

Health and Environmental Services Committee

Wednesday, 3rd February, 2010

MEETING OF HEALTH AND ENVIRONMENTAL SERVICES COMMITTEE

- Members present: Councillor McCarthy (Chairman); and
Councillors Adamson, Austin, W. Browne, Cush,
Humphrey, Jones, B. Kelly, Kirkpatrick, Kyle,
Mallon, Mhic Giolla Mhín, O'Neill and Rodway.
- In attendance: Mr. W. Francey, Director of Health and
Environmental Services;
Mr. S. Skimin, Head of Cleansing Services;
Mr. T. Walker, Head of Waste Management;
Mrs. S. Wylie, Head of Environmental Health;
Mr. D. Rogan, Building Control Manager;
Mr. M. McBride, Business Support Manager;
Mr. J. Hanna, Senior Committee Administrator; and
Mr. H. Downey, Committee Administrator.

Apologies

Apologies for inability to attend were reported from Councillors Campbell, Hendron and McKenzie.

Minutes

The minutes of the meeting of 18th January were taken as read and signed as correct. It was reported that those minutes had been adopted by the Council at its meeting on 1st February, subject to the amendment of the minute under the heading "Consultation on Proposals to Change Dog Control Legislation" to reflect that in answer to Question 10 the Council agrees that it should be an offence to allow a dog to attack another dog.

Cleansing Services

Street Cleanliness Index

The Committee considered the undernoted report:

"Relevant Background Information"

The figures presented in this report cover the third quarter of the financial year i.e. the period from October 2009 to December 2009. Monitoring figures were measured by Cleansing Services Quality Officers. Enforcement, and Education and Awareness information was supplied by the Customer Support Service and the Community Awareness Section within Cleansing Services, which were responsible for these functions over the period concerned.

The monthly monitoring programme consists of a random 5% sample of streets throughout the city being inspected and graded. From the grading, a Street Cleanliness Index is calculated and plotted for the various areas of the city and the city as a whole.

The index range is from 1 to 100, with a Cleanliness Index of 67 being regarded as an acceptable standard by Tidy NI. The results show the trends on a month to month basis. To alleviate the influence of spurious results on the overall index, the results are averaged over the last 4 surveys. Spurious results may occur for reasons such as adverse weather conditions, seasonal problems etc.

Key Issues

The overall city wide cleanliness index for this quarter is 74. This is a slight increase from the previous quarter's cleanliness index of 73. The index for the same period in the previous year was 72.

The breakdown by individual area is as follows:

North

The North Cleanliness Indices for October 2009 to December 2009 were 69, 72 and 70 respectively. This represents an increase for November (up 3), and decreases for October (down 3) and a small decrease for December (down 1), by comparison to those figures for the same period in the previous financial year viz. 72, 69 and 71 respectively.

The area however is maintaining a good to very good level of cleanliness.

South

The South Cleanliness Indices for October 2009 to December 2009 were 78, 78 and 78 respectively. This represents an increase for all months, with October (up 3), November (up 2) and December (up 5) by comparison to those figures for the same period in the previous financial year viz. 75, 76 and 73 respectively.

The area is maintaining a consistently very good level of cleanliness.

East

The East Cleanliness Indices for October 2009 to December 2009 were 77, 77 and 77 respectively. This represents an increase for October (up 3) and November (up 2), and a similar score for December (77), by comparison to those figures for the same period in the previous financial year viz. 74, 75 and 77 respectively.

The area is maintaining a consistently very good level of cleanliness.

West

The West Cleanliness Indices for October 2009 to December 2009 were 70, 72 and 74 respectively. This represents a similar score for October (70), and increases for November (up 3) and December (up 5), by comparison to those figures for the same period in the previous financial year viz. 70, 69 and 69 respectively.

The area is maintaining a good to very good level of cleanliness.

Central

The Central Cleanliness Indices for October 2009 to December 2009 were 71, 74 and 73 respectively. This represents an increase for all months, with October (up 1), November (up 4) and December (up 5) by comparison to those figures for the same period in the previous financial year viz. 70, 70 and 68 respectively.

The area is maintaining a good to very good level of cleanliness.

Complaints/Enquiries

There were 1034 complaints/enquiries regarding street cleansing during the quarter (by comparison to 1307 last quarter).

There were 6 Corporate Complaints (6 Stage One, 0 Stage Two and 0 Stage Three) during the quarter, none of which related to street cleansing (all Stage 1).

Enforcement

There were 296 Fixed Penalty Notices issued under the Litter (NI) Order 1994, and 45 summonses issued. In addition, 151 Article 20 Notices were issued requesting information.

Community & Education Projects

During the last quarter, the Community Awareness Team (on behalf of Cleansing Services) received a 'Green Apple' award for the recent 'Lord Mayors Big Cleanup Challenge' project. The Team took part in 5 community talks involving 595 participants, including speaking at the Tidy NI litter summit held in Belfast.

The Team also facilitated 12 community cleanups involving 224 volunteers and undertook 68 school visits, promoting the anti-litter message to 2513 pupils.

The Community Awareness Team also attended 15 community/ residents meetings on behalf of Cleansing Services.

Resource Implications

There are no financial, human resources, asset or other implications in this report.

Recommendation

Members are asked to note the content of this report."

In response to a question from a Member, the Head of Cleansing Services confirmed that the Council had written to various community groups across the City, inviting them to participate in environmental clean-ups within their areas and advising of the fact that the Council could assist them in this work. This information would be publicised also within the next issue of City Matters and posted on the Council's social networking sites.

The Committee noted the information which had been provided.

Building Control

Outstanding Accounts

The Director of Health and Environmental Services reminded the Committee that the Building Control Service was responsible for the issuing of inspection fee accounts under the Building (Prescribed Fees) Regulations (Northern Ireland) 1982. He reported that a number of debtors who had submitted applications to undertake building works had failed to pay their accounts and, despite procedures for the recovery of outstanding debts having been implemented, they remain unpaid. The accrued outstanding debts to date amounted to £17,578.75, which represented 0.81% of the Service's estimated income for 2009/10, and he submitted for the information of the Members a schedule providing details of the accounts.

He stated that these accounts fell within the provisions of the Council's Financial Regulations regarding the writing-off of unrecoverable debts and he recommended, in accordance with Section K12 of the Regulations, that the amount of £17,578.75 be written off.

The Committee adopted the recommendation.

**Northern Ireland Building
Regulation Advisory Committee**

The Committee was informed that the Northern Ireland Building Regulation Advisory Committee, which was a statutory body established under the Building Regulations (Northern Ireland) Order, provided guidance to the Department of Finance and Personnel on all matters relating to the implementation of new and amended building regulations. The Director of Health and Environmental Services reported that the Committee comprised seventeen persons, some of whom were drawn from specialists in the industry, in addition to Elected Members who represented the public's interest. He reported that Mr. D. Rogan, Building Control Manager, had been invited to become a member of the Advisory Committee for the next three years. He explained that Mr. Rogan would be required to devote no more than six working days per year to Advisory Committee work and would receive no remuneration.

The Director pointed out that the appointment would provide an important opportunity for the Council to be viewed as playing a crucial role in advising the Minister of Finance and Personnel in the formulation of policy and legislation which would be of benefit to the public.

The Committee granted authority for Mr. Rogan to become a member of the Northern Ireland Building Regulation Advisory Committee.

Waste Management

**Consultation Document - Northern Ireland
Environment Agency Draft Charging Policy**

The Head of Waste Management informed the Committee that the Northern Ireland Environment Agency was responsible for the implementation and enforcement of environmental regulations, many of which required operators and their activities to be authorised and monitored. The Agency was required to achieve full cost recovery for such functions through the application of fees and charges upon the companies which they regulated. He reported that three units within the Agency, namely, the Industrial Pollution and Radio Chemical Inspectorate, the Land and Resource Management Unit and the Water Management Unit operated on this basis and, collectively, they generated approximately £5 million pounds of income per year. This figure had increased significantly with the recent introduction of new regulatory responsibilities and controls.

He explained that the Northern Ireland Environment Agency was required to establish charges for individual schemes and regulations and that it was acknowledged that the number and complexity of differing charging arrangements, together with the processes and timeframes associated with their application, could create challenges for businesses. In order to address this, the Agency had undertaken an assessment of its own schemes and that of associated agencies and had issued a consultation document seeking the views of its main stakeholders on proposals relating to the setting and revision of fees and charges. He pointed out that the Council was regarded as being a stakeholder, since it was required to comply with the provisions of the

Waste Management Licensing Regulations (Northern Ireland) 2003 and the Water (Northern Ireland) Order 1999, both of which were enforced by the Northern Ireland Environment Agency. In fact, the Council had, since 2008, paid to the Agency approximately £25,000 per annum in licensing fees. He informed the Members that the Agency was proposing to limit annual increases in charges in line with the Gross Domestic Product price deflator for a three-year period from April, 2010 till March, 2013. This would enable it to reflect increasing costs to some degree, while a more substantial assessment of individual charging arrangements was undertaken, where required.

The Head of Waste Management explained that arc21 had formulated recently a response to the Northern Ireland Environment Agency's consultation document. He provided a brief overview of its response and suggested that, in light of the recent accreditations gained by the Council in relation to environmental management and health and safety management, the Council should provide additional comments, requesting that a discounted fee and charging structure be applied to those organisations which had gained the relevant accreditations. He suggested also that the Council request that, as a minimum, a regular programme of inspections be delivered annually by the Agency. Accordingly, he recommended that the Committee approve the undernoted response of arc21, together with those additional comments proposed by the Council:

"arc21's Draft Response"

Introduction

Arc21 is a collaborative legal public sector entity embracing eleven Councils located along the Eastern Region of Northern Ireland which covers 25% of the land base, populated by 57% of the national population and accounts for 54% of the national municipal waste arisings.

The establishment of arc21 together with its functionality is enshrined in legislation with the original provision being The Local Government (Constituting a Joint Committee a Body Corporate) Order (NI) 2004.

In essence, it is primarily responsible for activities associated with the production, ongoing development and implementation of a Waste Management Plan within the Eastern Region Area.

The eleven constituent Councils of arc21 are Antrim Borough Council, Ards Borough Council, Ballymena Borough Council, Belfast City Council, Castlereagh Borough Council, Carrickfergus Borough Council, Down District Council, Larne Borough Council, Lisburn City Council, Newtownabbey Borough Council and North Down Borough Council.

Response

arc21 welcome the opportunity to respond to this consultation. In commenting, attention is drawn to our response previously submitted at the same time last year to the consultation on Fees & Charges associated with Waste Licensing Activities. It is disappointing there has been little progress on some of the aspects outlined in that response and therefore some of the comments submitted then are equally pertinent to this consultation.

The aforementioned response covered four generic aspects and accordingly, this response is similarly structured. The four aspects being:

1. Transparency
2. Timing
3. Approach to Regulation
4. Level of Proposed Increase

1. Transparency

Our response last year made the point that, ‘the consultation documentation does not a sufficiently detailed breakdown of information in respect of the costs associated with the agencies activities to enable a meaningful response to be submitted. No current indication of the costs incurred by the agency in the various fee based elements or assumptions made are included in the document and this lack of transparency should be addressed in any future consultation, particularly given the suggestion that a more substantial increase in some charges will be required in subsequent years.’

We would contend that this equally applicable to this consultation. The consultation does briefly outline the principles adopted in the setting of Fees and Charges but does not offer further detail. The absence of this detail is not consistent with transparency and prohibits any meaningful consideration and response with regard to efficiency. It is recognised that a comprehensive review of its structures and organisation is underway, however, there is no indication any timetable in regard to completion of the review and if applicable, implementation.

The commitment where new schemes are to be introduced or where substantial revisions to an existing scheme are required, consultation with stakeholders will be carried in tandem through single or parallel consultations papers is welcomed by arc21.

However it is noted that NIEA have undertaken an assessment of current fees and charges and that it revealed that some of the schemes require fuller investigation and interrogation of their function and applicability but that no list or further information was forthcoming. It would be helpful for stakeholders to learn of the schemes that are deemed to require such work and the nature of this work and consequently afforded the opportunity to comment accordingly.

2. Timing

Our response last year made the point that, 'the timing of the consultation is unfortunate in that any resultant outcome does not enable Council's to take accurate account of any subsequent rise in the budgetary cycle. arc21 would advocate that any future consultation in this regard should be undertaken at a time that would be more conducive to the public budgetary cycle including that of the Agency.'

It is regrettable that this consultation follows the same timetable for 2011/12. However it is recognised that the proposed policy covers a three period and that any proposed increase for the final two years will be known in November preceding each of these years with the publication in the Pre-Budget report which will contain the relevant GDP deflator level to be applied to the forthcoming scheme year.

3. Approach to Regulation

Our response last year made the point that, 'arc21 would suggest that the Agency adopt a scheme which reflects a more risk based approach to the regulation of activities/sites similar to that adopted by the Agencies in GB, which would appear to be a fairer approach.'

We welcome the recognition of the merits of this approach by the NIEA and the commitment to move towards such. However we are disappointed in the anticipated timescale culminating in a full public consultation within the period of the Charging Policy i.e. by 2013. arc21 would encourage NIEA to address this as a matter of some priority with a view to bringing schemes following suitable public consultation during the period of this Charging Policy.

Finally, the Department should ensure that the funding of any future role by Councils in waste regulation should take similar and equivalent cognisance of the principles applied in this consultation.

4. Level of Proposed Increase

We are satisfied that the proposed GDP deflator would be an appropriate index or economic measure to link any proposed change in the level of fee or charge.

COUNCIL RESPONSE

In addition to the arc21 comments above, Belfast City Council would like to make the following comments:

1. The Council acknowledges the regulatory and enforcement role of NIEA and welcomes the compliance reassurance and information provided as a result of their inspections. The Council would request however that, as a minimum, a regular programme of inspection is delivered by the NIEA per annum.
2. The Council would also seek assurances from the NIEA that, when considering levels of charging, consideration would be given to recognising the low risk associated with the operation of facilities which have consistently performed well in NIEA compliance inspections and have received other external validations in the form of accreditations such as, for example, ISO14001. The NIEA should consider introducing a discounted fees and charges structure in these instances.”

The Committee adopted the recommendation.

Environmental Health

Health Equity Capacity Building Programme

The Committee was reminded that, at its meeting on 18th January, it had been advised of proposals for the establishment between the Council and the Public Health Agency of a Joint Public Health Unit with a view to addressing health inequalities and reducing the gap in life expectancy between people residing in more affluent areas of the City and those living in the most deprived neighbourhoods. This work linked directly to the Council's overall objective of improving quality of life now and for future generations. The Head of Environmental Health reported that the Review of Public Administration within the health and social care sector had recognised the contribution made by local government in improving health and wellbeing through, amongst other things, its joint planning with various partner organisations. As a result, Elected Members had been appointed to both the Local Commissioning Group and the Board of the Public Health Agency. Furthermore, the Review of Public Administration process within local government would introduce a new power of wellbeing for District Councils. She reported further that the Council, at its meeting on 5th January, had referred to the Health and Environmental Services Committee a Notice of Motion directing the Committee to put in place a mechanism to ensure that all relevant Council policies were assessed to ascertain to what extent they contributed to achieving a reduction in health inequality. A report in this regard would, in the near future, be submitted to the Committee.

The Head of Environmental Health pointed out that, in view of the enhanced role for both Elected Members and officers in the field of health and wellbeing, Belfast Healthy Cities had undertaken recently, across a number of organisations, including the Council, an audit of training and development and capacity levels and skills available currently in this sector. As part of the process, Elected Members and officers had been interviewed by the organisation and, as a result, a number of recommendations had been formulated which set out how the required capacity levels could be developed. Belfast Healthy Cities had now begun to progress some of these recommendations and had put in place a capacity building programme centred around a series of seminars, to be led by experts in various aspects of health. She provided an overview of the seminars, which would take place on several dates from February till November, and pointed out that there would be no cost for attendance at the events.

After discussion, the Committee agreed that any Member of the Committee who so wished be authorised to attend the Belfast Healthy Cities Capacity Building Programme.

Consultation Document - Draft Local Air Quality Management Policy Guidance

The Committee considered the undernoted report:

“Relevant Background Information

The Draft Local Air Quality Management Policy Guidance LAQM PGNI (09) Document represents major aspects of policy in respect of ambient air quality management. It includes policy guidelines on air quality reviews and assessments, air quality action planning, transport planning and land use planning. It is designed to replace the Local Air Quality Management Policy Guidance which was issued in 2003 and which has been used to date by Council officers engaged in the Local Air Quality management process.

The United Kingdom is required legally to achieve European Union Limit Values for a range of ambient air pollutants. Local measures, such as air quality action planning, are one of the most important means by which the UK Government can meet these limit values. The Draft Guidance recognises that improved air quality has significant health benefits and determines that district councils, together with relevant authorities, are best placed to improve air quality at localised hot spots and deliver both health benefits and improved quality of life.

In August 2004, Belfast City Council declared the following four Air Quality Management areas across the city:

- 1) the M1 Motorway and Westlink corridor;**
- 2) Cromac Street to the junction of the Short Strand, Woodstock Link and the Albertbridge Road;**

- 3) the Upper Newtownards Road; and
- 4) the Ormeau Road.

The Air Quality Management Areas were declared because of a combination of exceedances of the UK Nitrogen Dioxide (NO₂) and Particulate Matter (PM₁₀) air quality objectives and EC limit values.

In May 2006, the Belfast City Air Quality Action Plan was issued. It proposed a series of measures and actions designed to deliver reductions in pollution levels by 2010. An Updating and Screening Assessment (USA) carried out in 2009 indicated that there had been some improvements. A Detailed Assessment is to be carried out in 2010 to establish what steps may need to be taken to ensure that the Council continues to meet its responsibilities under the Environment (NI) Order 2002.

Key Issues

After 7 years of engagement in the Local Air Quality Management process, considerable experience and knowledge has been built up by Council staff with regard to how best to achieve improvements in local air quality. The review of the existing Local Air Quality Management Policy Guidance is timely and necessary.

It is considered that significant aspects of the draft policy document will have a positive input and will support the Council in working towards the improvement of air quality within Belfast. This is especially the case in relation to *Section 2. – Measures to Improve Air Quality*, where a series of Annexes provide useful information and guidance.

There are however some concerns relating to *Section 1. – Local Air Quality Management – Overview of Processes and Principles*.

The 2003 Guidance Document states that ‘This guidance is designed to help relevant authorities, which may be a Northern Ireland Department, a district council and or any other public body, with their local air quality management duties....’ This is in contrast to the 2009 Draft Document which states, ‘This policy guidance is principally for district councils.....’ and ‘The guidance will also be of interest to relevant authorities and other bodies associated with air quality management.’

This represents a significant shift to emphasise the role to be played by district councils over other departments and agencies. However, the fact remains that the main problems associated with poor air quality in Belfast relate to traffic pollution and hence the main controls to improve air quality from this source are largely within the remit of other agencies. At this point in time, a district council has no direct control over the other relevant authorities.

Therefore, an accountability framework needs to incorporate all agencies with a significant role to play. It has been our experience to date that some of the relevant authorities have not always appeared fully committed to the process. Consequently, there also needs to be a reporting mechanism to the DOE for all participants in the process and not just district councils.

In addition, there is a need to ensure that the new policy contains clearly defined roles and responsibilities. The attached draft response reflects this view.

A full copy of the Draft Local Air Quality Management Policy Guidance – LAQM PGNI (09) is available in the Members' library for information.

Resource Implications

None

Recommendation

It is recommended that the Committee agrees the attached draft response to this consultation document.

COUNCIL RESPONSE

Having reviewed the draft Local Air Quality Management Policy Guidance, Belfast City Council wishes to submit the following comments:

This draft guidance document represents major aspects of policy in respect of ambient air quality management. It includes policy guidelines on air quality reviews and assessments, air quality action planning, transport planning and land use planning. It also includes information and guidance on measures to improve air quality. It is designed to replace the previous Local Air Quality Management Policy Guidance issued in 2003.

The Council welcomes the updating of the 2003 document and finds significant sections of the draft policy as having a positive input to enable the Council to better work towards the improvement of air quality within Belfast. However, the Council has concerns that lessons learned since 2003 have not been adequately addressed in the draft document. This is especially the case relating to the power and influence that Northern Ireland Councils have in relation to the other relevant authorities involved in the process. At a recent DEFRA conference (November 2009 at which an officer from this Council was represented), it was clear that in Great Britain, councils are also frustrated by their lack of authority to drive forward and deliver the Action Planning process. In the proposed draft document for NI, it appears that more responsibility is being placed on district councils without a corresponding increase in authority.

In the following paragraphs, Belfast City Council endeavours to raise some of these concerns.

**Section 1: Local Air Quality Management –
Overview of processes and principles**

Belfast City Council notes that the draft Policy Guidance document highlights that the United Kingdom is legally required to achieve European Union Limit Values for a range of ambient air pollutants, and that local measures are one of the most important means by which the UK Government can meet these limit values. Moreover, the draft guidance recognises that improved air quality has significant health benefits, and determines that district councils, together with relevant authorities, are best placed to improve air quality at localised hotspots and deliver both health benefits and improved quality of life.

In August 2004, the Council declared four Air Quality Management Areas across the city comprising the M1 Motorway and Westlink corridor, Cromac Street to the junction of Short Strand, Woodstock Link and the Albertbridge Road, the Upper Newtownards Road and the Ormeau Road. The Air Quality Management Areas were declared for a combination of exceedences of the UK nitrogen dioxide (NO₂) and particulate matter (PM₁₀) air quality objectives and associated EU limit values. A source apportionment study revealed subsequently that the air quality exceedences were attributable principally to road transport emissions within the air quality management areas. The Department of Environment has indicated that across Northern Ireland, 17 of the 24 air quality management areas have been declared for exceedences of nitrogen dioxide (NO₂) and particulate matter (PM₁₀) air quality objectives associated with road transport. The Council recommends therefore, that the proposed Local Air Quality Management Policy Guidance should place greater emphasis upon proven actions that local authorities and relevant government Departments such as the Department for Regional Development and Department of Environment Planning Service should take in order to reduce air pollution impacts from road transport.

By greater emphasis, we mean clearly defined responsibilities, accountabilities and reporting mechanisms to DoENI against actions that reduce road transport and air pollution impacts. The Department will be aware that the mechanism in England and Wales of directly linking Local Road Transport Planning funding to targets which simultaneously advantages improvements in air quality has been in place for some years. This incentivisation goes some way to addressing the responsibility that clearly in an urban authority such as Belfast would be needed. Given that the next

editions of BMAP, RTS and BMTP are still in draft, now is the time for DoENI to take a radical step in order to influence this. If this is not addressed, the impact of an Air Quality Action Plan where the source of poor air quality is road transport will not improve.

The introduction in Section One, lists the organisations that the document is primarily aimed at. In the Council's opinion it should also include the Department for Regional Development, Translink and any additional relevant authorities who have a statutory responsibility as already defined in statute.

It should also be noted that LAQM PGNI (03) states, 'This guidance is designed to help relevant authorities, which may be a Northern Ireland Department, a district council and or any other public body with their local air quality management duties under Part III of the Environment (NI) Order 2002'. This is in contrast to the 2009 Draft Policy Document, which states, 'This policy guidance is principally for district councils.....to have regard to in carrying out their LAQM duties... The guidance will also be of interest to relevant authorities, and other bodies associated with air quality management.' It appears to Belfast City Council that there has been a significant shift of emphasis from a partnership of responsibility on a number of 'relevant authorities' to highlighting the role of district councils.

This consultation document, whilst placing even greater emphasis on the processes and structures already in place, will not lead to a future improvement in the delivery of action plans. This has been recognised by DEFRA in its recent workshops in November 2009 where there was a clear recognition that the local authority air quality management process is not fulfilling the needed change in air quality improvement. Belfast City Council considers that the Department needs to more rigorously address this issue regionally before issuing this guidance – which merely requires more process and more consultation steps being placed on local authorities but will only compound the lack of ability of a local authority to use the 'carrot and stick' approach that is now needed at central government level.

A criticism of this entire draft guidance document is that it implies an enhanced role for District Councils but fails to apply clear and appropriate responsibility and accountability to each of the relevant authorities who in our experience over several years of managing the local air quality process can in some cases not be fully committed or engaged in this process. Chapter One should be amended to reflect this.

By way of amplification, within Northern Ireland, responsibility for road transport planning rests with the Department for Regional Development and its Executive Agency, the Roads Service. The Review of Public Administration has recommended that transport planning functions should not be transferred to local authorities from April 2011 however, the Roads Service has been advised that it should implement structural arrangements to facilitate coterminosity with new council boundaries and that it should develop procedures to provide councils with greater influence over roads-related issues and decision-making within their respective areas. Belfast City Council considers that the introduction of such procedures will provide councils with a more formalised mechanism through which to communicate transport related air quality issues to the Roads Service.

In the meantime, however, Belfast City Council recommends that the draft Local Air Quality Management Policy Guidance document should define explicitly the responsibility upon the Department for Regional Development and its agency, the Roads Service, to contribute actions towards the achievement of the UK air quality objectives and EU limit values by the relevant compliance dates.

Presently, the draft policy guidance document (page 7 paragraph 3) simply suggests that *'The chapters in this guidance covering transport and planning are relevant to those working in various government and local government departments, such as environmental health, land-use, planning, economic development and transport planning. This guidance should therefore be taken into account by those departments, and any other relevant departments, when carrying out their duties.'*

The Council feels that this is too weak and would strongly make the request that clearly defined responsibilities, accountabilities and reporting mechanisms to the DOE against actions that reduce road transport air pollution are made for each of the relevant authorities. In addition it is considered that reporting on progress should be established as the respective agency / department's responsibility and that reports must be made directly to the Department as well as to the relevant local authority.

The Council will continue to report on its actions with the Belfast Air Quality Action Plan relevant to its areas of responsibility and influence and will coordinate composite reports when provided with the appropriate information from each of the relevant authorities. Belfast City Council will also continue its role of monitoring and managing air quality monitoring networks and coordinating the Air Quality Management process in line with its statutory requirements.

What it cannot deliver however, is an accountability arrangement or process for implementation of actions by the other agencies involved within the Plan. Belfast City Council is concerned that the draft document seems to suggest that this is the case.

Belfast City Council notes that the draft Local Air Quality Management Policy Guidance document also seeks to link the development of air quality policies to those policies designed to address climate change. It should be noted that since March 2001, a system of graduated Vehicle Excise Duty has been in operation for new cars based primarily on a vehicle's level of CO₂ emissions. This system of incentivisation has typically favoured diesel vehicles, which offer higher miles to the gallon and lower carbon dioxide output in relation to comparable petrol models. The recently published Department for Regional Development Northern Ireland Transport Statistics 2008-09 highlights that by 31st December 2008, 51.7% of Northern Ireland private and light goods vehicles were diesel fuelled. The Local Air Quality Management Technical Guidance LAQM.TG (09) identifies however, that increased primary NO₂ emissions are associated with the greater penetration of diesel cars into the vehicle fleet. The potential exists therefore for a conflict between climate change and air quality objectives. Accordingly, it is suggested that the Department should ensure compatibility between the Local Air Quality Management Policy Guidance document and climate change policy. Moreover, the Council recommends that additional technical guidance should be developed to enable all relevant authorities and district councils to link effectively air quality and climate change actions.

Chapter 1: Local air quality management
process – an overview

Page 13 – Review and Assessment Reporting Cycle

Referring to the Review and assessment of air quality, the Local Air Quality Management Policy Guidance highlights that *'Where the objectives are unlikely to be met, the local authority must take action to work towards meeting the objectives. District councils also have a duty to continue to meet the air quality objectives beyond the deadlines set out in the regulations. An objective, for example, which was due to be met by 2005, must be met each subsequent year.'*

Referring to Part III of the Environment (Northern Ireland) Order 2002, the legislation requires that district councils periodically undertake a review of the future air quality within their districts. Where the review indicates that air quality standards or objectives are not being achieved, or are not likely to be achieved within the

relevant period, then the district council is required to designate an air quality management area and prepare an air quality action plan in pursuit of the air quality standards and objectives in the designated area. The district council is required to employ powers assigned to it to achieve the air quality standards and objectives. The Order also states that Relevant Authorities are also required to exercise their powers in pursuit of the air quality objectives.

Belfast City Council considers therefore that this draft Local Air Quality Management Policy Guidance text (page 13, paragraph 1) does not accurately reflect district council obligations as articulated within the Environment (Northern Ireland) Order 2002. The Order requires that district councils should exercise those powers for which they have responsibility and furthermore, it is unclear from where the duty to continue to meet air quality objectives beyond the deadlines set out in the regulations has been derived. Moreover, it is unclear how the provisions of the Air Quality Standards Regulations (Northern Ireland) 2007 are reflected within the draft Local Air Quality Management Policy Guidance.

Again, the Council expresses its concern at the change in emphasis and language used in terms of the accountability this draft guidance implies. We do not accept this form of words and seek formal and legal clarification of the duties imposed from it. As already stated, a council such as Belfast can only act within the powers and responsibilities over which it has a legal duty and responsibility to deliver. Our experience to date, based on the effectiveness of the Air Quality Action Planning process, has been made several times to the Department detailing the key actions we as a council can deliver, and highlighting the fact that we cannot be accountable for the delivery of actions which in the action plan are the responsibility of Central Government Departments or their agencies. They need to be accountable directly to the Department for their part in the delivery process.

A change in the wording of Chapter 1 is required to address this. Our role has been clear on this point as a coordinating body. We have sought to use our influence over the past 7 years to influence and encourage innovation and commitment by the other agencies to do more to improve air quality within their regulatory influence. The Department is already aware that we have had only limited success borne out of the lack of engagement and influence in regional planning and regional and local transport planning that the Council can have.

Appraisal Process

The Council would suggest that consideration be given to ensuring that any written comments to a district council are also copied to the relevant authorities. This will help to emphasise the part they are expected to play in the process. It would also be helpful that where aspects of the report refer to issues which are relevant to one of the roles of a relevant authority and not necessarily the district council that the appraisal response reflects this.

Chapter 4: Air Quality Action Plans – Legal Framework, Principles and Processes.

Page 22 – Setting up a Steering Group.

Please note the typographical errors in the naming of some Government Departments within this draft.

Department for the Environment – Department of Environment
Department of Regional Development – Department for Regional
Development.

Department of Social Development – Department for Social
Development.

Northern Ireland Authority for Energy Regulation –
Northern Ireland Authority for Utility Regulation.

Page 23 – Impact Assessment

It is recognised that for, many measures it will not be possible to quantify accurately benefits but it is important that district councils continue to implement measures, which are known to have benefits in terms of air quality and climate change goals, and in this case, detailed information on implementation targets should be provided. Examples would include schemes to encourage car sharing and / or cycling or the use of cleaner vehicles. Taking the latter of these the provision of information in the Action Plan on say a measure to encourage the uptake of cleaner vehicles through differentiated parking charges, the Euro standard(s) or the vehicle type that the measure is linked to, and the number of vehicles that are expected to be covered by the measure would be appropriate.

Belfast City Council highlights that Northern Ireland local authorities do not have responsibility for introducing the type of transport planning actions cited within the text. For example, Travelwise Northern Ireland is a Department for Regional Development Service initiative to encourage the use of sustainable transport options such as walking, cycling, public transport or car sharing. Moreover, car-parking charges are also set by the Department for Regional Development. Examples of transport planning and enforcement functions available to the Department for Regional Development Roads Service have been summarised in Chapter 6 of the draft policy guidance document.

Again, the Council would have concerns that the text referenced above is relevant to English guidance, which is based on a different Government structure and delivery framework to that in Northern Ireland. Notwithstanding this, Belfast City Council has, and will continue to implement measures within its own Council fleet, and to encourage its staff to consider sustainable transport solutions and to use its influence and civic leadership role to encourage other organisations to do the same.

In developing and assessing an Action Plan, district councils should consider wider economic, social and environmental impacts, bearing in mind other legal requirements and policy drivers from central Government.

Section 25 of the Northern Ireland (Miscellaneous Provisions) Act 2006 establishes a duty upon public authorities, to include Northern Ireland departments, district councils, and any other person designated by the Office of the First Minister and Deputy First Minister, to act in the way best calculated to contribute to the achievement of sustainable development in Northern Ireland, except to the extent that it considers that any such action is not reasonably practicable in all the circumstances of the case. Achieving sustainable development would require such public authorities to maximise social, environmental and economic aspects of a policy or action.

Belfast City Council considers that, as an air quality action plan may draw upon contributions from a range of relevant authorities and organisations, responsibility for considering the wider economic, social and environmental impacts of a particular action or proposal should be placed with the organisation charged with its development and implementation.

Again, Belfast City Council would seek to ensure the emphasis on the district council role as in the italicised text above is amended to refer also to all the relevant authorities. A district council cannot deliver this in isolation, but would seek to encourage it alongside and on an equal basis with all relevant Government Departments and agencies.

Chapter 5 – Consultation

Consultation on Reviews and Assessments

Belfast City Council notes a draft policy guidance requirement that district councils must consult the Department and other statutory consultees as detailed in Schedule 2 of the Environment (Northern Ireland) Order 2002 regarding the content of Updating and Screening Assessment (USA) reports. Persons prescribed

under Schedule 2 of the Order include for example, adjacent district councils, competent authorities exercising functions in, or in the vicinity of, council's district and bodies or persons appearing to be representative of persons with business interests in the district to which the review or action plan in question relates, etc.

This provision appears to be a departure from the previous 2003 policy guidance in which district councils were required to consult only the Department and other relevant authorities. It was left to the district council to determine the extent of further consultation. Councils were advised, however, that there was no automatic requirement for a full public consultation.

Belfast City Council considers that given the rigorous air quality management timetable outlined in table 2, page 14 of the draft policy guidance, the requirement for a detailed assessment whenever necessary, the financial cost and time implications of completing a formal consultation and that updating and screening assessments are freely available to the public via the Air Quality in Northern Ireland website, that the extent of consultation on USAs should remain at the discretion of the relevant district council.

Chapter 6 Air quality and transport

There were approximately 1,024,396 vehicles licensed in Northern Ireland at 31st December 2006. (*2008 - Northern Ireland Transport Statistics 2008-09*).

District Council Measures

Reducing the contribution of road transport emissions is therefore a key part of local air quality management. There are a number of practical measures that councils can consider implementing to reduce levels of pollutants from vehicles. However, it should be remembered that while reducing pollution from road based transport is a significant factor in the improvement of air quality, road transport is not the only source of pollution and a balanced approach to tackling air quality should be adopted.

The Council would re-emphasise that responsibility for transport planning lies with the Department for Regional Development and, therefore, there are few measures that district councils could directly implement which would reduce levels of air pollution from road vehicles. Moreover, it is unclear what is meant by the final sentence in the above paragraph - it is considered that a Stage IV further assessment and source apportionment study would enable to district councils to accurately target and prioritise action plan measures. Accordingly, Belfast City Council requests that the italicised text above be amended to reflect the responsibility of all of the relevant Government Departments and agencies.

The statement on page 28 referring to the need for Council officers to liaise with Planning and Roads Service is essential. However, Belfast City Council would again seek to ensure that clearly defined responsibilities, accountabilities and reporting mechanisms to the DOE against actions that reduce road transport air pollution for each of the relevant authorities are incorporated.

Regulatory Measures to cut Vehicle Emissions

To make sure that vehicles do not produce excessive emissions, new vehicle standards are backed up by emissions tests as part of the MOT. In addition, the Driver Vehicle Agency carry out around 1000 vehicle emissions checks each year as part of their roadworthiness enforcement check programme. To improve emissions performance still further, all new cars and light goods vehicles will be required to be fitted with on board diagnostic systems from 2007, which will immediately alert the driver to any irregularities in the vehicle's emissions.

The tense of this paragraph needs to reflect that on board diagnostic systems should have been introduced already.

Chapter 7 – Air Quality and Related Issues

Land Use Planning

The Review of Public Administration has recommended that responsibility for local plans, including town centre plans and subject plans, development control, planning enforcement and consultation on all area plans and strategic policies including planning policy statements be transferred to local authorities from April 2011. The Department of Environment has recently completed a consultation into the reform of the Planning System in Northern Ireland however, ahead of the outcome of the consultation, the Council recommends that the draft Local Air Quality Management Policy Guidance should include reference to the forthcoming revised Northern Ireland planning arrangements.”

The Committee approved the draft response.

Consultation Document – The Housing Bill (Northern Ireland)

The Committee considered the undernoted report:

“Relevant Background Information

In May 2009, the Department for Social Development (DSD) published a consultation document entitled ‘Building Sound Foundations: A Strategy for the Private Rented Sector’. The Council provided a detailed response to this consultation at that time and the Department has indicated that, subject to the results of that consultation, the proposals in the strategy will be included in a proposed Housing Bill.

On 7th December, the Department published a further consultation in relation to the Housing Bill with additional proposals for the regulation of Houses in Multiple Occupation (HMO), different approaches to tackle fuel poverty and a range of suggestions to build upon existing powers to deal with homelessness and community safety with regard to tenants. The consultation period ends on 26th February, 2010.

The key issues are set out below, however, the Department has included a list of questions at the end of each chapter of its consultation document. A completed draft response to this consultation is attached.

Key Issues

- A new definition of HMO is already included in the Housing (amendment) Bill which will require clarification of familial relationships. The Department is therefore seeking views on the best way to implement the proposals on the evidence of family relationships. The Council has previously written to the Department expressing concerns about the lack of consultation on the change to HMO definition and the difficulties of establishing the veracity of family relationships.
- Landlords will be required to notify the appropriate authority of any of their properties that appear to fall within the definition of an HMO.
- Fines for non-compliance with the registration process for HMOs will increase to a maximum £20,000.
- It is proposed that the Housing Executive will have powers to discharge its homelessness duties by securing accommodation in the private rented sector.
- The Housing Executive and registered housing associations will have powers to broker energy / fuel at discounted prices for their tenants.
- The Bill intends to extend the scope of injunctions against anti-social behaviour for social landlords.
- The Bill proposes powers to enable the Housing Executive and registered housing associations to extend the trial period for an introductory tenancy for up to 6 months.
- It is proposed to enable courts to grant 'demotion orders' in respect of Housing Executive and housing association secure tenancies where there is evidence of anti-social behaviour.

- There will be clear guidelines for judges in possession cases which should ensure that decisions are more consistent.
- The Housing Executive and registered housing associations will be enabled to withhold consent to an exchange of tenancies in certain specified cases and will be permitted to disclose information about possession orders, demotion orders, injunctions, etc. where such information is required.
- The Housing Executive will be given power to take part in crime prevention initiatives.
- The Department is seeking views on the most appropriate way to treat individuals who have been found to be unintentionally homeless and in priority need but are not considered suitable tenants for social housing.
- It is proposed to give the Department powers to make regulations to enable the Housing Executive and other bodies to delegate functions from one to another to have a single provider of key services, particularly with regard to homelessness.
- It is proposed to repeal the legislation relating to the Rent Surplus Fund.

Resource Implications

The proposed Housing Bill will have limited resource implications for the Council as it focuses primarily on the Housing Executive and registered housing associations. However, the potential problems in clarifying extended family relationships associated with the proposed change in the HMO definition in the Housing (Amendment) Bill, will impact on the Council when responsibility for HMOs transfers to District Councils under the Review of Public Administration.

In addition, the proposal that the Housing Executive could utilise the private rented sector to meet housing need for homeless people may impact on the work of the Council if the Housing Executive requires evidence from District Councils that these dwellings must meet the statutory fitness standard.

Recommendation

It is recommended that the Committee endorses the attached response to the Department for Social Development's consultation document on the Housing Bill (Northern Ireland).

CONSULTATION DOCUMENT/COUNCIL RESPONSE

EXECUTIVE SUMMARY

The Housing (Amendment) Bill currently being considered by the Northern Ireland Assembly seeks to improve the delivery of homelessness policy and clarify existing housing law in a number of ways.

The Department intends to introduce a further Bill before the Assembly elections in 2011 and the purpose of this consultation document is to seek your views on the proposals for that Bill.

The main focus of the proposed Bill would be the operation of the private rented sector in Northern Ireland. The Bill would also aim to provide new tools to tackle fuel poverty, meet housing need (particularly for those who are homeless) and deal with community safety issues as they relate to both social and private rented housing.

The consultation period ends on 26th February, 2010.

Introduction

The Department for Social Development, through its Housing Division, is responsible for providing the financial, legislative and policy framework in which the Northern Ireland Housing Executive and the housing association movement operate. The Housing Executive is responsible for assessing social housing need and drawing up plans to enable that need to be met. Housing associations provide all new social housing as well as specialist housing for elderly people and those with special needs.

There is a considerable body of existing housing law in Northern Ireland to support the delivery of these functions. During the current decade, four pieces of primary housing legislation have been brought forward. The Housing (Northern Ireland) Order 2003 introduced a number of fundamental changes to housing law following a major review carried out during the 1990s. The Private Tenancies (Northern Ireland) Order 2006 aimed to deliver improvements to the operation of the private rented sector. The Housing (Amendment) (Northern Ireland) Order 2006 made provision for the Housing Executive to pay grant to registered housing associations. The Housing (Amendment) Bill, currently being considered by the Northern Ireland Assembly, seeks to improve the delivery of homelessness policy and clarify existing housing law in a number of ways.

The Department intends to introduce a further Bill before the Assembly elections in 2011 and the purpose of this consultation document is to seek your views on those proposals.

The main focus of the proposed Bill would be the operation of the private rented sector in Northern Ireland. The sector has grown considerably in recent years and, given this context, it is important to ensure that Government continues to have the right policies in place to help the sector meet the needs and aspirations of both tenants and landlords. Many of our proposals for the private rented sector are set out in 'Building Sound Foundations: a Strategy for the Private Rented Sector', which is the subject of a separate consultation. This document complements the strategy for the private rented sector with further proposals for the regulation of Houses in Multiple Occupation.

The Bill would also provide different approaches to tackle fuel poverty and meet housing need. The latter aims to modernise the use of existing powers in line with emerging practice from elsewhere in the UK to better meet the housing needs of homeless people.

The proposals related to community safety build on the existing powers available to tackle a range of issues affecting existing tenants as well as those seeking housing. Minor, but important, changes to the delivery of Housing Executive and housing association functions are also included.

The following chapters set out the background to the proposed changes and explain why they are being proposed as well as the intended benefits. We are seeking your views on all these proposals. A list of consultation questions is set out at the end of each chapter to help you focus your response.

The consultation period will run from 7 December 2009 to 26 February 2010. Due to constraints imposed by the legislative timetable, there will not be any scope for extensions to be given and consequently any responses received after the closing date cannot be taken into account. The consultation document has been sent to a wide variety of consultees and is also available on the Department's website (www.dsdni.gov.uk/index/consultations).

Chapter 1 - Private rented housing

Issues

The issues covered in this chapter are:

- 'Building Sound Foundations: a Strategy for the Private Rented Sector'; and
- Houses in Multiple Occupation.

Context

Building Sound Foundations

On 15 May 2009, the Department for Social Development launched 'Building Sound Foundations: a Strategy for the Private Rented Sector', for consultation. The strategy is the first stage in the Department's plans to encourage the development of a healthy private rented sector capable of responding more effectively to housing need in Northern Ireland.

The strategy examines the current state of the private rented sector and Government's interaction with it and seeks views on a range of proposals on the way forward.

The strategy also outlines a number of potential changes to the existing legislative framework for the private rented sector which is set out in the Private Tenancies (Northern Ireland) Order 2006. It also includes new proposals across a range of policy areas such as the quality of private rented housing, tenancy management standards and security of tenure, including access and affordability issues.

HMOs

Houses in Multiple Occupation (HMOs) are one part of the private rented sector. Such properties represent an important housing option for a range of individuals, including students, young professionals and migrant workers. Over nearly twenty years, Government policy on HMOs has focused on improving the standards of accommodation and the way in which this is managed. The proposals presented in this paper aim to build on this existing policy framework and make the existing system of regulation more effective.

BUILDING SOUND FOUNDATIONS

'Building Sound Foundations: a Strategy for the Private Rented Sector' was published for consultation on 15 May 2009 (www.dsdni.gov.uk/index/consultations). The strategy contains a number of proposals which may, subject to the results of the consultation, be included in the proposed Housing Bill.

These may include:

- the establishment of a Northern Ireland accreditation scheme for landlords;
- the establishment of a rent deposit scheme similar to that in other parts of the United Kingdom;

- the introduction of new quality standards for private rented housing;
- extending the notice to quit period in certain circumstances;
- amendments to the Private Tenancies (Northern Ireland) Order 2006; and
- the application of certain conditions to the direct payment of housing benefit to landlords.

HOUSES IN MULTIPLE OCCUPATION

Houses in Multiple Occupation (HMOs) offer an important housing option for a range of individuals. HMOs tend to be concentrated in areas close to universities or centres of employment which attract migrant workers. In many cases, HMOs also provide a first home for young, single people.

HMOs differ from other housing in the private rented sector in two important respects:

- as accommodation primarily for single people, HMO households tend not to be linked by strong family bonds, with an identifiable head of household; and
- traditionally, HMOs have tended to be older and larger properties.

For these reasons, Government has sought to regulate HMOs more fully than other parts of the private rented sector, with a particular focus on the standards of the dwellings, including health and safety issues, the ways in which HMO tenancies are managed and the impact of HMOs on the neighbourhoods in which they are located.

The first steps to regulate HMOs were made in the Housing (Northern Ireland) Order 1992. The Housing (Northern Ireland) Order 2003 included a number of amendments to the 1992 Order and introduced the requirement for an HMO registration scheme. This scheme, currently managed by the Northern Ireland Housing Executive, has been in operation since April 2004. Under the Reform of Public Administration, it is intended that councils will take over responsibility for operating an HMO registration scheme from 2011.

The Housing (Northern Ireland) Order 2003 changed the definition of an HMO. The Housing (Amendment) Bill, currently being considered by the Northern Ireland Assembly, contains a proposal to further amend this definition to ensure it fully reflects the policy intention of targeting regulation on those most at risk.

The proposals in this document build on the existing framework for regulating HMOs with the aim of making the current system of regulation more effective.

There are three specific proposals which are set out in more detail overleaf:

- give the regulatory authority powers to secure documentary evidence of family relationships for the purposes of deciding whether or not a property is an HMO;
- require landlords to notify the appropriate authority of any of their properties which appear to fall within the HMO definition; and
- increase the fine for non-compliance with HMO registration processes up to a maximum of £20,000.

HOUSES IN MULTIPLE OCCUPATION: EVIDENCE OF FAMILY RELATIONSHIPS

Proposal

An amendment to the definition of an HMO is included in the Housing (Amendment) Bill currently being considered by the Northern Ireland Assembly.¹ Subject to this becoming law, we propose to minimise the scope for abuse of this new definition by requiring, where appropriate, clarification of the relationships within a house. The owner or operator of the property will be responsible for ensuring that this clarification is provided in all cases where it is claimed that the occupants are members of three or fewer families. Similar provisions already exist in Scotland.

Background

An HMO is 'a house occupied by more than two qualifying persons, being persons who are not all members of the same family' (i.e. if occupied by 3 different people from at least 2 different families).

¹ A copy of the Bill is available on
www.niassembly.gov.uk/legislation/primary/2008/nia7_08.htm

For the purposes of the definition of an HMO the Housing (Amendment) Bill seeks to extend the definition of 'family' to include uncle, aunt, nephew and niece.

HMOs, as defined in legislation, do not include accommodation occupied by members of an extended family and concern has been expressed that, to evade the regulation regime prescribed for HMOs, unscrupulous landlords might encourage unrelated tenants to claim that a family relationship exists between them.

Intended benefits

The proposal would support the definition of an HMO and help to ensure that safety standards are maintained in such accommodation.

Your views:

We would particularly welcome your views on the best ways for implementing this proposal and on the need for any alternative or additional actions to ensure all homes which meet the HMO definition are registered and meet required standards.

The Council is concerned that an overcrowded HMO, which contains a large number of tenants who claim the new wider familial relationships, would be exempt from regulation. This is extremely worrying particularly in light of the conditions migrant workers were found to be living in recently.

Belfast City Council's Head of Environmental Health wrote to the Committee for Social Development on 11 September 2009, subsequently endorsed by the Council, expressing concerns about the proposed change to the definition of HMO and, in particular, the potential difficulties of proving or disproving family connections. The definition of HMO is key to the regulatory regime and enforcement responsibilities that flow from it and, as such, the Council believes that a more rigorous consultation should have been carried out. Bearing in mind that enforcement for HMOs will transfer to District Councils as a consequence of the review of public administration, the Council would recommend that further consideration be given to the definition of HMO before enactment of the Housing (Amendment) Bill.

HOUSES IN MULTIPLE OCCUPATION: NOTIFICATION

Proposal

Require landlords to notify the appropriate authority of any of their properties that appear to fall within the definition of an HMO.

Background

The Housing Executive is currently responsible for the regulation of HMOs to ensure that safety standards are maintained (it is envisaged that, under the Review of Public Administration, responsibility for the regulatory regime will transfer to councils). At present, the onus is on the Housing Executive to identify properties that should be placed on the register of HMOs. This adds unnecessary cost to regulation and diverts resources away from the effective enforcement of safety standards.

Intended benefits

The proposal would help to ensure that safety standards are maintained in HMOs.

Your views:

The Council welcomes any proposals which require landlords to register privately rented properties. In its submission to the Department's consultation of May last year, *Building Sound Foundations: A Strategy for the Private Rented Sector*, the Council stated that all privately rented properties should be registered with their District Council. This is particularly important as properties can vary from HMO to non-HMO with each new tenancy.

HOUSES IN MULTIPLE OCCUPATION: FINES

Proposal

Increase maximum fines for non-compliance with the registration process for HMOs up to a maximum of £20,000.

Background

The Housing Executive is currently responsible for maintaining a register of HMOs to ensure that safety standards are maintained (under the Review of Public Administration, responsibility for the regulatory regime will transfer to councils). A similar regime operates in England where the maximum penalty for non-compliance with the registration process is a fine of £20,000.

Intended benefits

The proposal would provide a more effective deterrent to non-compliance with the HMO registration process, thereby helping to ensure that safety standards are maintained.

Your views:

The Council welcomes the proposal to increase the maximum fines for non-compliance with HMO registration up to a maximum of £20,000. The Council would also welcome any proposals to increase the level of fines for non-compliance with the Private Tenancies Order (NI) 2006, particularly in relation to unlawful eviction, as the current level of fines do not act as a sufficient deterrent to some landlords.

Chapter 1 consultation questions

- 1. Do the proposals achieve the aim of making the existing system of regulating HMOs more effective?***

The proposed amendment to the definition of HMO will have a major impact on the identification and regulation of HMOs. By widening the definition of the family it introduces a greater administrative and investigative burden on those enforcing the regulations. The Department has acknowledged this by asking for views on proposals on how to implement this change to avoid unscrupulous landlords encouraging unrelated tenants to claim family relationships. Even if the landlord is made to supply clarification of familial relationships, the regulator will still have to check the veracity of these statements.

- 2. Are any alternative or additional actions needed to ensure that all homes which meet the HMO definition are registered and meet required standards?***

The Council would recommend that a risk-based registration scheme is introduced by the Department which would ensure that all privately rented properties are made known to the District Council and that higher risk premises are subject to the appropriate regulatory framework.

- 3. Do you have any views on the best ways to implement the proposals on the evidence of family relationship?***

The Council advocates a risk based approach in relation to the regulation of the entire private rented sector. A rented property should be assessed and regulated on the risks it poses to the occupants, not on whether the occupants come from more than 2 separate extended families.

Chapter 2 - Homelessness

Issue

The issues covered in this chapter are:

- securing accommodation for homeless people in the private rented sector; and
- the homelessness duty owed to persons from abroad.

Context

The Housing (Northern Ireland) Order 1988 remains the central legislative pillar for dealing with homelessness in Northern Ireland.

The Housing (Amendment) Bill, currently being considered by the Northern Ireland Assembly, proposes to amend the 1988 Order in a number of ways, offering, among other things, new rights of appeal for homeless applicants and placing a duty on the Housing Executive to produce a homelessness strategy and for other Government bodies to take account of this strategy in delivering their functions.

The Department for Social Development is also leading on taking forward 'Including the Homeless: a Strategy to Promote the Social Inclusion of Homeless People, and those at risk of becoming Homeless, in Northern Ireland' which was published in July 2007.

This consultation document contains proposals to clarify the Housing (Northern Ireland) Order 1988. Article 10 of that Order places a duty on the Housing Executive to 'secure that accommodation becomes available' for occupation by homeless applicants deemed to be in priority need and unintentionally homeless. While in most cases the Housing Executive meets that duty by allocating a social housing tenancy, this may not always be the most effective way of meeting an applicant's needs. However, certain safeguards for applicants are required if the Housing Executive is to meet its duty other than by allocating a tenancy of social housing.

SECURING ACCOMMODATION FOR HOMELESS PEOPLE IN THE PRIVATE RENTED SECTOR

Proposal

Provide safeguards for homeless people in circumstances where the Housing Executive decides to discharge its homelessness duty by securing accommodation in the private rented sector.

The Housing Executive has a statutory duty to deal with homelessness. Legislation requires that, where an eligible person is unintentionally homeless and in priority need (a 'full duty applicant'), the Executive shall secure that accommodation becomes available for that person's occupation. While the Housing Executive normally seeks to meet this duty by offering a secure tenancy in the social rented sector, this may not always be the most effective way to meet an individual's housing needs or the most efficient use of resources. For this reason, existing legislation provides the Housing Executive with discretion to offer applicants who meet the statutory criteria for homelessness assistance.

It should also be noted that, in cases where a full duty applicant's entitlement arises through a family member who would be ineligible for assistance because of their immigration status, housing authorities across the United Kingdom, including the Housing Executive, have a specific power to discharge the duty by ensuring that a private rented sector tenancy is available.

The proposed amendment to the Housing (Northern Ireland) Order 1988 would place certain safeguards on the use of the Housing Executive's existing powers and make it clear that homeless applicants should only be placed in the private rented sector where the accommodation is suitable for their needs and the tenancy will last for at least 12 months.

This proposal would bring the option of offering private rented sector accommodation to homeless applicants into line with existing and emerging practice in other parts of the United Kingdom.

In England, local housing authorities also have a duty to secure that accommodation becomes available for full duty applicants. However, the legislation makes it clear that this duty will come to an end in certain circumstances e.g. where the applicant accepts a private rented sector tenancy of at least 12 months duration. There is no requirement in law for housing authorities in England to offer secure tenancies of social housing to homeless people. However, English housing legislation provides that, where a person who is owed the full homelessness duty makes an application for social housing, the applicant must be given 'reasonable priority' on the waiting list.

In Scotland, local housing authorities have been using the private rented sector to discharge their homelessness duties for some time. In June 2008, the Scottish Government published proposals to extend this use of the private rented sector and to give local authorities specific power to discharge their homelessness duty through provision of a private rented sector tenancy with a minimum 12 month duration².

² Consultation on Regulations made under Section 32A of The Housing (Scotland) Act 1987 (<http://www.scotland.gov.uk/Resource/Doc/228769/0061947.pdf>)

Intended benefits

The proposal would facilitate a more flexible response to dealing with homelessness and meeting housing need.

Your views:

The growing problem of Homelessness is not helped by the reduction in social housing, an expanding private rented sector and increasing repossessions as a consequence of the current recession. The Housing Executive should therefore be provided with a sufficient range of options to ensure that, as the regional Housing Authority, it has the flexibility and legislative authority to provide housing to those who are most in need.

HOMELESSNESS DUTY OWED TO PERSONS FROM ABROAD

Proposal

Provide for the Housing Executive's duty under homelessness legislation to come to an end in cases where a person ceases to be eligible for such assistance.

Background

The entitlement of non-United Kingdom nationals to benefits and services, including social housing, is an excepted matter which lies outside the normal remit of the Assembly. However, the Assembly can legislate on excepted matters which are ancillary to transferred matters if the Secretary of State agrees.

Existing legislation requires that, where an eligible person is unintentionally homeless and in priority need (a 'full duty applicant'), the Housing Executive shall secure that accommodation becomes available for that person's occupation. Legislation also provides that certain descriptions of persons from abroad are not eligible to be assisted under homelessness legislation in Northern Ireland, depending on factors such as their immigration status and employment history. The provisions relating to the eligibility of persons from abroad reflect legislation which applies to other parts of the United Kingdom and were incorporated in Northern Ireland housing legislation with the agreement of the Secretary of State.

It should be noted that a person from abroad who is not eligible for social housing or homelessness assistance is unlikely to be eligible for social security benefits such as housing benefit. While housing legislation in England provides that a local authority's homelessness duty will come to an end if a person's eligibility ceases because of a change in their circumstances, there is no such provision in Northern Ireland legislation. This means that

the Housing Executive may find itself with a duty (under homelessness legislation) to provide accommodation for individuals who (under immigration legislation) must not be provided with accommodation because they no longer meet the eligibility criteria. This leaves an unsatisfactory situation of administrative limbo for both the individual applicant and the Housing Executive. Addressing this defect in homelessness legislation would remove the legal anomaly by providing for the Housing Executive's duty in such cases to be formally brought to an end. This would also benefit applicants by bringing them within the scope of the statutory rights to review and appeal which are being introduced in the Housing (Amendment) Bill.

Intended benefits

The proposed amendment would correct a legislative anomaly and ensure that all applicants who are ineligible for assistance as a result of immigration legislation have access to their statutory rights of review and appeal.

Chapter 2 consultation questions

- 1. Do you agree that, like local housing authorities in England and Scotland, the Housing Executive should, where appropriate, discharge its homelessness duty by securing suitable accommodation in the private rented sector subject to certain safeguards?*

The Council agrees that the Housing Executive should be free to secure accommodation for homeless people based on their housing needs. This would therefore include the option of using the private rented sector. The 2006 House Condition Survey indicated that there were 13,800 vacant properties in the province that were privately rented when last occupied. This suggests that there is a significant and available housing resource, one that the Housing Executive should be permitted to access in order to address urgent housing need.

- 2. Do you agree that appropriate use of the private rented sector would offer the Housing Executive a useful tool to meet an individual's housing need?*

The private rented sector is capable of providing good and well managed housing, however, there is an element of this sector that falls well below accepted standards. The Council would therefore recommend that, in identifying suitable privately rented accommodation, the Housing Executive applies robust statutory controls.

3. *Are there particular circumstances where such use of private rented sector accommodation would not be appropriate?*

As a minimum the Council would recommend that the Housing Executive should only secure accommodation for homeless people where the property is the subject of a Fitness Certificate issued under the Private Tenancies (NI) Order 2006 or where the local district council has provided evidence that the house meets the current fitness standard. In its submission to the Department's consultation of May last year, *Building Sound Foundations: A Strategy for the Private Rented Sector*, the Council proposed a mandatory licensing scheme for landlords. The Council would therefore reiterate this point and would recommend that only property owned by accredited landlords should be considered for housing homeless people.

Chapter 3 – Fuel poverty

Issue

This chapter covers new powers for social housing providers to broker energy at a discounted price for their tenants.

Context

Fuel poverty is where a household needs to spend more than 10% of its income on energy to maintain an acceptable standard of warmth in the home. The causes associated with fuel poverty are high fuel costs, low income and poor energy efficiency.

Fuel poverty damages health and social well-being and those who suffer most are people in vulnerable groups, such as the elderly, children and those who are disabled or have a long-term illness.

Northern Ireland has the highest rate of fuel poverty in the United Kingdom. The 2006 House Condition Survey showed that 34% of households in Northern Ireland are in fuel poverty. The Survey also estimated that 41% of Housing Executive tenants and 21% of housing association tenants are 'fuel poor'.

The Fuel Poverty Strategy, published in 2004, highlights Government's commitment to tackling the issue.

Government across the United Kingdom is also committed to reducing the level of carbon emissions caused by burning fossil fuels such as coal, oil and gas.

The volatility of energy prices in recent years has made the task of alleviating fuel poverty even more challenging. During the early part of 2008, oil prices rose quickly to hit record highs. This had an immediate knock-on effect on the price of all domestic energy. In response, Margaret Ritchie, Minister for Social Development, established a Fuel Poverty Taskforce to produce recommendations on ways of assisting those vulnerable households most affected by the sharp rises in fuel prices. While its remit focused on short-term actions covering the subsequent winter period, the Taskforce also made a number of recommendations covering the longer term.

Among these longer-term issues was a proposal to give social housing providers powers in law to bulk purchase energy on behalf of their tenants. The intention behind this proposal was to reduce energy bills and so mitigate fuel poverty.

This chapter sets out proposals for acting on and extending this idea.

BROKERING ARRANGEMENTS WITH ENERGY PROVIDERS

Proposal

Give the Housing Executive and registered housing associations powers to broker energy at a discounted price for their tenants.

Background

The Fuel Poverty Taskforce recommended that social housing providers should be given powers in law to bulk purchase energy on behalf of their tenants.

There are a number of ways to act on this recommendation. Given the practical problems associated with buying and storing energy, the most pragmatic solution seems to be to provide the Housing Executive and registered housing associations in Northern Ireland with powers to broker the purchase of energy at a discounted price on behalf of tenants. These powers could be exercised by a social housing provider acting alone or in collaboration with another provider of social housing.

Given the Department's strategic role in domestic energy efficiency and fuel poverty, it is proposed that any social landlord who wishes to use the proposed powers should do so in consultation with the Department, perhaps through the submission of a plan for the Department's consideration and agreement.

This proposal also has the potential to generate additional benefits more widely for Northern Ireland energy consumers as it may encourage more energy providers to enter the domestic energy market.

Intended benefits

Economies of scale would make energy more affordable for tenants of social housing and contribute to the alleviation of fuel poverty in social housing.

Your views:

Fuel Poverty is determined by energy efficiency, income and fuel costs. Whilst government can have a degree of influence on poverty and energy efficiency there are few options for influencing fuel prices. Increasing fuel costs are probably the largest contributor to the rise in Fuel Poverty over recent years and therefore any means whereby these costs can be minimised for users are to be welcomed.

Chapter 3 consultation question

Do you agree that giving social housing providers powers to broker the purchase of discounted energy on behalf of their tenants would be a useful tool in alleviating fuel poverty in social housing?

The Council welcomes the Department's commitment to reduce Fuel Poverty and would support the proposal that social landlords, either acting unilaterally or with others, could bulk purchase energy at a discounted price on behalf of tenants. The problem of Fuel Poverty however affects many people other than social housing tenants. The highest levels of Fuel Poverty, over 44%, are found in the private rented sector, according to the 2006 House Condition Survey, and this figure is now likely to be much higher due to the disproportionate increase in fuel costs in recent years. As both the Regional Housing Authority and the Regional Energy Efficiency Authority the Housing Executive should have the power to make discounted fuel prices available to any householder, who is deemed to be in social need, whether they are a tenant of a social landlord, a private tenant or an owner occupier.

Chapter 4 – Community safety

Issues

The issues covered in this chapter are:

- injunctions against anti-social behaviour, illegal use of premises and breach of tenancy agreement;
- introductory tenancies: extension of trial period;

- demoted tenancies;
- proceedings for possession: judges' discretion;
- exchange of tenancies: grounds for refusal;
- information sharing;
- crime prevention, and
- homelessness duty in cases of anti-social behaviour

Context

The Housing Executive and registered housing associations have a duty of care to protect their tenants from crime and other anti-social behaviour (whether caused by tenants of social housing or not), as well as a duty to protect other people from anti-social behaviour caused by tenants of social housing.

Social landlords therefore have a range of powers at their disposal for dealing with anti-social behaviour. While landlords can seek an order for possession of a secure tenancy where there are statutory grounds (such as causing nuisance or annoyance to neighbours), eviction is a last resort. The existing legislation, which is based on provision made for England and Wales in the Housing Act 1996, enables the Housing Executive, registered housing associations and private sector landlords in Northern Ireland to seek an injunction against any person whose anti-social behaviour affects the landlord's tenants. Such injunctions can be used to restrain tenants from engaging in unacceptable behaviour without depriving them of their homes.

Social landlords in Northern Ireland also have the facility to offer new tenancies on an 'introductory' basis, which means that tenants have limited security of tenure during the first 12 months of the tenancy and can lose their homes during that period if their conduct is not satisfactory.

It is now proposed to update the powers of the Housing Executive and registered housing associations for dealing with anti-social behaviour by reflecting certain provisions of the Anti-social Behaviour Act 2003 and the Housing Act 2004 which built on the anti-social behaviour provisions of the 1996 Act. In addition to those provisions, it is proposed to give the Housing Executive statutory authority to take part in crime prevention initiatives.

INJUNCTIONS AGAINST ANTI-SOCIAL BEHAVIOUR, ILLEGAL USE OF PREMISES AND BREACH OF TENANCY AGREEMENT

Proposals

- (a) widen the application of the existing form of injunction against anti-social behaviour;
- (b) introduce a new form of injunction against illegal use of premises;
- (c) place injunctions against breach of tenancy agreement on a statutory footing;
- (d) provide for a power of exclusion from any premises to be attached to injunctions;
- (e) provide for a power of arrest to be attached to injunctions, and
- (f) extend the scope of injunctions to cover sites provided for Travellers.

Background

Article 26 of the Housing (Northern Ireland) 2003 enables the Housing Executive, registered housing associations and private landlords to apply to the courts for injunctions to prevent any person from engaging or threatening to engage in conduct causing or likely to cause nuisance or annoyance etc. to persons residing in or visiting the landlord's property, or to persons engaging in lawful activity in the locality of such property. Such injunctions can also be used to prevent the use of premises for illegal or immoral purposes, and to prevent individuals from entering landlords' property or the locality of such property. Injunctions against anti-social behaviour only apply to behaviour which has actually caused nuisance or annoyance or is likely to cause it.

Landlords may also apply for injunctions to prevent tenants from breaching their tenancy agreements, although there is no specific legislative provision for this. At present, injunctions against the breach of a tenancy agreement cannot be used to exclude individuals from any description of premises.

The Housing Executive is currently responsible for providing and managing sites for Travellers. Because the Housing Executive may not own any of the accommodation on such sites, it would be difficult for the Executive to seek an injunction in relation to a Traveller site.

Breach of an injunction is regarded as contempt of court. Where an individual appears to have breached an injunction against anti-social behaviour or an injunction against breach of tenancy agreement, or appears to be about to breach such an injunction, the landlord can apply to the court to issue a summons to the individual, which may take some time.

Intended benefits

The proposed anti-social behaviour injunction would have a wider application than the existing form of injunction as it would cover behaviour capable of causing nuisance or annoyance, and would apply in respect of behaviour relating to or affecting any of a landlord's housing management functions. Such injunctions could also be used to exclude individuals from any premises if there is a threat of violence or risk of harm.

It is envisaged that the new anti-social behaviour injunction should be based on the form of injunction introduced in England and Wales by section 13 of the Anti-social Behaviour Act 2003. Those injunctions cannot be used to prevent the use of premises for illegal or immoral purposes, which is covered by a separate form of injunction against 'illegal use of premises'. It is therefore proposed that landlords in Northern Ireland should be in a position to apply for injunctions against illegal use of premises as well as anti-social behaviour injunctions.

Placing injunctions against breach of tenancy agreement on a statutory basis would mean that such injunctions could also be used to exclude individuals from any premises where there is a threat of violence or risk of harm and would allow the courts to attach a power of arrest.

The proposed powers of arrest could be attached to individual injunctions if the court considers it appropriate and would enable a police officer to arrest an individual where there is reason to believe that the individual has breached or intends to breach an injunction against anti-social behaviour, illegal use of premises or breach of tenancy agreement. This would provide a swifter remedy than the existing arrangements which require the landlord to report breaches of injunctions to the court.

Extending the scope of injunctions to cover Traveller sites would help to deal with anti-social behaviour on such sites.

Your views:

This is a positive development and recognition of the impact antisocial behaviour can have upon individuals, communities and neighbourhoods. Importantly this would also allow social landlords to address issues of antisocial behaviour caused by non-tenants i.e. those visiting or using a premise. It is noted that injunction could be used in relation to immoral purposes or where it is believed that antisocial behaviour is likely to cause nuisance. While a positive development in theory, providing the required evidential standards for these may be more challenging. With regard to the extension of this approach to Traveller sites it is recognised that this would bring continuity of approach. It is noted, however, that there may need to be considerable thought into how this is managed and enforced in recognition of the distinct culture and needs of tenants of these sites. In conclusion, however, this is to be viewed as a positive development and offers social landlords another tool in addressing community safety needs.

INTRODUCTORY TENANCIES: EXTENSION OF TRIAL PERIOD

Proposal

Enable the Housing Executive and registered housing associations to extend the trial period of an introductory tenancy for up to 6 months.

Background

Article 25 of the Housing (Northern Ireland) Order 1983 provides that Housing Executive and registered housing association tenancies are normally 'secure' tenancies which cannot be brought to an end except by obtaining a court order for possession. The court will not grant such an order unless the landlord can prove that there are statutory grounds for possession.

Under Chapter II of Part II of the Housing (Northern Ireland) Order 2003, all new Housing Executive and registered housing associations tenancies are let on an 'introductory' basis. An introductory tenancy currently lasts for a trial period of 12 months. If an introductory tenant engages in anti-social behaviour during the trial period, the landlord can seek an order for possession which the court will grant without requiring the landlord to prove grounds for possession. Otherwise, an introductory tenancy automatically becomes a secure tenancy when the trial period has expired.

Intended benefits

Landlords could choose to extend the trial period of an introductory tenancy where an introductory tenant's conduct gives cause for concern but would not warrant an immediate application for an order for possession. This would give such tenants an opportunity, and incentive, to modify their behaviour.

Your views:

This is a positive proposal and one which would be welcomed though it is assumed that further guidance would be offered to tenants on the implications of failing to meet acceptable behaviour standards during this extended trial period.

DEMOTED TENANCIES

Proposal

Enable the courts to grant 'demotion orders' in respect of Housing Executive and housing association secure tenancies where the court is satisfied that the tenant or a person residing in or visiting the dwelling-house has engaged in, or has threatened to engage in, conduct which would enable the court to grant an injunction against anti-social behaviour or unlawful use of premises and the court considers it reasonable to make such an order. A demotion order would effectively remove the tenant's security of tenure.

Background

Under Chapter II of Part II of the Housing (NI) Order 2003, all new Housing Executive and registered housing associations tenancies are let on an 'introductory' basis. An introductory tenancy lasts for a trial period of 12 months. If an introductory tenant engages in anti-social behaviour during the trial period, the landlord can seek an order for possession which the court will grant without any requirement to prove grounds for possession. Otherwise, an introductory tenancy automatically becomes a 'secure' tenancy when the trial period has expired. Secure tenancies cannot be brought to an end except by obtaining a court order for possession which the court will not grant unless the landlord can prove that there are statutory grounds for possession. Seeking an order for possession of a secure tenancy can be a lengthy and expensive procedure.

Intended benefits

Landlords may wish to apply for a demotion order where the conduct of a secure tenant gives cause for concern but the landlord would be reluctant to seek immediate possession. While 'demoted' tenants could remain in the accommodation at the landlord's discretion, they would be made aware that they could be evicted at short notice. This would give such tenants an opportunity, and incentive, to modify their behaviour.

Your views:

This is a positive development and once again offers social landlords another tool in tackling antisocial behaviour. However, further clarity is needed to distinguish why in certain circumstances a landlord would only seek to demote a tenancy as opposed to seeking a possession order. It is certainly implied in the proposal that the evidential burden is the same and therefore perhaps further thought is required as to the potential benefits of this option.

PROCEEDINGS FOR POSSESSION: JUDGE'S DISCRETION

Proposal

Require the court to take account of the following factors when considering applications for orders for possession of secure tenancies in cases involving anti-social behaviour:

- the effect of any nuisance or annoyance;
- the likely effect of such nuisance or annoyance continuing, and
- the likely effect of a repeat of the nuisance.

Background

Where a secure tenant of the Housing Executive or a registered housing association has been guilty of serious anti-social behaviour, the landlord may wish to regain possession of the property. A secure tenancy cannot be brought to an end except by obtaining a court order for possession and the court will not make such an order unless the landlord can provide evidence of statutory grounds for possession. The grounds for possession include conduct by tenants or persons residing with them which causes or is likely to cause nuisance or annoyance to persons residing, visiting or otherwise engaging in a lawful activity in the locality.

Intended benefits

The provision of clear guidelines for judges in possession cases should help to ensure that decisions are more consistent.

Your views:

This approach is to be welcomed as it will support a more consistent and informed approach and also support the criminal justice system in making informed decisions. It would be beneficial to know if as part of the evidence received whether the court would similarly hear a community impact statement as with applications for ASBOs in order to offer complainants more confidence to come forward while protecting their anonymity.

EXCHANGE OF TENANCIES: GROUNDS FOR REFUSAL

Proposal

Enable the Housing Executive and registered housing associations to withhold consent to an exchange of tenancies where certain orders for possession, anti-social behaviour orders, demotion orders or injunctions have been made in respect of either party to the proposed exchange or a member of their households.

Background

Secure tenants of the Housing Executive and registered housing associations may, with the written consent of the landlord, exchange houses on the basis of mutual assignment of their tenancies. Landlords cannot withhold consent except on one or more of the grounds for refusal specified in the legislation.

Intended benefits

The new ground for refusal could be used as a sanction against anti-social behaviour. There may also be, in individual cases, valid housing management reasons to prevent anti-social tenants from exercising an automatic right to exchange houses with other tenants.

Your views:

This is an extremely positive development and will prevent the system currently being 'abused' by known perpetrators. Importantly it will ensure a transfer of information that will allow decisions to be informed on the overall behaviour of tenants as opposed to limited to behaviours at individual addresses. As with a number of these recommendations however further clarification is required as to the impact upon tenancies where it is not the leaseholder who is found to have committed antisocial behaviour but rather their child or dependent.

INFORMATION SHARING

Proposal

Permit the disclosure of information about possession orders, demotion orders, injunctions etc where such information is required to enable the Housing Executive and registered housing associations to withhold consent to a mutual exchange or to refuse to complete a house sale.

Background

Exchange of tenancies (Housing Executive and registered housing associations)

Secure tenants of the Housing Executive and registered housing associations may, with the written consent of the landlord, exchange houses on the basis of mutual assignment of their tenancies. The landlord can withhold consent on certain grounds which are set out in legislation.

Restrictions on House Sales (Housing Executive)

The Housing Executive's House Sales Scheme provides that a tenant cannot exercise the right to buy at any time when:

- (a) the Executive has, within the previous three months, served on the tenant a statutory notice seeking possession on grounds relating to anti-social behaviour, or is in the process of carrying out investigations which may lead to the serving of such a notice;
- (b) proceedings for possession of the tenant's dwelling are pending, or
- (c) the tenant is obliged to give up possession of the dwelling in pursuance of an order of the court (or will be obliged to do so at a date specified in the order).

Restrictions on House Sales (registered housing associations)

The scheme which requires registered housing associations to allow their tenants to buy their homes provides that a tenant cannot exercise the right to buy at any time when:

- (a) the association has, within the previous three months, served on the tenant a statutory notice seeking possession on grounds relating to anti-social behaviour;

- (b) proceedings for possession of the tenant's dwelling are pending, or
- (c) the tenant is obliged to give up possession of the dwelling in pursuance of an order of the court or will be obliged to do so at a date specified in the order, or
- (d) the association is actively considering whether it would be appropriate to serve – at some time within the next three months – a statutory notice seeking possession on grounds relating to anti-social behaviour.

Intended benefits

Disclosure of information about possession orders, demotion orders, injunctions etc would enable the Housing Executive and registered housing associations to prevent an exchange of tenancies or a house sale where this is necessary as a sanction against anti-social behaviour or there are housing management reasons for preventing anti-social tenants from exchanging houses or purchasing their homes.

Your views:

Information sharing is vital and therefore this proposal is strongly welcomed. Once again it is judged that this would also prevent the system from being abused by known perpetrators.

CRIME PREVENTION

Proposal

Give the Housing Executive power to take such action as it considers necessary for the prevention of crime and anti-social behaviour.

Background

From time to time, the Housing Executive participates in crime prevention initiatives which may involve, for example, the provision of home security measures for elderly citizens living in high-crime areas or persons who are vulnerable to hate crime. However, the Executive has no specific statutory authority to take part in such schemes.

Intended benefits

Giving the Executive a statutory power to take part in crime prevention schemes would give it the proper authority to operate crime prevention initiatives.

Your views:

The NIHE has an integral role to play in addressing community safety and therefore having the statutory power to support this work would be extremely beneficial. The NIHE for example already plays a pivotal role in Belfast Community Safety Partnership and has worked closely with Belfast City Council to deliver a range of services. However, by being given the statutory power to take part in crime prevention initiatives this would facilitate a more flexible and effective partnership approach and hopefully support more targeted sharing of resources.

**HOMELESSNESS DUTY IN CASES OF
ANTI-SOCIAL BEHAVIOUR**

Proposal

Individuals who are unsuitable to be tenants of social housing because of their unacceptable behaviour should not be in a position to access Housing Executive or housing association tenancies via the homelessness legislation, even if evidence of their unsuitability does not emerge until after the Executive has established that their housing circumstances are such that they would otherwise meet the statutory criteria for homelessness assistance.

Background

The Housing Executive has a statutory duty under the Housing (Northern Ireland) Order 1988 to secure that housing becomes available for homeless persons who are:

eligible for assistance;

in priority need (ie with dependent children or vulnerable in some way), and

unintentionally homeless.

If the Housing Executive is satisfied that a person meets all of the above criteria, the Executive owes that person what it calls the 'full housing duty'. The Housing Executive normally meets the full housing duty by providing a secure tenancy in social housing, although Chapter 2 of this Paper deals with the other ways in which the Executive may choose to meet the duty.

Article 22A(1)(c) of the Housing (Northern Ireland) Order 1981 provides that persons who are unsuitable to be tenants of social housing because of their unacceptable behaviour are not eligible to be allocated such housing via the waiting list and Article 7A of the 1988 Order makes similar provision in respect of homelessness. Specifically, Article 7A(1)(c) provides that a person may be treated as ineligible for homelessness assistance if the Housing Executive uses its power under Article 7A(5) to decide that an applicant has been guilty of unacceptable behaviour serious enough to make the applicant unsuitable to be a tenant of the Executive. In this context 'homelessness assistance' means an allocation of social housing, although this is only one of the different types of assistance that can be provided for homeless people under the 1988 Order.

The provisions outlined above are intended to ensure that persons who indulge in anti-social behaviour do not become tenants of social housing. However, Article 7A(7) of the 1988 Order provides that persons who are ineligible for homelessness assistance because of their unacceptable behaviour, but have priority need, must be treated in the same way as eligible persons who are in priority need but are 'intentionally homeless' i.e. they must be provided with temporary accommodation plus advice and assistance to enable them to make their own housing arrangements. This meets the policy objective of ensuring that anti-social individuals have no entitlement to social housing, while at the same time ensuring that homeless people with priority need receive a level of assistance which is, at least, in line with the basic legal requirements.

While Article 7A(5) of the 1988 Order allows the Housing Executive to treat 'applicants' as ineligible for homelessness assistance on the basis of their unacceptable behaviour, an individual cannot be described as an 'applicant' after the Executive has completed an assessment of their housing circumstances. This means that the Housing Executive cannot invoke the eligibility provisions where, for example, a person who is awaiting re-housing having been found to be owed the full housing duty damages temporary accommodation provided by the Executive or threatens other hostel residents. The Housing (Amendment) Bill introduced in the Assembly on 9 June 2009 therefore provides for an amendment to the form of words used in Article 7A(5) which would allow the Housing Executive to treat 'persons' rather than 'applicants' as ineligible for homelessness assistance on the basis of their unacceptable behaviour.

While the amendment to Article 7A(5) is intended to resolve the 'person/applicant' issue, a question would remain around the legal propriety of the Housing Executive exercising its discretion under Article 7A(1)(c) of the 1988 Order to treat an individual as ineligible for homelessness assistance in circumstances where the person concerned has already been found to satisfy the relevant statutory criteria and the Executive therefore owes that person the full housing duty. Where individuals who have applied to the Housing Executive for homelessness assistance display anti-social tendencies after a decision has been taken that they are owed the full duty, but before they are re-housed, existing legislation allows the Housing Executive no option other than to treat the individual in accordance with the full duty i.e. to allocate a tenancy of social housing (even though the landlord might wish to initiate proceedings for possession immediately) or to attempt to secure accommodation for the individual in the private rented sector.

The Department would welcome views on the most appropriate way to treat individuals who have been found to be unintentionally homeless and in priority need but are not considered suitable persons to hold tenancies of social housing, including your views as to the need for any further legislation in this area. For example, it might be appropriate to make specific provision that the full homelessness duty is deemed to be discharged in circumstances where the Housing Executive has decided that a person is to be treated as ineligible for an allocation of accommodation pursuant to Article 22A (6) of the Housing (NI) Order 1981, or to amend the 1988 Order to allow the Housing Executive to treat such individuals in the same way as eligible persons who are in priority need but are 'intentionally homeless' i.e. to provide temporary accommodation plus advice and assistance to enable them to make their own housing arrangements.

Intended benefits

Ensure that tenancies of social housing are not allocated to individuals who are likely to engage in anti-social behaviour.

Your views:

While the principle behind this approach is well guided the outworking of this approach requires more thought. Once again clarity is needed on the impact that a dependent's behaviour might have on housing status. Furthermore, greater consideration is required on the evidential proof that would be required to prove intent. There should be continued monitoring of behaviour by relevant agencies. It is suggested for example that the Interagency Antisocial Behaviour Fora might offer a forum for this to be considered. If, however, such issues were resolved this approach would hopefully prevent the current system from being abused and ensure that social landlords are offered the opportunity to manage their housing stock in a positive manner.

Chapter 4 consultation questions

1. *Do you agree that the proposals on community safety and anti-social behaviour are reasonable and provide social housing providers with appropriate tools to ensure their tenants and others can peacefully enjoy their homes?*

The proposals recommended are, by in large, to be welcomed and show a commitment to supporting communities and improving quality of life.

2. *Are there any additional proposals which should be considered?*

In light of the draft proposals reassurance is needed that resulting changes will be adequately resourced. In particular it is hoped that by granting the statutory power to support crime prevention that this opportunity will be fully realised through appropriate resourcing.

Chapter 5 – Housing Executive functions

Issues

The issues covered in this chapter are:

- partnership between the Housing Executive and other bodies; and
- indemnities for Housing Executive staff serving on other bodies.

Context

The purpose of the proposals outlined in this chapter is to allow Government services to be more joined-up, particularly, but not exclusively, in dealing with homelessness. Meeting the often complex needs of service users and citizens requires public bodies to work across organisational boundaries. This approach does not always sit well with systems of accountability which tend to constrain such innovation.

The proposals outlined are designed to overcome some of these barriers to joined-up working by allowing the Housing Executive to enter into partnerships with other Government bodies and pool resources where required and providing indemnities to Housing Executive staff and members who participate in the work of other housing-related organisations.

PARTNERSHIP BETWEEN THE HOUSING EXECUTIVE AND OTHER BODIES

Proposal

Enable the Department to make regulations prescribing arrangements which may be entered into by the Housing Executive and other bodies in relation to the exercise of certain functions, if the arrangements are likely to lead to an improvement in the way in which those functions are exercised.

Background

While the Health and Social Care Board, the Probation Board for Northern Ireland and registered housing associations are required to co-operate with the Housing Executive if requested to do so in connection with the Executive's homelessness functions, there is no specific statutory provision which would enable the Housing Executive to work in partnership with such bodies.

Intended benefits

The proposal would enable the Housing Executive and other bodies to delegate functions, to pool resources and to transfer resources from one body to another so that there can be a single provider of services in key areas.

Your views:

The proposal has the effect of embedding in legislation the benefit of greater co-operation between the Housing Executive and other organisations in the exercise of their functions.

INDEMNITIES FOR HOUSING EXECUTIVE STAFF SERVING ON OTHER BODIES

Proposal

Enable the Housing Executive to provide indemnities to some or all of its members and staff.

Background

The Housing Executive requires certain of its officers, as part of their official duties, to become involved in the governance of institutions and bodies which are involved in housing-related activities but have no direct connection with the Executive. Officers of the Housing Executive who are involved in the governance of external companies or bodies may be obliged by law to act primarily or solely in the interests of those institutions and, at present, the Executive cannot lawfully indemnify its officers in such circumstances.

Intended benefits

The proposal would ensure that Housing Executive staff who are involved in the management of other housing-related bodies would be protected in the event of, for example, those bodies becoming insolvent.

Your views:

It is appropriate for the Department to ensure that there are no unnecessary impediments to Housing Executive staff and members from involvement in other housing related bodies.

Chapter 5 consultation question

Do you agree that the Housing Executive should be able to work in partnership with other bodies, particularly in terms of tackling homelessness?

The Council would support the concept of the proposed reciprocal approach to service delivery.

Chapter 6 – Housing Associations

Issue

The issue covered in this chapter is the repeal in law of the Rent Surplus Fund.

Context

Article 37 of the Housing (Northern Ireland) Order 1992 places an obligation on registered housing associations to show separately in their accounts certain surpluses on rental income arising from properties built with grant-funding from the Department.

This provision is no longer required and the Department for Social Development has sought to withdraw it by administrative means. However, it would also be useful to repeal Article 37 of the Housing (Northern Ireland) Order 1992 and remove it from the statute book.

RENT SURPLUS FUND

Proposal

Repeal primary legislation relating to the Rent Surplus Fund.

Background

Registered housing associations have a statutory duty to show in their accounts surpluses arising from increased rental income (such surpluses are known as 'the Rent Surplus Fund'). While similar legislation at one time applied to the rest of the United Kingdom, that legislation has been repealed.

Intended benefits

Repeal of the relevant legislation would remove an unnecessary bureaucratic burden from registered housing associations.

Your views:

Registered housing associations should not be required to carry unnecessary bureaucratic burdens.

Chapter 6 consultation question

Do you agree that provisions in primary legislation relating to the Rent Surplus Fund should be repealed?

The Council agrees with this proposal.

Chapter 7 – Equality

NORTHERN IRELAND ACT 1998

Section 75 of the Northern Ireland Act 1998 requires the Department in carrying out its functions to have due regard to the need to promote equality of opportunity:

- between persons of different religious belief, political opinion, racial group, age, marital status or sexual orientation;
- between men and women generally;
- between persons with a disability and persons without;
and
- between persons with dependants and persons without.

Without prejudice to the obligations set out above, the Department is also required, in carrying out its functions relating to Northern Ireland, to have regard to the desirability of promoting good relations between persons of different religious belief, political opinion or racial group.

The Department has undertaken an equality screening of the proposals contained in this document to determine if they are likely to have a significant impact on equality of opportunity. This screening has not identified any adverse differential impact of the proposals on the equality categories outlined above.³

RURAL PROOFING

The Department considers that the impact of the proposals contained in this document would be felt mainly in urban areas. There does not appear to be any potential for an adverse differential impact on rural areas.

We would welcome your views on these findings and any evidence of adverse differential impacts arising from any of the proposals within this document.

The Department's equality screening document is available at www.dsdni.gov.uk/index/consultations.

Chapter 7 consultation questions

1. *Do you have any evidence to suggest that the proposals within this document would create an adverse differential equality impact on any of the nine equality categories under Section 75 of the Northern Ireland Act 1998?*

No.

2. *Do you have any evidence to suggest that the proposals within this document would create an adverse differential impact on rural areas?*

No.”

The Committee approved the foregoing response.

Consultation Document - Underage Sale of Tobacco Products

The Committee considered the undernoted report:

“Relevant Background Information

On 14th December, 2009, the Department of Health, Social Services and Public Safety launched a public consultation to seek views on proposals for strengthening sanctions against retailers

³ Differential impact occurs where a Section 75 group has been affected differently by a policy.

who sell tobacco products to children and young people under 18 years of age. The public consultation paper and completed response questionnaire are attached. The consultation closes on 12th March 2010.

Children and Smoking

Smoking is the single greatest cause of preventable illness and premature death in Northern Ireland, killing around 2,300 people each year. Recent research in Northern Ireland indicates that 77% of adult smokers started to smoke in their teens and that almost 9% of children aged 11-16 are now regular smokers. More work needs to be done to prevent children and young people from starting to smoke and reducing the availability of tobacco products to under 18s is key to this.

Studies done with children who smoke in England and Scotland show that their primary source for purchasing tobacco is shops (England – 57% of children; Scotland – 82% of 15 year olds & 47% of 13 year olds).

Current Controls

On 30th April 2007, the Smoking (Northern Ireland) Order 2006 came into effect to protect people from second hand smoke by preventing smoking in most workplaces and public places.

On 1st September, 2009 the minimum age to purchase tobacco products was increased from 16 to 18 years old by the introduction of the Children and Young Persons (Sale of Tobacco etc) Regulations (Northern Ireland) 2008. Following this, Belfast City Council has provided advice to all retailers to inform them of this and have been monitoring compliance by carrying out test purchases with children. Since April 2009, Council officers have carried out 30 test purchasing exercises in Belfast and 16 premises have sold cigarettes to the 13 and 14 year old volunteers. To date, 14 of these have been successfully prosecuted.

England introduced a negative licensing scheme for retailers on 1st April 2009. A negative licensing scheme is where a shop does not need an official licence to sell tobacco but when they are found to be selling tobacco to persons under 18 years of age, their right to sell tobacco could be suspended or withdrawn for a period of time. The Scottish Government is also proposing a registration scheme that would create a national database administered by the Scottish Government along with negative licensing.

Key Issues

There are six options put forward for consideration in the consultation by the Department of Health, Social Services and Public Safety. These are:-

- Option 1 – Do nothing;
- Option 2 – Require registration of retailers;
- Option 3 – Introduce accreditation for retailers (a non mandatory licence);
- Option 4 – Introduce a negative licensing system;
- Option 5 – Introduce a positive licensing system administered by either the Northern Ireland Courts Service or District Councils; and
- Option 6 – Combining a registration scheme with a negative licensing system.

The Department is recommending option 6 as the preferred option.

The attached draft Council response is largely supportive of the Department's recommendation. This option is similar to what is being proposed in Scotland. The draft also suggests that the Council is in favour of the introduction of a Fixed Penalty Notice for selling tobacco to persons under the age of 18.

Resource Implications

There are no significant resource implications as Council officers currently enforce legislation relating to underage sales.

Recommendation

It is recommended that the Committee approve the attached response to the consultation document.

COUNCIL RESPONSE

Q1. Do you agree with the summary and recommendation reached by the Department (paragraphs 135 & 136 of the Regulatory Impact Assessment (RIA) that a registration system combined with a negative licensing scheme (option 6) should be introduced in conjunction with a fixed penalty notice scheme? Have you any comments?

Yes

No

Belfast City Council agrees that a registration system combined with a negative licensing scheme should be introduced along with a fixed penalty for retailers who sell tobacco to anyone less than 18 years.

Registration would provide councils with a comprehensive list of retailers who sell tobacco without the excessive cost or administrative burden for both businesses and councils that a licensing scheme would likely introduce.

The Council believes that the negative licensing system would allow a graduated enforcement response to retailers who sell tobacco to children. It would send a strong message to those who repeatedly do not comply with the law, demonstrating that breaches will be dealt with appropriately. The Council also strongly supports the introduction of fixed penalty notices in conjunction with the recommended option. This would provide an efficient and effective way of dealing with retailers who sell tobacco to children for the first time. The fixed penalty amount should also be carefully considered to reflect the seriousness of the offence.

It is crucial that, to make the introduction of the new regime effective, an offence for a retailer breaching an order that has suspended them from selling tobacco must be explicit within the new legislation.

- Q2. *If in agreement with the summary and recommendation reached in the RIA, do you have any views on the proposed maximum length of time for the prohibition order (1 year), the conditions under which a prohibition order may be served (3 offences within a 2 year period) or the application of the prohibition order (may apply to an individual, the premises or both)? [see paragraph 8 of introduction to this questionnaire for details]***

Belfast City Council agrees that a graduated enforcement response should be introduced. This could be done by issuing a fixed penalty notice on retailers for the first two offences and then applying to the Courts for a Prohibition Order for the third offence. However the Council recommends that the length of time in which the three offences can occur prior to a prohibition order being sought should be extended to 3 years. This recommendation is based on the experience of the Council in understanding the level of planning and resources that are needed for test purchasing exercises using children who volunteer.

The Council agrees that a prohibition order should be for a maximum of one year and that they should be applicable to an individual and/or a premises.

- Q3. *If not in agreement with the summary and recommendation reached in the RIA which of the other options do you feel should be introduced? Have you any other suggestions or views?***

The Council agrees with option 6. It would however recommend that the time period over which the 3 offences can occur prior to application for a prohibition order should be carefully considered to take into account the resources required to carry out test purchasing exercises, which would be required to detect offences. The Council recommends that the time period should be extended to 3 years.

- Q4. *Do you agree with the decision (paragraph 128 of RIA) that the measures outlined do not require a full equality impact assessment? If you disagree, please explain why?***

Yes No

The Council agrees that the measures outlined would not require a full equality impact assessment.

- Q5. *Is there any other qualitative or quantitative information which you consider should have been taken into account in compiling the RIA?***

Yes No

If yes, please provide details.

None

- Q6. *Are you aware of any other equality implications likely to arise from the proposals in the RIA?***

No.

- Q7. *Do you have any views on the assessment of health impacts/benefits?
If so, please provide details.***

Yes, the Council considers that if the proposals are implemented effectively this will reduce the availability of tobacco to under 18s. In doing this it is hoped that fewer children will start smoking as they will be unable to easily obtain cigarettes from a shop. This will have a positive impact upon their health.

Q8. Are there any other health impacts that you consider should have been addressed? If yes, please provide details.

Yes No

Q9. Do you consider that there are any other issues which need to be taken into account in the assessment of the impact on business? If yes, please provide details.

Yes No

No – The Council believes that for those businesses complying with the legislation, the extra burden will be negligible.

Q10. Do you agree with the summary tables outlining the ongoing costs and benefits (paragraphs 109 to 117 of RIA)? If not, please provide details.

Yes No

Yes, the Council agrees with the outlined costs and benefits in the RIA.

Q11. Do you agree that the measures will not have a disproportionate impact on retailers/businesses? If you disagree, please provide details of disproportionate impact.

Yes No

The Council agrees that the measures proposed will not have a disproportionate impact on retailers/businesses. The Council already enforces legislation in relation to selling tobacco to persons under the age of 18 and these proposals will not hinder retailers that comply with their legal duties.

Q12. Is there any other material evidence which you consider should have been taken into account in assessing the impact on retailers/business? If yes, please provide details.

Yes No

Q13. Do you agree that the proposals will not have a disproportionate adverse impact on rural business? If you disagree, please give your reasons.

Yes No

The Council agrees that there will be no disproportionate adverse impact on rural businesses.

14. *Do you have any general comments on the overall approach that was taken in completing the RIA?*

Yes No

None

Q15. *Are the options which are set out in the RIA likely to have an adverse impact on any group of people in terms of the nine equality dimensions?*

Yes No

If you answered yes, please state which group(s) and the reasons why:

The Council does not believe that any of the options proposed in the RIA would be likely to have an adverse impact on any group of people in terms of the nine equality dimensions.

Q16. *Are you aware of any indication or evidence – qualitative or quantitative – that the recommendation in the RIA may have an adverse impact on equality of opportunity or good relations?*

Yes No

If you answered 'yes', please state the reasons why and suggest how this might be mitigated:

17. *Do proposals afford an opportunity to promote equality of opportunity and/or good relations?*

Yes No

If you answered 'yes', please outline:

Q18. *Are there any aspects of the proposals in the RIA where potential human rights violations may occur?*

Yes No

If you answered 'yes', please outline:

Further Comments

Q19. *Do you have any further comments on the RIA?*

Yes No ”

The Committee adopted the recommendation.

**Consultation Document –
Draft High Hedges Bill**

The Committee considered the undernoted report:

“Relevant Background Information

In December 2009, the Minister for the Department of the Environment (DOE) launched a public consultation seeking views on the draft High Hedges Bill.

In England and Wales, the introduction of the Anti-Social Behaviour Act 2003 gave local Councils powers to deal with high hedges, however, there is currently no legislation in Northern Ireland governing the height or maintenance of a hedge.

Disputes between neighbours regarding high hedges are common but there is currently little which can be done under statute to resolve the matter. Problems of this type may have increased in recent years due to greater urban density and also due to the availability of low-cost and often very fast-growing hedges which need to be regularly trimmed to prevent them becoming a nuisance. Currently, the only legal redress a householder can seek regarding a neighbour’s high hedge is through civil action, the costs of which can often be prohibitive. It is, therefore, appropriate that the Department of the Environment is seeking to address this anomaly through the introduction of High Hedges legislation.

The Department has indicated that responses to the consultation should be received by them by 1st March, 2010. A draft response is attached.

Key Issues

- The Department’s document seeks views on the draft Bill to enable District Councils to deal with nuisance high hedges.
- The Council welcomes legislation that would assist householders who are adversely affected by high hedges.
- A high hedge is defined in the Bill as a hedge which must:
 - Be formed wholly or predominantly by evergreen or semi-evergreen
 - trees or shrubs;
 - Consist of a line of two or more trees or shrubs;
 - Measure more than 2 metres from ground level (measured on the
 - hedge-owner’s side);
 - Act as a barrier to light or access;
 - Be affecting residential property; and
 - Be growing on land owned by someone other than the person making the complaint

- The Council would have the discretion to charge a fee from the complainant to recover administration and investigation costs and to deter malicious or frivolous complaints.
- Councils in England and Wales have set fees for processing a complaint averaging between £350 to £650.
- The complainant must be able to demonstrate that they have attempted to communicate or mediate with the hedge owner in advance of the Council agreeing to take action. In England and Wales complainants have experienced difficulty in obtaining mediation services so care needs to be taken that similar problems don't arise here.
- The Department will need to provide District Councils with clear guidance on the evidence required for demonstrating that initial communication and mediation has taken place.
- The Department would need to resource awareness raising campaigns for the public and guidance on the legislation including advice on planting hedges, maintaining them and ensuring that nesting birds are protected.
- The Department needs to clarify the issue of liability where a high hedge subsequently dies after it is cut back by order of the Council.
- The Council would be concerned about carrying out works in default on land where there is no known owner and therefore little or no prospect of recovering costs. An alternative would be to receive some government funding to carry out such work under this new regulation.

Resource Implications

The Council will have the discretion to charge a fee for the investigation of a complaint. This will allow the Council to recover its costs in investigating complaints but will also have the effect of deterring frivolous or malicious complaints. Research has shown that similar sized urban Councils in England and Wales would receive on average between 5 and 12 complaints per annum and the fees range between £350 and £650. Some Councils offer reductions for those on benefits. The income from fees would be used to offset any additional staffing or administrative costs incurred.

Recommendation

It is recommended that the Committee agrees the attached draft response to the Department's consultation document on the draft High Hedges Bill.

Council Response

Introduction

Belfast City Council is aware that there is currently no legislation in Northern Ireland governing the height or maintenance of a hedge and as a result, disputes between neighbours regarding high hedges can remain unresolved for years. Problems of this type are often referred to the Council but, to date, there was little that could be done if the owner of the hedge was reluctant to address the issue.

It is likely that disputes of this type may have increased due to greater urban density and also due to the availability of low-cost and often very fast-growing hedges which need to be regularly trimmed to prevent them becoming a nuisance. Currently the only legal redress a householder can seek is through civil action, the costs of which can be prohibitive.

Belfast City Council therefore welcomes the introduction of a High Hedges Bill by the Department. The Council does, however, have a number of specific concerns and queries regarding some of the proposals contained within the consultation document and draft Bill.

Issues of concern

- The Department will need to provide guidance to District Councils in relation to those circumstances that would constitute a complainant *taking all reasonable steps to resolve the matter complained of*, including how a complainant would need to demonstrate this.
- Where the property is vacant and there is no traceable owner, the Council is concerned that there is an assumption by the Department that the Council would automatically act in default, without additional resources being made available to it.
- The Department needs to clarify whether or not a mediation service would be available. This is a service that the Council would call for and one which is available in England and Wales. However it would need to be effectively resourced to ensure that it is readily available to those that need this service. This is currently not always the case in England and Wales.
- Resources will be required to educate and advise the public with regard to the new legislation and on how to plant and maintain hedges in order to avoid a problem.

- The Council would welcome a prescribed application form which would clearly indicate to the complainant what information is required and would capture any previous communication and/or mediation. A standard form would also ensure consistency of approach from Councils across Northern Ireland.
- The Council would welcome clarification on liability regarding hedges on land where there is no known owner.
- The Council would be concerned about the potential for hedge owners cutting hedges during the bird nesting season and would appreciate guidance in relation to this matter.
- The Council would be concerned about the liability implications in the situation where it ordered a hedge owner to reduce the height of a hedge and the hedge subsequently died. It would be helpful if the legislation could limit the potential for such claims in some way, provided that the Council has acted in good faith and has taken appropriate professional advice regarding the proposed remedy.
- Those from lower-socio-economic groups may find the cost of employing a specialist tree surgeon prohibitively expensive if a notice is served on them. Financial assistance may be necessary.
- The Department should consider allowing reduced fees for those on means tested benefit or the elderly. However Councils would need to receive financial support to cover costs.
- The Council would welcome clarification in relation to Powers of Entry and the requirement to give the occupier of land 24 hours notice and would suggest that this should also apply to the owner of the land.
- The Council would seek clarification on how to deal with complaints relating to land which is vacant or where there is no identifiable occupier.
- The Council would welcome confirmation that the registered charge placed on a property following works in default will include the cost of registering a charge on the property.

- The Council would be concerned about carrying out works in default on premises with no known owners as there would be little prospect of recovering costs. Therefore some funding may be required.”

The Committee approved the draft response.

Future Alleygating Projects

The Committee considered the undernoted report:

“Relevant Background Information

Introduction

At its meeting on 18th January, the Committee was advised that funding had still not been secured for the capital costs of rolling out an alleygating scheme across the City but that, to ensure that gates could be erected as quickly as possible after the receipt of funding, the Community Safety Team intended to carry out house-to-house surveys and to make applications to the Roads Service for Road Traffic Orders to be made. However, the Committee requested more detailed information on the areas that would be included in this exercise and the rationale for such prioritisation.

Committee Decisions on a Citywide Scheme

Since the pilot scheme was completed in 2008, the Council has continued to receive requests for further gates and has maintained a register of interest covering over 200 locations. The Committee has previously received reports on proposals for the phased roll out of a citywide scheme which would be implemented once funding becomes available.

At an early stage it was recognised that demand would be likely to outstrip available resources. Therefore it was agreed that a robust selection process should be developed to help prioritise potential areas for gating. Deloitte was then engaged to develop prioritisation criteria and, at its meeting on 6 May 2009, the Committee agreed to distribute the potential Council capital funding package of £500,000 (not yet approved) equally across the city (north, south, east and west) using the prioritisation process recommended by Deloitte. This process recommended that, given the limited resources available, the criteria should be applied to those streets noted on the register of interest at that time, as to go out to open call would unrealistically raise community expectations. These decisions were taken following party group briefings and a number of Committee meetings after it was referred back from Council. However, after a number of minor adjustments, the decision was ratified by the Council on 1 June 2009.

The Committee also supported the development of a proposal to the Council's Capital Programme for £500,000 and wrote to the Ministers responsible for Criminal Justice, Roads and Social Development regarding the necessity for a regional funding package(s). Unfortunately significant funding has not yet been agreed, however a report on the capital project is to be presented to the Strategic Policy and Resources Committee in March and it is hoped that the Minister for Criminal Justice will announce a Northern Ireland Wide Scheme in the near future.

The Strategic Policy and Resources Committee of 5th May, 2009 agreed the term contract for the provision and installation of alleygates for a three year period. This was to enable expedient erection of gates once funding is made available.

In addition, to offer communities the alternative of installing privately financed gates, until such time as funding is in place, the Committee agreed to cover insurance, liability and maintenance costs for gates that meet Council standards (most recent decision: 4 November 2009). At its meeting on 2 December 2009, Committee also agreed to take advantage of one off external funding opportunities to install gates in Belfast as they arise, the first being DSD funding for gates in Cooke Court.

Lastly, at its meeting on 18th January, the Committee noted that, in the absence of confirmed funding, consultation should begin in areas identified through the application of the Deloitte prioritisation criteria. It is intended that this will ensure the lengthy legal process laid down by the Roads Service to secure the necessary Road Traffic Orders would be expedited so that gates could be erected with a minimum of delay once funding becomes available. However, it was also recognised that a communications plan would be essential to help manage expectations.

Key Issues

Belfast City Council Funded Programme

The register of interest for alleygates includes over 200 locations which would amount to over 500 gates and would cost over £2 million. Therefore, if approved, the Council's Capital Programme funding for alleygates would not even cover the installation of all the gates in locations listed on the register. Prices of gates vary, however, depending on the price of steel, it is likely that £500,000 would pay for approximately 120 -130 gates (average 50-55 streets). Hence the need to apply the prioritisation criteria already agreed by Committee.

The Deloitte Criteria have been applied to the list of streets held at the time of the Council decision and the highest priority streets in North, South, East and West of the City have been identified. These are listed in Appendix 1. Note that a higher number of streets than is likely to be gated within the funding limitations is included, as some streets may not be physically suitable for gating or there may not be sufficient support from local communities. Each area, except North Belfast has a total of 30 - 31 'potential gates' identified around which to base the consultation. However North Belfast has 37 'potential gates' identified as this is considered to be the most efficient use of expenditure given the groupings of streets that require gating to 'complete' an area. The alternative would be to allocate each area 32 'potential gates', however this would not be considered to be such an efficient use of resources.

In the likely event that funding is secured from the other sources, the Council will be required to incorporate the specific conditions of funding set by the funding body. Discussions are ongoing for example with the NIO with regard to their regional scheme and also with NIHE in relation to funding for gates in areas with high HMO density such as the Holyland (which, it should be noted, would be one of the next highest ranking areas for gating in South Belfast under the Deloitte scheme). Therefore it may not be possible to apply exactly the same process and stipulations to the selection of streets as for the Council funded scheme. In particular it is likely that the NIO will require need to be evidenced on a city-wide basis. Moreover, during the party group briefings held in March 2009, Councillors also expressed a desire that there should be opportunities for new areas, not currently included on the register of interest, to be considered should further funding become available. Therefore the number of streets on the register is likely to increase.

To facilitate any future Citywide application, it is proposed to apply an additional analysis tool used by the Jill Dando Institute for Crime Science at UCL, as recommended by the Community Safety Crime Analyst; The *Vulnerable Localities Index* (VLI). The VLI uses 6 indicators to identify communities at risk of crime and antisocial behaviour and assigns a score to each super output area. Areas with a score higher than 200 are considered at highest risk although the Vulnerable Localities Index allows the ranking of each super output area. The indicators used in this index are as follows:

- Crime-based indicators – burglary to a dwelling and criminal damage to a dwelling;
- Deprivation variables – income deprivation and employment deprivation; and
- Demographical Information – e.g. Educational Attainment & the population of young people.

With the assistance of our crime analyst we have applied the VLI to Output Areas (OA) as each OA has roughly the same population and number of households allowing for easier comparison. In total there are 913 Output Areas (OA) in Belfast, of which 41 have a VLI higher than 200. These are the areas at highest risk from disorder and fear of crime. This means that less than 5% are at high risk.

The application of the Vulnerable Localities Index allows us to impartially identify parts of the city which most need community safety interventions. It is recommended that rather than hold an open call which will raise public expectation to an unmanageable level and can only be answered by communities with adequate capacity; we identify streets with highest need that would be suitable for Alleygating initially using the VLI. Having done so a further assessment, using the criteria identified by Deloitte that have not been applied in the VLI e.g. physical suitability, housing tenure and community capacity, will be undertaken as well as consultation with elected representatives of the areas. Finally, recommendations would then be brought before Committee for final approval.

It is considered that through the above process available resources would be targeted to areas of need and where there is evident community support for this approach. Should Committee agree that this process should be applied, a further report will be brought to a future meeting showing the outcome of the process, assuming a further £500,000 will be made available for gating. This will then enable further consultation to take place in advance of external funding, again to expedite the process.

Resource Implications

Financial

Revenue costs to support community consultation have been included in this year's revenue estimates. The Strategic Policy and Resources Committee is to receive a report on the proposed alleygating capital scheme of £500,000 within the next few months.

Human Resources

Gavin Bell, Community Safety Project Officer, will manage the consultation process in line with his current role and responsibilities.

Asset and Other Implications

None at this stage.

Recommendations

It is recommended that the Committee:

- Notes the prioritised list of streets for gating under the proposed Council Capital Programme (still to be agreed) in which consultation will commence immediately; and
- Agrees that, for further externally funded programmes, potential areas for gating should be identified using the Vulnerable Localities Index, the Deloitte criteria and consultation with Elected Members and that a further report will be brought to a future meeting showing the outcome of this process, assuming a further £500,000 will be made available.

Appendix 1

Proposed Alleyways for Gating - BCC Capital Programme (February, 2010)

<u>Rank</u>	<u>Area: North</u>	<u>Streets</u>	<u>No. Gates</u>	<u>Estimated Cap. Cost</u>
1	Little Americas	Cavehill Road	2	
		Salisbury Avenue.	2	
2	Woodvale	Palmer Street	1	
		Bray Street	2	
		Chief Street	2	
		Disraeli Street	2	
		Rathlin Street	3	
3	Ardoyne/Ballysillan	Brompton Park	3	
		Cranbrook Court	1	
		Cranbrook Gardens	2	
		Duneden Park	1	
		Estoril Park	3	
		Etna Drive	1	
		Glenbank Place	1	
		Glenside Parade	4	
		Holmdene Gardens	3	
		Northwick Drive	2	
		Ladbrook Drive	1	
		Strathroy Park	1	
			37	150960

<u>Rank</u>	<u>Area: South</u>	<u>Streets</u>	<u>No. Gates</u>	<u>Estimated Cap. Cost</u>
1	Lower Ormeau	Cooke Court	4	
1	Lower Windsor	Adelaide Avenue	3	
		Brookland Street	2	
		Ethel Street	1	
		Fane Street	3	
		Great Northern Street	8	
		Lisburn Avenue	2	
		Lorne Street	1	
		Northbrook Street	1	
		Rathgar Street	1	
		Surrey Street	2	
		Windsor Road	1	
		Rathcool Street	1	
			30	122400

Proposed Alleyways for Gating - BCC Capital Programme (February 2010)

<u>Rank</u>	<u>Area: West</u>	<u>Streets</u>	<u>No. Gates</u>	<u>Estimated Cap. Cost</u>
1	Beechmount	Beechmount Crescent	1	
		Beechmount Grove	1	
		Colinview Street	2	
		Colinward Street	1	
		Crocus Street	2	
		Forfar Street	1	
		Fort Street	1	
		Iris Close	2	
		La Salle Gardens	2	
4	Whiterock	Beechview Park	2	
5	Upper Springfield/Glencolin	Monagh Drive	1	
		Monagh Road	1	
		Moyard Parade	1	
		Lenadoon Avenue	2	
		Corrib Avenue	2	
6	Glencairn	Glencairn Crescent	2	
		Glencairn Street	2	
		Rutherglen Street	4	
			30	122400

<u>Rank</u>	<u>Area: East</u>	<u>Streets</u>	<u>No. Gates</u>	<u>Estimated Cap. Cost</u>
1	Mount Willowfield	Ardenvohr Street	4	
		Halcombe Street	2	
		Maymount Street	4	
		Omeath Street	1	
		Willowfield Parade	4	
3	Avoniel	Avoniel Drive	2	
		Avoniel Parade	3	
		Flora Street	2	
		Heatherbell Street	1	
		Jonesboro Park	2	
		Mayflower Street	3	
		Hatton Drive	3	
				31
Total Cap. Cost				522240"

During discussion, several Members highlighted the success of the Council's pilot alleygating scheme and stressed the need to progress to the next phase of the initiative as a matter of urgency. It was pointed out that demand for alleygates was increasing steadily across the City and, given the limited resources likely to be made available to meet such levels of demand within this next phase, the Council should be seeking to develop, in consultation with residents, innovative ways in which to address the issue.

Further discussion took place in relation to the proposal to use the Vulnerable Localities Index (VLI) as one mechanism for prioritising areas, to be used in conjunction with the Deloitte criteria and information from Elected Members, should funding be made available by the Northern Ireland Office. Some Members expressed the view that account should be taken of some potentially unique aspects of the circumstances in Northern Ireland including, in particular, the under-reporting of crime in certain areas.

The Committee approved the list of streets contained within appendix 1 and agreed that a process of local consultation be commenced. The Committee noted that a report would be submitted to a future meeting outlining further proposals for prioritising areas for gating, should external funding become available.

Chairman