

CONSULTATION RESPONSE TO THE DEPARTMENT OF THE ENVIRONMENT (DOE) ON DILAPIDATED/ DANGEROUS BUILDINGS AND NEGLECTED SITES	7th June 2016
TO: ENVIRONMENTAL SERVICES COMMITTEE	
FOR DECISION	

Linkage to Council Strategy (2015-19)	
Strategic Theme	Resilient, Healthy and Engaged Communities and Protecting and Enhancing Our Environments and Assets
Outcome	Implementation of effective, fit for purpose legislation to address issue of dilapidated and dangerous buildings and neglected sites
Lead Officer	Martin McCook
Cost: (If applicable)	

1.0 Background

The Department of the Environment are currently considering proposals to introduce a new regime of legislation to deal with dilapidation, one which gives Council more effective powers to tackle the most dilapidated and dangerous buildings and neglected sites but also will enable Council to take action to prevent such dilapidation and neglect occurring in the first place.

The latest stage in this process is publication of a policy consultation document within which a number of options are outlined.

The attached response (appendix A) includes comments from Building Control, Environmental Health, Planning Service and Finance enabling a corporate response to be made which it is hoped will help shape the final proposals for a new fit for purpose regime to deal with the blight of dilapidation.

1.1 Recommendation

It is recommended Council approve the consultation response attached at Appendix A

RESPONSE TO CONSULTATION ON DILAPIDATIONS**QUESTION 1: Do you agree that Option 4 should be the preferred option? If not, please indicate your preferred option and the reasons for that preference.**

Council agrees with the DOE that Option 4, a Bill to introduce a new broader regime dealing with dilapidated / dangerous, neglected sites and a range of visual amenity issues should be the preferred option.

Existing legislation in respect of Dangerous structures is antiquated and fragmented in so far as three similar but different pieces of legislation exist which are applicable to dealing with dangerous structures in Belfast, Londonderry and the rest of the Province.

Existing legislation can also result in duplication and has commonality with other pieces of similar legislation. This makes effective and efficient administration very difficult for all officers involved.

In respect of para 6.22, Council preferred option is (c) additional powers and a duty to take appropriate action;

In response to para 6.24, Council would advise when considering the issue of funding, particular attention is given to at least one fatality in Portstewart connected to a derelict building (despite a proactive approach to dealing with dilapidations by Council) and the fact that many derelict buildings are occupied by squatters which also puts NIFRS staff at risk when attending fires;

In response to para 6.26, Council agrees, effective implementation would require councils to allocate resources. However, we would disagree that the economies of scale resulting from the new local government model enhances our capacity to do so from within existing resources. Furthermore, leaving the decision with Councils for determining priority within their areas will result in inconsistency of administration of the legislation and exactly the same situation we currently have, where some Councils allocate resources and others don't.

In response to para 6.27 Council currently prioritises problem sites against agreed criteria and this has worked very well.

Council would advocate implementation of new legislation in full rather than phased.

QUESTION 2: Do you agree with the Department's approach to consolidating and amending Article 65 of the Pollution Control and Local Government (NI) Order 1978? If not, please comment on the specific issue(s) causing concern.

Council agrees with the DOE proposed approach to Article 65 of the Local Government and Pollution Control (NI) Order 1978.

Council has used Article 65 where there is a statutory nuisance which should be abated and welcomes amendments detailed with para 8.8.

In consolidating the provisions, and broadening its scope, it is critical DOE engage with Council Officers to ensure the current use of statutory nuisance provisions contained within the Clean Neighbourhoods and Environment Act (NI) 2011 are in no way hindered.

Due consideration should also be given to powers contained in Chapter 2 of The Housing (NI) Order 1981 which deal with unfitness and where these sit in the future.

QUESTION 3: Do you agree with the Department's approach to consolidating and amending Article 66 of the Pollution Control and Local Government (NI) Order 1978? If not, please comment on the specific issue(s) causing concern.

In light of the proactive use of Article 66 of the Pollution Control and Local Government (NI) Order 1978 within Council, particularly over the past five years, the Department's approach of consolidating and amending Article 66 as outlined in paragraph 8.18 is welcomed.

We would also offer the following comments:-

In amending the current Article 66, provision for instances when an owner cannot be identified should be included;

It could be questioned 'building or structure' should be retained in the wording, rather than changing to 'building' and providing a wider definition;

Article 66 currently includes ability to require the removal of rubbish or other material resulting from, or exposed by, the demolition or collapse of a building or structure that is seriously detrimental to the amenities of the neighbourhood. However, many situations exist where fly tipping has taken place on sites of derelict or abandoned property. This is currently dealt with under section 215 of Clean Neighbourhoods legislation and under Waste and Contaminated Land (NI) Order 1997. Despite welcoming the proposal to include rubbish and materials which are deposited from sources other than demolition or collapse, due consideration should be given to ensuring there is no duplication of legislation.

If the proposal is included, cost recovery options open to Councils should be clear, prescribed and specific and cover instances where owner is unknown. The surety that costs are likely to be recovered will encourage Councils to be proactive in using the legislation with limited budgets and resources.

Proposals of penalties are also welcomed, particularly higher fines for serious cases. This should have a greater impact than the minimal per diem fines imposed (if any) for each day the offence continues after the conviction. It is our experience this has not been administered well and recommend consideration of other options.

Council recommends provision is included to compel owners to carry out the work, as is incorporated within Town Improvement (Ireland) Act.

With respect to paragraph 8.17 Council advocates retention of options of demolition and repair/restore. This can provide an option where a property is protected. New legislation could make provision that in certain cases demolition could be considered only as a last resort?

QUESTION 4: Do you have any comments regarding the Department's proposed approach to transposing these provisions of the Building Act 1984?

Council would welcome transposing relevant provisions from the 1984 Act, particularly in respect of dangerous buildings and structures.

With respect to paragraph 8.21, Section 77 relates specifically to 'dangerous buildings'. Care should be taken to ensure this does not remove ability to deal with other 'structures' which are considered ruinous and dilapidated and present a danger.

Section 77 specifically requires the owner to execute such work as to obviate the danger. Clarity is required to ensure this is not simply a temporary repair or securing the property. Council recommends repair, restore, replace or demolish options should be retained.

Council agree completely with recommendation not to adopt the requirement to apply to court for an order requiring the owner to take steps to obviate the danger. Every delay results in the risk being retained for longer than it needs to be.

Adoption of Section 78 would also be a very welcome addition and would be beneficial to Council particularly if supported by cost recovery provisions proposed. Council is currently reluctant to carry out immediate action due to costs that can be incurred and the inability to recover. This has resulted in extended inconvenience eg. road closure etc, where an unsafe property is fenced off as a temporary solution while Council tries to establish ownership.

With respect to paragraph 8.23, Council also welcomes the proposal to incorporate relevant parts of the 1984 Act particularly power of entry and clear instruction relating to serving of notices.

On reviewing existing dangerous structures legislation and Sections 77 and 78 of The Building Act, Council concludes the Building Act does not really offer much more than already exists. The benefit is in the clarity and more modern relevant form of the wording.

QUESTION 5: Do you have any comments regarding the Department's intention to repeal the relevant provisions in location-specific legislation and re-enact necessary provisions in the new legislation?

Completely agree. There is no benefit that can be gained from location specific legislation within our small province. Failure to address this is likely to maintain the inconsistent interpretation and delivery of legislation.

That said, care must be taken to retain the best of what we have in all existing relevant legislation and other legislation such as Sections 77 and 78 of The Building Act and Derelict Sites Act 1990 (in the Republic of Ireland) and develop legislation which is fit for purpose.

QUESTION 6: Do you have any comments regarding the Department's intention to introduce provisions in the new Bill that would replicate powers available to local authorities in England and Wales under the Town and Country Planning Act 1990?

The introduction of such provisions would be welcomed and would allow for action to be taken on sites that are not encompassed by the existing regime. It is envisaged that such powers

would be primarily used for lower priority sites to require the “proper maintenance of land”. We would welcome the Department’s views on whether such a provision could be used to address invasive plant species where their spread may be adversely affecting the amenity of neighbours. The NI Assembly’s October 2015 research paper on Japanese Knotweed recognised the limited legislation to address this particular problem.

It is noted that it is the Department’s intent that such provisions should be used proactively by Councils thereby ensuring that local areas are maintained to a higher standard that is presently legislatively required. It is recognised that such efforts will require regulatory resources to successfully deliver these improvements.

It is noted that:-

Section 215 of the 1990 Act only includes ‘amenity’ of the area, or adjoining area to be adversely affected. The test is not extended to ‘Seriously detrimental’, and,

- This legislation has been well received and productively used in England and Wales to good effect.

Council would also welcome the replication of Section 330 of the 1990 Act in so far as it could provide a power to require information as to interests in land which in turn could assist in addressing problems faced in identification of owners and others responsible for relevant premises.

A tiered approach could also provide Council with clearer parameters to implement the proposed legislation based on the specific circumstances of each individual case.

It is essential clear Guidance is provided to accompany this approach and ensure consistency of application.

QUESTION 7: Do you agree with the Department’s view that a combination of existing planning powers (transferred to the councils under Local Government Reform) and proposed new provisions in respect of dangerous buildings and visual amenity are sufficient to deal with unfinished or abandoned sites?

We believe that the scope of proposed legislation has the potential to address any adverse Environmental Health impacts upon the neighbourhood. The existing planning powers transferred to Council on 1st April 2015 have limited impact on addressing this problem.

The existing provisions under Section 64 and 65 of the Planning Act (Northern Ireland) 2011 (Completion Orders) only relate to developments which are not yet completed. The effect of the Completion Order will not remedy the impact of the dangerous building or adverse visual impact. Instead, it solely removes permission relating to the completion of the development whilst the existing structure remains a valid development.

Under Section 68 of the Planning Act the Council has the legislative power to revoke planning permission, however, this could leave Council liable to compensation. Furthermore, the effect of revocation would again have limited impact as it can only be exercised before the operations have been complete or the change of use of the land has taken place.

The final power open to Council under the Planning Act is a Section 73 Discontinuance Order which is subject to confirmation under Section 74 by the Department. Again the exercise of

this power would leave the Council liable to compensation and should only be exercised having regard to the local development plan and other material planning considerations. It is therefore unlikely to be applicable to ordering the removal of a building due to it being considered dangerous and visual amenity concerns where planning permission had been correctly granted having had regard to the local development plan and other material considerations.

QUESTION 8: Do you agree with the Department's proposed approach to issues of ownership and, in particular, do you have any comments regarding the scenario outlined in paragraphs 8.42 – 8.44?

A major challenge and drain on available resources in enforcing existing legislation is due to difficulties establishing, identifying and locating owners. Many properties are under the control of persons other than the owner.

Provision of a definition of 'reasonable efforts' is welcomed. However, accompanying guidance to clarify what reasonable efforts will be in terms of identification of relevant owners is also required to support this.

As stated in paragraph 8.41, the existing framework is unfair on both Council and Rate payers where Council are obliged to do work in default where the property is under the control of a financial institution. The owner or financial institution can subsequently benefit from a better resale value at the expense of rate payer and Council.

Provisions must be included to enable priority to be given to recoupment of costs by way of a charge or statutory charge with automatic postponement of the financial institution's or other charges.

Council also welcome the proposal in paragraph 8.43 to explore the possibility of extending liability to persons other than the owner and provision for cost recovery in instances where there is a direct beneficiary of the work carried out by Council.

QUESTION 9: Do you have any comments on the Departments proposed approach to cost recovery?

Although we acknowledge the limitations, with reference to paragraph 8.44, Council would strongly support ability to recover all costs associated with investigation and administration associated with bringing cases to a resolution. It is our experience that significant time and effort go into bringing cases to court only for them to be sorted at the last minute without necessity to do work in default. However, at significant expense to the ratepayer.

We concur completely with the comment it is right and proper that the burden of preventing and addressing dilapidation should fall to those who have a beneficial interest in the property concerned.

Further comments:-

- Recommend automatic priority of Council costs and charges over others;
- Advise new legislation provides a way of giving a prospective purchaser secure title of a property where a Council utilises an enforced power of sale;

- In cases of abandonment, if costs to carry out work in default exceed a property site value and the property is unused, could provision be incorporated to declare the property as abandoned and have it vested in that Council?
- Council would also welcome power of sale over such abandoned property;
- Consideration could also be given to bona vacantia property. Where a property is deemed to fall into the rules of bona vacantia and costs are owed to Council, subject to discretion, a property should revert to Council before reverting to the crown, with Council having the right to disclaim also.

QUESTION 10: Do you think guidance for a new regime should be statutory or non-statutory?

Council is of the opinion any new regime and associated guidance should be statutory. This is critical to ensure consistency of application throughout Northern Ireland.

Council agrees guidance produced by the DOE should be developed collaboratively with relevant local government officers and other stakeholders to ensure technical and operational issues are adequately reflected.

QUESTION 11: Do you have any specific comments regarding potential provisions to enhance the protection of heritage buildings?

Council agrees a proactive approach is required. We would advocate this in respect of all property (not just protected buildings). Given adequate resources, a programme of intervention could be implemented as part of the new legislative regime whereby proactive communication and enforcement is possible prior to property deteriorating to a dangerous or dilapidated state.

A balance should be struck between protection of people and protection of buildings of architectural interest.

Also welcome inclusion of any provisions which would enable early intervention.

Urgent works notices provided for in Section 161 of the Planning Act (NI) 2011 are useful.

Again it is essential provisions are made to ensure effective cost recovery in any new regime.

Provisions in any new legislation could incorporate ability to draft notice which does not include an option of demolition in certain specific circumstances. Any notice could contain instruction to the effect that consent to demolish any protected building must be obtained prior to that option being implemented.

Furthermore, where demolition is the only reasonable option, provisions requiring replacement of identical façade could be enforced.

QUESTION 12: Do you have any further comments on any of the issues raised in this document or are there any other important issues that you feel have not been covered?

Council welcomes any provisions and legislation which have potential to protect and benefit the health, safety, welfare and convenience of people living in, visiting or commuting through Causeway Coast and Glens Borough.

APPENDIX A Cont'd

In the current financial climate we find ourselves, it is critical provisions for cost recovery are adequate, sufficient and clear and that those responsible for the detriment pay for its' removal. This will assist to ensure fairness for rate payers who should not have to pay for the improvement of properties they have no control over.

The department must be diligent in the transfer or granting of additional powers to councils without detailed consideration of the size and scope of the issue being addressed since Councils' current budgets will contain absolutely no provision for such powers to be exercised. Failure to allocate adequate funding or the requisite ability to recover all costs incurred in the exercise of such powers will only result in Councils becoming reluctant to implement these powers and therefore the intended benefit from such legislation will become increasingly nullified especially if cost recovery options are seen as ineffective.