

Consultation Response of West Dunbartonshire Council

The Building Repairs (Scotland) Bill Consultation – David Stewart MSP

Date of Response:
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Consultation Response Author:
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Consultation Question 1

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

- Tracing owners of both vacant and tenanted properties.
- Some property owners are not aware of their responsibilities and the importance of building maintenance and repair and, in cases in which they are aware, difficulties in getting communal work carried out due to reluctance from other owners to accept, agree, arrange and finance the work required.
- Current budgetary issues facing Councils resulting in priorities lying elsewhere; money is not generally available for Councils to tap into to enable them to fund & carry out work in default of a notice, then waiting for this to be recovered at some unknown future date. Added to this are the legal and staff time/costs of debt recovery under the current system which relies on civil recovery measures.
- Communal responsibility for maintenance and repair of buildings not understood by owners. Responsible owners who do wish to carry out communal work are often frustrated and discouraged when other owners do not wish to fund work or do not agree that such work is necessary.

Consultation Question 2

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

- The current system of identification works reasonably well. Experience in West Dunbartonshire is that we are always responsive to reports of dangerous buildings and generally attend reports of defective buildings. Following information gathering, discussion and the giving of advice to the reporter, there are instances in which some defective buildings are reported but not visited - as no further action is deemed necessary by the Council at that time.
- Provision of a national fund allowing Councils, who are carrying out work in default of the owner, to draw money from before work start to repair defective and dangerous buildings. Repayment back to the fund could be

made either directly by the owner or by the discharge of a charging order at time of future sale.

Consultation Question 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?

- More reliable opportunity for costs to be recovered than is currently the case. However Councils must still have the discretion on whether to carry out any work in default of a notice.

Consultation Question 4

What do you see as the disadvantages of charging orders?

- Councils would still require to access funds at present time in order to pay the costs they incur; including costs incurred by contractors that they engage to carry out work to rectify the situation. Repayment of these costs to Councils, even using charging orders, can be many years after the time of placing of the charging order on the property. Councils would require to absorb this debt until such time as it was repaid.
- Owners may place a reliance on and have an expectation that Councils will use charging order powers to provide a way of funding repair and maintenance work, and thus further avoid their own responsibilities for doing so themselves.
- As a charging order could only be placed if the Council did the work, it does not solve the issue of owners taking responsibility for their property but cannot fund work e.g. an otherwise responsible owner, agrees that work requires to be carried out and simply cannot fund, will be forced to give up responsibility for the issue and to allow the Council to take over and remedy the situation.

Consultation Question 5

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

- Ability to get work carried out now without the owner having to access funding at present time.
- Someone else (i.e. the Council) will arrange the work and take responsibility for rectifying the situation and any subsequent defects arising.
- Placing of a charging order could be a solution for some owners who are facing short term financial issues (including those who would not be suitable for normal financial lending criteria and those who cannot access any equity in the property), as a charging order would allow them to have the defect remedied now and pay sometime later.

- Defective buildings would be repaired and therefore avoid the building becoming uninhabitable/dangerous at a future date.

Consultation Question 6

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

- Overall cost of rectifying the situation may be more if Council arranges work rather than the owner doing so.
- Owner may not agree that works are necessary and resent the process and aims of the Council.

Consultation Question 7

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

Benefits

- Owners may have time be able to source a range contractors, possibly resulting in a reduction in the overall cost,
- Owners may feel that they have some breathing space allowing them to assess the situation and seek professional assistance in relation to any major repair work required.

Disadvantages

- longer period for defects to be repaired, owners can avoid the issue for longer in the hope that it will just go away
- The extent of the work required may increase over the longer period of the notice as a result of the cumulative effect of deterioration of various building elements involved.

Consultation Question 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?

- In the majority of cases 12 weeks should be an adequate time to start work. However we would point out that the 7 days specified within the current legislation to start work and 21 days thereafter to complete the work are both minimum times. This provision is felt to be useful as it allows Councils to adjust these times as it deems necessary in relation to the particular circumstances of the case.

Consultation Question 9

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

Generally advantages and disadvantages are as provided above, however the following additional information may also be of use:

Advantages

- May provide Councils with more confidence to carry out work in default of a notice in the knowledge that they will be able to recover its costs in doing so; albeit this recovery may be many years later.

Disadvantages

- Councils being forced to take action in cases of defective buildings regardless of nature of the defect and the cost of rectification (both minor and major). We would submit that discretion on whether to take action by serving a notice, and in addition if a notice was served further discretion on whether to carry out works in default of a notice must still remain a decision for the Council; as per the current position.
- Unless additional funding is made available for Councils for carrying out work in default of a notice, the system as proposed could be a financial burden on Councils at time of financial constraint.
- Owners would still be able to avoid taking responsibility for their properties, could sit back and watch others (Councils) arrange and do the work, with no need to source funding.
- Potential for misuse to remove unwanted buildings/problems.
- Potential for misuse by disgruntled tenants against landlords.

Consultation Question 10

What do you see as the advantages and the 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

- Costs can be apportioned in a simple, straightforward way.

Disadvantages

- Potential for owners having a higher than equal share of the costs by way of legal title using the equal apportionment system to reduce their own immediate costs to the disadvantage of other minor share owners
- Usually there is already a legal document in form of the property title for apportionment of cost of communal works

Consultation Question 11

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

Advantages

- Early identification of issues and chance to remedy before situation deteriorates into a defective or dangerous condition.
- Owner awareness raised on the importance of investing in their property by maintaining and repairing it.
- Creation of additional work area for building surveyors.

- Additional information available to potential purchasers - if all inspection reports were made available.

Disadvantages

- Scale and initial cost of setting up system, public awareness, logistical & staffing issues.
- Additional unnecessary burden on those owners who are responsible and do look after their properties, and have maintenance and repair schemes in place.
- Certification, like a vehicle MOT, is a snapshot in time – it would not deal with issues which come to light following the certification inspection, more so if the renewal period was 5 or 10 years.
- Cost of inspection for difficult to access properties, both in terms geographical location and property size, may be disproportionately high; e.g. remote premises where there is likely to be low public risk as a result of defective building (high inspection costs due to travel time & costs), high rise properties requiring wall and roof inspections where access is not readily available, inspection of large buildings such as hospitals and university campuses, (high inspection costs due to access equipment and time to inspect, record and report).
- Public reaction to perceived government intrusion into their private life.
- Penalty for not having a 'certificate of building repair' for a property? Careful consideration would be required in relation to this aspect, as it may be beneficial for an owner to take the penalty option rather than arrange inspection and/or carry out any works required; especially in cases of defective buildings requiring large sums of money to remedy.
- Resource costs for running and enforcement of system.

Consultation Question 12

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

- We have commented on some of the financial implications of the proposals as part of the answers previously given, however we would take this opportunity to reiterate the point stated at Q4 above, that Councils would still require to access funds at present time in order to meet its costs. Repayment of these costs to Councils via charging orders can be many years later, with Councils requiring to absorb this until such time as repayment is made. Councils are under increasing budgetary pressures at present and to be successful, additional funding would require to be allocated to underpin this scheme.

Consultation Question 13

Do you have any comments on enforcement of the proposals?

- What is a defective building? The lack of a definitive answer to this may result in varied, wide ranging opinions and interpretations throughout Scotland and thus varied application of enforcement measures.
- In relation to defective buildings, enforcement should remain at the discretion of Councils. The facility for Councils to be able to place a charging order on properties if the costs incurred are not paid in a reasonable time, may give some confidence to Councils to serve notice and arrange work in default in the more serious cases.

Consultation Question 14

Are there any equality issues that arise from these proposals?

- An initial screening for equalities issues did not highlight any equalities issues in relation to these proposals.

Additional Comments

The following additional comments are submitted for consideration and if felt appropriate incorporation into the proposed bill.

The Council feels that the opportunity should be taken to explore the introduction of powers to allow Local Authorities to deal with unsightly and dilapidated buildings in order to have them improved to a reasonable state given their use, nature, construction and location. Buildings which are dilapidated, vandalised or otherwise unsightly, but are neither defective nor dangerous, also cause issues within the built environment. They can bring down the general feel of our built environment and as a result discourage inward investment; especially within retail areas and housing estates. They are often owned by absent landlords and lie empty or are let out to tenants with little or no re-investment of rental income into the general upkeep and maintenance of the premises. The Council feel that Local Authorities should be able to take control and undertake works that they feel are necessary to improve such buildings if the owner fails to do so and we submit that due consideration should be given to incorporating this into your proposed bill.