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1 March 2010

Dear Sir,

Consultation Response: The Building Repairs (Scotland) Bill Consultation

The following response is on behalf of the members of the Built Environment Forum Scotland (BEFS).

BEFS is a forum that brings together 21 non-governmental organisations – both professional and voluntary – that work within the built environment sector. The purpose of BEFS is to raise awareness of policy issues within the sector, encourage debate and share information, with a view to influencing policy and legislation.

Through its members, BEFS connects with over 325,000 individuals through 540 organisations.

BEFS understands that there is parliamentary process and timetable to adhere to. However, BEFS would support any opportunity that there may be to use this Bill to achieve wider outcomes.

For instance, investment in traditional building skills and materials. Currently, options are very limited when it comes to training opportunities for stone masonry because of the relatively high cost of training (the trade cannot be exclusively learned in a classroom environment), and the fact that this skill is best learned on the job, as an apprentice, however the recession has led to a slump in demand and apprenticeships/ training & learning centres are not sufficiently available.

There is therefore a major supply and demand crisis.

The idea promoted in our Manifesto, is to help stimulate demand through focusing on the maintenance and repair of our existing built stock, specifically tenement property. The suggestion is to require regular surveys of such communal property where owners /occupiers may be less inclined to initiate action since the responsibility is collectively held.

Promoting preventative measures will also help to mitigate against the risks of climate change (and the impact on our existing built environment) and promote economic recovery through the promotion and sustainability of proactive survey work delivered by an adequate supply of traditional skills in the construction industry.

1. What do you believe are the current problems with the enforcement of dangerous and defective buildings legislation?

Fundamentally the scale of the problem and the potential financial implications is a major disincentive to many local authorities. Many local authorities have inadequate capacity, knowledge and processes in place, therefore responding in adequate time (both in terms of risk and cost) to serving enforcement notices is a real problem.

Moreover, even if local authorities had sufficient capacity, BEFS considers that there is declining capacity within the building and maintenance sector to adequately respond to the challenge now and more importantly in the future. Where health and safety is concerned there should be no 'post-code lottery'.

The true scale of the current repair condition and the impact of Climate Change (resulting in more risk of extreme weather conditions – heat, cold, wind, rain) on the Built Environment are largely unknown. More significantly it is unknown how many properties are at risk of being or becoming defective or dangerous.

There are however, estimates from the [Scottish House Condition Survey \(2009\)](#) which indicate that almost **eighty percent (78%) of dwellings in Scotland have some disrepair**. When it is considered that new built property only adds 1% to the existing stock, and that the majority of the current **99% of buildings will still be standing by 2050** (the Climate change target date) then the scale of defective or dangerous buildings is potentially enormous.

In particular, older traditionally constructed dwellings are more likely to have some form of disrepair, with **91% of those built before 1919 having some disrepair**, compared with 53% of dwellings built after 1982.

This aging stock will require some form of regular inspection and planned and preventative maintenance to mitigate against future health and safety risk, more costly repair and potential loss of heritage of not just listed buildings but properties of both local and national cultural significance.

There are **currently 2355 properties on the Buildings at Risk Register** for Scotland. This Register highlights properties of architectural or historic merit throughout the country that are considered to be at risk or under threat. Unfortunately, the Buildings at Risk Service do not have any statutory powers, nor does a building's presence on the Register afford the building any additional statutory protection or intervention if it falls into disrepair or becomes dangerous.

A Building at Risk is usually a listed building, or an unlisted building within a conservation area, that meets one or several of the following criteria:

- vacant with no identified new use
- suffering from neglect and/or poor maintenance
- suffering from structural problems
- fire damaged
- unsecured open to the elements
- threatened with demolition.

Ownership of the Built Environment is largely in private ownership (with the majority of residential dwellings being owned by individual households) which makes the enforcement of defective and dangerous legislation difficult to manage.

For individual owners, it is a major responsibility, many of whom will be ignorant of the true condition of their property and what to do about inspecting and maintaining it. BEFS considers that despite efforts in the past to raise awareness, that contextual and consequential public information and education on the requirements for the maintenance of the built environment is currently insufficient.

2. In your opinion, what changes should be made to current legislation to allow for a more effective system of identification and enforcement?

BEFS is concerned that currently there appears to be no incentive or widespread will for building owners (whether individual or business) to have sufficient survey work and remedial works undertaken on a building or structure, and often the building is left until it has become dangerous and a health and safety risk to the public.

BEFS considers that an opportunity was missed to establish a national standard across all tenures when the Scottish Housing Quality Standard (SHQS) was introduced in 2004. Whilst a target was set that all social landlords must ensure that all their dwellings pass the SHQS by 2015, private owners and landlords are currently under no obligation to meet the SHQS.

Notwithstanding that there is no statutory comprehensive standard in place, there is now a plethora of legislation in place – which in theory should enable local authorities to be the guardians of the (private sector) built and historic environment – however, it is not as effective as it potentially can be because there is no holistic legislation in place from preventative measures to enforcement.

BEFS members consider that ([see Manifesto](#)) there should always be a ‘carrot and stick approach’ to enforcement. BEFS members want to see a requirement for all communal properties to be surveyed every 3 years to encourage ongoing maintenance of the existing built and historic environment in order to promote the development of whole life costings in the management of the existing built environment.

The proposed enforcement regime for both a defective and dangerous building appears to be very clear and straightforward. However, the Bill does not mention what would happen if the building in question was unlisted, not within a conservation area but still regarded to be of historical significance.

BEFs members would be concerned that the owner, following receipt of a notice and/or confirmation that the Local Authority was to carry out works, would simply have the building demolished.

If the building in question is deemed to be of historical significance (this information could be sought from Local Authority in-house building conservation and archaeology expertise) notices served on owners ought to flag up ways that owners can find help and advice in relation to exactly what consolidation works were required, where the owner can go for advice etc.

3. What do you see as the benefits of charging orders in enabling local authorities to recover costs from owners of dangerous and defective buildings?

Faced with the current financial constrictions, the charging orders should provide local authorities with an incentive to proceed with enforcement (since there is no statutory duty requiring planning authorities to implement the following examples) where otherwise they may have been averse to using existing legislation such as:

- **Dangerous Building Notices** (which can be served on both listed and unlisted properties, and require the owner to make safe or demolish a building that poses a threat to public safety);
- **Repair Notices** (which can be served on both listed and unlisted properties, and specify those works considered reasonable and necessary for the preservation of a building, along with a time-scale within which these works should be completed), or apply for a
- **Compulsory Acquisition Order** (if there has been a continued failure to comply with Repairs Notices served on a listed building).

4. What do you see as the disadvantages of charging orders?

Members of the Community may regard the charging order punitive and therefore create animosity with the local authority – affecting future collaborative working with the community to create better places. Full consultation and education with the community would be in order before commencement of a more robust regime for tackling and prevent the occurrence of defective and dangerous property.

5. What do you see as the benefits of charging orders to owners of dangerous and defective buildings?

Not that those financial matters should be a disincentive to carry out works on buildings which are a potential threat to public safety – but many local authorities will currently be mindful about the financial implications of completing emergency remedial work where an owner refuses to respond. Therefore Charging orders can be a major contributor to improving Public Health and Safety measures by ensuring that enforcement work can be addressed timeously. Another consequential benefit is that properties of significant historical and economic value can be protected from possible future demolition orders if early remedial work has been undertaken by tradesmen appropriated trained and skilled in traditional construction skills.

6. What do you see as the disadvantages of charging orders to owners of dangerous and defective buildings?

No response.

7. What would be the benefits or disadvantages of changing the notice period in relation to defective building notices?

The obvious benefit to a responsible building owner would be that it provides a reasonable time for the owner to procure a suitably experienced and skilled construction firm to undertake the necessary remedial works to the defective property; and to work with the local authority , other public bodies and partners to

try and take a more comprehensive and collaborative approach. For instance, using the defective property as a catalyst for wider outcomes e.g. applying to the Townscape Heritage Initiative (THI) (Heritage Lottery Fund's grant giving programme for the repair and regeneration of the historic environment in towns and cities throughout the UK.).

By increasing the notice period, it not only provides the owner with a more reasonable time for repairs, but also the opportunity to engage in a wider strategic approach. The example of the THI scheme encourages and helps deliver sustainable conservation in historic urban areas by raising the standard of repair where the market has failed to do so, and by bringing new uses and new life back into areas which have lost their traditional economic base. Such a scheme encourages partnerships to carry out repairs and other works to a number of historic properties within those areas, and improve the quality of life for all those who live, work or visit there.

8. Do you think this would allow adequate time for owners to carry out repairs to their properties and please give a reason for your response?

Yes – see response above.

9. What do you see as the advantages or disadvantages of the proposal?

No Response

10. What do you see as the advantages and disadvantages of an automatic equal shares provision for local authorities in cost recovery for work carried out by them on dangerous and defective buildings?

Hopefully equal share provision would encourage a more comprehensive strategic approach as referred to in response to 7 above.

As outlined above, notices should additionally identify how owners could get either financial help (grants etc) to help with repairs/works; help with any historic building recording work and how an owner can find out whether there is a community interest and support.

For example, you might have an owner of a historic building which is not listed but is regarded to be historically significant but the owner has no means to undertake the repairs. It is possible that [community councils and local community groups](#) may wish to be involved and help.

11. What do you see as the advantages and disadvantages of a certification and inspection regime for buildings?

BEFS supports a *property MOT* (see our response to question 2 above). However, this would require a regulatory or registration framework to be established to verify and accredit such a regime and contractors involved. Otherwise there could be counter claims by aggrieved parties that inspection survey work (and therefore recommended remedial work) is not valid. See recent [article](#) on CPO's case in West Lothian, where the survey work commissioned by the local authority on valuations (and demolition) were dismissed by a Government reporter.

12. Do you have any comments on the financial implications of the proposals?

No

13. Do you have any comments on enforcement of the proposals?

No

14. Are there any equality issues that arise from these proposals?

Clearly there will be many older and low income households who are on limited annual income. Introducing equal shares provisions can be considered to be unequal.

Yours Sincerely



Craig Stirrat
Director
On Behalf of the Built Environment Forum Scotland