

Legislative basis for an Enforced Sale

The Council's primary consideration when determining whether an Enforced Sale can be pursued, is whether the statutes, pursuant to which the default works are carried out, confer the necessary rights and powers.

If the statute confers a charge on all estates and interests in the property and also grants all the powers and remedies under the Law of Property act 1925 or otherwise for the purpose of enforcing the charge, then an Enforced Sale may be used and the charge will bind any prior charges affecting the property.

If the statute does not confer such rights it will be necessary to consider whether section 7 of the Local Land Charges Act 1975 applies. Under this provision, a local land charge falling within section 1 (1) (a) of the Act when registered in Part 2 of the Local Land Charges register, takes effect as if it had been created by a deed of charge by way of legal mortgage within the meaning of the Law and Property Act 1925, but without prejudice to the priority of the charge. Where the mortgage is made by deed, section 101 of the Law and Property Act gives the Council all the powers and remedies available to a mortgagee including a power of sale. An Order of the Court is not necessary because the legislation itself provides that power.

If section 7 of the Local Land Charges Act 1975 does not apply, an Enforced Sale may still be used, but only the estate of the offending party will be bound, not all the estates and interests in the property. In such circumstances the existence of any prior charges and the quality of the offending party's title will be major considerations when deciding whether to pursue an Enforced Sale.

If none of the above apply then an Enforced Sale cannot be used and consideration should be given to alternative courses of action.