

WEST DUNBARTONSHIRE COUNCIL

Report by the Executive Director of Corporate Services

Corporate and Efficient Governance Committee: 20 June 2012

Subject: Private Housing in Disrepair in West Dunbartonshire

1. Purpose

- 1.1** This report advises Members of the powers available to Council when considering how best to deal with houses in disrepair that are privately owned.

2. Background

- 2.1** At the meeting of the Corporate and Efficient Governance Committee of 23 November 2011 in respect of a report entitled "Service of a Demolition Order - 143 Braehead, Bonhill, Alexandria", the Committee requested a further report showing the scope of powers that the Council has in relation to private landlords. This report has been extended to cover the powers of the local authority in relation to private owner occupied and privately let property.
- 2.2** Various officers from Legal, Regulatory and Housing, Environmental & Economic Development met to discuss and consider a range of powers available to the Council at meetings held in March 2012. The meetings were followed up with written contributions from the various service areas and this report contains the details of the research and results of the discussions that have taken place.

3. Main Issues

- 3.1** The powers available to the Council are many and varied and are spread across several service areas, including Environmental Health, Building Control, Planning, Housing and Legal Services.
- 3.2** The profile of West Dunbartonshire housing stock is contained in the Local Housing Strategy 2011-2016, as divided between the following tenures as follows:-

Tenure	Total Number	Percentage
Council Housing	11,323	25.5%
Registered Social Landlords	5,679	12.8%
Private Rented Sector	1,799	4.0%
Owner Occupation	25,672	57.7%

3.3 The main legislation for dealing with houses in disrepair is contained within the following legislation, but this list is illustrative and not exhaustive:-

Housing (Scotland) Act 1987;
Housing (Scotland) Act 2006;
Civic Government (Scotland) Act 1982;
Environmental Protection Act 1990;
Building (Scotland) Act 2003; and
Town and Country Planning (Scotland) Act 1997.

3.4 Tolerable Standard

In terms of Section 85 of the 1987 Housing Act, and as amended by the 2006 Housing(Scotland) Act, the Council is under an obligation to ensure that houses within its area which do not meet the tolerable standard are brought up to that standard, closed or demolished within a reasonable timescale. The tolerable standard is a very basic level of repair that homes must meet to be fit to live in. A house meets the tolerable standard if the house:-

- (a) is structurally stable;
- (b) is substantially free from rising or penetrating damp;
- (c) has satisfactory provision for natural and artificial lighting; for ventilation; and for heating;
- (ca) has satisfactory thermal insulation;
- (d) has an adequate supply of wholesome water available within the house;
- (e) has a sink provided with a satisfactory supply of both hot and cold water within the house;
- (f) has a water closet available for the exclusive use of the occupants of the house and suitably located within the house; or waterless closets;
- (fa) has a fixed bath or shower and a wash-hand basin, each provided with a satisfactory supply of both hot and cold water and suitably located within the house;
- (g) has an effective system for the drainage and disposal of foul and surface water;
- (ga) in the case of a house having a supply of electricity, complies with the relevant requirements in relation to the electrical installation for the purposes of that supply;
- (h) has satisfactory facilities for the cooking of food within the house; and

- (i) has satisfactory access to all external doors and outbuildings

3.5 The Repairing Standard

The principal standard against which the standard of privately rented housing is judged is called the Repairing Standard. In accordance with the 2006 Housing Act a landlord must ensure a house meets the Repairing Standard at the start of a tenancy and at all times during the tenancy. Further information in relation to this standard is provided at paragraph 4.14 of this report.

4. Powers Available to the Council

4.1 Closing Order

In terms of Section 114 of the 1987 Housing Act, the Council can serve a Closing Order on any house(s) within a property where it is satisfied that the house does not meet the Tolerable Standard and that it ought to be demolished. In addition, the house must form part of a building and there must be other houses in the building which do not fail to meet the tolerable standard. Accordingly, it can be used for flatted dwellinghouses.

4.2 Demolition Order

Section 115 of the 1987 Housing Act permits the Council, where it is satisfied that a house does not meet the Tolerable Standard and ought to be demolished, to make an Order requiring the building to be vacated within a specified period and demolished within six weeks following expiration of that specified period. If the building is not demolished within the specified time, the Council can carry out the demolition and sell the resultant materials. The Council is also entitled to set-off expenses incurred in the demolition from the payment received from the sale of the materials and any surplus must be paid to the owner.

4.3 Housing - Compulsory Purchase Order Powers

4.3.1 In terms of Section 124 of the 1987 Housing Act, where a Closing or Demolition Order has been made and it appears to the Council that the land must be retained for use as housing accommodation, the Council may be authorised by Scottish Ministers to compulsorily purchase the site of the building.

4.3.2 In terms of Section 45 of the Building (Scotland) Act 2003 there are also CPO powers where the Council has carried out work under the 2003 Act and the expense of carrying out this work cannot be recovered from the owner as the owner cannot be found. The Council is entitled, subject to Scottish Minister's consent, to proceed to purchase the building and its site.

- 4.3.3 A general power of compulsory purchase is also found in Sections 9 and 10 of the 1987 Housing Act where the Council requires land for or in connection with the provision of housing accommodation.
- 4.3.4 Section 40 of the 2006 Housing Act also contains a power to compulsory purchase where the Council is authorised to demolish and the owner fails to comply with a Demolition Order; however the house requires to be identified within a Housing Renewal Area Action Plan before this section can be used.

4.4 Planning Compulsory Purchase Order Powers

- 4.4.1 The Planning Authority's Compulsory Purchase Powers under the Town and Country Planning (Scotland) Act 1997 are normally used for land assembly in regeneration or infrastructure projects rather than for individual derelict properties. However, the power contained by Section 189 allows local authorities to seek a CPO where the land is required in order to secure the carrying out of "development, redevelopment or improvement" or for "a purpose which it is necessary to achieve in the interests of the proper planning of the area". These powers could be exercised in situations where the Housing Act powers did not apply, for example, in order to acquire a derelict property, where there was no intention to rehabilitate the house or redevelop the site for housing, for example, where it was intended to demolish the derelict property and use the site for some other purpose, such as an open space.
- 4.4.2 The legal costs involved in pursuing a CPO can be significant and the Council would also have to purchase the site at its market value and then undertake such work as may be required in order to bring it up to an appropriate standard. Some of these costs may be recouped if the site can be sold for redevelopment, or if the Council itself has a use for the land. However, if the site has limited redevelopment potential, or the cost of repairs exceeds the value of the resulting building, there would be no way to recover the full costs. At present, no service has an identified budget for this sort of activity.
- 4.4.3 When considering the CPO route it is worth noting that the whole process from start to finish can be quite lengthy. An unopposed CPO is likely to take around a year and an opposed CPO with the requirement for a Hearing may take from one to two years.

4.5 Work Notice

In terms of Section 30 of the 2006 Housing Act, the Council can require the owner of a house which the Council considers to be sub-standard to carry out work for the purpose of bringing the house into or keeping it in a reasonable state of repair. The Work Notice is served on the owner, specifying the reason for the Notice; details of the work that require to be carried out; any standard which the house is to meet on completion of the work; and the period within which the work must be completed. There is no automatic right to provide the owner with a grant for the works and no obligation for the local authority to carry out the work in default. In the event that the Council does carry out the work, the cost of the work can be reclaimed by registering a repayment charge against the property in the Registers of Scotland. The charge is recoverable in thirty equal annual instalments, payable on the same date each year, but the owner can choose to pay off the total amount due earlier or the amount can be repaid on sale of the property.

4.6 Maintenance Orders

In terms of Section 42 of the 2006 Housing Act, the Council may require the owners of a house(s) to prepare a plan for securing the maintenance of the house to a reasonable standard over a period of up to five years. The Order can only be made where:-

- (i) the authority considers that any benefit arising from the compliance with a Work Notice or a Repairing Standard Enforcement Order has been reduced or lost because of lack of maintenance; or
- (ii) that the house has not been, or is not likely to be, maintained to a reasonable standard. A Maintenance Order requires owners to submit a Maintenance Plan to the Council for approval. Once submitted, the Council may accept the plan with or without modification; reject the plan and require another plan to be prepared; or substitute a plan of its own. If no plan is submitted on the expiry of the Order, the Council may itself devise a plan for the house(s) concerned. The Council must also monitor the property to ensure that the plan is being adhered to.

4.7 Powers available under the Civic Government (Scotland) Act 1982

4.7.1 Section 87 permits the Council to rectify defects of an extremely urgent nature, such as a major burst water supply pipe in one house that is affecting an adjacent house or houses. The timescale for use of this legislation is very short. Where no key holder can be easily traced, a Warrant is normally sought. However, if the emergency is dire a Warrant is not necessary. Appropriate tradesmen are sourced and entry into the house is effected as soon as possible. The defect is repaired in the most direct manner and the house secured. The Council can recover all costs from the relevant owners.

- 4.7.2 Section 90 permits the Council to require owners of properties to provide and maintain lighting in common property, such as stairs, passages, back greens or basements and private courts.
- 4.7.3 Section 92 of the Act permits the Council to require occupiers, by means of a Notice, to keep common property clean. If the officers arrange the works in default, costs can be recovered.
- 4.7.4 Section 95 enables the Council to require owners of an open space, such as a back court area used by two or more separate properties, to maintain the open space and boundary walls or fences to prevent danger or nuisance to the public.

4.8 Nuisance Abatement Notice

In terms of Section 80 of the Environmental Protection Act 1990, the Council can serve a Notice where they have established that a statutory nuisance exists. In a housing context, the definition of statutory nuisance could range from an accumulation of refuse in or around premises to rainwater penetration in a house. The majority of complaints received could be characterised as having the potential to be a statutory nuisance. Where statutory nuisance has been established and a Notice has been served, the Council may carry out the necessary works in default if the Notice is not complied with. Local authority costs are recoverable.

4.9 Waste Land Notice/Amenity Notice

- 4.9.1 If it appears to the Council, as Planning Authority, that the amenity of an area is being adversely affected by the condition of any piece of land (including land with buildings), the Council may serve a Notice under Section 179 of the Town and Country Planning (Scotland) Act 1997 on the owner/lessee/occupier(s) of the land. The Notice must specify the steps which require to be taken for the abatement of the problem and must specify a date, of not less than 28 days from the date served, on which the Notice will take effect. There is a right of appeal against such Notices. In the event of non-compliance, the Council may undertake the works itself and recover the costs of doing so from the owner/lessee.
- 4.9.2 While Section 179 appears to give the Council wide ranging powers to force land owners to maintain their property in a condition which does not detract from local amenity, in practice these powers are limited as follows:-
- (i) The condition of the land must be adversely affecting the amenity of the area;
 - (ii) The steps required to comply with the Notice must not exceed what is necessary to remedy the adverse effects;

- (iii) The time period for compliance must be reasonable; and
- (iv) Such Notices cannot be used to rectify amenity problems arising from the ordinary undertaking of lawful operations on the site.

4.9.3 The fact that a house was vacant or in poor repair would not in itself be enough to justify a Section 179 Notice, even though it may be causing problems for immediate neighbours. If, however, the garden was very seriously overgrown or subject to fly tipping, or if the house was not secure and was attracting vandals or fire raisers, or the house was completely derelict and unsightly, then a Section 179 Notice may be appropriate. However, even in the worse cases, it is unlikely that such a Notice could require a derelict house to be brought back into a habitable condition as that would probably exceed what was necessary to remedy its immediately adverse impact on amenity. Such a Notice could perhaps require that the roof be covered and the building made secure, or that the garden be cleared, but it could not force the owner to fully rehabilitate the property. In practice, the use of these Notices is limited by the fact that the planning service has no budget for undertaking direct action and the difficulty of recovering costs from those owners unwilling to pay or those of limited means.

4.10 Defective Building Notice

In terms of Section 28 of the Building (Scotland) Act 2003, the Council may serve a Defective Building Notice. The defects are those which require rectification to bring the building into a reasonable state of repair, having regard to its age, type and location.

4.11 Dangerous Building Notice

In terms of Section 30 of the Building (Scotland) Act 2003, the Council may serve a Dangerous Building Notice. The Notice relates to work necessary for repair, securing or demolition of a dangerous building which the Council considers necessary to remove the danger.

4.12 Enforcement of Title Conditions

4.12.1 This section of the report specifically relates to enforcement of title conditions in relation to the former Council houses sold under the Right to Buy. When houses are sold, title conditions are normally inserted in the Deed of Conveyance or "Disposition" that relate to repairs, maintenance and renewal of the building, including any common parts. Where an owner contravenes the use of his/her title, appropriate legal action may be taken by any person having an interest to enforce the title condition. Action could be taken by a property factor in its management of the property or block, or even by a neighbouring owner if sufficient legal interest can be demonstrated.

4.12.2 From time to time the Council, in its capacity as owner of one or more buildings in the terrace/block and/or as managing factor in terms of the relevant titles, is requested to write to another owner to remind them of their title obligations and request them to remedy any breach of their title conditions within a reasonable time period. Should further contravention occur, or no action by the owner be forthcoming, then the appropriate course of action may be taken by the Council under delegated powers, which might involve a Sheriff Court Action to enforce the owner to implement the title condition (specific implement); or Interdict (to prevent a course of action that was contrary to the provisions in the title). Sheriff Court Actions can be time consuming for all involved and expensive and sometimes the eventual outcome is difficult to predict prior to the Proof or Hearing; however Court Actions can be sisted (put on hold) to allow time for negotiation and settlement on terms agreed between the parties.

4.13 Empty Homes Officer

During 2012/2013 the Scottish Government, West Dunbartonshire and Renfrewshire Councils are jointly funding the post of West Dunbartonshire and Renfrewshire Empty Homes Officer to champion support and develop initiatives throughout both Council areas in relation to empty homes. The work will involve maintaining a private sector empty homes database for each Council, providing information and practical assistance to owners of empty homes to encourage them to bring their properties back into use and develop a list of priority properties across both local authority areas for more concentrated work to engage, encourage and negotiate with empty home owners to bring their property back into use.

4.14 The Repairing Standard for Private Rented Properties

4.14.1 A private rented property must meet the Repairing Standard as follows:-

- (i) The house is wind and watertight and in all other respects reasonably fit for human habitation;
- (ii) The structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order;
- (iii) The installations in the house for the supply of water, gas and electricity and for sanitation space, heating and heating water are in a reasonable state of repair and in proper working order;
- (iv) Any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and are in proper working order;

- (v) Any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed; and
- (vi) The house has satisfactory provision for detecting fires and for giving warning in the event of a fire or a suspected fire.

4.14.2 Regulation is shared between the Environmental Health Section and the independent body called the Private Rented Housing Panel (PRHP). Registered private landlords are required to sign a declaration that they comply with all legal requirements relating to letting before their Private Landlord Registration is approved. If there are any complaints relating to property condition, an officer will visit the property and assess it against the Repairing Standard. After inspection, if there are any disrepair issues or other concerns, the landlord is contacted and made aware of these concerns and given time to rectify them. If no action is taken, sanctions to encourage landlords to improve practice can include the service of Rent Penalty Notice, which withholds rental income until action is taken. Other enforcement actions, if considered appropriate, is a report to the Licensing Committee, as a condition of registration is meeting the 'fit and proper' person test. This test includes any information showing that a landlord has contravened any provision of the law relating to housing or landlord and tenant law. Private landlords already have legal obligations to repair the properties they rent out but these are difficult for tenants to enforce. The Repairing Standards, under the 2006 Housing Act, modifies and extends these obligations and the establishment of the PRHP makes it easier for a tenant to enforce them.

4.14.3 The PRHP deals with disputes between landlords and tenants on repair issues. Only a tenant can currently report a problem to the PRHP. The tenant must first let the landlord know about the problem in writing and give the landlord a reasonable amount of time to resolve it. If no action is taken by the landlord, a referral can then be made by the tenant to the PRHP. If the case is accepted, it will be referred to the PRHP Committee for consideration. If this committee decides that the landlord has failed to comply with the Repairing Standard, they can make an Enforcement Order (RSEO) requiring the landlord to carry out the work. It is an offence for any landlord to fail to comply with an RSEO. In such a case, the committee can impose a Rent Relief Order to reduce the rent payable on the property until satisfied that the work has been completed. In certain circumstances the Council may also be asked to carry out work on behalf of the landlord and recover all costs from them. To date this has never occurred in West Dunbartonshire.

4.14.4 Houses in Multiple Occupation (HMO)

A house is an HMO if it is occupied by three or more persons who are not all members of the same family or of one or other of two families.

Part 5 of the 2006 Housing Act requires every HMO to be licensed and an Application must be made by the owner to the Council. Council powers relating to disrepair in HMOs are:-

(i) Suspension of Rent

This can be applied where there is no licence in place or where the HMO fails to meet a licence condition.

(ii) Power to Require Rectification of Breach of Licence

Where a licence condition has been breached, notice can be served requiring the matter to be rectified and it is an offence not to comply with the Notice.

(iii) HMO Amenity Notices

These can be served on HMOs whether licensed or not. Where the Notice is not complied with, the Council can carry out the necessary work and recover their expenses. Relevant amenities include: failure to meet building regulations, natural and artificial lighting, ventilation, provision of gas, electricity, water, sanitation, heating; personal washing facilities; facilities for storage, preparation and provision of food.

5. People Implications

5.1 There are no personnel issues.

6. Financial Implications

6.1 Repairs and maintenance of common parts, for example in tenemental property, are often impeded or delayed because one or more owners does not agree to pay his/her share of common repair costs.

6.2 The 2006 Housing Act allows the Council to use repayment charges to recover certain expenses and payments, including interest and administration expenses. This charge is registered in the Land Register over a property and is payable in 30 equal annual instalments, unless redeemed early, for instance, on sale.

- 6.3** There is a small Public Health Protection Budget of £5,000.00 which is used to pay for the Council's direct outlays for all enforcement matters. There is no specific budget if a Committee approves service of a Notice to repair a building (or to demolish it) and any costs incurred by the Council will require to be recovered from the owner of the premises.
- 6.4** The Council operates a Scheme of Assistance for private sector housing and further information and advice for owners can be obtained from the Private Housing Advice Team at 17 Overburn Avenue, Dumbarton.
- 6.5** The Council does not provide any financial assistance to owners where their property has been left unoccupied and has fallen into disrepair, or if the owner acquired the property knowing its condition with a view to developing it.
- 6.6** Discretionary financial assistance may be provided by way of a general Repair Grant to properties where the roof is in serious disrepair (for example, water ingress to living accommodation), properties below Tolerable Standard and lead pipe replacement, subject to budget restrictions. Owners must provide the Council with two letters of refusal (one for a bank loan and another for a re-mortgage product). The grant is 100% means tested and is subject to availability of funds at the time of application.

7. Risk Analysis

- 7.1** Failure to take action against owners of private property in disrepair will leave the properties in a state of continual deterioration and this will impact negatively on the amenity of the local area.
- 7.2** Where properties fall into a state of disrepair, where they become uninhabitable, this leads to further problems for individuals and neighbourhood blight as nearby properties become affected and the Council will require to prioritise cases that affect public health and safety and will greatly improve the amenity for local residents.
- 7.3** The £5,000.00 budget might be overspent should the number of poorly maintained properties increase in the future. Early intervention to prevent houses reaching such a state of disrepair is, therefore, necessary.

8. Equalities Impact Assessment (EIA)

- 8.1** This report does not relate to any new or significantly changing policies or services and, therefore, an EIA is not required.

9. Strategic Assessment

- 9.1** The Council has identified four main strategic priorities, namely, social and economic regeneration; financial strategy; asset management strategy; and fit for purpose services.

- 9.2** The effective dealing by the Council and its officers of matters resulting in a repair of houses in the private sector will contribute to all the Council's strategic priorities and social and economic regeneration of the area in particular.

10. Conclusions and Recommendations

- 10.1** It is the owners' responsibility to repair and maintain their properties. Owners should be given every opportunity to remedy their properties in disrepair, but where they fail to do so the Council should consider the various options available to it to serve the appropriate Statutory Notice and follow this up with appropriate actions/works where required, taking into account the potential costs of carrying out the necessary work and taking steps to recover such costs from the owners.
- 10.2** Members are asked to note the contents of this report.

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Background Papers: Planning Circular 6/2011; and
All legislation referred to in the report.

Wards Affected: All wards.