

REPORT TO: HOUSING COMMITTEE – 16 JUNE 2003

REPORT ON: RESPONSE TO FINAL REPORT AND RECOMMENDATIONS OF THE HOUSING IMPROVEMENT TASK FORCE AND CONSULTATIONS ON THE TENEMENT (SCOTLAND) BILL

REPORT BY: DIRECTOR OF HOUSING

REPORT NO: 377-2003

1. PURPOSE OF REPORT

- 1.1. To advise the Committee on both the Final Report of the Housing Improvement Task Force (HITF) entitled “*Stewardship and Responsibility: A Policy Framework for Private Housing in Scotland*” and the Consultation Paper on the Tenement (Scotland) Bill and to submit draft responses from Dundee City Council to documents.

2. RECOMMENDATIONS

- 2.1. It is recommended that the Housing Committee approves the draft responses (Appendix 1 and 2) and agrees to their submission as Dundee City Council’s response to the HITF Final Report and the Consultation Paper.

3. FINANCIAL IMPLICATIONS

- 3.1. There are no immediate financial implications from these reports at this time, however the implementation of many of these recommendations would have an impact on demand for grant assistance, an increased demand for advice and guidance and other non-financial services as well as potentially impacting on the management of the council’s own housing stock in relation to Right to Buy properties.

4. LOCAL AGENDA 21 IMPLICATIONS

- 4.1. The Final Report of the HITF makes recommendations on how conditions, standards and the overall quality of housing in both the owner occupied and private rented sector could be improved as well as making recommendations for modernising the powers of Local Authorities and their role within the Private Sector.
- 4.2. The Tenement (Scotland) Bill reflects recommendations from the HITF Final Report and sets out a framework for the management and maintenance of tenements which should make it easier for owners to reach agreement and ensure that their homes are well maintained.

5. EQUAL OPPORTUNITIES IMPLICATIONS

- 5.1. The HITF Report has sought to “equality proof” their recommendations by ensuring that they involved and took account of the views of representatives of particular “equalities groups” including the disabled and ethnic minorities.

6. **BACKGROUND**

6.1. **HOUSING IMPROVEMENT TASK FORCE FINAL REPORT**

- 6.1.1. The objective of the HITF was to undertake a comprehensive review of housing policy as it relates to the condition of private sector housing in Scotland. The review has been undertaken in an environment where owner-occupation is the largest tenure in Scotland, where, whilst the private rented sector has declined it has become more diverse and new problems are emerging. The recommendations within the report reflect the basic premise that the responsibility for the upkeep of houses in the private sector lies with their owners and that there is a need for greater awareness and acceptance by owners of their responsibilities. Their recommendations seek to achieve this by influencing the housing market; improving cooperation between owners; reshaping assistance to owners and modernising the role of Local Authorities generally; and by encouraging and, if necessary, requiring owner-occupiers and private landlords to increase their expenditure on repairs and maintenance.

- 6.2. The report makes recommendations in the following five significant areas:

6.2.1. **Quality Standards for Private Housing in the 21st Century**

The report recommends modernisation of the Tolerable Standard by the inclusion of thermal insulation and unsafe electrical wiring, the introduction of statutory guidance on the interpretation of standards leading to the setting of higher standards in respect of water supplies, dampness and radon gas.

The HITF also propose a new cross-tenure Scottish Housing Quality Standard aligned with the proposed Social Housing Standard as well as making a case for a new statutory Repairing Standard which would set out clearly the obligations on private landlords, based on that applying in the social rented sector but tailored to the specific conditions found in private renting.

6.2.2. **Improving the Operation of the Housing Market**

Recommendations focus on the quality of information available to buyers, in particular the condition of properties as they go on the market and the nature and extent of any common or shared maintenance and repairing obligations associated with the property. A single survey is recommended, initially commissioned by the seller but made available to all potential purchasers and paid for by the ultimate buyer, with the contractual liability of the surveyor transferring to the eventual purchaser and any lender.

6.2.3. **Facilitating Common Repairs and Maintenance**

The report recognises the need for effective mechanisms for ensuring the repair and maintenance of communally owned parts of buildings. They make recommendations in respect of obtaining agreement between owners, allocation of costs, payment of an individual's share as well as arrangements for the management and insurance of communal parts. The report also covers the recovery of costs from uncooperative owners, recommending that Local Authorities become the "backstop" when genuine difficulties occur. The role of Local Authorities in encouraging the establishment of owners associations is discussed together with proposals for powers to require owners to establish property management arrangements and statutory powers to put in place maintenance plans.

Also recommended are arrangement for the accreditation of property managers and the scope of community mediation schemes.

6.2.4. **Public Sector Intervention and Support at the Local Level**

Recommendations include; direct intervention by using powers to compel owners to undertake works; assistance to owners in undertaking those works; and strategic planning of interventions to achieve policy objectives.

Further recommendations include strengthening the Local Housing Strategy system; removing the links between statutory notices and mandatory grants; ensuring the provision of specific services, such as Care & Repair, for those in need; a wider range of practical assistance other than subsidy (grant); Housing Renewal Areas to replace Housing Action Areas; more flexible options for the serving of Improvement Orders and Disrepair Notices; powers to address minor disrepair and require owners to operate Maintenance Plans as well as a more flexible and effective system for recovering expenses incurred in enforcing these powers.

6.2.5. **Improving Standards in the Private Rented Sector**

The report recognises the need for much greater professionalism in property and tenancy management. Recommendations in this section include creation of a Private Rented Housing Tribunal with the ability to abate the rent a landlord is entitled to where they fail to carry out repairs and the power to refer breaches to the Local Authority for enforcement action. The development of local accreditation schemes to promote and encourage higher standards, encouraging higher levels of engagement and provision of advice to both landlords and tenants within the sector.

6.3. **THE TENEMENT (SCOTLAND) BILL**

The Tenement (Scotland) Bill is based on the work of the Scottish Law Commission and updates their draft Bill. It takes into account the Abolition of Feudal Tenure etc (Scotland) 2000 and the Title Conditions (Scotland) Bill, and also the Final Report of the HITF referred to above, and attempts to be compatible with all of those.

The consultation paper seeks views on 38 discussion points relating to the following areas:

6.3.1. **Ownership of a Tenement**

The intention is to make the existing common law of the tenement, marginally revised to eliminate gaps and inconsistencies, the statutory default position. Just as with the common law at present, it will be possible to opt out of this new statutory law of the tenement. This situation will apply to all existing tenements, and to all new tenements, this latter point being a change from earlier intentions.

6.3.2. **Tenement Management Scheme**

The Tenement Management Scheme would apply to all tenements, old and new, unless the more sophisticated Development Management Scheme (as set out in the Title Condition Bill), or some limited variation thereof was adopted.

6.3.3. **Common Interest**

The proposal is to re-enact the Common Law position of common interest in statutory form, with few changes.

6.3.4. **Insurance**

The proposal is to make insurance mandatory for all owners in tenemental property, with the risks to be insured against set out in a Statutory Instrument, changeable from time to time. The proposal is for there to be no sanctions or enforcement, other than giving co-owners the power to enforce against each other.

6.3.5. **Television Aerials, Gas and Other Services**

There is to be a right to put television aerials and satellite dishes on ones own external walls and on the roof and chimney stacks of a tenement. There are to be rights to install gas piping through common parts, and power is to be given through regulations for the installation of future services, as yet unspecified.

6.3.6. **Demolition and Abandonment of Tenements**

Various provisions are made with relation to the shares of costs and responsibilities for demolished tenements, tenements requiring to be demolished and abandoned tenements.

6.3.7. **Liability for Certain Damage Costs**

This section would allow non-owners, who are nevertheless responsible for a share of the maintenance of some part of a tenement, to recover the costs incurred when the property has been damaged by a third person, in the same way as the owner of such property could recover from a third person who damaged the property.

6.3.8. **Amendments to the Title Conditions (Scotland) Bill and Miscellaneous**

This makes a small number of changes to the earlier Title Conditions Bill and other miscellaneous matters and does not appear controversial.

7. **CONSULTATION**

The Chief Executive, Director of Support Services, Director of Finance, Director of Environmental and Consumer Protection, Director of Planning and Transportation and the Director of Economic Development have been consulted in the preparation of this report.

8. **BACKGROUND PAPERS**

- 8.1. Stewardship and Responsibility: A Policy Framework for Private Housing in Scotland – The Final report and Recommendations of the Housing Improvement Task Force.
- 8.2. Tenements (Scotland) Bill Consultation Paper.
- 8.3. Copies of both documents have been placed in the Members' Lounge.

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JUNE, 2003

**DUNDEE CITY COUNCIL'S RESPONSE
TO
FINAL REPORT OF THE HOUSING IMPROVEMENT TASK FORCE**

1. GENERAL COMMENTS

Dundee City Council welcomes the opportunity to comment on the Final Report of the Housing Improvement Task Force and endorses the view that the impact of poor housing on individuals and households and the consequences of neglect of maintenance and repair for neighbouring owners and communities can be substantial.

- 1.1. Of the 37,200 flats in Dundee (2001 census), around 9800 are pre 1919 tenement flats. As the population has declined and consumer aspirations have increased, consumer demand for tenement flats has fallen. As a result, in specific areas, there has been a significant increase in private rented flats with the result that the stock suffers from poor maintenance and management. The consequence for these areas is a very poor local environment and quality of life for many.
- 1.2. It is worth noting however that very poorly maintained property is often mixed with well maintained and managed property. The negative impact of derelict and deteriorating property on the surrounding property is costly. Values fall and housing associations and other landlords find it difficult to let property creating a vicious circle.
- 1.3. Many of the recommendations contained in the final report would be extremely helpful in tackling the issues facing Dundee at this time.

2. The Council would respond to the specific aspects of the Final Report as follows.

2.1. QUALITY STANDARDS FOR PRIVATE HOUSING IN THE 21ST CENTURY

2.1.1. Tolerable Standard

The Council welcomes the proposals for modernisation of the Tolerable Standard and guidance on interpretation of the Standard which is seen as essential to the consistent application of the Standard. In particular the council support proposals in respect of a wholesome water supply and the inclusion of electrical wiring.

We would also support the view that modernisation of the Tolerable Standard will create a significant rise in the numbers of BTS properties. If Local Authorities are to prioritise the eradication of BTS properties, sufficient funding must be allocated both in respect of the work required to meet the standard and equally to help identify BTS properties. Current methods of identifying total numbers of BTS are very weak.

2.1.2. **Scottish Housing Quality Standard**

The introduction of a cross-tenure Scottish Housing Quality Standard would provide a consistent approach across all tenures. Of some concern however is the ability of owners within right to buy properties to prevent improvements being carried out.

The use of the Standard to provide meaningful information on stock as a whole implies a significant resource implication.

The Council consider that environmental quality and environmental management should be included in the Scottish Housing Quality Standard as we believe that the environmental area particularly that associated with the back courts of tenemental property can have a significant impact on the quality of the building. In terms of property management it is easily incorporated into a management scheme and can indeed be the simple foundation of a management scheme.

2.1.3. **Repairing Standard for Private Landlords**

The Repairing Standard for Private Landlords is also supported and reflects to a fair degree, this Council's required standards for licensed HMOs.

2.2. **IMPROVING THE OPERATION OF THE HOUSING MARKET**

2.2.1. **Improving Confidence in the Building Industry**

There is widespread demand from grant applicants and Care & Repair applicants for lists of "Approved Contractors" supported by comments in our customer satisfaction surveys. We note with interest the Scottish Construction Licensing Executive scheme and would support any independent scheme which encourages confidence in the building industry and overcomes some of the issues associated with Local Authority based Approved Contractor Schemes.

2.2.2. **Tax and Benefit Incentives**

Currently Private Landlords supported by the Housing Benefit system have little incentive to maintain or manage their property. The introduction of Mandatory HMO Licensing is limited in our ability to identify these properties, particularly the effects of data protection. The Council would therefore support a link between Housing Benefit payments and the standard of the accommodation including whether it is an unlicensed HMO.

2.3. **FACILITATING COMMON REPAIR AND MAINTENANCE**

The Tenements (Scotland) Bill makes a significant contribution to the issues discussed under this heading.

2.3.1. **Making Decisions on Communal Repairs and Maintenance**

The Council agree that it should be a requirement of all title deeds for new residential developments, where owners are subject to burdens relating to communal repairs and maintenance, to make provision for the establishment of an owners' association. Furthermore we support the view that Local Authorities should have the power to promote the establishment of owners' associations and maintenance plans, including the provision of set up grants, as a pre-condition of being declared a Housing Renewal Area and/or receiving grant assistance.

2.3.2. **Funding Communal Repairs**

The issue of recovery of costs from non-compliant owners remains a significant issue. The Council questions the practicality, for other owners in particular, of trying to recoup the costs through the Sheriff Court and debt recovery action.

Attaching debt to the property is of limited use. The turnover of ownership in tenemental property is significant with the difficulty of tracking the owners to whom the debt is due to ensure that they are reimbursed.

The Council would agree that it should have discretionary powers to require the establishment of a reserve or sinking fund, in support of a power to require the establishment of owners' associations and maintenance plans.

The use of the Local Authority as a "backstop" is accepted but with the qualification that sufficient funding is available to accommodate this position. The funding of this area might possibly be subject of separate allocation within the proposed new Private Sector Housing Grant. It is clearly likely to be much easier for the Local Authority to recover outstanding debt from non-compliant owners than for the remaining compliant owners.

2.3.3. **Managing Communal Repairs and Maintenance**

The proposal within the Title Conditions Bill to allow two-thirds of owners to dismiss the property manager could have a significant impact on the Council's status as deemed majority owner in mixed tenure blocks.

2.3.4. **Ensuring that Owners Understand their Responsibilities for Communal Repairs**

The Council consider that a duty to provide owners benefiting from Local Authority assistance with standard guidance on the management and maintenance of common property would support other proposals aimed at creating owners associations and maintenance plans.

2.3.5. **Identifying Owners**

The Council's experience with the Mandatory Licensing of HMOs has shown the benefits of neighbours being able to identify and contact non-resident owners, causes us to fully support the recommendation that there should be a duty on non-resident owners to provide contact details to other owners. The simple knowledge of who to contact in case of a problem can go a long way to an early resolution.

2.3.6. **Insurance**

We would suggest that it should be a pre-condition of any grant assistance or other form of assistance that the owner of any property should provide copies of current property insurance, as is the case in HMO Licensing.

2.4. **PUBLIC SECTOR INTERVENTION AND SUPPORT AT THE LOCAL LEVEL**

The view that it would be appropriate to set targets for the reduction of BTS housing will be dependant upon being able to accurately identify the numbers of BTS properties in a Local Authority area. We have little confidence in the ability of either the Local or National House Condition Surveys to provide accurate statistics.

2.4.1. **Providing Assistance to Owners**

In anticipation of providing a broader service to the private sector Dundee City Council's Housing Department have amalgamated the Private Sector Grants Unit and the Housing Action Area Team from the Area Renewal Unit to form a Private Sector Services Unit. There must be however a recognition that the provision of such services, whether in the form of advice and guidance, practical assistance, loans or grants, will bring training and resource implications which will require adequate financial provision.

The provision of a "Handy-man" service to complement the existing Care & Repair Service operated by Dundee City Council is desirable but again will be influenced by funding.

This Council have not offered loans as a form of assistance for some time and we are concerned about the administrative burden of loans, particularly small loans.

The Council also have some concerns in respect of the proposals for change of tenure. There is already a significant surplus of Local Authority properties in Dundee and the implications of this proposal particularly with Right to Buy ownership would have to be fully researched.

2.4.2. **Modernising Local Authority Powers**

The Council welcome all of the proposals within this section, seeing these powers as critical to adequately dealing with poorly maintained and managed property as well as BTS property.

The creation of Housing Renewal Areas would be a significant tool in helping with the particular issue of surplus private sector stock in Dundee whilst allowing positive intervention to create quality neighbourhoods with a long term future.

2.5. **IMPROVING STANDARDS IN THE PRIVATE RENTED SECTOR**

The Council acknowledges the need to broaden the advice and information service provided to the private rented sector and would seek to build on experience gained in the mandatory licensing of HMOs.

2.5.1. **Regulation and Accreditation**

We agree that a new legislative framework should be developed for HMO Licensing which must incorporate effective sanctions against non-compliant landlords, including the ability to close a non-compliant property. The introduction of a Compulsory Registration Scheme may prove to be helpful in the identification of HMOs. Furthermore the Council would support the introduction of discretionary powers, subject to approval by the Scottish Executive, to introduce a regulatory scheme for the compulsory registration, certification or licensing of private rented properties other than HMOs, as appropriate.

**DUNDEE CITY COUNCIL'S RESPONSE
TO
TENEMENTS (SCOTLAND) BILL CONSULTATION PAPER**

1. GENERAL COMMENTS

Dundee City Council welcomes the opportunity to comment on the consultation paper and would make the following comments.

1.1. DISCUSSION POINT 1

We agree that statutory restatement of the law of the tenement is the most practical way forward, and that any other approach would run serious risks of breaching human rights provisions.

1.2. DISCUSSION POINT 2

We agree with the proposed rules on the boundaries of ownership of tenement flats.

1.3. DISCUSSION POINT 3

In our view, owners will find it difficult to work out precisely which flats are “served” by particular pertinents, and having different pertinents owned by different groups of owners within the tenement will be a nightmare when it comes to major repair schemes. It will be better to simply say that everything that was not owned exclusively by one flat was owned equally by all flats.

1.4. DISCUSSION POINT 4

In consequence of our view of the last discussion point, we would not support either of the alternatives given.

1.5. DISCUSSION POINT 5

Agreed.

1.6. DISCUSSION POINT 6

We consider that fire escapes should be treated like external paths, owned equally by all the flats.

1.7. DISCUSSION POINT 7

We do think that the Tenement Management Scheme should apply to all tenements, old and new, except where the Development Management Scheme is adopted. Only very limited variation should be permitted.

1.8. DISCUSSION POINT 8

This is a very important point for the Council. If title deeds do not prevail over the Tenement Management Scheme, then our status as deemed majority where we own even one flat would be at risk. We agree therefore that title deeds should always prevail over the Tenement Management Scheme as regards what constitutes a majority on allocations of costs.

1.9. DISCUSSION POINT 9

We would change the emphasis so that instead of the Tenement Management Scheme only applying to the extent that the title deeds were silent, rather the Tenement Management Scheme should always apply except where directly and explicitly contradicted by the title deeds and then only to the extent of that contradiction. A view has been expressed however that if the titles require unanimous approval for decision making, this should be superseded by the Tenement management Scheme, requiring only majority approval

1.10. DISCUSSION POINT 10

Yes and no. Title deeds should prevail on decision making and costs.

1.11. DISCUSSION POINT 11

The Council agree with the concept of scheme property, and find the definition to be sound. However we would suggest that the rainwater installations should be specifically mentioned as we consider this element to play a significant role in the disrepair of property. It may also be useful to provide a definition of "roof" to include roof vents and skylights.

1.12. DISCUSSION POINT 12

If it is too great a step to change the position for existing tenants to create a positive obligation on owners to maintain their property, that could be enforced by other co-owners, then one possibility might be to introduce a positive obligation to maintain in the case of new tenements. The present position is clearly failing and giving to owners positive obligations which they can enforce and which others can enforce against them, would help to get repairs done. If that can only be brought in for new tenements, then that is what should be done.

1.13. DISCUSSION POINT 13

We would agree that in existing tenements the definition of maintenance should not include improvements but would be in favour of improvements being included in the case of new tenements, where owners knew before purchasing that improvement would be an obligation on them.

1.14. DISCUSSION POINT 14

Agreed.

1.15. DISCUSSION POINT 15

Given that the 8 flat tenement is the standard structure in Dundee and that tenements of this size are likely to continue being built in the future, we would take the view that the requirement to set up an owners' association should only apply in developments of more than 8 flats, rather than 8 or more.

1.16. DISCUSSION POINT 16

We agree that it would be impractical to use the Tenements' Bill to compel all owners in existing tenements to establish and contribute to reserve or sinking funds. We think, however, that it would be entirely practical for new developments. One possibility would be to capitalise an annual contribution to cover repairs, which capitalised sum would effectively become part of purchase price from the developer, for example £3,500 on the purchase price should provide £100 per year in perpetuity to cover repairs and maintenance, per flat, and this could be funded through the mortgage.

1.17. DISCUSSION POINT 17

We do not agree that it should not be a requirement in new developments for the owners to appoint a professional Property Manager. The alternative proposal represents no more than good aspirations and will not work.

1.18. DISCUSSION POINT 18

The arrangements for appeals to the Sheriff to annul decisions taken under a management scheme are unobjectionable in themselves, but a cheaper, less formal, and less intimidating alternative structure for appeals would be preferable.

1.19. DISCUSSION POINT 19

Summary applications in the Sheriff Court generally require lawyers and would normally be too expensive and intimidating to deal with disputes about application of management schemes in tenements. A much more informal scheme than the Sheriff would be preferable for the bringing of cases, with a restrictive appeal to the Sheriff, and definitely no appeal to the Court of Session.

1.20. DISCUSSION POINTS 20 & 21 INCLUSIVE

No comments.

1.21. DISCUSSION POINT 22

Agreed but there should be a requirement for an owner carrying out work to attempt to obtain a management scheme decision first (to counter unscrupulous landlords etc).

1.22. **DISCUSSION POINT 23**

It would be very useful for the Council, as proposed, if there were to be joint and several liability for common repairs costs between the owner at the time the repairs costs arose, and any subsequent owner who may purchase a property in the meantime. As to whether the new owner should have a right or relief against the old owner, this could be regulated by the missives of sale, although a presumption, in the absence of specific provision, giving such a right of relief is probably desirable. The Council strongly endorse the proposal that there should be a duty on a non resident landlord to provide contact details and an obligation to keep those details current.

1.23. **DISCUSSION POINT 24**

We agree with the HITF that non-resident owners should have to provide other owners with a contact address.

1.24. **DISCUSSION POINT 25**

While it would not apparently be in the Council's interest to have mutual repairs debts prescribe after 5, instead of 20 years, the practicalities of obtaining evidence for debts much older than 5 years mean that this proposal is not seriously objectionable.

1.25. **DISCUSSION POINT 26**

No comment.

1.26. **DISCUSSION POINT 27**

The proposal for a right of access to individual flats for maintenance purposes is supported. Safeguards restricting such a right of access are clearly necessary but should not be unduly onerous on owners who have been refused necessary access. The Council would seek clarification as to whether this right of access extends to adjoining properties in adjoining tenements, a particular problem in dealing with outbreaks of dry rot.

1.27. **DISCUSSION POINT 28**

Making a minimum standard of insurance compulsory is supported. Other owners should have power to insist on seeing evidence of insurance, and should have a simple means of getting an order **ad factum praestandum** against uninsured neighbours from the Sheriff, with no defences available other than not being the owner, or already having insurance. Ideally, Sheriff Court fees could be waived for undefended actions of this sort. It would seem sensible to also make it a pre-condition of any local authority assistance that the owner of a property should provide copies of current property insurance.

1.28. **DISCUSSION POINT 29**

We would support compulsory common insurance policies for tenements in the case of new tenements, not existing ones.

1.29. DISCUSSION POINT 30

The proposed entitlement to put television aerials and satellite dishes on the roof and chimney stacks would limit the power of the Housing Department to regulate this in part sold tenements. We would request that the legislation clarifies the situation where the roof space has been converted by the top floor flat(s). In such circumstances does the roof become a boundary feature forming the outer surface of that flat and therefore become part of the unit as for the external walls. Does the entitlement remain?

1.30. DISCUSSION POINT 31

The proposals for gas pipes are reasonable. There is a case for bringing in provisions, akin to the electricity supply provisions, for data transmission lines, including broadband internet connections, as the widespread adoption and use of broadband is the policy of the Executive. Giving wide powers akin to those of electricity supplies would make this easier, and of course low voltage data lines are even less dangerous than high voltage electricity supply cables.

1.31. DISCUSSION POINTS 32 TO 36

No comments. Proposals seem reasonable.

1.32. DISCUSSION POINT 37

We agree that non-owners should be treated as though they were owners for the purposes of a right to recover from a person causing damage to part of a tenement.

1.33. DISCUSSION POINT 38

We agree with the proposals.