

Appendix 1



Public Consultation: DoE Policy Consultation Dilapidated / Dangerous Buildings and Neglected Sites

Dilapidated / Dangerous Buildings and Neglected Sites

Mid Ulster District Council response June 2016

In response to a “Call for Evidence” from the Department of the Environment (DoE), please note comments below.

1.0 Introduction

- 1.1 DoE published a policy consultation on Dilapidated / Dangerous Buildings and Neglected Sites on the 4th March 2016. There is a 16 week public consultation period within which views of all interested parties on the Department’s proposals are to be sought. All responses must be submitted no later than 5pm on 30th June 2016 and may be emailed to dilapidation.law@doeni.gov.uk.
- 1.2 The Department of the Environment has been actively considering policy on dilapidated / dangerous buildings and neglected sites over the past 2 years. It is recognised that such sites may present not only a risk to members of the public but also can attract anti-social behaviour and discourage economic activity and redevelopment. The Department of the Environment have issued a policy consultation which seeks to gain views on the most appropriate approach to be taken in developing a legislative regime to address dilapidated / dangerous buildings and neglected sites. The consultation advises that, “Ultimately, the desired outcome is that councils will have access to an effective, fit for purpose, regime that is applied consistently and proactively across all council areas, thereby enhancing the environment for all”.
- 1.3 It is worthy of note that the reason that a new regime is required is due to the narrow scope of the existing provisions which give the Councils some powers to act in serious or high risk situations but are less focussed on neglect and more minor issues.
- 1.4 The development of the current policy consultation is strongly welcomed. Council believes that the suite of existing provisions does not deliver the standards required for unoccupied buildings and sites within local communities. Therefore in order to reduce the adverse impacts from such buildings and sites and in order to best support local efforts to regenerate and develop local areas, we believe that an updated statutory regime is necessary.

2.0 Key Matters

- 2.1 The issue of Dilapidated and Dangerous Buildings and Neglected Sites has a negative impact on the visual amenity, public health and economic growth of a local authority and can often lead to an increase in anti-social behaviour. The consultation paper suggests that effectively dealing with the problem of dilapidation has obvious potential to support the councils’ new functions of

planning, local economic development, community development and local tourism. Councils often deal with complaints of derelict, dilapidated and ruinous properties. Additionally the issue of abandoned and partially completed building sites and areas of waste ground has frequently been raised by ratepayers. Such properties and sites are a great concern to the public; in particular residents who live in close proximity and issues of anti-social behaviour, fly-tipping and pest can arise. Council has adopted a robust approach in the area and regularly action has been taken by Environmental Health under the Pollution Control and Local Government (NI) Order and by Building Control under the Public Health Amendment Act 1907.

- 2.2 The Council is now statutorily required to protect, conserve and where possible enhance the character and appearance of built heritage assets. One of the key objectives of the proposed new local development plan is to protect and enhance the natural and built environment to achieve biodiversity, quality design, enhanced leisure and economic opportunity and promote health and wellbeing¹.
- 2.3 Since April 2015 under the Planning Act (NI) 2011 the Council has had a number of new planning powers associated with the protection of built heritage. Historic Environment Division has issued practical guidance with regard to these new powers, attached for your information. The two key powers are:
- **Urgent Works Notices**
 - **Building Preservation Notices**
- 2.4 An Urgent Work Notice (UWN) is a direct way of securing repairs urgently necessary for the preservation of a listed building (or building in a Conservation Area where the Department (DoE) has issued a Direction). UWN's allow councils to take direct action to protect unoccupied listed buildings, or the unused part of occupied listed buildings, that have deteriorated to the extent that their preservation may be at risk. It also allows them to work with Historic Environment Division (HED) to tackle buildings situated in a Conservation Area, where their preservation is important for maintaining the character or appearance of the Area.
- 2.5 Section 161 of the Act allows councils to serve an UWN where it *'appears to the council that works are urgently necessary for the preservation of: a listed building or a building in respect of which a direction has been given by the Department that this section shall apply'*. Section 161(2) explains that the grounds on which the Department will give a direction is that *'its preservation is important for maintaining the character or appearance of a conservation area.'* To date, MUDC Planning Department Enforcement Team has only opened one UWN case which is ongoing.
- 2.6 A Building Preservation Notice (BPN) is a form of temporary listing which provides statutory protection to an unlisted building, for a period of 6 months,

¹ Position Paper One Population and Growth, September 2014

as if it were listed. The Planning Act give councils the discretionary power to serve a BPN on the owner and occupier of a non-listed building that they consider meets the following test:

- It is of special architectural or historic interest; and
- It is in danger of demolition or of alteration in such a way as to affect its character as a building of such interest.

2.7 These powers are detailed in Section 81 – 83 of the Planning Act. For the 6 month period of the BPN, the building is protected as though it were a listed building and all relevant planning controls apply. This includes the need to apply for listed building consent for changes that might affect its architectural or historic interest, and enforcement powers relating to unapproved works. To date, MUDC Planning Department has not issued any BPNs.

2.8 The Historic Environment Division (HED) in partnership with the Ulster Architectural Heritage Society (UAHS) has prepared the Buildings at Risk Register for Northern Ireland. This Register highlights properties of architectural or historic merit throughout the country that are considered to be at risk or under threat – within Mid Ulster district there are approximately 56 historic buildings or structures at risk. All entries on the register are considered to be ‘at risk’ from decay, deterioration and neglect – i.e. potential buildings or structures subjected to dilapidation or becoming dangerous. This register could be utilised as a method to identify the problem sites and buildings under the proposed dilapidation policy.

3.0 Policy Options

3.1 The paper puts forward 4 Policy Options for consideration and highlights that the ultimate desired outcome of this paper is that councils will have access to an effective, fit for purpose, regime that is applied consistently and proactively across all council areas, thereby enhancing the environment for all.

3.2 **Option 1: Do Nothing** While this option would certainly deliver the lowest cost, it would not deliver any of the benefits of bringing dilapidated buildings and neglected sites into beneficial use. With the exception of the short term cost implications there is little to recommend this option.

3.3 **Option 2: Department issues non-statutory guidance** As previously states, (in the paper), current legislation does not permit the Department to issue statutory guidance to the councils and therefore it may be perceived that any guidance would not carry any legislative weight. However, there is case law which supports the notion that guidance may be binding because it is authoritative and expert, rather than because it is labelled as ‘statutory’. Such guidance could include, for example, procedures, technical issues, policy direction etc. but would fall short of a definitive legal interpretation of the legislation – as that can only be given by the courts.

3.4 Guidance (either statutory or non-statutory) for new legislation would be extremely useful, or even essential, but guidance alone cannot, in the

Department's view, address the weaknesses identified in current legislation and so benefits are likely to be somewhat limited.

- 3.5 **Option 3: Bill to amend and consolidate existing legislation** i.e. a 'tidy up' of existing DOE legislation. This approach could provide for the making of subordinate legislation to provide greater procedural clarity, and allow the Department to issue statutory guidance to councils. **This option would not involve the introduction of new regimes like, for example, those in force in England and Wales, the Town and Country Planning Act 1990 (Section 215) in respect of visual amenity, and the Building Act 1984 in respect of emergency provisions for dangerous structures.** This type of Bill would preclude the possibility of delivering a single consistent regime throughout Northern Ireland.
- 3.6 As set out in the paper's background section non-statutory but authoritative best practice guidance may be regarded by the courts as binding but, for the removal of doubt, the power to publish statutory guidance could easily be included in a Bill of this nature. The technical aspects of such statutory guidance would be developed in conjunction with the relevant councils to ensure that practitioners were not unduly fettered, therefore there is a clear resource implication with regard to this option in terms of staffing.
- 3.7 This option would not create any additional legislative statutory duties which should result in no significant additional costs. However, it would be hoped that improving the clarity of the legislation and making it more workable would increase the activity levels of councils. Such improvements would not broaden the scope of the legislation to any great degree, and would not therefore deal with some of the fundamental deficiencies of that legislation, particularly the Heritage issues.
- 3.8 **Option 4: A Bill to introduce a new broader regime dealing with dilapidated / dangerous structures, neglected sites and a range of visual amenity issues** This option would, essentially, provide a completely new regime that would seek to encompass all of the relevant elements of the existing legislation alongside new provisions based on existing legislation in other jurisdictions, such as Town and Country Planning Act 1990. A multi-tiered approach, with different sanctions available for cases of varying magnitude, might be considered. In keeping with the Department's Better Regulation agenda, there may also be potential to utilise administrative penalties for lower grade cases.
- 3.9 Under this option there is an opportunity to introduce enhanced procedures to allow for appropriate protection of heritage sites could also be built into such a Bill, addressing the problems identified with the existing legislation – i.e. the potentially perverse incentive to allow heritage buildings to fall into disrepair with a view to subsequent demolition. However, it is noted that councils do have access to powers under section 161 of the Planning Act 2011 enabling them to carry out urgent works in respect of statutorily protected buildings (and unlisted buildings in conservation areas as directed). Cost recovery for such works is through conventional civil debt procedures.

- 3.10 In addition, under this approach consideration would also need to be given to the issue of statutory duties for councils in respect of dilapidated / dangerous buildings and neglected sites: -
- (a) additional powers but no statutory duty;
 - (b) additional powers and a duty to inspect (but not necessarily take action); or
 - (c) additional powers and a duty to take appropriate action.
- 3.11 It is important to note paragraph 6.24 that if additional statutory duties were to be imposed, central government funding for these activities would need to be secured over a significant period of time. This option would give council an effective tool to encourage the regeneration and revitalisation of their districts.
- 3.12 A key issue with regard to this option is that effective implementation would require councils to allocate adequate resources but it is felt that the economies of scale resulting from the new local government model enhances their capacity to do so. The paper states that given their wider remit, it is considered appropriate for councils to take responsibility for determining the priority of this issue for their areas and resourcing it accordingly.

4.0 Key Questions

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.

- 4.1 Council agrees that option 4 should be the preferred option as it is only this option that allows for the introduction of provisions to deal with the full scope of matters which pertain to dilapidation, dangerous buildings and neglected sites. Council believes that it is important that scope encompasses measures to deal with minor problems akin to the “broken window” right up to robust procedures to deal with more extensive problem sites.
- 4.2 In terms of the protection, conservation and enhancement of the historic built environment and local historic heritage assets within Mid Ulster Option 4 is the only approach which can facilitate the introduction of specific legislation for the appropriate and proportionate protection of such historic built assets that have fallen into dilapidation or become dangerous. This option will encourage the proactive protection of identified historic buildings and structures at risk from deterioration and neglect. In addition, this option will promote the need for internal cooperation and liaison between local authority departments.
- 4.3 Under Option 4 the benefits to the community would be the introduction of powers similar to those available in England and Wales under s.215 of the Town and Country Planning Act 1990, which would include the power to enforce

the 'tidying up' of land and sites which are adversely impacting upon the public / communities in terms of amenity.

- 4.4 It is worth noting that the DoE Historic Environment Division have funded and managed the Buildings at Risk Register since 1993. This register highlights properties of architectural or historic merit throughout Northern Ireland. All entries on the register are considered to be 'at risk' from decay, deterioration and neglect – i.e. potential buildings or structures subjected to dilapidation or becoming dangerous. This register could be utilised as a method to identify the problem sites and buildings under the proposed dilapidation policy.
- 4.5 It is important to note that Mid Ulster Council agree that Option 4 is the preferred Option solely on the basis that a funding stream is provided by Central Government to the Council to undertake the additional work involved as a result of the introduction of this legislation.

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.

- 4.6 Council agrees with the Department's suggested approach, however, in broadening the scope of Article 65 provisions the Department must ensure that its use in relation to statutory nuisance remains unhindered. In dealing with the wider scope we believe that the Department should issue guidance on the nature of physical injury and anti-social behaviour that it envisaged the new legislation should deal with. Development of any such guidance should be undertaken in consultation with the enforcement authority.

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.

- 4.7 It is agreed that in general the proposed approach of consolidation with regard to Article 66 of the Pollution Control and Local Government Act (NI) Order 1978 is acceptable. In practical terms the ability to require the removal of rubbish and other material deposited is welcomed as it is frequently the case that such material accumulates alongside material from the building itself, and it remains odd that only some of the material on such a site may be removed. With reference to the rubbish and material deposited from other sources it must be noted that there are existing legislative provisions under the Waste and Contaminated Land (NI) Order 1997 which provides a regime to address illicit waste activities. Any guidance should recognise the relationship between these provisions and define where the Northern Ireland Environment Agency (NIEA) are responsible and where the Council may act. It should not be the result of the proposed Bill to create a legislative power for Councils to address low level

fly-tipped waste, nor should discretionary Council action interfere with the NIEA's statutory enforcement responsibilities.

- 4.8 The definition of building would be welcomed.
- 4.9 The proposed legislation appears to create a hierarchical approach whereby the more significant problem sites giving to conditions seriously detrimental to the amenity of the neighbourhood are dealt with under provisions similar to Article 66. Accordingly any such provisions must attract a higher penalty as to date offences under this legislation rarely attract penalties which act as a deterrent. We would welcome the wider range of administrative and criminal penalties to deal with the broader range of offences that may be created and we believe these should be graduated according to the seriousness of the offence. Such an approach will be consistent with Council's Enforcement Policies.
- 4.10 We would welcome the ability of the Courts to make an order as they see fit as this is often used to secure the abatement of nuisances where Notices fail to be complied with.
- 4.11 There is a need to highlight the case of historic buildings and structures, whether they are listed or not. The key issue, from a built heritage perspective is the provision allowing an owner to decide to demolish his building rather than repair it. Under the Planning Act 2011, there is a statutory duty on a local authority to protect, conserve and where possible enhance protected historic buildings and structures be they listed or located within a designated conservation area. It is vital that an Article 66 notice take account of the status of a building, structure or monument on which such a notice is being served. The option of demolition should be prohibited in such cases i.e. the owner must make secure and repair the structure and also seek all other required consents under planning legislation, for example, listed building consent.

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

- 4.12 Council would welcome transposing relevant provisions from the 1984 Act, particularly in respect of dangerous buildings and structures.
- 4.13 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 with additional consideration being given to listed buildings and buildings in conservation areas.

- 4.14 Council agree 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.
- 4.15 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.
- 4.16 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.
- 4.17 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. A robust system comprising amendments to Article 65 and 66 provision may reduce the need for the provisions contained within the Building Act 1984.

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?

- 4.18 Council agree. There is no benefit that can be gained from location specific legislation within Northern Ireland. Failure to address this is likely to maintain the inconsistent interpretation and delivery of legislation.
- 4.19 However 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?

- 4.20 It is agreed that in general the proposed introduction of new powers via the Bill focused on 'land' which is negatively affecting the amenity of an area or neighbourhood similar to Section 215 of the Town and Country Planning Act 1990 in England and Wales is a positive approach.

- 4.21 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.
- 4.22 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.
- 4.23 From a Heritage perspective such an approach could be applied to designated conservation areas, areas of townscape and village character, where the statutory duty on the local authority is to protect, conserve and enhance the character or appearance of that designated area. It would be particularly useful to have the power to issue an s215 notice with regard to re-building, external repairs, repainting, enclosure etc. provided that all required statutory planning consents have been agreed. It is acknowledged that clear authoritative and expert guidance will be required whether statutory or not.

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?

- 4.24 Council believes that the scope of proposed legislation has the potential to address any adverse Environmental Health impacts upon the neighbourhood. Council is of the opinion current powers provided for within the Planning Act (NI) 2011 are sufficient to address the general issue of unfinished and abandoned sites. However, where for example visual amenity is an issue it would be advantageous for Council to be able to use discretion to use other provisions to deal with these matters while giving due consideration to the specific circumstances of the case in question.

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?

- 4.25 It must be recognised that in the current financial climate, many properties and frequently those that are neglected, are under the control of persons other than the owner. A robust piece of legislation and associated guidance will deal with this by defining who is responsible for such properties and what circumstances. In the experience of Environmental Health it is often possible to secure minor works such as boarding up on such sites, but much more difficult to secure more extensive building or demolition works.
- 4.26 The definition of "reasonable efforts" is welcomed and will assist the Courts in circumstances where this is in dispute.
- 4.27 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.
- 4.28 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?

- 4.29 In recognition of the limited operating budgets for Local Government and in order to secure the most effective outcomes from the proposed regulations it is important that Councils are able to have confidence that costs incurred are likely to be recovered, therefore in principle, the proposals to improve the cost recovery provision are welcomed. We concur 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.

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

- 4.30 Any guidance accompanying a new Bill should be statutory. Although the paper clearly sets out case law which would indicate that non-statutory authoritative and expert guidance is given weight by the courts, to remove any doubt regarding interpretation, any such guidance should be statutory to facilitate enforcement powers and any subsequent statutory charges and /or financial penalties. Any such guidance should be developed in consultation with Council and other stakeholders.

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

- 4.31 The council has a duty under the Planning Act 2011 to protect, conserve and where possible enhance the character and appearance of the historic built environment. The Regional Development Strategy (RDS) 2035 and Single Planning Policy Statement (SPPS) require the council to:
- secure the protection, conservation and, where possible, the enhancement of our built and archaeological heritage;
 - promote sustainable development and environmental stewardship with regard to our built and archaeological heritage; and
 - deliver economic and community benefit through conservation that facilitates productive use of built heritage assets and opportunities for investment, whilst safeguarding their historic or architectural integrity.
- 4.32 Option 4 provides a conduit for the introduction of legislation that can encourage a joint up approach by local authorities to facilitate the protection, conservation and enhancement of our historic built environment. The proposed new Bill could include the need for any notice issued in relation to a dilapidated or dangerous building to have regard to the status of the building in terms of heritage. For example, if the dilapidated building or structure is listed or located within a designated conservation area then the onus on the owner should be to secure and repair the building / structure not demolish. The new regime could also highlight the need for the owner to comply with all other statutory requirements under the Planning Act (NI) 2011 with regard to historic buildings, structures or sites.
- 4.33 The introduction of new legislative powers akin to s.215 of the Town and Country Planning Act 1990 with regard to visual amenity could greatly benefit the need to protect, conserve and where possible enhance a designated conservation area. Such powers could compliment and support the existing powers under the Planning Act (NI) 2011.
- 4.34 Option 4, could facilitate the identification of historic built heritage sites, areas and buildings that are deemed by the Department to be 'at risk' from dilapidation, deterioration and neglect and be used as a preventative measure i.e. the buildings at risk register NI could be utilised to identify potential at risk properties and / or structures that in the interest of the public should be proactively protected from decay, deterioration and dilapidation, preventing the structure from becoming dangerous. The key issue is to prevent any historical built heritage asset becoming unviable in terms structural soundness and stability – i.e. reduce and prevent the loss of important historical built assets. In such cases any notice should clearly require an owner to secure and repair rather than demolish. It should also be made clear to an owner that such historic buildings, structures and sites are regarded as top priority and a higher financial fines and / or criminal penalties shall apply.

- 4.35 It should be noted that recipients of Article 66 notices issued by Councils under the Pollution Control and Local Government (NI) Order 1978 are obliged to be given the option of demolition which may have conflict with Built Heritage legislation.

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?

- 4.36 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 the Mid Ulster District Council area.
- 4.37 In the current financial climate, 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.
- 4.38 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 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.

5.0 Conclusion

- 5.1 It is the Opinion of Mid Ulster Council that Option 4 should be the preferred approach to the issue of Dilapidated / Dangerous Buildings and Neglected Sites. **As stated previously this is the preferred Option only on the basis that Central Government provide the additional funding necessary to implement such proposed legislative changes. It is the opinion of the Council that no such changes should come forward until such times as this funding is secured.**