

WEST DUNBARTONSHIRE COUNCIL

Report by the Executive Director of Housing, Environmental and Economic Development

Planning Committee: 1 March 2011

Subject: The Building Repairs (Scotland) Bill Consultation

1. Purpose

- 1.1** To inform the Committee of this consultation paper and to agree a response.

2. Background

- 2.1** David Stewart MSP proposes to make a Private Members Bill and has published the above consultation paper. The Council views are sought on a number of questions of the consultation paper and a response to the consultation paper is detailed in Appendix A to this report.

3. Main Issues

- 3.1** The consultation paper outlines the current issues that Councils throughout Scotland face in respect of enforcement of dangerous and defective building legislation under the provisions of the Building (Scotland) Act 2003. In practice, the current enforcement powers have some weaknesses and the paper seeks to find a way forward from the present position.
- 3.2** The Bill proposals can be summarised as follows:
- Extending the circumstances in which Councils can use charging orders to recover costs where it has carried out work to dangerous or defective buildings owned by others, in the event that the owners do not pay for the costs incurred by Councils,
 - Increasing the minimum period available to owners to undertake repairs in relation to defective buildings from 28 days to 12 weeks, in order to allow adequate time for owners to carry out repairs before Councils would be able to intervene to carry out the work,
 - Providing an automatic apportionment of responsibility in equal shares among owners in relation to the costs incurred by Councils in cases of shared ownership/responsibilities for buildings, in the event that Councils intervened and carried out the work,
 - Establishing a certification and regular inspection requirement for properties.
- 3.3** Under present legislation there are a number of barriers to a Council ensuring that remedial work is carried out on defective buildings to prevent them

reaching the stage where they would be considered dangerous to building users and the public. These barriers are primarily due to the legal and financial processes involved in the recovery of costs incurred by a Council and it is these barriers that the proposed Bill would seek to address.

- 3.4** While there is a legal obligation for a Council to respond to issues of dangerous buildings, there is no corresponding obligation to intervene and make good defective buildings. The current legislation does however provide discretionary powers for a Council to deal with defective buildings. The poor success rate in cost recovery means that there is disincentive for a Council to use such discretionary powers to issue defective building notices and in cases in which the owner has defaulted on the terms of the notice, to thereafter carry out the work.

4. People Implications

- 4.1** There are no personnel implications in relation to this report.

5. Financial Implications

- 5.1** There are no financial implications to the Council at this stage. However if the proposed Bill is approved and receives Royal Assent then there would be financial implications for the Council. The exact extent of these is not yet quantifiable due to the nature of the proposals detailed in the consultation paper. There may be some cost reductions for the Council in terms of elimination of small debt right-offs in situations where the Council arranges work in event of a non-paying owner(s) not doing the work themselves. There could on the other hand be expenditure implications if a scheme of building inspection and/or certification was to be introduced without appropriate funding.

6. Risk Analysis

- 6.1** No risk analysis is required in relation to this report.

7. Equalities Impact

- 7.1** No significant issues were identified in a screening for potential equality impact of this report.

8. Conclusions and Recommendations

- 8.1** The consultation paper aims to take forward and enhance the present situation of enforcement of dangerous and defective buildings, which has some weaknesses.

- 8.2** It is recommended that the Committee notes the content of this report and agrees that responses provided within Appendix A forms the Councils response to the consultation paper.

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Date: 15 February 2011

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Appendices: Appendix A: The Building Repairs (Scotland) Bill Consultation

Background Papers: Nil

Wards Affected: All wards