

**Rushcliffe Borough Council**

**Empty Dwelling Management Order (EDMO)  
Protocol & Procedure**

**December 2019**



# Rushcliffe Borough Council

## Empty Dwelling Management Orders

### Protocol and Procedure

#### **Introduction**

Across the Borough of Rushcliffe, there are in excess of 1000 private sector homes left empty for a number of reasons. Over 500 of these are classed as being long-term empty, having been unoccupied for a period of 6 months or more. Whilst market forces, a transient population and certain circumstances which lead to properties become empty often can't be helped, there are those which lay and remain empty, with no visible signs of returning to occupation.

There will always be a certain portion of these properties that are in the middle of a transactional process, going through Probate or about to be re-let, and whilst these will be monitored, they generally are not a cause for concern.

The majority of long-term empty properties in Rushcliffe are hidden amongst occupied residential dwellings and are often not generally considered empty or vacant until the condition and external appearance are considered to be below the standards expected by the surrounding community. Many, if not given the appropriate attention and encouragement to the owner, can become longer-term empty, eyesores, and negatively impact their neighbourhoods significantly.

Whatever the reason or circumstance surrounding an empty house, it represents a wasted resource that brings no benefit to the owner or local community. As of 1<sup>st</sup> July 2019, 537 private sector homes across Rushcliffe are recorded as having been empty in excess of 6 months, both restricting housing supply, and often detracting inward investment and impacting on the quality of local life.

A small number of these can become particularly problematic for local communities.

An Empty Dwelling Management Order (EDMO), along with a Compulsory Purchase Order and an Enforced Sale, are powers available to Local Authorities to deal with problematic empty homes, with the emphasis on ensuring that every support and opportunity is given to the property owner to encourage re-occupation.

The Council will consider the appropriateness of an EDMO as part of the wider consideration of all available options when it comes to bringing a property back into use, and each case is treated on its own individual merits.

## **1.0 Purpose**

The purpose of this document is to explain the Council's protocol when considering the use of Empty Dwelling Management Orders (EDMOs) and outline its procedure in order to process cases successfully.

## **1.1 Aims**

The main aim of using the power of an EDMO in Rushcliffe is to bring long term empty homes back into use where other powers or steps are either considered inappropriate or have been exhausted.

In producing this document, the Authority aims to:

- Utilise a power which will be implemented in a consistent, transparent and robust manner that will assist to bring empty residential properties back into useful housing stock.
- Support the Council's Empty Homes Strategy 2019-2014.

## **2.0 Explanation of an Empty Dwelling Management Order**

An Empty Dwelling Management Order (EDMO) is a process which allows the Council to take over the management of empty residential properties with a view to agreeing with the owner a plan to bring them back into occupation. It is used as a means to reoccupy long-term vacant homes where the Council has been unable to persuade the owner to bring the property back into use and considers this course of action necessary and proportionate.

EDMOs are suitable for consideration in circumstances where the present owner is either unwilling or unable to deal with the house and its associated problems.

By taking over the management of the property the Council can bring the property up to the 'Decent Homes' standard through renovation works and allow reoccupation of the property by letting the property for the duration of the EDMO.

The Council assumes management of the property and legal possession but does not obtain ownership. The Council would enter into a 'Management Agreement' with a Local Housing Association or Letting Agent to manage the property for the duration of the EDMO. All management costs are met from rental income.

A local authority wishing to use an EDMO must apply to a residential property tribunal for approval of an interim order, the first stage in the process. The tribunal must be satisfied that the property has been empty for at least two years, as well as having a negative impact on the local community and that there is local support for the use of an EDMO.

EDMO's cannot be granted for partly occupied buildings, so it cannot be used on an empty set of lodger's rooms within a house or for non-residential properties.

Once an interim EDMO has been granted, it lasts for up to twelve months, during which the authority works with the owner to try and agree a way to put the property back into use. The authority is considered legally in possession (in control) of the property during this time but does not gain legal ownership; it can change the locks but not sell the house. If no agreement is reached during this time, and the building remains unoccupied, the authority may make a final EDMO, which lasts for up to seven years. A final EDMO differs from an interim EDMO in that the authority is not required to obtain the owner's consent before finding a tenant for the property. If the authority fails to find an occupier for the property, or decides it cannot reasonably get the property occupied, it must hand back possession to the owner.

When a tenant has been found under the EDMO, the rent is paid to the local authority who are able to recover any costs they may have incurred by taking possession of the property and making it habitable, as well as the routine costs of maintenance and letting. However, any money over and above these costs is to be paid to the owner of the property.

## **2.1 Identifying Suitable Properties for EDMO action**

The empty homes database is compiled and maintained by the Empty Homes Officer. In accordance with Rushcliffe's Empty Homes Strategy, problematic empty homes will be 'risk-rated' and an investigation carried out to determine the best course of action to bring that home back into use and deal with the negative impact that property is causing the local community.

Section 133 (4) of the Housing Act 2004 states that in reaching the decision to apply to the Residential Property Tribunal (RPT) for authorisation to propose an EDMO, the Council must "take into account the rights of the relevant proprietor of the dwelling and the interests of the wider community". The Council will need to be able to show how and why they have reached their decision, having carefully considered all the evidence, and importantly have the documentation to prove it.

Properties will only be selected for EDMO when The Council has considered all other avenues to bring the property back into use.

## **2.2 Legislative Considerations**

In order for a property to be considered suitable for an EDMO under this procedure, it must satisfy the following criteria. It must be:

- A residential dwelling;
- Vacant for at least 2 years. This applies, even if the property is being occupied unlawfully, i.e. squatted in;
- A property which does not fall within any exempt categories as defined by: Housing (Empty Dwelling Management Orders) (Prescribed Exceptions and Requirements) (England) Order 2006.
- The dwelling has been causing a nuisance for the community;
- The community supports the proposed making of the interim empty dwelling management order by the local authority.

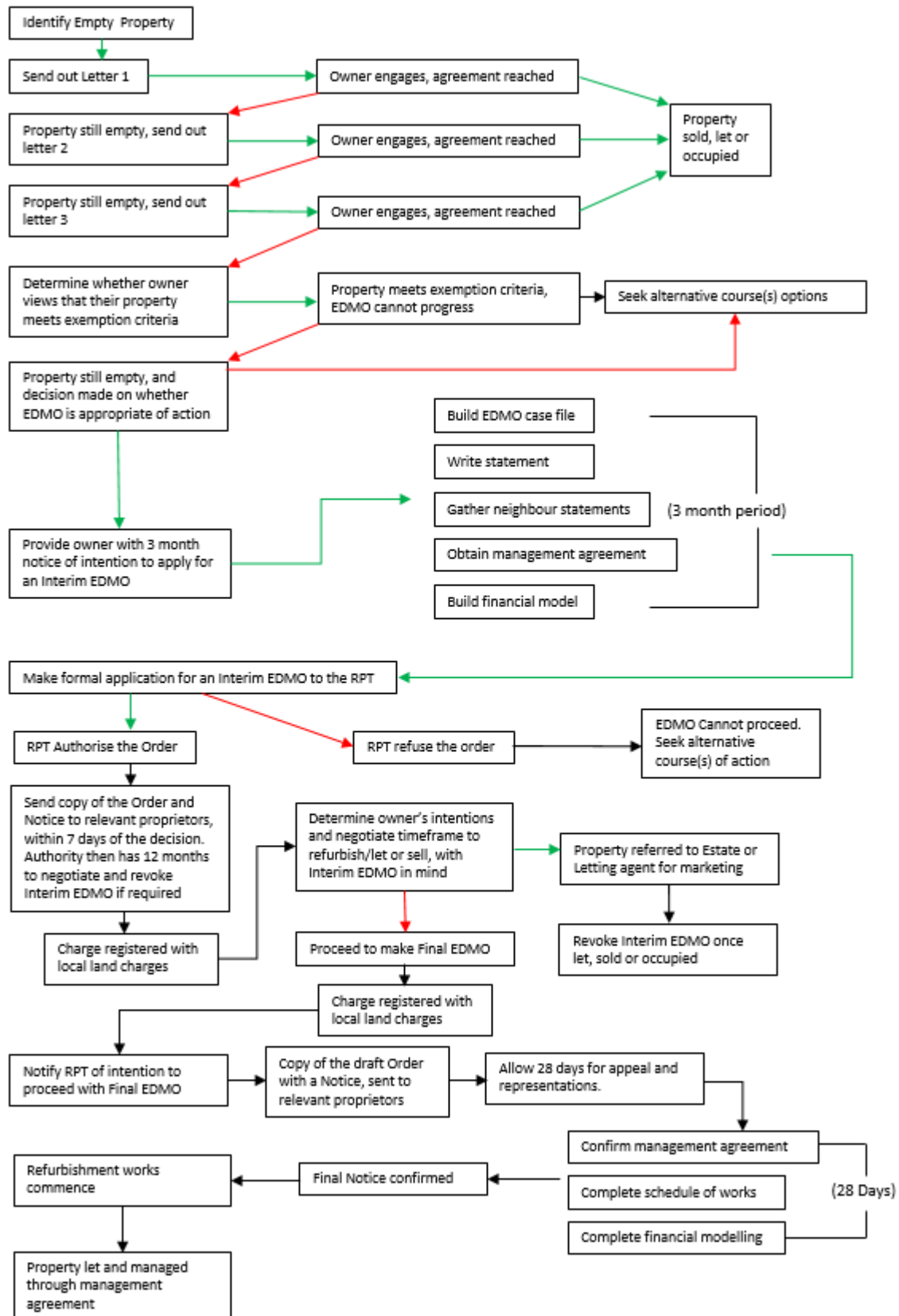
## **3.0 Prior action to proceeding with an Empty Dwelling Management Order**

Consideration of other, more appropriate types of action must always take place before pursuing an EDMO. The use of EDMOs, as with Enforced Sales Procedures and Compulsory Purchase, should be seen as a means of last resort. It is expected that all informal and formal actions will have been taken and exhausted by the Council in order to resolve the existence of the empty property and its associated problems. Such formal action could include but is not limited to the service of improvement notices requiring the owner to remove waste, improve the appearance of the property or to ensure the property is secured from unauthorised occupation.

Section 239(1)(a) of the Housing Act 2004 gives the Council power of entry to any property that may, in its view, be a candidate for an EDMO. Power of entry will be required to judge the viability of an EDMO to assess the property's condition in some detail before a decision is made to pursue the EDMO route.

Where an EDMO is being considered, a business case shall subsequently be produced, with expert opinion to the viability of letting the dwelling, including full costings to bring the property up to the decent homes standards.

## 4.0 Procedure Summary – Flow Chart



## 5.0 Legislative Basis for an Interim EDMO

Section 133 (3) (b) of the Housing Act 2004 stipulates that, before deciding whether or not to apply to the Residential Property Tribunal Service (RPT) for authorisation to serve an Interim EDMO, the Council must make reasonable efforts “to ascertain what steps (if any) [the owner] is taking, or is intending to take, to secure that the dwelling is occupied”.

Exceptions. The precise wording of Article 4 (1) (a) of the Housing (Empty Dwelling Management Orders) (Prescribed Exceptions and Requirements) (England) Order 2006 (SI 2006 No. 367) (with reference to Section 134 (2) (e) of the 2004 Act) must be quoted in communications with the owner. Article 4 (1) (a) states that the local housing authority “must make reasonable efforts to establish from the relevant proprietor whether he considers that any of the exceptions contained in article 3 apply to the dwelling”.

An application will be required to be made to the Residential Property Tribunal for authorisation to gain an Interim EDMO.

Section 134 (1)-(3) of the 2004 Act explains simply the terms under which the Residential Property Tribunal (RPT) will assess an EDMO application and may decide to grant authorisation for an Interim EDMO. In summary, there are four main counts; the RPT must be satisfied that:

- the property has been empty for more than two years, with little prospect of occupation without an EDMO and more chance if an EDMO is authorised;
- the authority has notified the owner of its intention, tried to find out what plans, if any, the owner has to return the property to use, and complied with any other requirements;
- the authority has considered the rights of the owner and the interests of the wider community; and
- it has itself considered the interests of the wider community and the effects an EDMO would have on the rights of the owner and might have on those of third parties.

If successful, an Interim EDMO is then registered as a local land charge in order to make it known that the property is under the control of the local authority, and in doing so prevents the owner from selling the property without the Authority having the ability to recover any costs associated with it up until the date of completion.



## 5.1 Legislative Basis for a Final EDMO

A detailed Management Scheme will need to be produced for the property in preparation for a Final EDMO. The Management Scheme is part of the Final EDMO. This will include details of works required to the property and cost estimates (for administration, works and management). It should also cover payment arrangements (including compensation, if any). Schedule 7, paragraph 13 (3) of the 2004 Act sets out what it “must (in particular) include”, and Schedule 7, paragraph 13 (4) lists additional, optional content; these lists are also set out at Chapter 8.4 of the DCLG Guidance Note on EDMOs.

The Council will liaise with the managing agent & housing benefits to determine the rent to be set. Schedule 7, paragraph 13 (3) (g) of the 2004 Act and the DCLG Guidance Note state that, should the Council set a sub-market rent, it must reduce the sum it takes from the rental income by the same amount as the sub-market rent falls short of the market rent. Where the rent is set at an affordable rent it should be in line with Local Housing Allowance Rates and the objectives of the Empty Homes Strategy.

The Council must either:

- Ensure the income generated over the 7-year period allows for any shortfall between the market rent and the affordable rent.
- Submit a draft management agreement at an affordable rent which is open to appeal by the owner prior to being granted.

A notice of intention to make a final EDMO will be served. Any representations to be made in response to this notice would need to be made in writing to the Council within 14 days after the service of the notice.

Once the consultation period has ended the final EDMO can be made, incorporating any changes resulting from consultation response.

A notice of the final EDMO will be served on the owner within 7 days (owner has 28 days to appeal to the Council & RPT). If there is no appeal the final EDMO is confirmed at the end of the 28 days. If there is an appeal the final EDMO is not confirmed pending the RPT’s decision.

Once in place, a local land charge is then placed on the property to ensure that the Authority’s cost are recoverable at any point that the owner attempts to sell the property. Only when the costs are recovered will the charge be removed, unless costs are repaid with prior agreement as part of the sale completion.

In order to provide continuity and transparency, a full cost and income file should be kept throughout the management of the property in order to supply the owner or their legal advisers with an up to date balance sheet, as and when required.

## 5.2 Considerations Following the Granting of a Final EDMO

It is the responsibility of the Council to:

- Secure the property and change the locks, if not already done.
- Store or dispose of any furniture not required by the owner.
- Commission and oversee necessary works.
- Contact the Managing Agent and ensure they keep detailed accounts of all income and expenditure.
- Ensure the property is let and remains occupied or with minimal void periods.
- Ensure any surplus rental income is paid to the owner.
- Write to the owner when the property is repaired and let, confirming management arrangements and whom the property is let to and offering an opportunity to view and inspect the property.

Further information can be found by reference to:

[Guidance Notes on Empty Dwelling Management Orders - DCLG 2006](#)

[Guide to Empty Dwelling Management Orders – Empty Homes Agency 2009](#)

[House of Commons Briefing Paper Number 04129, 5 September 2019](#)

[The Housing \(Empty Dwelling Management Orders\) \(Prescribed Exceptions and Requirements\) \(England\) Order 2006](#)

[Housing Act 2004 Section 132](#)

[The Housing \(Empty Dwelling Management Orders\) \(Prescribed Period of Time and Additional Prescribed Requirements\) \(England\) \(Amendment\) Order 2012](#)