

The Building Repairs (Scotland) Bill Consultation

Response by South Ayrshire Council Building Standards to the list of questions included in the consultation document

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

With regard to dangerous buildings, the main problem is the recovery of costs for work legally organised by a local authority, if the owner does not carry out the work specified in a dangerous building notice. With no charging orders available the debt has to be recovered by civil means, and there are a number of instances where South Ayrshire Council (SAC), and specifically the Building Standards service, has been left with outstanding debts. Sometimes these debts cannot be recovered, and are eventually written off against building standards revenue budgets.

South Ayrshire Council has never issued a defective building notice under Section 28 of the Act, due mainly to the lack of a suitable budget to carry out the works if the owner does not co-operate.

The tracing of owners can often be difficult.

There are a number of pieces of legislation dealing with dangerous/defective buildings, which can cause confusion.

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

Enforcement : SAC Building Standards would generally support the introduction of charging orders into the Building (Scotland) Act 2003, which would allow for more efficient cost recovery, and allow consideration of the use of the defective building procedures under the Act.

Identification : Consideration could be given to a register of buildings at risk, perhaps as an expanded version of the Buildings at Risk Register maintained by the Scottish Civic Trust of behalf of Historic Scotland. Streamlining of the various pieces of legislation would also be useful, as would Government guidance explaining when each piece of legislation should be used.

(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?

The current position, with owners having to be dealt with simply as civil debtors to the Council is not ideal, and does not take account of owners who abscond without paying, or owners who cannot be traced. Being able to place a charging order on the building or site

would be of great assistance, by providing a real means of recovering costs. This would encourage owners to carry out works and avoid a burden against their Title when selling their property or refinancing.

The use of charging orders could encourage local authorities to be more proactive in dealing with defective buildings, which would have the added benefit of reducing risk to the public.

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

There can be a considerable time period between the issuing of a charging order and cost recovery, depending on the circumstances surrounding ownership. Charging orders are not the entire answer, as there can still be problems with sites or buildings of modest value.

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

If they are in financially difficult circumstances then payment to the Council can be delayed until the sale of a building or site.

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

There would be a lack of closure on any outstanding debt, and the subsequent sale of any such property could be affected.

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

The danger remains, and during the intervening period there could be problems with defective buildings deteriorating to the point where they become dangerous buildings. The problem of lack of resources would remain, in particular for defective buildings.

(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?

An increase to 12 weeks should allow sufficient time for owners to carry out the necessary works, provided that they agree to co-operate jointly in a necessary repair scheme. However, in certain cases, where a building is deteriorating rapidly, a 12 week period could be too long

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

The problem of resources will remain, particularly for defective buildings. Advantages would be that procedures could be simplified, and local authorities would have greater comfort that costs could be successfully recovered.

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

The advantages of an automatic equal shares provision are simplicity, and the fact that the process could be speeded up.

However, disputes could remain. South Ayrshire Council Building Standards normally use the maintenance percentages in a typical tenemental town centre property to allocate proportions of costs (though rateable values have been used in the past). Commercial premises at street level can have a disproportionate share of maintenance, typically up to 50%, with the remainder proportioned between the flats on the upper floors. One disadvantage is that the use of a simple “equal share” may lead to legal challenges if the costs proportioned from the Title Deeds are less. The conflict between Titles and a simple apportionment could render this unworkable.

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

The administration of such a certification scheme would be a major burden on whichever organisation was chosen to oversee it, with a lack of suitable resources, both in staff and finance. The scheme could be simplified if only properties in designated city/town centres were included. South Ayrshire Council has carried out inspections of front facades of buildings within town centre areas in an effort to be “proactive” and not just “reactive” to potential problems. Although this only gives a “snapshot” of the condition of buildings, the results can be a useful tool in targeting the owners of those buildings which require maintenance. In addition paid “advertisements” in local newspapers reminding property owners of their maintenance commitments have been used. In the past South Ayrshire Council tried to target a portion of their Private Sector Housing Grant (PSHG) allocation to town centre building owners to encourage them to maintain their properties, although this was only partially successful due to the difficulties in making owners act together. There is a possible input through the new “Scheme of Assistance”, but this would be dependent on funding and priorities. It is difficult to see where the resources to deal with a certification and inspection regime could be found from existing budgets. Compulsory Purchase Orders should remain as a “last resort”

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

It is difficult to see where the resources to deal with a certification and inspection scheme could be found from existing budgets

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

Presumably enforcement would fall on local authorities, which would be an additional burden on already hard pressed local authority budgets.

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

No