

**REPORT TO: CITY DEVELOPMENT COMMITTEE - 23 AUGUST 2010**

**REPORT ON: DUNDEE CITY COUNCIL RESPONSE TO SCOTTISH PARLIAMENT PUBLIC PETITIONS COMMITTEE**

**REPORT BY: DIRECTOR OF CITY DEVELOPMENT**

**REPORT NO: 405-2010**

## **1 PURPOSE OF REPORT**

- 1.1 To inform the Committee that the Scottish Parliament Public Petitions Committee is undertaking an investigation into improving compulsory purchase for derelict properties and to seek approval of the response submitted on behalf of Dundee City Council.

## **2 RECOMMENDATION**

- 2.1 It is recommended that the Committee notes the response submitted by the Director of City Development on behalf of Dundee City Council to the Scottish Parliament Public Petitions Committee in respect of its investigation into improving compulsory purchase for derelict properties.

## **3 FINANCIAL IMPLICATIONS**

- 3.1 None

## **4 BACKGROUND**

- 4.1 The Scottish Parliament Public Petitions Committee is considering a petition urging the Scottish Government to investigate and review the compulsory powers of local authorities to deal with derelict properties/land. Dundee City Council, along with two other local authorities, the Royal Town Planning Institute, Planning Aid and the Development Trusts Association Scotland was invited to submit a written response to the Committee.
- 4.2 The petition raises concerns regarding the impact that derelict land and property has on surrounding communities. The Committee asked Dundee City Council to respond to specific questions regarding the existing powers available to local authorities to deal with derelict property and the potential use of compulsory purchase powers to address problems.
- 4.3 A copy of Dundee City Council's response to the petition is contained in Appendix 1 to this report. Due to the timescales for responses set by the Committee, it was not possible to report this response to Committee in advance of its submission. However, the Committee is asked to note the action taken and the terms of the response.

## **5 POLICY IMPLICATIONS**

This Report has been screened for any policy implications in respect of Sustainability, Strategic Environmental Assessment, Anti-Poverty, Equality Impact Assessment and Risk Management. There are no major issues.

**6 CONSULTATIONS**

- 6.1 The Chief Executive, Depute Chief Executive (Support Services), Director of Finance and Assistant Chief Executive have been consulted and are in agreement with the contents of this report.

**7 BACKGROUND PAPERS**

- 7.1 None

Mike Galloway  
Director of City Development

Ian Mudie  
Head of Planning

GH/MM

20 July 2010

Dundee City Council  
Tayside House  
Dundee

**APPENDIX 1****THE SCOTTISH PARLIAMENT PUBLIC PETITIONS COMMITTEE CONSIDERATION OF PE1326****WRITTEN RESPONSE BY DUNDEE CITY COUNCIL****What is your response to the points raised in the petition?**

Dundee City Council recognises that derelict land and property can have a significant negative impact on surrounding communities. Dereliction can range from small sites and buildings to large areas of land and property. The circumstances behind each case are unique and often complex. Solutions to dereliction in communities will require a multi faceted approach. An increase in the exercise of Compulsory Purchase Powers by Local Authorities alone will not provide the answer.

Vacant and derelict land (and buildings) is surveyed by Local Authorities annually, with information across Scotland compiled by the Scottish Government. For the purpose of the survey, derelict land (and buildings) is land which has been so damaged by development, that it is incapable of development for beneficial use without rehabilitation. In addition the land must currently not be used for the purpose for which it is held or a use acceptable in the local plan. Land also qualifies as derelict if it has an un-remediated previous use which could constrain future development. To be included on the Vacant and Derelict Land Survey, sites must be at least 0.1 hectares in size.

A disproportionate amount of derelict land is located within the 15% most deprived datazones in Scotland, as identified by the Scottish Index of Multiple Deprivation (SIMD). Their impact is therefore felt by communities that are already disadvantaged. This may in part be a consequence of more difficult development and marketability conditions in such areas.

Notwithstanding the negative impact that derelict land and property can have on communities, it remains appropriate that the use of compulsory purchase powers by local authorities should be a measure of last resort. Local authorities have a number of other statutory powers to deal with derelict land and property including Waste Land Notices, Dangerous Building Notices and the designation of Housing Renewal Areas. Other positive measures, such as the land use planning system can also be used to stimulate the reuse of derelict buildings and sites.

**Is it your understanding that Councils already have the power to compulsory purchase these types of property? Are there barriers to using them?**

The SPICe Briefing accompanying this Petition notes that Local Authorities have been granted the power to compulsorily purchase land, or interests in land, by several Acts. In addition to those listed, the Local Government in Scotland Act 2003 enables local authorities to do anything they consider is likely to promote or improve the well-being of their area and/or persons in it.

The Town and Country Planning (Scotland) Act 1997, as amended gives powers to Local Authorities to compulsorily acquire land that is required for development or to achieve the interests of proper planning of an area. Dundee City Council has used CPO to acquire derelict property to enable the implementation of planning proposals. Prior to exercising

CPO powers, there must be a plan in place to justify the necessity for acquisition. This may be an extant planning permission, the provisions of the development plan or other measures such as site planning briefs or masterplans.

A number of barriers exist to using CPO powers, including:

- **Financial Risk** – the failure of a landowner to promote the reuse of derelict land and property may indicate that development is not economically viable. In many instances compulsory purchase will not change this, possibly resulting in financial implications for the local authority, for example through the costs of site improvement or sale to developers at reduced value to enable development. In light of financial constraints on local authority budgets, exposure to such risk is likely to be unacceptable.
- **Financial Uncertainty** – on completion of a CPO the local authority is required to pay compensation to the owner of the land purchased. However, a significant amount of time can elapse between commencement and completion of the CPO process. The local authority is therefore exposed to risk in pursuing acquisition when the future marketability of the site for development is uncertain. Whilst developers may be willing to enter into ‘back to back agreements’ to purchase the land, there is no guarantee that they will cover the local authority’s acquisition costs. Such arrangements also raise issues in terms of the requirement for local authorities to secure ‘Best Value’ in land and property sales.
- **Time Resources** – the CPO process requires a significant commitment of local authority staff time and resources. This requires to be considered against other priorities for the local authority, including those arising from its Single Outcome Agreement and Local Community Plans.
- **Complexity of Process** – whilst it is appropriate that the CPO process should not be entered into lightly, the complexity of the process can be a deterrent to local authorities. In this respect, the work that the Scottish Government is currently undertaking to revise Circular 42/1976 and provide up to date and focussed guidance is welcome.

### **Should a time limit to develop be placed on all derelict land/buildings?**

This question raises certain practical difficulties, such as what would be an appropriate time limit? When would the time limit commence from? Would changes in land ownership have any impact on compliance with the time limit?

The value of development land has declined in recent years. The current approach of many owners of land, including local authorities, is not to sell until market conditions improve. Placing a time limit within which derelict land/buildings should be brought back into use could unfairly impact upon owners; particularly should owners be obliged to sell the land when market conditions are poor. Any requirement that local authorities purchase derelict private land after a certain period would raise significant resource issues.

Recognising the negative impact that derelict land and property can have on a community, it is appropriate that measures are explored to ensure that this impact is minimised. This may include clearance of derelict buildings and screening of sites. Temporary greening of a site may also be a short term option to improve site appearance. Such action may raise community expectations that this will be a more permanent solution.

An approach to taxation that discourages land owners from perpetuating dereliction may be worthy of exploration. Revenues generated by Government from such an approach could be used to assist local authorities to acquire and address dereliction and remove some of the associated risks. Where land is subsequently sold for development, the receipt could be recycled for similar purposes.

### **Does the planning process encourage you to CPO and redevelop derelict properties?**

The modernised statutory planning system encourages local authorities to pursue sustainable economic growth through the development planning and development management processes. In addition, local authorities are involved in promoting regeneration in their areas, often through the community planning process.

In undertaking these activities, local authorities can play a positive role in encouraging and enabling the redevelopment of derelict properties. Local development plans can include policies that promote the redevelopment of derelict sites. Such sites can also be positively allocated for development. The removal of dereliction in an area can be a material planning consideration in the development management process. The preparation of site planning briefs and masterplans can also encourage the removal of derelict land. Dundee City Council has also benefited from the Scottish Government's Vacant and Derelict Land Fund since 2004. This has successfully enabled a range of activities leading to the take-up of a significant amount of derelict land in the City.

The planning process enables local authorities to use CPO powers to redevelop derelict properties. However, it is appropriate that this should always be a last resort and follow the failure of other more positive efforts.

### **What 'pressure' can local authorities put on property/land owners to prevent sites falling into a state of disrepair?**

Section 179 of the Town and Country Planning (Scotland) Act 1997 enables planning authorities to serve a notice requiring proper maintenance of land where it appears that the amenity of any part of their district is adversely affected by the condition of any land.

Section 43 of the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997 enables a Repairs Notice to be served on the owners of listed buildings specifying the works considered reasonably necessary for the proper preservation of the building. Failure to comply with such a notice may lead to compulsory acquisition under Section 42 of the Act.

Section 79 of the Environmental Protection Act 1990 offers powers to local authorities to take action if the condition of property/land poses a public health risk. This is limited to the potential to cause disease and does not include risk of injury or visual amenity.

The Housing (Scotland) Act 2006 contains powers to designate Housing Renewal Areas where a significant number of the houses in the locality are sub-standard or the appearance and state of repair of any houses in the locality is adversely affecting the amenity of the area. Housing Renewal Area action plans identify works that require to be undertaken for the purposes of enhancing the HRA.

Local authorities are generally able to undertake works in default should owners fail to comply with notices served under the above legislation. However, the recovery of costs can prove time consuming and challenging and such action is not taken lightly.

**What powers do local authorities have to demolish derelict buildings?**

Section 29 of the Building (Scotland) Act 2003 enables local authorities to demolish a dangerous building where urgent action is necessary to reduce or remove the danger after giving such notice (if any) to the owner as the circumstances permit.

Section 33 of the Housing (Scotland) Act 2006 states that where a house is identified in a Housing Renewal Area action plan as a house which the local authority considers to be in a serious state of disrepair and ought to be demolished, the local authority may require the owner to demolish it. If the owner fails to comply with a demolition notice, the local authority may carry out the work.

**What action would you like the Scottish Government to take?**

The powers and responsibilities of local authorities to tackle derelict land and property issues in an area must be carefully balanced against the ownership rights and responsibilities of private interests.

The fulfilment of the Scottish Government's commitment to revise the Circular relating to compulsory purchase orders and provide up to date, focused and straightforward guidance will assist local authorities and others in the process.

Further consideration should be given to means of encouraging dereliction to be addressed. Some form of financial penalty, possibly through taxation, would provide a 'stick' to encourage dereliction to be removed and vacant sites to be maintained in a condition that is not detrimental to surrounding communities. Any revenue generated from such an approach could be ring fenced at a local level to enable the local authority to undertake works in default or compulsorily acquire property where appropriate. As costs are recovered or land subsequently sold, income could be recycled by the local authority for the same purpose.