns, or planning enforcement.

### What you need to do:

You are legally required to fill in and return the attached form within 14 days. The form asks for details about your connection to the property (e.g. owner, tenant, manager) and who else might have an interest in it.

### Why it matters:

This request is made under Section 16 of the Local Government (Miscellaneous Provisions) Act 1976. If you don't respond, or if you knowingly give false or misleading information, you could be committing a criminal offence and may be fined up to £5,000.

### Need help?

If you're unsure what this notice means or how to respond, you should get legal advice straight away. You can also contact the Council using the phone number provided in the notice and quote the reference number.

## REPLY FORM

### SECTION 16 OF THE LOCAL GOVERNMENT (MISCELLANEOUS PROVISIONS) ACT 1976

To: [insert **OUR OFFICERS** name]  
Of: [insert **OUR** address]  
Ref: [insert **OUR** reference]

The information required in your Notice dated [insert date] relating to the premises/land at: [insert address/location].

1. Nature of my interest in the premises/land (e.g. owner, occupier, mortgagee, lessee etc.)

.....  
.....

2. Name and address of occupier(s) of the premises/land:

.....  
.....

3. Name and address of the owner(s) of the premises/land:

.....  
.....

4. Name and address of any other person(s) having an interest in the premises/land (e.g. Building Society, Bank etc.):

.....  
.....

5. The nature of any person's interest mentioned at (4) above:

.....  
.....

6. Name and address of any person authorised to manage or arrange for the letting of the said premises/land:

.....

.....

I HEREBY CERTIFY that the answers to the above questions are true so far as the same are within my knowledge.

Dated this            day of            20

Signed:

Full name (block capitals):

Address:

## APPENDIX B

### ESP File Checklist

#### Reference:

<b>Property Address:</b>	
<b>Owner Details: (attach search info)</b>	
(if the owner is unknown confirm what searches have been undertaken and ensure copy documents are stored on the file)	
<b>Statutory Notices have been reviewed and are valid and have been correctly served (attach copy certification)</b>	<b>Date of Review:</b>  <b>Reviewing Officer:</b>
<b>Local Land Charge Total (attach LLC details)</b>	<b>£</b>
<b>Customer Accounts informed (attach copy and response)</b>	<b>Date of Enquiry:</b>  <b>Response Date:</b>
<b>Date file sent to Legal:</b>	<b>Date sent:</b> <b>(send full copy of file)</b>
<b>LEGAL SERVICES</b>	
<b>Notice served under Section 103 Law of Property Act 1925</b>	<b>Date of Service:</b>
<b>Date of Expiry of Section 103 Notice (3 months)</b>	<b>Date of Expiry:</b>
<b>Final Notice sent to Owner (including request for Deeds)</b>	<b>Date of Letter:</b>
<b>Notice sent to Chargeholder (including request for Deeds)</b>	<b>Date of Letter:</b> <b>(if there is no known Chargeholder please state)</b>
<b>Deeds Received?</b>	<b>No / Yes – Date:</b>
<b>REGISTERED TITLE</b>	
<b>AP1 sent to HM Land Registry (must attach sealed Resolution, form SC and either Land/Charge Certificate or Final Notice to owner/chargeholder)</b>	<b>Date sent:</b>

<b>Confirmation of Registration received from HM Land Registry</b>	<b>Date received:</b>
<b>Letter – Intention to sell sent</b>	<b>Date sent:</b>
<b>UNREGISTERED TITLE</b>	
<b>Certification of Compliance by Legal Officer</b>	<b>Date:</b>

## APPENDIX C

### **Example e-mail to Customer Accounts – send to “Customer Accounts”**

Re: [Proprietor Name] of [Property Address].  
[Customer ID: ##### - *if known*]

As you will be aware, the Council has the benefit of Local Land Charges against the above-mentioned property in the total sum of [£amount charged]. The property is currently in an empty and/or derelict state and I am therefore considering commencing Enforced Sale proceedings.

I should be grateful if you would assist as follows:

1. Please update the notes for the Customer on the Accounts system as follows:
  - a. To confirm that this matter is currently subject to Enforced Sale proceedings;
  - b. That the balance of the outstanding Local Land Charges should be paid following a sale;
  - c. That any queries in respect of the account should be directed to the writer;
  - d. That any alternative recovery proceedings in respect of this debt should immediately be placed on hold.
2. Please confirm any alternative service addresses you have for the debtor on the account?
3. According to your records on the account, from what date has the property been vacant?
4. Please let me have any other information you recorded on this account which you believe may be useful to me.

The Enforced Sale Procedure may result in the possession and sale of the property and any secured debt in favour of the Council will be paid from the proceeds of sale, subject to sufficient funds being realised.

I look forward to hearing from you.

Kind regards.



## **APPENDIX D**

### **CERTIFICATION OF SUITABILITY FOR ENFORCED SALE**

**IMPORTANT – THE CERTIFYING OFFICER MUST BE SATISFIED THAT ANY STATUTORY NOTICES HAVE BEEN PROPERLY SERVED IN ACCORDANCE WITH THE RELEVANT STATUTORY AUTHORITY AND/OR SECTION 233 LOCAL GOVERNMENT ACT 1972**

Proper Officer: [insert name]  
Position: [insert job title]  
Telephone: [insert extension]  
Re: Premises at: [insert description of relevant property]

The following Notices have been served upon [insert name or state “the owner” if unknown] of the relevant premises and works undertaken in default:

1. Notice pursuant to [insert type] served on [date served] by way of [method of service]. Works in default of this Notice undertaken on [date of works] at a cost of [£total cost of works]. A Local Land Charge in respect of these works was recorded on Part 2 of the Register on [date of local land charge];
2. Notice pursuant to [insert type] served on [date served] by way of [method of service]. Works in default of this Notice undertaken on [date of works] at a cost of [£total cost of works]. A Local Land Charge in respect of these works was recorded on Part 2 of the Register on [date of local land charge];
3. etc.

\*[Enquiries were required to be made pursuant to Section 233 of the Local Government Act 1972. The enquiries made were as follows [insert full details]

\*Delete if not relevant

I HEREBY CERTIFY that I believe service is proper and in accordance with the law and that the information provided herein is true to the best of my knowledge and belief.

Dated this                      day of                      20

Signed:

Full name (block capitals):

## **APPENDIX E**

**Memo to Legal Services**

**TO: LEGAL SERVICES – Land and Development**  
**Second Floor, Town Hall, Bury, BL9 0SW**

**INSTRUCTING OFFICER:** [Instructing Officer name]  
**REFERENCE:** [Client reference]

**INSTRUCTION TO COMMENCE ENFORCED SALE PROCEEDINGS**

I refer to the above matter.

Please find a copy of the ESP file in respect of [property address] which is [not] registered at HM Land Registry.

The file includes the following:

- Checklist completed up to the date of your instruction;
- All relevant Statutory Notices;
- Full Local Land Charge information;
- HMLR search information;

Please proceed to serve Section 103 Notice. In the event that the outstanding charges are not settled within 3 months of service of the Section 103 Notice, it is our instruction that you should register our interest at HM Land Registry and seek a sale of the Property at your very earliest convenience.

I confirm that at the date of this instruction no payments have been received to the pay the outstanding debts and the current balance is £[debt due].

I thank you in anticipation of your assistance.

Kind regards.

[Instructing Officer name]

## APPENDIX F

### **Section 103 Notice – Sent on letter addressed to owner of relevant Property**

Dear [Sir/Madam]

**Re: [Address of Property]**

#### **LAW OF PROPERTY ACT 1925, SECTION 103(1) NOTICE**

As you will be aware, the Council served you with Notice(s) requiring you to carry out certain works to the above property, copies of which are attached. As you failed to comply the Council, in default, carried out the required works at a total cost to the Council of £[total amount charged]. Further details are as follows:

4. Notice pursuant to [insert type] served upon you on [date served]. The Council carried out the required works at a cost of £[balance];
5. Notice pursuant to [insert type] served upon you on [date served]. The Council carried out the required works at a cost of £[balance];
6. etc.

In accordance with the above-mentioned statute(s), the debts due have taken effect, until recovered, as Local Land Charges on the above property. The Council has all the same powers and remedies under the Law of Property Act 1925 and otherwise, as if it was a mortgagee by deed having powers of sale and Lease, of accepting surrenders of leases and of appointing a receiver.

You are required to pay the total sum of £[total balance payable], which includes any applicable interest, by no later than 28 days from the date of service of this Notice. In the event payment is not made the Council will proceed as follows:

1. Proceedings will be issued against you in the County Court for recovery of the Debt and will include a claim for costs and interest; or
2. **If the debt is not paid within three months from the date of service of this Notice, the Council will sell the above property or some part of such property.**

Please note that this letter constitutes Notice pursuant to Section 103(1) of the Law of Property Act 1925.

I sincerely hope further action is not necessary and look forward to receiving payment. If you wish to discuss the matter, please call the writer on the number above.

Yours faithfully

## **Appendix F - EXPLANATORY NOTE – SECTION 103 LAW OF PROPERTY ACT 1925**

You are receiving this notice because the Council has carried out works to your property after you failed to comply with legal requirements previously set out in formal notices.

The Council is now seeking repayment of the costs it incurred.

Under Section 103 of the Law of Property Act 1925, the Council has the same legal powers as a mortgage lender. This means:

The money owed is treated as a legal charge against your property.  
The Council can take legal action to recover the debt, including:

- County Court proceedings for repayment, including interest and costs.
- Selling the property if the debt remains unpaid for three months.

This section of the law is designed to give the Council strong enforcement powers when recovering costs for works it has lawfully carried out in default of the property owner.

What you need to do:

Pay the amount stated in the notice within 28 days.

If you do not pay, legal action may follow, including the potential sale of the property.

**Need help?** If you do not understand this notice or what it means for you, it is strongly recommended that you seek independent legal advice immediately

## **APPENDIX G**

### **Letter to Owner Requesting Deeds**

Dear [Sir/Madam]

**Re: [Address of Property]**

As you will be aware, the Council served you with Notice(s) requiring you to carry out certain works to the above property and as you failed to comply the Council, in default, carried out the required works at a total cost to the Council of £[total amount charged]. Notice was then served upon you pursuant to Section 103 Law of Property Act 1925 on [date of 103 notice].

As you have failed to make payment, it is our intention to sell the premises and apply the proceeds of sale towards discharging the outstanding debt and any associated costs.

I should therefore be grateful if you would discharge the outstanding debt or, if you are not prepared to do this, forward all title deeds in your possession relating to the Property. If you are not in possession of the deeds, please contact me to confirm the whereabouts of these documents.

If I hear nothing from you within 21 days of the date of this letter I will proceed to register our charges against your title in any event. In addition, any additional costs incurred by the Council as a result of your inability or unwillingness to supply to the deeds will be payable by you.

If you wish to discuss this matter further please do not hesitate to call me.

Yours faithfully

## **Appendix G -EXPLANATORY NOTE – REQUEST FOR TITLE DEEDS**

You are receiving this letter because the Council previously served you with legal notices requiring you to carry out works to your property. As you did not comply, the Council carried out the works itself and has since served a **Section 103 Notice under the Law of Property Act 1925**, notifying you of the debt owed.

Despite this, the debt remains unpaid. The Council now intends to **sell the property** to recover the outstanding costs.

### **Why the Council is requesting the title deeds:**

- The Council needs the **title deeds** (legal documents proving ownership) to proceed with the sale of the property.
- If you do not provide the deeds or confirm their location, the Council will register its legal charge against the property and may incur further costs in obtaining the necessary documentation.

### **What you need to do:**

- Either **pay the outstanding debt** in full within **21 days**, or
- **Send the title deeds** you hold, or
- **Contact the Council** to confirm where the deeds are held (e.g. with a solicitor or mortgage lender).

### **Important:**

- If you do not respond within 21 days, the Council will proceed to register its charge against the property.
- Any **additional costs** caused by delays or failure to provide the deeds will be added to the debt and will be **payable by you**.

**Need help?** If you do not understand this letter or what it means for you, it is strongly recommended that you seek **independent legal advice** immediately

## **APPENDIX H**

### **Letter to First Chargeholder Requesting Deeds**

Dear Sirs

**Re: [Address of Property]  
Title No. [Title No. of Property]  
Your Charge Dated: [Date of Charge]**

I note from that you have the benefit of [a First Registered Charge against][Caution against First Registration of] the interest of [proprietor name] ("the owner") in the above-mentioned property.

The Council served Statutory Notice(s) upon the owner requiring certain works to be carried out at the above property. The owner failed to comply and the Council, in default, carried out the required works at a total cost to the Council of £[total amount charged]. These costs have been registered in Part 2 of the Register of Local Land Charges as financial charges.

Accordingly, the Council has the benefit of a charge on the premises and all estates and interests therein and the Council has, for the purposes of enforcing the charge, all the same powers and remedies under the Law of Property Act 1925 and otherwise as if it were a mortgagee by deed, having powers of sale, of lease, of accepting surrenders of leases and of appointing a receiver. The said statutes confer a priority on the Council's charge over your own charge and, therefore, when registered, the Council will be the first chargee.

It is therefore our intention to register the financial charges against the title to the property and thereafter exercise our power of sale so that the proceeds of sale can be used towards the discharge of the debt due to the Council.

I should therefore be grateful if you would contact me to confirm if you are willing to discharge the outstanding debt. If you are not prepared to do this, please forward all title deeds in your possession relating to the Property. If you are not in possession of the deeds, please contact me to confirm the whereabouts of these documents.

I look forward to hearing from you within 21 days of the date of this letter. In the meantime, should you have any queries please do not hesitate to call me.

Yours faithfully



## **APPENDIX I**

### **Example Resolution Form in support of application for Charge to be Registered at HM Land Registry**

#### **Section 76, Building Act 1984**

#### **PROPERTY:[Property Address]**

1. Whereas Bury Metropolitan Borough Council ('the Council') is a 'local authority' within the meaning of Section 126 of the Building Act 1984 ('the Act').
2. And whereas a local authority, if it considers that any premises are in such a state as to be prejudicial to health or a nuisance, and unreasonable delay in remedying that defective state would be occasioned by following the procedure prescribed by Section 80 of the Environmental Protection Act 1990 may, under Section 76 of the Act, serve Notice on the owner or occupier of those premises stating that the local authority intend to remedy the defective state and may do so, subject to there being no counter-notice served by the owner or occupier.
3. And whereas a notice under Section 76 of the Act is to be served in accordance with Section 94 of the Act.
4. And whereas the expense of such works may, by virtue of Subsection (2) of Section 76 of the Act, be recovered from the owner or occupier of the premises and such expense plus interest thereon, by virtue of Section 107 of the Act, from the date of completion of the works shall, until recovered, be a charge upon the premises and all estates and interests in them and gives a local authority for the purposes of enforcing such a charge, all the powers and remedies under the Law of Property Act 1925 and otherwise as if they were mortgagees by deed.
5. And whereas such charge is by virtue of Section 1(1)(a) of the Local Land Charges Act 1975, capable of registration as a Local Land Charge.
6. And whereas, under Section 7 of the Local Land Charges Act 1975, a local land charge falling within the aforementioned Section 1(1)(a) takes effect as if it had been created by deed of charge, by way of legal mortgage within the meaning of the Law of Property Act 1925, but without prejudice to the priority of the charge.
7. And whereas Section 101 of the Law of Property Act 1925 provides that a mortgagee by deed shall have inter alia the power of sale of the property so mortgaged.

8. And whereas pursuant to a notice dated [ ] the Council gave Notice to the owner or owners of the property known as [ ] ('the premises') under Section 76 of the Act by serving the Notice in accordance with Section 94 of the Act by -

ALTERNATIVE 1 addressing the Notice to [ ] and delivering it to that person **and/or**

ALTERNATIVE 2 addressing the Notice to [ ] and leaving it or sending it in a pre-paid letter addressed to that person at [ ] being the usual or last known residence of that person **and/or**

ALTERNATIVE 3 addressing the Notice to the Secretary or Clerk of [ Limited] at [ ], being the registered or principal office of [ Limited] and delivering it or sending it in a pre-paid letter to that address **and/or**

ALTERNATIVE 4 (it not being practicable, after reasonable inquiry having been made, to ascertain the name and address of the person to or on whom the Notice should be given or served) addressing the Notice to the owner or owners of the premises (naming the premises) and either delivering it to some person on the premises or (there being no person on the premises to whom it can be delivered) affixing the Notice or a copy of it to some conspicuous part of the premises.

ALTERNATIVE 5 (the premises at the date such Notice is given or served being unoccupied) addressing the Notice to the owner or owners of the premises (naming the premises) and affixing the Notice or a copy of it to some conspicuous part of the premises stating that the Council intended to remedy the defective state of the premises after the expiration of [ ] days from the date of service of the Notice by carrying out the following works: [ ].

9. And whereas there being no counter-notice served upon the Council within the period prescribed by Section 76(3) of the Act, the Council executed the said works between the [date] and the [date] at a cost to the Council of £[ ].
10. And whereas on the [date] the Council registered the cost of the works in Part 11 of Bury Metropolitan Borough Council's Local Land Charges Register as a specific financial charge against the premises, such charge attracting interest at such a rate from time to time applying.
11. And whereas pursuant to a Notice dated [ ] the Council gave Notice to the owner or owners of the property known as [ ] ('the premises') under Section 76 of the Act by serving the Notice in accordance with Section 94 of the Act by

ALTERNATIVE 1 Addressing the Notice to [ ] and delivering it to that person **and/or**

ALTERNATIVE 2 Addressing the Notice to [ ] and leaving it or sending it in a pre-paid letter addressed to that person at [ ] being the usual or last known residence of that person **and/or**

ALTERNATIVE 3 addressing the Notice to the Secretary or Clerk of [ Limited] at [ ], being the registered or principal office of [ Limited] and delivering it or sending it in a pre-paid letter to that address **and/or**

ALTERNATIVE 4 (it not being practicable, after reasonable inquiry having been made, to ascertain the name and address of the person to or on whom the Notice should be given or served) addressing the Notice to the owner or owners of the premises (naming the premises) and either delivering it to some person on the premises or (there being no person on the premises to whom it can be delivered) affixing the Notice or a copy of it to some conspicuous part of the premises.

ALTERNATIVE 5 (the premises at the date such Notice is given or served being unoccupied) addressing the Notice to the owner or owners of the premises (naming the premises) and affixing the Notice or a copy of it to some conspicuous part of the premises stating that the Council intended to remedy the defective state of the premises after the expiration of [ ] days from the date of service of the Notice by carrying out the following works: [ ].

12. And whereas there being no counter-notice served upon the Council within the period prescribed by Section 76(3) of the Act, the Council executed the said works between the [date] and the [date] at a cost to the Council of £.
13. And whereas on the [date] the Council registered the cost of the works in Part 11 of Bury Metropolitan Borough Council's Local Land Charges Register as a specific financial charge against the premises, such charge attracting interest at such a rate from time to time applying.
14. And whereas the said monies continue to remain outstanding.

**BURY METROPOLITAN BOROUGH COUNCIL** being now desirous of exercising their aforementioned power of sale over the premises to recover the costs they have incurred in relation thereto,

**HEREBY RESOLVES**

- 1(i) To make application to the District Land Registry for Lancashire and Greater Manchester under the Land Registration Act 1925 to register their charge against all titles subsisting in the premises
- 1(ii) To claim, affirm and avow in said application the binding nature of the Council's charge on all estates and interests in the premises and the priority of the Council's charge over all existing and future charges affecting each and every title in the premises (whether or not they be registered), such claims, affirmations and avows being supported by the decisions in Bristol Corporation-v-Virgin [1928] 2.K.B.622 and Paddington Borough Council-v-Finucane [1928] Ch567.
- 1(iii) To affix the Council seal hereto.

**HEREBY CERTIFIES TO HM LAND REGISTRY**

- 2(i) As recited in paragraph 4 of this resolution, the Act contains provisions conferring a charge on the premises and on all estates and interests therein.
- 2(ii) As further recited in paragraph 4 of this resolution, the Act confers on the Council all the powers and remedies under the Law of Property Act 1925 and otherwise as if it is a mortgage by deed.
- 2(iii) The Council has followed the procedure in the Act as to service of Notices and the carrying out of the works.
- 2(iv) The charge(s) for which an application for registration is made pursuant to 1(i) above affect(s) the whole of the property known as [ ] and registered under title number(s) [ ].
- 2(v) As recited in paragraphs 10 and 13 of this resolution, the charge(s) for which an application for registration is made pursuant to 1(i) hereof was/were registered in Part 2 of the Bury Metropolitan Borough Council Register of Local Land Charges on the [ ] and the [ ]

Dated :

The COMMON SEAL of the  
Metropolitan Borough of Bury  
was hereunto affixed in  
pursuance of an Order of  
the Council of the said Borough

**Authorised Signatory:**

## **APPENDIX J**

### **Letter to Owner/Chargeholders Confirming Intention to sell**

Dear [Sir/Madam]

**Re: [Address of Property]**

I write further to my letter dated [date of previous letter], in which I advised you of our outstanding claim and requested the Title Deeds to the property.

In that letter I confirmed that the Council had the power to sell the property and to deduct from the proceeds of sale the secured debts due to the Council.

The Council's charge has now been registered at HM Land Registry and it is our intention to now proceed with sale.

If you wish to discuss this matter further please do not hesitate to call me.

Yours faithfully

## **APPENDIX K**

### **LEGAL SERVICES** **CERTIFICATION OF COMPLIANCE** **UNREGISTERED LAND**

IMPORTANT – THE CERTIFYING OFFICER MUST BE SATISFIED THAT ALL RELEVANT ENQUIRIES HAVE BEEN MADE IN ACCORDANCE WITH THE ENFORCED SALE PROCEDURE BEFORE SIGNING

Legal Officer: [insert name]  
Position: [insert job title]  
Telephone: [insert extension]  
Re: Premises at: [insert description of relevant property]

The following searches have been undertaken by Legal Services:

- i) An Index Map Search carried out on [date];
- ii) A Land Charges Act 1972 search carried out on [date];

ALTERANTIVE 1 The searches carried out by Legal Services revealed the owner of the Property to be [name] whose last known address is [address].

ALTERANTIVE 2 The searches carried out by Legal Services revealed the owner of the Property to be [name] whose whereabouts are unknown.

ALTERANTIVE 3 The searches carried out by Legal Services did not reveal any information about the owner of the Property.

I HEREBY CERTIFY that I believe all reasonable enquiries have been undertaken and all Notices have been properly served and/or re-served as necessary and that the Council can now take steps to dispose of the Property:

Dated this                      day of                      20

Signed:

Full name (block capitals):

## **APPENDIX L**

### **Memo to Property Services and L&D**

#### **TO: Legal Services, Property Services, Land and Development**

**LEGAL OFFICER:** [Instructing Officer name]

**REFERENCE:** [Legal reference]

**PROPERTY:** [Property Address]

#### **ENFORCED SALE PROCEDURE VALUTION AND SALE OF PROPERTY**

The Council has served Notice(s) upon the owner of the above Property requiring the owner to carry out certain works to the above property. The owner failed to comply and the Council, in default, carried out the required works at a total cost to the Council of £[total amount charged].

These debts have taken effect, until recovered, as Local Land Charges on the above property. The Council has all the same powers and remedies under the Law of Property Act 1925 and otherwise, as if it was a mortgagee by deed having powers of sale and Lease, of accepting surrenders of leases and of appointing a receiver.

#### **[ALTERNATIVE 1 – PROPERTY REGISTERED]**

The title to the Property is registered at HM Land Registry bearing reference to record [title no.]. Notice has been served upon the owner pursuant to Section 103 Law of Property Act 1925 on [date of 103 notice] and our Charge has been registered against the title by HM Land Registry on [date of registration].

#### **[ALTERNATIVE 2 – PROPERTY UNREGISTERED BUT OWNER KNOWN]**

The title to the Property is not registered at HM Land Registry. However, we have traced the person we believe to be the owner of the Property and Notice has been served upon the owner pursuant to Section 103 Law of Property Act 1925 on [date of 103 notice].

#### **[ALTERNATIVE 3 – PROPERTY UNREGISTERED AND OWNER UNKNOWN]**

The title to the Property is not registered at HM Land Registry. We have made all necessary enquiries but have been unable to trace anyone with an interest in the Property. However, a sale can still progress as all relevant Notices have been served by affixing to the Property.

As our charges have not been paid, we should be grateful if you would arrange a valuation of the Property and thereafter arrange for its sale. It is our intention to apply the proceeds of sale towards discharging the outstanding debt(s) and any associated costs.

Please note that we are [not] in possession of the Deeds to the Property.

### Valuation

Before proceeding with sale, we need to establish what we believe the current value of the property to be. With this in mind I would be grateful if you would:

1. Carry out an external inspection of the property;
2. Provide a brief description of the property;
3. Provide a description of the interior condition, as seen through any accessible windows; and
4. Produce a valuation of the property in its current condition.

In addition to providing the above information in a report, please state who carried out the inspection together with details of their qualifications and experience. It should also include the date when the inspection was made, the prevailing weather conditions on that day and an indication upon what the valuation is based upon (e.g. comparable properties nearby).

We have commenced this procedure on the basis the Property is empty. If, on inspection, it appears that the Property is no longer vacant please let the instructing officer know as soon as possible.

### Sale

A copy of this memo has been delivered to Legal Services, Land and Development Department to put them on notice of this matter.

I believe they will be able to draw up an appropriate sale contract, which will be the same as for any normal sale by a mortgagee. [However, as the property is unregistered and we have no deeds or details of any encumbrances, the contract for sale needs to reflect this].

I believe that a sale by way of Auction or sealed offer, with a guide price to be the most expedient method of disposal, as we are generally entitled to accept the highest bid for the Property described and advertised in a properly published auction.

If you require any further information please let me know, otherwise I look forward to hearing from you as soon as possible.



Kind regards.

## APPENDIX M

### **Suggested Special Conditions**

#### **Building Act 1984 (Section 76) Charge – Unregistered Property**

### **Suggested Special Conditions**

#### **1. The Property**

All that Property situate at and known as [ ] in the Metropolitan Borough of Bury shown for identification purposes only edged on the attached plan.

#### **2. Recitals**

**2.1 WHEREAS** the Vendor is a 'local authority' within the meaning of S.126 of the Building Act 1984 ('the Act') and the steps taken by the Vendor as referred to in these recitals were taken in their capacity as a local authority within the meaning of the Act

**2.2 AND WHEREAS** a local authority, if it considers that any premises are in such a state as to be prejudicial to health or a nuisance, and unreasonable delay in remedying that defective state would be occasioned by following the procedure prescribed by S.80 of the Environmental Protection Act 1980, may under S.76 of the Act, serve notice on the owner or occupier of those premises stating that the local authority intend to remedy the defective state and may do so, subject to there being no counter-notice served by the owner or occupier.

**2.3 AND WHEREAS** a notice under Section 76 of the Act is to be served in accordance with Section 94 of the Act.

**2.4 AND WHEREAS** the expense of such works may, by virtue of Subsection (2) of S.76 of the Act, be recovered from the owner or occupier of the premises and such expense plus interest thereon, by virtue of S.107 of the Act, from the date of completion of the works shall, until recovered, be a charge upon the premises and all estates in them and gives a local authority, for the purpose of enforcing such a charge, all the powers and remedies under the Law of Property Act 1925 and otherwise as if they were mortgagees by deed.

**2.5 AND WHEREAS** such charge is, by virtue of S.1(1) (a) of the Local Land Charges Act 1975, capable of registration as a local land charge.

**2.6 AND WHEREAS** under S.7 of the Local Land Charges Act 1975 a local land charge falling within the aforementioned S.1 (1) (a) takes effect as if it had been created by deed of charge by way of legal mortgage within the meaning of the Law of Property Act 1925, but without prejudice to the priority of the charge.

**2.7 AND WHEREAS** S.101 of the Law of Property Act 1925 provides that a mortgagee by deed shall have inter alia the power of sale of the property so mortgaged.

**2.8 AND WHEREAS** pursuant to a notice dated [ ] the Vendor gave notice to the owner or owners of the Property (in these recitals described as 'the Premises') under Section 76 of the Act by serving the notice in accordance with Section 94 of the Act by

ALTERNATIVE 1 Addressing the notice to [ ] and delivering it to that person **and/or**

ALTERNATIVE 2 Addressing the notice to [ ] and leaving it or sending it in a prepaid letter addressed to that person at [ ] being the usual or last known residence of that person **and/or**

ALTERNATIVE 3 Addressing the notice to the Secretary or Clerk of [ Limited] at [ ] being the registered or principal office of [ Limited] and delivering it or sending it in a prepaid letter to that address **and/or**

ALTERNATIVE 4 (It not being practicable after reasonable inquiry having been made to ascertain the name and address of the person to or on whom the notice should be given or served) addressing the notice to the owner or owners of the Premises (naming the Premises) and either delivering it to some person on the Premises or (there being no person on the Premises to whom it can be delivered) affixing the notice or a copy of it to some conspicuous part of the Premises.

ALTERNATIVE 5 (the Premises at the date such notice is given or served being unoccupied) addressing the notice to the owner or owners of the Premises (naming the Premises) and affixing the notice or a copy of it to some conspicuous part of the Premises stating that the Vendor intended to remedy the defective state of the Premises after the expiration of [9] days from the date of service of the notice by carrying out the following works:

**2.9 AND WHEREAS** there being no counter-notice served upon the Vendor within the period prescribed by S.76(3) of the Act, the Vendor executed the said works between the [ ] and the [ ] at a cost to the Vendor of [£ ].

**2.10 AND WHEREAS** on the [date] the Vendor registered the cost of the works in Part 11 of the Bury Metropolitan Borough Council Local Land Charges Register as a specific financial charge against the Premises, such charge attracting interest at such a rate from time to time applying.

**2.11 AND WHEREAS** the expenses incurred by the Vendor as referred to in Recital 2.9 have become a charge on the premises by virtue of Section 107 of

the Act as more particularly referred to in Recital 2.4 and the said expenses continue to remain outstanding.

### 3 Title

**3.1** The title to the property is unregistered and the Vendor does not have in its possession any of the title deeds or documents relating to the Property and the Purchaser shall raise no requisition thereon or objections thereto and shall not be entitled to postpone or delay completion as a result thereof.

**3.2** The Vendor cannot produce an up-to-date receipt in respect of any yearly rent (if any) payable on the Property nor any other evidence that any such rent has been paid to date (and in which respect the Vendor shall not be liable for any arrears of such rent up to the date of Actual Completion and which liability the Purchaser will assume on Actual Completion) and the Purchaser shall raise no requisition nor be entitled to delay or postpone completion as a result thereof.

**3.3** The Purchaser purchases with full knowledge of the fact that on first registration of the title to the Property at HM Land Registry the Chief Land Registrar will make an entry against such title on the following (or similar terms) and the Purchaser shall make no claim or demand against the Vendor in regard thereto:

"The Property is subject to such restrictive covenants and to such rent charges as may have been imposed thereon before [*this will be the date of application for first registration*] and are still subsisting and capable of taking effect".

### 4 Possession

Vacant possession of the Property will be given to the Purchaser on Actual Completion.

### 5 Covenants for Title

**5.1** The Vendor is selling all of the estates and interests in the Property as are bound by the Charge(s) arising under Section 107 of the Building Act 1984 as referred to Recital 2.11 of these Special Conditions but freed and discharged from the said Charge(s).

**5.2** Sections 1 to 9 of the Law of Property (Miscellaneous Provisions) Act 1994 shall not apply to this Agreement and the Transfer of the Property to the Purchaser ('the Transfer') and the Transfer shall contain the following provisions:

5.2.1 In consideration of £[**naming the amount of the consideration**] (receipt of which is acknowledged) the Vendor transfers the Property to the Purchaser

- 5.2.2 The parties agree and declare that the covenants by the Vendor implied by Sections 1 to 9 of the Law of Property (Miscellaneous Provisions) Act 1994 shall not apply to this transfer.

## **6 Matters affecting the Property**

The property is sold subject to and (as the case may be) with the benefit of:

- 6.1** all rents rights exceptions and reservations and covenants and conditions provisions and agreements and declarations or otherwise as subsist and relate to the Property without any obligation or liability on the part of the Vendor (whether as a result of its inability to produce the title deeds or documents to the property or otherwise) to define or provide details of the same.
- 6.2** all Local Land Charges whether registered or not before or after the date hereof and all matters capable of being registered as such
- 6.3** all notices served and orders demands proposals or requirements made by any local or public authority whether before or after the date hereof
- 6.4** all actual or proposed orders directions notices charges restrictions conditions agreements or other matters arising under the town and country planning legislation and environmental law.
- 6.5** all covenants exceptions and reservations of whatever nature all rights of way water light air and other rights easements quasi easements liabilities and public or private rights whatever and to any liability to repair or contribute to the repair of sewers drains fences or other like matters as the Purchaser shall have notice of or shall be apparent on inspection of the Property.

## **7 Indemnity covenant by the Purchaser**

The transfer will contain a covenant by the Purchaser with the Vendor that the Purchaser and its successors in title will henceforth observe and perform all such matters subject to which the property is expressed to be sold in Clause 6.1 of these Special Conditions the breach of which would or could expose the Vendor to liability (either direct or indirect) and will contain an indemnity by the Purchaser in favour of the Vendor against all actions proceedings costs claims and demands which may be made against the Vendor in connection with the breach non-performance or non-observance of the same.

## **8 Subsales**

The Vendor will not be required to execute a Transfer of the property to any person other than the Purchaser and in one parcel and by one transfer.

## **9 General Conditions**

- 9.1 'The General Conditions' means the Standard Conditions of Sale (Fourth Edition)

9.2 The General Conditions are deemed to be incorporated herein so far as the same are applicable to a sale by private treaty and are not varied by or inconsistent with these Special Conditions and the 'contract rate' will be four per cent (4%) per annum above the Base Rate for the time being of the Co-operative Bank plc.

9.3 The General Conditions are amended as follows:

9.3.1 Standard Conditions 2.2.5 and 2.2.6 shall not apply and the Deposit shall be paid to the Vendor's Solicitor as agent for the Vendor.

9.3.2 In Standard Condition 3.1.2 subclause (c) the words "and could not reasonably" shall be deleted

9.3.3 Standard Condition 3.4 shall not apply

9.3.4 Standard Condition 4.6.2 shall not apply

9.3.5 Standard Condition 5.1.1 shall not apply and the buyer assumes the risk when the contract is made

9.3.6 Standard Condition 5.1.2 shall not apply and the buyer must buy the Property in whatever physical state it is in at completion.

9.3.7 Standard Conditions 5.2.2 (b), 5.2.2 (e) and 5.2.2 (g) shall not apply

9.3.8 Standard Condition 5.2.3 shall not apply

9.3.9 Standard Condition 5.2.7 shall not apply

9.3.10 In Standard Condition 5.2.2 (f) the words "nor change its use and is to comply with all statutory obligations relating to the property and indemnify the seller against all liability arising as a result of any breach of such obligation" shall be added at the end

9.3.11 In Standard Condition 7.1.1 the words "or in negotiation leading to it" and "or was" shall be deleted

9.3.12 Standard Condition 7.3.2 shall be deleted and the following substituted:

Compensation is calculated at the contract rate on all sums payable under the contract (other than pursuant to Standard Condition 6.3) for the period between the completion date and actual completion.

## **10 Non-merger**

The contract will not merge in the Transfer on completion but will continue in full force and effect in relation to any matters outstanding at completion.

## **11 Condition of the Property**

The Purchaser is deemed to have made a full and complete inspection of the Property and to have full knowledge and notice of the state of repair and condition thereof in all respects and the Purchaser shall make no claim or

demand whatsoever against the Vendor in respect of any matter or thing arising out of or in connection with the state of repair and condition of the Property or any part thereof.

### **12 Transfer to take effect subject to General and Special Conditions**

The transfer is to take effect as if the disposition is expressly made subject to all matters to which the Property is sold subject under the General Conditions and Special Conditions of sale.

### **13 Completion Date**

The sale will be completed at the office of the Vendor's Solicitor before 2.30pm on [    ]

### **14 Restriction on Assignment**

This Agreement is personal to the Purchaser and shall not be capable of assignment.

## APPENDIX N

### **Letter to Land Registry in respect of unregistered property**

Dear Sirs

**Re: [Property Address]**

I refer to the above property, which has today been transferred by the Council under its Enforced Sales Procedure.

On behalf of the Council and being duly authorised to do so, I hereby certify that:

1. as recited in clause [ ] of the Contract for Sale dated [ ] the Act (as referred to therein) contains provision conferring a charge on the Premises and on all estates and interests therein.
2. as further recited in clause [ ] of the said Contract for Sale the Act confers on the Council all the powers and remedies under the Law of Property Act 1925 and otherwise as if they were mortgagee by deed.
3. the Council has followed the procedure in the Act as to service of notices and the carrying out of the works.
4. the charge(s) pursuant to which the Council has disposed of the property affect(s) the whole of the property known as [ ] today disposed of by the Council.
5. as recited in clause [ ] of the Contract for Sale the charge(s) pursuant to which the Council has disposed of the property was/were registered in part 2 of the Register of Local Land Charges on the [ ]

Yours faithfully