

Belfast City Council response to the Department of the Environment (DOE) Policy Consultation on Dilapidated/Dangerous Buildings and Neglected Sites

Introduction

Belfast City Council ('the Council') welcome the opportunity to provide comment on the DOE policy consultation regarding the current legal and policy framework that governs Dilapidated/Dangerous Buildings and Neglected Sites.

As the DOE will be aware, this Council has long advocated for a review of legislation in this area. It is the Council's view that a new modern fit for purpose regime is required, providing local government with appropriate powers and sanctions that will enable it to effectively deal with blight and issues caused by dilapidated buildings, dangerous buildings and neglected sites.

The Council welcome the proposals for a new, broader regime to deal with dilapidated buildings, dangerous buildings and neglected sites. In establishing a new regime, it is essential that the Council, be it through building control, environmental health, local economic development, community development, local tourism or planning possess effective powers by which to deal with the issues of concern in this area.

The Council anticipate that new legislation and associated guidance will assist the 11 district councils and local government in general in continuing to improve the amenity of the communities we serve and represent. It will also help this Council in making Belfast a vibrant, attractive, connected and environmentally friendly city.

The Council has answered each question set out in the consultation in sequence. In addition, the Council has also included a section of general comments towards the end of this paper.

Q1 Do you agree that Option 4 should be the preferred option? If not, please indicate your preferred option and the reasons for that preference.

The 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.

The Council has previously indicated in response to the DOE discussion document issued in March 2014 that Council would prefer the introduction of new legislation to govern this area. Existing legislation is antiquated, piecemeal and cumbersome. Enacting new legislation is an opportunity to ensure that it is fit for purpose and adequately equip district councils with the powers to address the issues of: (1) dangerous structures; (2) dangerous places; (3) emergency powers; (4) dilapidated and/or ruinous properties; (5) abandoned, neglected and incomplete sites; and (6) clear and robust methods for recovering costs.

The introduction of new primary legislation will provide a solid foundation on which to shape a new regime dealing with the issues outlined above. It is critical that should the DOE decide to draft new legislation and guidance that it engages fully with district councils to ensure that the new legislation works in practice and takes account of operational matters to address existing gaps in the current legislative framework.

Given the archaic nature of the existing legislation the Council is concerned that some of the provisions, particularly those in relation to default powers to sell land etc. may give rise to issues of compatibility with The European Convention of Human Rights. The introduction of a new all-encompassing Bill would ensure that it has been screened for compatibility and remove any such concerns.

Q2 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.

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

The Council normally uses Article 65 of the 1978 Order where there is a statutory nuisance, which should be abated, but the Council is unable to trace the owner of the property within a certain period. It is a useful provision in that it allows the Council to address urgent situations in order to protect the health and well-being of the public.

The Council welcomes the consolidation of this Article in line with the amendments suggested by the DOE set out in Paragraph 8.8 of the policy consultation document. The Council believe the proposed amendments will provide district councils with greater powers to appropriately deal with cases of statutory nuisance, which currently fall outside the remit of Article 65. However, it is important that in broadening the scope to include potential physical injury and/or anti-social behaviour the DOE engage with council officers to ensure that the current use of the statutory nuisance provisions contained within the Clean Neighbourhoods & Environment Act (NI) 2011 by district councils be in no way hindered by this wider approach. It is recommended that the DOE have regard to the decision of *R. v. Bristol City Council, ex parte Everett* [1999] 1 W.L.R. 1170.

Another benefit of consolidating this provision is that it may provide an opportunity to bring clarity around the role of other agencies concerning these types of issues, for example, the Northern Ireland Housing Executive and its powers under the Housing (Northern Ireland) Order 1981.

The Council also feel that the DOE in reviewing this Article should consider other associated powers contained in the Housing (Northern Ireland) Order 1981 (Chapter 2) to deal with unfitnes. These powers should have transferred to district

councils pursuant to local government reform in April 2015 and the creation of new legislation in this area could provide the vehicle by which to transfer these powers to district councils now. The powers sought would include the ability to serve Repair Notices, Closing Orders and Demolition Orders, which would greatly enhance the ability of district councils to effectively deal with dilapidated and neglected sites.

Currently the Council rarely use Article 65 when dealing with issues of dumping, fly-tipping and littering. The inclusion of anti-social behaviour in a consolidated provision is welcome although it will be important, in defining what constitutes anti-social behaviour, to clarify if this is to include dumping, fly-tipping and littering.

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Q3 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.

The Council has undertaken a wide range of enforcement action under Article 66 of the 1978 Order in respect of dilapidated or ruinous buildings and structures.

Again, the Council would welcome the consolidation of the existing Article 66 provision along the lines outlined in Paragraph 8.18 of the consultation document. However, the Council would have some specific comments in respect of the issues the Department considers require amendment and some matters that the Department has not suggested in the proposed amendments.

In relation to including a wide-ranging definition of "building", while the Council accept that a definition may provide clarity, it is important to retain the flexibility already existing in the current Article 66 to enable enforcement action against any dilapidated man-made structure and not to restrict it solely to buildings. The lack of a definition for a building, has not posed any difficulties to date for this Council in bringing enforcement action. As currently under Article 66 (1) action can be brought in relation to any 'building or structure' therefore providing district councils with the flexibility to enforce successfully against the owners of a wide range of 'non-building' structures, such as ruinous hoardings around vacant property. Alternatively, the DOE could reference 'building' (and define same) as well as 'non-building structures'.

The Council would also suggest that, in amending the current Article 66, it is critical that the Department include provision for instances when an owner cannot be identified within a certain period. This could be by way of a district council seeking a court order to undertake the works in default when an owner cannot be identified or alternatively, a default power to carry out works without the necessity of a court order where a district council has not been able to locate an owner after reasonable enquiries.

The current Article 66 covers “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”, but not rubbish or materials resulting from any other source. Therefore, the Council cannot use Article 66 for dealing with dumped materials, fly tipping or littering on dilapidated sites. However, it welcomes the proposal by the Department to include rubbish and materials, deposited from sources other than demolition or collapse. If the proposal is included in new legislation the Department would need to be specific in terms of the cost recovery options open to a district council to recover what may well be significant amounts particularly in instances when the owner is unknown.

The Council welcomes the proposal to provide a wider range of administrative and/or criminal penalties, including significantly higher fines for serious cases. Currently, Article 66 (6) enables the Court to impose a per diem penalty for each day the offence continues after the conviction. It is the Council’s view, based on experience, that District Judges are reluctant to impose penalties in this manner, as there is no mechanism in place for determining how this is administered. The Council therefore requests that either an appropriate mechanism and/or guidance be put in place for the Courts, on how to manage the imposition of a per diem penalty. .

The Council considers that there would be merit in providing the Court with the power to compel an owner to carry out appropriate works to comply with an Article 66 notice issued by a district council. Similar provision exists within the Belfast Improvement Act 1878, in respect of dangerous structures notices, and has proved a successful tool in compelling owners to carry out requisite works. Based on officer experience, some property owners are willing to absorb the fines issued by the Court under Article 66 rather than comply with a notice. However, if the Court can compel an owner to fulfil the works set out in a notice then experience has shown this is normally the best avenue to resolving outstanding issues.

The Council also welcomes the suggestion that in respect of notices there can be agreement between a district council and the owner as to the course of action to be

taken to ensure compliance with the Notice. This is a sensible provision that may significantly reduce the likelihood of a council decision being challenged. The only potential area of difficulty in relation to this proposal concerns buildings that may have some degree of protection, i.e. are either listed, located within a Conservation Area or within an Area of Townscape Character (ATC).

For example, demolition of buildings inside an ATC, as a rule, does not benefit from permitted development and therefore permission is required. In addition, permission will only be granted for an acceptable replacement scheme. However, there are exceptions to this rule, in particular Paragraph A.1 (a) of Schedule 2 to The Planning (General Development) (Amendment) Order (Northern Ireland) 2012, which provides for demolition which is required or permitted to be carried out under any statutory provision.

The DOE considers that an Article 66 notice issued by a district council is a statutory notice and therefore, if this notice permits the demolition of any building then its demolition becomes a permitted development. The inclusion of the words 'if he so elects' within a notice in some cases inadvertently permits the demolition by a property owner of a building that should, in the interest of the amenity of an area, be renovated instead. It is critical that new legislation provides district councils with appropriate options to insist that all other avenues are fully explored before the option to demolish can be considered. The Council is committed to promoting, maintaining and protecting its built heritage and would caution that any new legislation guards against demolition of protected buildings except for in the most serious and exceptional circumstances.

Q4 Do you have any comments regarding the Department's proposed approach to transposing these provisions of the Building Act 1984?

The Council would welcome transposing **relevant** provisions from the 1984 Act, where it would strengthen and enhance the existing regime governing dilapidated and/or dangerous buildings and structures.

The Council notes the Department's proposal regarding Section 77 as it relates specifically to dangerous buildings and would welcome a similar provision as long as it would not fetter the ability of district councils to deal with structures that are ruinous or dilapidated and are dangerous. The Council also welcome the Department's proposal not to adopt the approach contained in the Building Act 1984 of applying for a court order requiring an owner to take steps to obviate the danger.

The adoption of Section 78 would be a welcome addition to any new legislative framework in dealing with emergencies through immediate action. This has been a longstanding frustration for the Council that while the will to deal or remove a danger exists it has often been the case that the legislation prevented immediate action therefore making a situation more precarious. As the Department will appreciate, the complex system of property ownership in Northern Ireland often means that it is not always straightforward to identify and locate a property owner. Although the Registry of Deeds system is being phased out to some extent due to compulsory first registration for certain transactions, a substantial amount of property within the Belfast area remains within the Registry of Deeds system. Land and Property Services may at some future date impose compulsory first registration for all transactions, which would lead to ownership of all land in Northern Ireland, recorded in Land Registry which would make property owner identification an easier task.

The Council would also welcome the incorporation of relevant parts from the 1984 Act on issues such as power of entry, form and services of documents, appeals, etc. and the inclusion of similar provisions would be useful.

The Council remains unconvinced that the provisions of the 1984 Act, with the exception of Section 78 (Dangerous Buildings – Emergency Measures), offers anything more than that which already exists under the Belfast Improvement Act 1878. In repealing location specific Acts it is suggested that the general provisions of the Belfast Improvement Act 1878 (which to some degree mirror the 1984 Act) should form the basis of any new legislation.

In essence, the Council welcomes the inclusion of provisions that will improve its ability to deal with dilapidated and dangerous properties and structures, for the benefit of those who live, work, invest in and visit Belfast. However, any transposition must be based on the principle that it provides district councils with more effective powers than those in existing legislation.

Q5 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?

The Council supports the Department's proposal to rationalise and simplify the law in this area. The continued existence of location specific legislation from over 100 years ago would complicate the establishment of a uniform regime throughout Northern Ireland to deal with these issues.

However, it is critical that in conducting a review of the old legislation that "the baby isn't thrown out with the bath water". For example existing provisions to undertake works in default when an owner is unknown, contained in the Belfast Improvement Act 1878, have proven very useful.

The Council would also suggest that the Derelict Sites Act 1990, applicable in the Republic of Ireland, be considered with a view to enact particularly in relation to powers relating to deposits of rubbish, litter, debris and waste on land.

Q6 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 Council would welcome the introduction of provisions, which will replicate the powers available to local authorities in England and Wales under the Town and Country Planning Act 1990 ('the 1990 Act').

The Council notes that to serve a notice under Section 215 of the 1990 Act the test is much lower than that which currently exists under Article 66 of the 1978 Order. Section 215 only requires the amenity of the area, or adjoining area to be adversely affected, not 'seriously detrimental' as per Article 66 requirements.

The adoption of similar provisions in new legislation equivalent to Sections 215-219 of the 1990 Act will hopefully prove as successful as it has been for local authorities in England and Wales. Research indicates that compliance with this Act is extremely high with a low percentage of appeals. Having similar provisions would also permit district councils to serve notice on an occupier as well as the owner. It is the view of the Council that this mechanism would dramatically improve its ability to alleviate the issues caused by dilapidated buildings and structures.

The Council would also welcome the replication of Section 330 of the 1990 Act as it will provide a power to require information as to interests in land; which would help address the problems faced in identifying owners and those responsible for dilapidated or dangerous buildings and structures.

Alongside the introduction of provisions similar to those contained in the 1990 Act, the Council recognises the need for detailed and appropriate guidance produced by the Department. Such guidance would provide clarity and assurance to both district councils and property owners.

Furthermore, the Council recognises the potential value in the two-tiered regime suggested by the DOE. The legislation, which underpins this area at present, is wide-ranging and multi-faceted as are the cases, which can arise. Therefore, a regime, which clearly delineates between serious public health or dangerous structures issues and those largely based on aesthetic quality, would provide district councils with clearer parameters to implement the proposed legislation based on the specific circumstances of each case.

It is envisaged that such powers on the lower scale could be used primarily for lower priority sites to require “proper maintenance of land”. The Council would welcome the views of the Department on whether this could be used to address invasive plant species e.g. Japanese Knotweed, Buddleia, etc. which can adversely affect the amenity and property of a neighbour.

Q7 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?

The Council agree that the current powers provided for in the Planning Act (NI) 2011 are sufficient to deal with the general issue of unfinished and abandoned sites. However, it would also be useful that when such sites pose a danger or have a significant impact on visual amenity, that district councils have the discretion to use other provisions to deal with these matters, taking into account the specific circumstances of the case in question.

Q8 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?

One of the main challenges to the Council in enforcing the existing legislation is due to longstanding difficulties with identifying and locating property owners and subsequent difficulties with serving relevant notices upon them.

The Council acknowledges this difficulty is to a large degree a result of the land registration system used in Northern Ireland. The Council would welcome provision included in the new legislation, and by way of guidance, which would clarify the reasonable efforts, which must be taken by district councils to identify relevant owners.

As indicated in the DOE policy document, the current system is clearly unfair to not only the Council but ratepayers also. In some instances, the Council is forced to undertake works in default when the subject property is under the control of a financial institution due to insolvency. Where the Council has paid to remove a danger or repair a property, which in turn increases its saleability and value, it should rightfully be in a position to recover its costs. This should take priority over the relevant financial institution to secure recoupment of costs by way of a charge or statutory charge with automatic postponement of the financial institution's or other charge(s).

The Council welcome the proposal by the DOE set out 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 a district council.

The Council also wish to place on record that in relation to any provision for cost recovery that the guiding principle of this Council and its officers has always been the recoupment of costs for works in default. The sole purpose for this is fairness to

its ratepayers who should not be responsible for paying to improve properties that will financially benefit persons, companies, financial institutions or other bodies.

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Q9 Do you have any comments on the Department's proposed approach to cost recovery?

The Council agree that appropriate provision for district councils to recover costs will be a key element for the effectiveness and success of any new regime. As indicated in the policy document not only will this enable district councils to recover costs expended it may also act as an incentive to property owners to take appropriate action themselves.

The Council agrees fully with the Department that the starting point in any debate concerning cost recovery is that, *'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'*.

The Council has registered statutory charges on the Statutory Charge Register in respect of works undertaken and costs owing under the Belfast Improvement Act 1878 and consider this a useful tool in that a property owner will likely discharge what is owed to the Council before selling their property on.

The Council would also make the following general points in relation to cost recovery:

- the Council would welcome automatic priority of the Council's costs and charges over other charges, mortgages and creditors;
- New legislation should provide a way of giving a prospective purchaser secure title if a district council utilises an enforced power of sale even in the absence of all conveyancing documents, such as roots of title and maps;
- If provision was made for district councils to enforce a power of sale this should incorporate powers in respect of priority of charges. Any registered charges and mortgages, etc. should be automatically cleared from title and in the event of surplus funds following the recovery of costs from the sale

proceeds, this amount can be paid out to the relevant charge/mortgage holders in order of subsequent priority. Alternatively, if there are no charges/mortgages, the surplus could be returned to an owner or retained by a district council to be held for a certain term. Pending an evidenced claim by the relevant property owner and where monies have not been claimed within that period then that council may retain such surplus.

- In cases of abandonment, if the costs to carry out the works in default exceeds a property/site value, and the property is not used, it would be useful for district councils to have a power to declare the property/site as abandoned and have it vested in that council. The Council would also welcome a power of sale over such abandoned/vested property, if necessary; any such vested land should be covered by general local government legislation, primarily, Section 96 of the Local Government Act 1972.
- With respect to escheat/bona vacantia land, where property is deemed to fall under the rules of bona vacantia/are subject to escheat and costs are owed to a district council then, subject to its discretion, a property should revert to that council before reverting to the Crown, with that council having the right to disclaim also.

Q10 Do you think guidance for a new regime should be statutory or non-statutory?

The Council believes that guidance on appropriate aspects for a new regime is critical in improving consistency in enforcement throughout Northern Ireland. This would be in line with local government's overarching commitment to the principles of better regulation. The Council agree that guidance produced by the DOE be developed collaboratively with relevant local government officers and other stakeholders to ensure technical and operational issues are adequately reflected.

In relation to the nature of the guidance that is to be developed, the Council would prefer the guidance to have a statutory basis. This would ensure the avoidance of any doubt for council officers, property owners, those with an interest in property and the courts as to what is required in practice under the relevant legislation.

Q11 Do you have any specific comments regarding potential provisions to enhance the protection of heritage buildings?

The Council agrees that new legislation should focus on addressing concerns on the lack of protection for heritage buildings. However, the Council appreciates the delicate balance to be struck between the need to provide appropriate protection for some properties while ensuring required works be carried out expediently and in a cost effective manner.

The inclusion of provisions akin to Chapter 2, Part 8 of the 1990 Act would also be welcome if it enables district councils to take a pro-active approach in addressing issues with such properties before significant deterioration occurs.

Urgent Works Notices provided for in Section 161 of the Planning Act (NI) 2011 are a useful tool in this area and the Council has regard to the DOE best practice guidance in relation to the use of them. The inclusion of provisions akin to it in new legislation would be welcome if it enables district councils to take a pro-active approach in addressing issues with such properties before significant deterioration occurs. Whether such powers should be included in new consolidated legislation or adequately serve councils through existing Planning law will warrant consideration. One of the main issues in terms of using Urgent Works Notices (which can prevent a building becoming unsafe) is the issue of cost recovery, particularly when an owner may make a hardship claim. Therefore, the Department should ensure that cost recovery mechanisms in this respect be reviewed.

Any new legislation should ensure that a statutory notice could be made for securing or repairing a property without the option of demolition. As a safeguard, it should also ensure that the options of securing or repairing must be fully considered before a demolition notice can be issued. The legislation should include a 'provisions prior to issue of a Notice' article which should state before any demolition order is issued a district council will have to first grant a consent to demolish either a listed building or a Building in a Conservation Area or Area of Townscape Character when this is required.

The Council appreciates that the demolition of unsafe listed buildings or buildings in a Conservation Area or Area of Townscape Character (that contribute to their character) should only occur in exceptional circumstances. Where it is adjudged that a building has been left to fall into such a state of repair that demolition is required then (if possible) a Notice under Article 140 (6) of the Planning Act (NI) 2011 requiring a replacement building should be issued at the same time. This provision should act as a disincentive to any property owner who may seek to gain a benefit by allowing their property to fall into such a state of dereliction that a district council must require its demolition.

The Council is keen that protection of heritage buildings is appropriately provided for in new legislation. It is appreciated that this area is both complex and technical and the commitment by the DOE to discuss further with key stakeholders is positive.

Q12 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?

The Council generally welcome the proposals put forward by the DOE in its consultation document. The Council's preferred option would be for the introduction of one comprehensive piece of legislation to address all issues of dangerous structures, places, emergency powers, dilapidated and ruinous buildings and structures, abandoned and incomplete sites as well as providing protection for our heritage buildings.

It is believed that this is the only reasonable option for addressing the inherent weaknesses and gaps in existing legislation. The Council is also amenable to offer the expertise and experience of its officers to work with the DOE in developing the policy framework in this area to assist in ensuring the development of legislation and guidance that is fit for purpose.

The Council envisage that with greater powers and better cost recovery procedures under new legislation district councils can pro-actively deal with buildings, structures and associated environmental problems. Clear and enhanced powers will enable local government to make a more significant contribution to the wider economy, public health, public safety, tourism regeneration and the reduction of anti-social behaviour. The proposed legislation supports delivery on the vision for local government promoted by the Northern Ireland Executive during the recent reform of local government.

As the DOE has indicated in this consultation that any central government funding to accompany the new legislation is unlikely the Council would caution that new legislation with enhanced powers would likely result in increased enforcement activities and place increased pressures upon already limited resources. Therefore, it is important that during the passage of any new legislation with potential resource implications that expectations of the public and elected representatives are managed so as to be mindful of these pressures.

In addition to the comments above, the Council has also enclosed its detailed submission provided in June 2014, which comprises a response to the Department's discussion document relating to Dilapidated/Dangerous Buildings and Neglected Sites. This document outlines detailed reasons why the existing legislation needs overhauled and the specific areas, which should be considered and included in moving forward.

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