

THE BUILDING REPAIRS (SCOTLAND) BILL CONSULTATION

RESPONSE TO CONSULTATION QUESTIONS

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

- Identifying quickly current owners of properties, particularly when you are dealing with dangerous buildings.
- Monies available within Local Authorities to deal with defective buildings.
- Lack of Charging Order powers in Building (Scotland) Act 2003.
- Plethora of legislation that deals with defective and dangerous buildings.
- Apportionment of costs incurred by Local Authorities.

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

- Introduction of Charging Orders to Building (Scotland) Act 2003.
- Legislation should be simplified in order that powers are contained within as few pieces of legislation as feasible/possible.

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?*

- Prior to 1 May 2005 (introduction of Building (Scotland) Act 2003) Local Authorities took action to secure the removal of dangerous buildings secure in the knowledge that any monies spent could be recouped by the placing of a Charging Order on the property in question.
- Ultimately property owners are responsible for their own properties. Local authorities, given current budgetary pressures, should not be held responsible financially for the actions, or should we say, non-actions of property owners and Charging Orders is at least a mechanism whereby monies can at least be recovered. The current economic situation has led to many property developers going bankrupt and this has resulted in many property developments being left unfinished. These developments can, on occasions, quickly turn in to eyesores and in some instances become dangerous. In some instances Local Authorities then have to take statutory action to remove the danger or make the building safe. In some ways it is almost the “rationalisation” of the issues and problems of the property development business.
- Local Authorities are more likely, although this cannot be guaranteed, to be more proactive in dealing with defective buildings.
- Tax payer/public benefit from improved public safety at little or no cost to them.

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

- By their very nature defective and dangerous buildings and the site they are situated on, are often, although not always, of little value. Carrying out work, often expensive, on a property and placing a Charging Order on it to secure the repayment of monies should in practice work but if the property or site is of little value then a Local Authority will still face problems ensuring repayment.
- It could be argued, regardless of whether Charging Order powers exist or not Local Authorities will still face problems ensuring the repayment of monies is made if the property/site that work is carried out on is of little value.
- Some Councils may be accused of being heavy handed when dealing with defective buildings. Any action has to be measured and appropriate.

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

It could be construed as an advantage by an owner if a Charging Order was placed on a property in that he/she may see it as expenditure on repairs/defects delayed.

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

Under the Building (Scotland) Act 1959 when a Charging Order was served on a property it could be a significant period before the Charging Order was removed from the property by repaying the debt to the Local Authority. The presence of a Charging Order on a property could act as a deterrent to some owners to sell their properties in that the repayment of a Charging Order could will reduce the monetary gain to the owner from selling the property.

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

Our view is that increasing the period in relation to defective buildings is welcome. It takes considerable time to arrange and agree the extent of the work and appoint contractors and the proposal would seem reasonable and fair.

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 7 above.

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

Advantages

- Simplifies procedures.
- Greater security for Local Authorities in that greater chance of monies spent will be repaid.
- Allows a more realistic timescale for carrying out the work in respect of defective buildings.

Disadvantages

- Local Authorities may have to ensure monies being spent do not exceed the value of the property on which the monies are being spent on. For example, if a Local Authority decided to demolish a dangerous building and demolition costs are high, the vacant site may be of little value and the fact that a Charging Order was subsequently placed on the property/land is of little benefit.

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?

Advantages

- Simplifies both legal and financial procedures.
- Owners/Local Authorities know without recourse to Title Deeds cost associated with works.
- Commercial properties, in a multi-occupancy building, are likely to be advantaged by the proposals and more likely to participate in communal repairs.
- Ceases the use of rateable values to apportion costs.

Disadvantages

- One disadvantage may arise when the building, the subject of a notice is multi-occupancy i.e. commercial on ground floor and housing on upper floors. Normally under the terms and conditions of the Title Deeds

the commercial properties would have a greater amount to pay towards communal repairs. Under the proposal of equal shares householders will pay more with commercial properties paying less. This may act as a deterrent to those most affected by the proposal and a hindrance to carrying out the work.

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

Advantages

- Property owners would have to take more responsibility for their property. Some would argue that this is long overdue.
- If carried out correctly by Local Authorities it would ensure that the maintenance and repair of private properties would have a higher profile.

Disadvantages

- Places more responsibilities and duties on Local Authorities and in the current economic climate may not be resourced.
- Adds to costs and responsibilities of property owners.
- Housing (Scotland) Act 2003 gives Local Authorities various powers to serve/place various notices on existing housing. Proposals may conflict with this requirement of the Housing (Scotland) Act 2005.

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

The proposals are generally welcomed, however the success or otherwise of them will depend very much on how Local Authorities fund, both the enforcement and the necessary works. The powers proposed will at least increase the powers available to Local Authorities to carry out the necessary works, if they wish.

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

As above.

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

Not to our knowledge.