Council Response to questions from the Consultation Document

Q1. Have you taken action under Article 65 of the Pollution Control and Local Government (Northern Ireland) Order 1978?

Yes.

Q2. What were the results of such action?

The Council has carried out the works in default.

Q3. Do you consider Article 65 to be an effective or useful provision, and if not, why?

The Article 65 provision is used by the Council on a regular basis as set out in the table below.

Year	Article 65s Issued
01/04/2013 – 31/03/2014	44
01/04/2012 – 31/03/2013	47
01/04/2011 – 31/03/2012	63

Article 65 is normally used where there is a statutory nuisance which should be abated but the Council is unable to trace the owner of the property. There would also need to be an element of urgency to the situation, e.g. blocked drain causing sewage to emanate from the property or accumulations of refuse causing vermin to proliferate in a property or locality.

Article 65 allows the Council to address urgent situations in order to protect the health and wellbeing of the public. The provision is not used to address

issues where an occupied property is being affected by a statutory nuisance from an unoccupied or derelict property next door. This is because the Northern Ireland Housing Executive (the NIHE) has the power to deal with situations like these under Article 63 of the Housing (NI) Order 1981. Unfortunately, the NIHE don't always utilise this power to its full capacity. The Council currently has a budget of £8,000 to deal with Article 65 issues which also involves procuring a suitable contractor.

Q5. Have you any suggestions on how the effectiveness or usefulness of Article 65 might be improved or strengthened?

The key issue is one of having sufficient available financial resources and having the capacity to carry out the works, rather than the limitations of the legislation. It is certainly a very useful piece of legislation to quickly address issues of an urgent nature.

Q6. Do you have any further comments on Article 65?

This power and the associated resources could be combined with the powers under Article 63 of the Housing Order (NI) 1981 to provide an effective tool in dealing with derelictions causing statutory nuisance to adjoining properties, which isn't necessarily the case at the moment.

Any review of these provisions should examine the issue of ensuring the clarity of roles of councils and the NIHE and should provide meaningful means of recovering costs including the power of sale of properties if owners do not have the means to pay costs incurred in undertaking works in default. In the case of abandoned property, given that Article 63 is designed to preserve housing stock, provision should be made to enable the power of sale of such property to NIHE (or a relevant housing association) in the first instance, which would enable it to be utilised for social housing.

Q7. Is there a need for a definition of "building" to be included in the Northern Ireland legislation?

Under the current legislation, the Council has taken enforcement action in relation to a wide range of other dilapidated or ruinous structures, such as free-standing walls, retaining walls, advertising signs, free standing industrial chimneys, hoardings, boundary fences and so on. While it would be useful to define a building, it is more important to retain the flexibility already in existence so as to allow enforcement action to be taken in relation to any dilapidated man-made structure and not to restrict it to buildings only. The lack of a definition for a building, has not, in relation to the ability of the Council to take successful enforcement action under Article 66, posed any difficulties as the wording of Article 66(1) includes the phrase 'building or structure' and that has provided the flexibility to enforce successfully against the owners of a wide range of 'non-building' structures, such as ruinous hoardings around vacant property.

Q8. Do you have any views on the Article 66 *"seriously detrimental to the amenities of the neighbourhood"* requirement?

Although some other councils have voiced the view that this requirement is too subjective, it should be noted that none have, to the best of the Council's knowledge, taken *any* cases under Article 66. By comparison, the Council has taken numerous cases and has never been challenged by either a defendant or a District Judge regarding the assertion that the condition of a structure is such that it is seriously detrimental to the amenities of a neighbourhood. Based on this evidence, the Council believes that the broad and subjective nature of this definition provides the scope and flexibility to take action when officers are of the view that a structure has a seriously detrimental effect. The Council would respectfully suggest that the only way to test a legislative provision is by taking action under it and letting the Courts determine whether your view as to what is seriously detrimental is correct. Currently, the Council proceeds on the basis that the term amenity is a simile for 'pleasantness' of a

neighbourhood. The state of an individual building should not in the Council's opinion be construed against the broader environmental setting in which it is located; an amendment to the provision making this clear would prevent any disparity in approach and application.

Additionally, the Council considers that the use of the term 'seriously' should be retained, as it seems reasonable and proportionate that the impact of a building or site on the amenity of its surroundings should be sufficiently grave in order to justify legal action being taken.

Q9. Do you have any suggestions as to how the requirement might be improved?

As stated above, the Council is broadly happy that this requirement gives sufficient flexibility to take a wide range of cases as it is currently worded, however, please refer herein and to the answer to Question 10 for suggestions for improvement.

Q10. Would Departmental guidance on factors to be taken into account in determining whether or not the requirement is satisfied be helpful?

Yes. The Council takes into account factors other than simply the aesthetic condition (and always *in addition to* aesthetic condition) including those used in the ranking matrix below. The Council takes the view that the inclusion of factors other than aesthetic condition should properly be considered when determining whether a building is '*seriously detrimental to the amenities of the neighbourhood'.* This position has not been challenged to date, either by defendants, defendants' legal representatives or by the District Judge hearing the case. Whilst it is of course possible that this view could be the subject of challenge and found to be incorrect, there has been a demonstrable lack of such a challenge to date.

Category	Rating	Weighting	Score
1. Aesthetic condition	(1 to 4)	15	15 to 60
2. Impact on attached properties	(0 to 2)	5	0 to 10
3. Public Realm Works nearby	(0 or 1)	10	0 or 10
4. Previous BIA *	(0 to 2)	5	0 to 10
5. NIFRS **	(0 or 1)	10	0 or 10
6.ASB ***	(0 or 1)	40	0 or 40
7. PSNI ****	(0 or 1)	5	0 or 5
8. Arterial route	(0 or 1)	20	0 or 20
9. Deprived ward	(0 or 1)	10	0 or 10
10. Tourist area	(0 or 1)	10	0 or 10
11. Fly tipping at site	(0 or 1)	10	0 or 10
12. Graffiti/ fly-posting	(0 or 1)	5	0 or 5
Total	_____	_____	**15 to 200**

Matrix used for ranking order in which to take enforcement.

Divide total score by 2 to get percentage rating.

* The Council has previously taken enforcement action relating to the building under BIA/PCO Art. 66

** There have been logged incidents of arson/fire-setting within the building/on the site resulting in attendance by the Fire Service.

*** There are logged incidents of anti-social behaviour complaints to the Council/police associated with the building/ site.

**** Police have records of having to respond to incidents within the building/on the site.

Q11. Could such guidance fetter the discretion of Council officers?

This is of huge concern to the Council given the successful action taken to date under the current legislation. The Council acknowledges that some guidance may be helpful. However, it is essential that it is non-prescriptive and does not fetter the discretion of council officers, particularly if unusual or complicated situations arise. If the guidance provides a sufficient number of examples of situations where the requirement has been met and similarly, examples where it has not, in theory this may be of assistance. But between these black and white situations, there are unlimited shades of grey, where flexibility is essential. However, it appears the majority of councils in the province have been reluctant to use the legislation owing to a perceived fear of losing a case due to the subjectivity of the requirement and for this reason, guidance on factors to be taken into account when assessing if the requirement has been met would undoubtedly be useful. On balance, the Council is of the view that non-prescriptive guidance is likely to be more often useful than not.

Q12. Do you have any views on the inclusion of the words *"if he so elects"* in Article 66(1)(b) of the 1978 Order?

The Council is of the view that this is a very sensible provision as it removes the need for council officers to make the decision that a building should be demolished, which might in some cases be challengeable on the basis that it is unreasonable, where an owner wishes to retain the building. Giving an owner the option of either renovating the exterior of a building or demolishing it and clearing the site, either of which actions would have the effect of alleviating the effect of the building on a neighbourhood, and may be less onerous for an owner. The one potentially problematic area that arises in relation to the term "if he so elects" relates to buildings that have some degree of protection, i.e. are either listed, within a Conservation Area or within an Area of Townscape Character (ATC). For example, demolition of buildings inside an ATC, as a rule, does not benefit from permitted development and therefore permission is required. In addition, permission will only be granted with an acceptable replacement scheme. There are however exceptions to this rule, in

particular Paragraph A.1 (a) of Schedule 2 of The Planning (General Development) (Amendment) Order(Northern Ireland) 2012, which states that demolition which is required or permitted to be carried out under any statutory provision. The Department considers that an Article 66 notice issued by the Council is a statutory notice and therefore, if this notice permits the demolition of any building then its demolition becomes permitted development. Therefore, the inclusion of the words "if he so elects" within the notice might in some cases, inadvertently permit the demolition of a building that should, in the interests of the amenity of the area, be renovated instead.

The Council would welcome an option for it to require demolition in certain serious cases, for example, where renovation is not viable.

Q13. Is it necessary to remove the words *"if he so elects"* to make Article 66(1)(b) of the 1978 Order more effective?

No, the Council believes that it should be retained in any new legislation for the reason given in the answer to Question 12. However, it may be that a qualifying clause could be inserted to provide that where a building has protected status a council can issue a notice which does not permit demolition as an option (see answer to Question 12). This may avoid owners deliberately allowing listed or protected buildings to fall into such a state of disrepair that the Council will serve a notice which will in turn allow an owner to circumvent the protected status of a building.

However, if additional Article 66 type powers were granted to councils where an owner could not be indentified and the phrase 'if he so elects' is retained, then demolition powers may be inappropriate. This is because it may be unfair to demolish a building where an owner could not be identified by a council.

However, the Council would welcome the option of demolition where an owner cannot be identified although perhaps that power should only be exercisable when the building is in such a condition that demolition is the most appropriate option in the opinion of a council.

The phrase which follows 'if he so elects', that is, 'as may be necessary in the interests of amenity', appears not to draw a distinction between the implications of repair and demolition. It places an obligation on an owner to make a decision in the interests of the amenity which he may not be best placed to do. It conflicts with the provision which places overarching responsibility on a council to determine interpretation of the term 'amenity'.

Q14. Are there any reasons to support the retention of the words *"if he so elects"* in Article 66(1)(b) of the 1978 Order?

Yes, refer to the answer to Question 12 and herein generally.

Q15. Have you taken action under Article 66 of the Pollution Control and Local Government (Northern Ireland) Order 1978?

Yes

Q16. What were the results of such action?

In the vast majority of cases where the Council has issued a notice under Article 66, the owner has carried out the works required (renovation of the building, demolition, or removal of rubble from the site) either following the issue of a notice or following the issue of a summons for failure to comply with a notice. Of those cases that went to court, in each case the owner was fined for failure to comply with a notice. In some of these cases, generally where owners were bankrupt/in administration, the Council carried out works in default and are pursuing recovery of costs incurred in doing so. The recovery of costs incurred by the Council in these latter instances is fraught with difficulty however. In addition to the financial outlay in carrying out the physical works there is also a significant resource implication in the cost-recovery process and in many cases, it proves impossible for the Council to recover the costs incurred in carrying out works in default.

Q17. Do you consider Article 66 to be effective, and if not, why?

Article 66 is effective in certain circumstances, i.e. where the owner carries out the works required by a notice without having to go to court. It is less effective where the case goes to court and the owner is found guilty as the only sanction is a fine, unlike the Belfast Improvement Act 1878 where the judge can issue an order requiring an owner to carry out the necessary works. The Council then has to issue a further summons, an owner can be fined again, but there is no mechanism for forcing him to carry out the works other than repeated fines. Article 66 is completely ineffective where the owner cannot be identified as there is no mechanism for taking any action in these circumstances.

Also, in the context of Article 66, the Council would welcome discretionary powers in relation to the lengths it has to go to in investigations in respect of identifying owners. A council should only be required to carry out reasonable enquiries/steps to ascertain ownership, thereafter perhaps a council would be able to deem a property owner unidentifiable.

Q18. Do you have any suggestions on how Article 66 could be improved in relation to cost recovery?

The most significant improvements would be the introduction of a provision to allow the Council to sell property in order to recover costs where it has not been possible to recover it by other means. In the case where an owner is solvent, the simple threat of selling a property to include a building and land may be sufficient to persuade an owner to reimburse the Council for work carried out.

General points in relation to Article 66 and cost recovery are as follows:-

- **The Council would welcome automatic priority of the Council's costs and charges over other charges, mortgages and creditors.**

- **Better powers generally for recovering money.**
- **Enforced sale/power of sale – title issues- there may be problems with title in respect of enforced sale of unregistered land. New legislation would need to provide a way of giving a prospective purchaser secure title in enforced sales even if the owner was not identifiable and not all conveyancing documents were available, for example, maps. A legislative assurance could address these problems. This is perhaps also a problem for the Crown in relation to Bona Vacantia land, however, it does not impede the Crown from disposing of unregistered lands. Also if there is a statutory power to sell in fee simple then there may be no need to deduce title.**
- **Enforced sale/power of sale- priority- the proposed legislation would need to ensure that an enforced sale power would overrule order of priority. Any registered charges/mortgages etc... would need to be cleared from title and in the event that there are surplus funds following recovery of the costs from the sale proceeds then same can be paid out to the relevant charge/mortgage holders in order of subsequent priority or if no charges/mortgages, the surplus could be returned to an owner or retained by a council.**
- **Human Rights- New legislation providing enforced sale power would be subject to human rights screening and the Council would welcome this to eradicate any doubt from the human rights perspective in terms of an enforced sale.**
- **Abandonment -if the cost projected to carry out the required works in default exceeds a property/site value, and a property is not used/ occupied, it would be useful to have a mechanism by which to declare buildings as abandoned. If works are carried out by a council, title to a property/site, at a council's discretion, could vest in a council subject to an advertising and notification process of such action and to perhaps Chancery Court approval. The Council would also welcome a power of sale over abandoned property if for whatever reason the Council does not require a property vested in itself. A definition of abandoned, which explains how a property /site can be declared abandoned, may therefore be required.**

- **Insolvency – the Council would welcome better measures to deal with insolvent owners, for example, power to serve notices on fixed charge receivers and other persons/bodies responsible under an insolvency scenario or if this is not possible, powers to carry out works without notice where a property is dangerous and is subject to an insolvency procedure or threatened insolvency procedure. If insolvency scenarios are not addressed in the new legislation then this might have resource implications where a council carries out works and cost recovery may be hindered because of the insolvency. The proposed legislation must provide a framework whereby all individual and corporate insolvency scenarios (administration, liquidation, CVAs, receiverships and administration receivership, IVAs and bankruptcies) are addressed and that notice can be served on fixed term receivers, companies in administration, trustees in bankruptcy, official receiver and financial institutions as appropriate without court approval. Also, the person/body responsible under an insolvency scenario should be deemed owners as appropriate.**
- **Disclaimed land- where property is disclaimed and costs are owed to a council then, subject to a council's discretion, a property should revert to a council before reverting to the Crown, however, a council should have the right to disclaim also.**

Q19. Do you have any suggestions on how Article 66 could be improved in relation to abandoned or incomplete developments?

It is difficult to apply the current wording of Article 66 to abandoned or incomplete developments, as the structures themselves are generally neither ruinous nor dilapidated. The issues relate to:-

(1) danger to trespassers, including children;

(2) the aesthetics of partly constructed buildings often surrounded by scaffolding, building materials scattered across sites, cranes, unsightly

boundary fences such as heras-type fencing, unfinished roads and overgrown vegetation; and
(3) vandalism and anti-social behaviour with partly finished buildings as a focal point.

'Dilapidated' needs to be expanded upon further as it appears to exclude newer unsightly buildings or incomplete buildings. It may be that a separate power is needed for newer buildings as planning legislation may be inadequate. Incomplete structures would need to be either completed or demolished in full. A new provision, tailored specifically to deal with abandoned sites is required or guidance form the Department is required in an effort to achieve more robust application of Planning Service completion notices. The Council does not consider Article 66 to be the appropriate vehicle for dealing with this problem, however, the provisions contained within the Town and Country Planning Act 1990 appear to provide potential scope to deal with this problem, as do provisions within Section 73 of the Planning (Northern Ireland) Act 2011.

In short, the proposed legislation should address abandoned dangerous sites where there are buildings or partially built properties which a council should have a power to deal with. Abandoned sites generally should be clearly aligned to planning powers.

Q20. Do you have any further comments on Article 66?

To make Article 66 more effective, it is essential that there is a process for works to be done where an owner cannot be identified. This could be by way of having a council seek a court order or alternatively a power in default after reasonable enquiries are carried out to identify an owner. It is suggested that non-prescriptive guidance would be the best way to ensure consistency in determining whether an owner can be located and provide some reassurance for councils that they have carried out sufficient checks.

Furthermore, Article 66(6) permits the Court to impose a per diem penalty for every day that the offence continues after conviction up to and until a council exercises its powers in default. The experience of the Council is that District Judges are reluctant to impose a per diem penalty because there is no mechanism in place for determining how this is to be administered. The Council would therefore either request that this provision is amended so as to include such a mechanism or provide guidance as to how the Courts should deal with the imposition of a per diem penalty.

As a result of the recession, a huge number of properties throughout Northern Ireland that are owned by an individual or company are subject to insolvency. A lot of properties have been abandoned by insolvent owners but more often there is a lender or administrator who has a degree of interest in a property who deliberately will not take possession of a property due to its condition. As stated, the new legislation should address these scenarios.

The Council has also come across properties where the owner has died intestate and the next of kin has not come forward to progress the administration of the estate.

In such cases the Council tends to do works in default. However, due to the current priority of charges legislation, a prior charge holder such as, a mortgagee, recovers its charge first, after which, there is highly unlikely to be a surplus to pay the costs incurred by a council. This thereby creates the position whereby the banks and perhaps other parties are benefiting from works carried out with ratepayers money as the works carried out by a council will likely increase the value of the property and prevent it's further fall into disrepair. The Council would therefore request that the Department extend the definition of owner so as to include any person or body which has a proprietary or substantial beneficial interest in the building or land. The council would seek the ability to charge land in respect of costs incurred for undertaking work in default with accumulating interest and for those charges to rank in priority to those of any other interested party or prior charge.

Q21. Are there any other relevant provisions in legislation not included in the above list?

Section 70 of the London Building Acts (Amendment) Act 1939 provides that where a council has incurred any expenses in relation to any dangerous or neglected structure, if payment is not forthcoming, a court may make an order that no part of the land involved may be built on, or no part of the repaired building let until the outstanding amount has been paid to a council.

The Inner London Boroughs implement the Dangerous Structures Fee and Expenses Regulations 2013 which allows them to charge fees in relation to dangerous structures. By way of example, in relation to an English council called Tower Hamlets, the fee payable for surveying and certifying a structure reported as dangerous, the service of a notice if required, further monitoring inspections and other services by council officers up to the time of (but not including) obtaining a summons is £200, where the survey to determine whether the structure was dangerous commenced after 8.00 am and before 6.00 pm Monday to Friday, or £350 where the survey was commenced at any other time or on a public holiday.

In relation to obtaining a summons or order, together with court attendance, and any inspection of the structure prior to the hearing, and other services there is a further fee of £350.

In addition to those fees it also imposes a fee for supervision and/or checking and certifying accounts and other services by council officers in connection with the undertaking of work to remove an immediate danger or to carry out works in default where an owner has failed to comply with a court order.

This appears to provide a significant deterrent against allowing a property to fall into a dangerous state and also provides a revenue stream to allow this work to be adequately funded by building owners instead of the ratepayers in general.

Q22. Have you taken any action in relation to the pieces of legislation identified in Part 1 and Part 2 of this Discussion Document and if not why not? (Where appropriate indicate legislative and/or decision making factors.)

The Council has taken action under Articles 65 and 66 of the Pollution Control and Local Government (NI) Order 1978 (see answers to questions 1, 2, 15 and 16) and instigated well over 1000 cases under the Belfast Improvement Act 1878 (and where owners cannot be found, also using Section 76 of the Belfast Corporation Act 1911), including 133 cases during the financial year 2013/2014. The Council has taken, relative to the numbers under the Belfast Improvement Act 1878, fewer cases of enforcement under the Public Health Acts Amendment Acts 1907, as it is generally used where there is no 'structure' such as in the case of a dangerous excavation adjacent to a public footway. The majority of the cases the Council takes under these pieces of legislation are resolved before a court appearance is required. Of those that proceed to court, the Council has yet to have a successful challenge to the contention that a building or place is dangerous.

Q23. The Department would welcome views on the possible proposal to introduce legislation in Northern Ireland based on that in Part 3 of the Building Act 1984 (i.e. sections 77, 78, 79, 80, 81, 82, 83 and 121).

Sections 80-83 of that Act appear to relate to the requirement to give notice to a council of conventional demolition of not necessarily dangerous or dilapidated buildings. This is in the remit of the Health & Safety Executive NI and not local authorities. Section 77 is similar to the provisions of the Belfast Improvement Act 1878 as it relates to dangerous buildings, except that it does not include a provision to permit a council to sell the land if necessary to recover costs. Neither does it allow for a council to require a person to provide information on the ownership of the building, unlike Article 66 or Section 330 of the Town and Country Planning Act. It also does not make any provision for taking action where the owner cannot be identified.

However Section 78 of the Building Act 1984, which relates to emergency measures for dangerous buildings, would be invaluable particularly in

Northern Ireland where it is not always straightforward to locate an owner due to the complicated system of search/identification and the registration of deeds. Whilst the registry of deeds system is being phased out under compulsory first registration, a substantial amount of property within the Belfast area remains under the registry of deeds system as opposed to the land registry system.

Section 79 of the Building Act 1984 is virtually identical to Article 66 as discussed at length above. However, it is not as broad as the existing powers in that it does not provide for the Council doing works in default or recovery of costs in any form.

With the exception therefore of the emergency powers provision, the Building Act 1984 does not offer anything more than what exists in Belfast already and omits important provisions currently in place, such as the ability to sell land (Belfast Improvement Act 1878), the ability to take action where an owner cannot be identified (Belfast Improvement Act 1878) and the ability to require information to be provided on ownership (Article 66). The Council takes the view that significant changes and additions to the text of the Building Act 1984 would be necessary in order for it to improve the legislation already in place.

Q 24. The Department would welcome your views on the possible proposal to introduce legislation in Northern Ireland based on that in Part 8, Chapter 2 of the Town and Country Planning Act 1990 (i.e. sections 215, 216, 217, 218 and 219.)

The best practice guidance document by ODPM for this piece of legislation points out that Section 215 permits action to be taken against land and buildings as the definition of land in Section 336 of the 1990 Act includes a building. The Council would welcome the introduction of these provisions. It is noted that to serve a notice under this provision the test is much lower than that which currently exists in Article 66. Section 215 only requires the amenity of the area, or adjoining area to be adversely affected, not 'seriously detrimental' as per Article 66.

The use of Sections 215-219 of the 1990 Act seems to have been very successful with a high level of compliance and a low percentage of appeals and/or works in default. The successful case studies included within the guidance document include a number of dilapidated buildings similar to those for which the Council has served Article 66 notices in the past. These provisions would also permit the Council to serve notice on an occupier as well as the owner.

Section 330 of the 1990 Act allows a local authority to obtain details about the ownership of land and this is a useful provision, as with Article 72 of the Local Government and Pollution Control (NI) Order 1978.
In conjunction with Sections 76-79 of the Building Act 1984, it would appear to be a useful tool.

Q25. The Department would welcome any other views on how best to improve the legislative framework in relation to dilapidated/dangerous buildings/structures and neglected sites.

The Council would prefer the introduction of a completely new piece of legislation to address all of the issues of dangerous structures, dangerous places (e.g., a missing storm drain manhole cover within a vacant site), emergency powers relating to dangerous structures or places, dilapidated or ruinous structures and dangerous abandoned or dangerous incomplete sites and a very robust method of ensuring cost recovery. This is particularly true when some of the legislation which exists is adoptive and dates back to 1847, which may make it difficult for some councils to even ascertain whether the legislation was ever adopted.

A new Act would also allow the Department to address the omissions and weaknesses identified herein with regard to the current legislation. The introduction of a new piece of legislation would also reassure councils that its powers are Convention compliant, particularly in the context of Article 1 of the First Protocol and Article 10.

In addition to the issues outlined above, the Council would suggest that there are a number of matters a new act could address. These include:

1 **the power to close roads where a dangerous building fronts a road, pending the making safe of the building;**

2 **the ability to take enforcement action against banks or the relevant responsible person in an insolvency scenario where companies or individuals are in financial difficulties;**

3 **where land/property is due to revert to the Crown via the Bona Vacantia process, but a council has carried out works in default, the land/property should revert to a council instead of the Crown in the first instance. Disclaimed land, where costs owed to a council, could be evidenced perhaps by registration of a statutory charge. In the event that a council does not want to retain the lands/property, then a council should be able to disclaim same, which would then revert to the Crown, following disclaimer;**

4 **a more expedited method of serving notices, for example, in emergency situations would be welcomed, such as posting a notice on a building, should be deemed good service. A power to undertake work in extreme cases of emergency without a court order should also be considered;**

5 **the introduction of provisions akin to the Dangerous Structures Fee and Expenses Regulations 2013 as discussed above, which may ensure that a council recoups the costs of dealing with dangerous structures;**

6 **make it an offence to own, or occupy where an owner cannot be identified, a dangerous or dilapidated building. This would encourage those responsible for dangerous or dilapidated structures to take more proactive steps to ensure the condition of their property does not fall into disrepair;**

7 ensuring that councils have sufficient powers to obtain information, and to make it an offence to fail to provide information when requested by a council;

8 consider introducing an offence in relation to obstruction;

9 the Council suggests that the Department Of Environment liaise with the Department of Justice in relation to the current Department of Justice Consultation on Fine Collection and Enforcement in Northern Ireland (responses required by 6/6/14) which may impact upon cost recovery processes in relation to dangerous, dilapidated, ruinous buildings and neglected sites;

10 person responsible – there should be a broad definition of owner - person/body with greatest interest, for example, under insolvency etc... See answer to Question 18;

11 statutory charges registered on foot of proposed legislation to be discharged on any subsequent transfers or dealings of the subject land/site and it should be made clear that the debt is recoverable from successive owners or occupiers;

12 power of sale should be exercisable in relation to properties where owners are and are not identifiable. One stage approach to power of sale required (unlike Belfast Improvement Act 1878), can sell the structure and land as one lot. Proposed legislation should remove burdens (as necessary) affecting the subject land and provide notification procedure of proposed sale to charge holders;

13 costs to be recovered – the legislation should include costs of works as well as all other expenses incurred by a council to include advertising, consultant, legal and surveying work, to name a few, as well as interest;

14 where an order granting a power of sale is made (if this is to be the procedure) or activation of the power under the legislation as

prescribed, then no liability should be incurred by a council to any party – actual title/possession does not/never passes to a council; and

15 **as stated, new legislation should test the compatibility of the power of sale procedure in general, which should not be a 2 stage approach but a 1 stage sale process, to ensure it is Convention compliant.**

It is essential that, given that planning powers are to come to local councils in April 2015, new legislation is drafted taking cognisance of the extent and limitations of planning enforcement powers, including the provisions within the Planning (Northern Ireland) Act 2011, as there may be situations where planning legislation is the better vehicle to use (for example, abandoned and partly completed sites).

Q26. If an improved legislative framework was put in place by the Department, do you agree that councils would be in a position to take effective action to address the problems associated with dilapidated/dangerous buildings and neglected sites in their respective areas and if not, why not?

Yes, with better legislation and better cost recovery procedures, there is no reason why all councils should not be much more proactive in dealing with these problems. The Council already has a track record of effective enforcement using the current legislation and an improved legislative framework would allow the Council to further improve that track record.