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Pàrlamaid na h-Alba

Official Report

LOCAL GOVERNMENT AND REGENERATION COMMITTEE

Wednesday 19 February 2014

Session 4

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LOCAL GOVERNMENT AND REGENERATION COMMITTEE
5th Meeting 2014, Session 4

CONVENER

*Kevin Stewart (Aberdeen Central) (SNP)

DEPUTY CONVENER

*John Wilson (Central Scotland) (SNP)

COMMITTEE MEMBERS

Richard Baker (North East Scotland) (Lab)
*Cameron Buchanan (Lothian) (Con)
*Mark McDonald (Aberdeen Donside) (SNP)
*Stuart McMillan (West Scotland) (SNP)
*Anne McTaggart (Glasgow) (Lab)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Sarah Boyack (Lothian) (Lab) (Committee Substitute)
John Delamar (Midlothian Council)
Alistair MacDonald (North Lanarkshire Council)
Gillian McCarney (East Renfrewshire Council)
David Stewart (Highlands and Islands) (Lab)
Dave Sutton (Institute of Historic Building Conservation)
Susan Torrance (Scottish Federation of Housing Associations)

CLERK TO THE COMMITTEE

David Cullum

LOCATION

Committee Room 4

Scottish Parliament

Local Government and Regeneration Committee

Wednesday 19 February 2014

[The Convener *opened the meeting at 10:03*]

Defective and Dangerous Buildings (Recovery of Expenses) (Scotland) Bill: Stage 1

The Convener (Kevin Stewart): Good morning and welcome to the fifth meeting in 2014 of the Local Government and Regeneration Committee. I ask everyone to ensure that they have switched off all mobile phones and other electronic equipment, please. We have received apologies from Richard Baker, who is unable to attend today's meeting, and I welcome Sarah Boyack in his place.

I also welcome David Stewart, who is attending in his capacity as the member in charge of the Defective and Dangerous Buildings (Recovery of Expenses) (Scotland) Bill. For the benefit of the witnesses, I will outline our approach to questions: committee members will ask their questions first and David Stewart will then come in with his questions.

Unfortunately, one panellist is still trying to get here. Gillian McCarney, the planning and building standards manager at East Renfrewshire Council will join us later. I welcome John Delamar, the building standards manager at Midlothian Council; Alistair MacDonald, the assistant business manager of building standards operations at North Lanarkshire Council; Susan Torrance, the policy manager at the Scottish Federation of Housing Associations; and Dave Sutton, the publicity officer and a committee member at the Institute of Historic Building Conservation.

Does anyone wish to make an opening statement?

Susan Torrance (Scottish Federation of Housing Associations): I will say a few words. The other witnesses are from local authorities, and the Scottish Federation of Housing Associations comes to the bill from a slightly different perspective.

Roughly 90 per cent of the 277,000 homes that housing associations own in Scotland are up to the Scottish housing quality standard and are in good repair. However, there is an issue relating to older tenements that are owned jointly. Although housing associations have the power to intervene and make common repairs to ensure that their tenants and the fabric of the building are safeguarded, the cost recovery mechanisms are civil remedies against individuals, which can be long winded and in many cases result in the costs being written off as an expense that the association has to bear. A parallel power to the charging order, or co-operation or collaboration with local authorities so that they use their charging order powers to recover costs, would be extremely useful.

The Convener: Is that a particular difficulty for smaller housing associations?

Susan Torrance: Absolutely. For a lot of community-based associations, mainly in Glasgow and Edinburgh, it is a drain on resources in terms of both staff time, if owner-occupiers have to be pursued for any liability, and the capital that must be expended in the first instance and then written off. If the cost could remain as a liability, through a charging order, that would be extremely useful; having it written off is obviously not useful.

The Convener: Mr Sutton, we received from your organisation a pretty lengthy submission that mentions quite a lot about the existing legislation, some of which seems to be untested. Would you like to comment on that?

Dave Sutton (Institute of Historic Building Conservation): I will make three quick points. First, we recognise the importance of tackling the issue of vacant and derelict buildings, but we are concerned that the bill looks rather narrowly at notices under the Building (Scotland) Act 2003. I work in a council that uses a repairs notice, or an urgent works notice, whether the subject is a listed building, an unlisted building or in a conservation area, or an amenity notice that can be used under the planning legislation. We would like to see a bit more joined-up thinking across those bits of legislation to create a more effective approach. For example, the Historic Environment (Amendment) (Scotland) Act 2011, on which we made representations, introduces a liability order that is being picked up in other legislation that is going through the Parliament now.

Why do we need the bill? The one bit of data that we have on the heritage side is the buildings at risk survey that is carried out every two years in Scotland, where 8 per cent of buildings are at risk. Those are category A or top-notch buildings, and the figure has fallen over the past few years from around 8.3 per cent. In England, the figure is 4 per cent. When we have our six-monthly meetings with Historic Scotland, we ask why there is such a difference in Scotland and why the future of twice as many buildings in broadly the same categories is threatened. That is the key reason why we need the bill.

We also need to develop a more robust preventative approach through a range of measures including VAT, fiscal incentives and so on. That is not the role of a member's bill, but it is an issue for the minister and the Parliament to consider. Do we value and protect Scotland's heritage? If we do, why do we not have a more robust protection and preservation approach?

The Convener: I do not want to stray too much off the bill, but you just referred to differences between England and Scotland. Is that because there is more planning flexibility in England than there is here? From my local authority experience, it seems to me that some planners and heritage bodies are unwilling to see certain things going into a building and on some occasions would rather that a building went to wrack and ruin than had a change of use.

Dave Sutton: Data is collected in Scotland only every two years. We have been lobbying Historic Scotland to have it done annually, working with local authorities, as is done in England, where all the councils complete an electronic survey to gather the data annually.

The Convener: I am trying to get at why the situation seems to be different in England. Is its planning regime much more flexible in terms of allowing changes of use for buildings?

Dave Sutton: I think that there have been recent changes in that direction. For derelict buildings, however, the planning system will generally be fairly flexible as to uses if they are consistent with the building.

The Convener: It has to be said that that is not my experience.

Dave Sutton: I am just giving you my experience. In England we have seen specific action, particularly by the Big Lottery Fund, to target buildings at risk. I am not saying that that accounts for the whole of the difference between the figures of 4 and 8 per cent of buildings at risk in England and Scotland respectively, but I think that repeated targeting of funding to address what is identified as a problem makes a good contribution. As I said, we are struggling to get the data in Scotland, rather than moving on to think about how we target the problems.

The Convener: I will go back to the bill. Folks were asked for their views on the proposed 30-year repayment period and your organisation said that that is far too long a period and it suggested a 10-year maximum repayment period. Would you expand on that, Mr Sutton?

Dave Sutton: I have been talking to building control colleagues on that point. The 30-year period would mean that, in effect, we would be giving a free loan to the owner of the building. We must remember that the cost of urgent repair work to buildings is in the range of £6,000 to £10,000, if the work is done effectively at an early stage. I am not saying that there are not costs that go above that range, but the administrative costs of a 30-year repayment period would far outweigh a relatively small sum of repair costs.

I am happy, though, to accept the view of my building standards colleagues, who have to deal with the matter day to day. My experience is of the civil proceedings that we go through. At the moment, we have a case involving an amenity notice. The case has taken 15 months and the sum is being treated as negotiable, so we will not get back the full costs that we spent in undertaking the works in default. There are also the costs of going through the courts for 15 months.

The Convener: Mr MacDonald, would you like to comment on the 30-year repayment period?

Alistair MacDonald (North Lanarkshire Council): The 30-year repayment period would be fine if it was for a substantial sum of money. The average debt in North Lanarkshire Council is £3,000. If a charging order was split over 30 annual instalments, that would equate to only £100 per year. If the repayment was a low sum of money per annum and was defaulted on, the council would have to chase that sum and it might think that it would not be effective to do so.

At the moment, the council would probably use the usual debt recovery mechanism to pursue a sum such as £3,000, but £3,000 repaid over 30 years is a low amount per annum. If the person who owed it was not able or willing to pay and defaulted, I do not know whether we would chase such low individual payments. A 30-year repayment period would be valid for substantial amounts of money.

John Wilson (Central Scotland) (SNP): Mr MacDonald said that the average debt was £3,000. Is that the average debt for repairs to defective buildings?

Alistair MacDonald: Basically, in North Lanarkshire, the defective and dangerous buildings debt that we try to recover averages £3,000, which is at the low end.

10:15

John Wilson: Do the other witnesses relate to that figure of £3,000? It seems low in relation to the issues that are being raised in the bill.

John Delamar (Midlothian Council): The works that we normally get involved in are usually a couple of hundred pounds for making the building safe or carrying out the minimum amount of works. Midlothian Council does not tend to go in and repair a building. We do the minimum works

under section 29 of the Building (Scotland) Act 2003 to make the building safe. A debt that was recovered would generally be for the cost of Heras fencing, scaffolding and contracts for cherry pickers, for example. The figures that we deal with are probably around about £100 to £3,000.

The Convener: Is 30 years a fair amount of time?

John Delamar: We suggest that the time should be relative to the person's means to pay and the costs involved, rather than just a standard 30-year period.

John Wilson: Does Susan Torrance have any figures?

Susan Torrance: I do not have any figures, but I suspect that the sum that the associations will expend on other people's property is significantly higher, because they would probably take a more proactive approach to the works that they would want to do. Rather than making just the minimum repairs, an association would think about what would bring the building up to standard so that it had a reasonable life expectancy from its point of view. However, as I say, I have no data on that as such.

The Convener: What are your feelings on the 30-year period?

Susan Torrance: The key is that the charging order attaches to the title of the property and, although people might default on paying the annual sum of money that they have agreed to pay, when the property is sold the whole sum will be recovered. Therefore, we would support anything that is flexible and enables us not to write off the debt, which is the issue. I agree that the period should be relative to the debt and to the individual's ability to pay, if there is flexibility.

The Convener: I welcome Ms McCarney.

Gillian McCarney (East Renfrewshire Council): I apologise for being late. My train was cancelled.

The Convener: The trains have got us all at one point or another. Do you have any comment on the 30-year period and can you tell us what the average debt is in your area?

Gillian McCarney: I concur with my building standards manager colleagues that £2,000 to £3,000 is normal. However, abnormal costs occur fairly frequently. Four or five years ago, we had to do substantial work to a substantial listed building, which incurred abnormal costs. Also, in a couple of weeks' time, we are demolishing a property under the dangerous building notice and the costs of that will be reasonably substantial. If we are talking about substantial costs such as those, 30 years is reasonable, but East Renfrewshire Council would like a shorter period for smaller amounts.

The Convener: Mr Sutton, you have been sat there and are desperate to get in.

Dave Sutton: The £3,000 figure has been quoted for an individual, one-off set of works to make a building safe. Over five years, there have been about five interventions at the Blairhill Dundyvan parish church on the outskirts of Coatbridge, which add up to about £15,000 to £18,000 and for which we are pursuing the costs.

Yes, £3,000 might be the cost for a one-off incident, but such buildings tend to have a number of incidents over a period of years rather than having the problems solved in a one-off.

John Wilson: Thank you for reminding us about Blairhill Dundyvan parish church. From my memory, people have been trying to get something resolved in that building for a lot longer than five years.

I ask for clarification whether the £3,000 that has been quoted is just to make the building safe rather than carry out repairs. My understanding is that the member's bill before us contains the 30-year period because of some of the substantial costs that have been identified. Susan Torrance referred to the experience of SFHA members. In Glasgow, individual tenants of properties in the high street are being hit with bills of £36,000 to make good defective older sandstone buildings.

Is the £3,000 to carry out the repairs or is it just to make the building safe?

Alistair MacDonald: It is to make the building safe. The money is basically for the minimum works that John Delamar described: fencing off, boarding up and using a cherry picker.

John Delamar: As I say, we generally do not get involved in the repair work. We will do the minimum amount of work under the 2003 act to make the building safe.

The Convener: Is your response similar, Ms McCarney?

Gillian McCarney: Yes, it is exactly the same: we do the minimum amount of work to make the building safe and to exclude the public.

The Convener: That might include substantial demolition, as you stated a few minutes ago.

Gillian McCarney: Some of the work does; the case that I mentioned was exceptional, but it involved substantial demolition to make the building safe.

Mark McDonald (Aberdeen Donside) (SNP): We have got to the point anyway, but the witnesses seem to be indicating that a change in

the wording of the bill to specify a period of up to 30 years would provide local authorities with the flexibility to set their own time limits. Do the witnesses see some benefit in that?

The Convener: Does the panel agree with that?

Witnesses: Yes.

Mark McDonald: Ms Torrance rightly identified that the debt attaches to the title of the building, so it is therefore recoverable when the building is sold. Obviously, however, some buildings would not be sold or be eligible for sale. Where does the bill fit in with regard to debt that is attached to that kind of property?

Susan Torrance: That would be the exception. The other benefit, which we were discussing before the meeting, is where local authorities or housing associations cannot identify the owner, in which case pursuing a civil debt is not possible. The expectation would be that, if there was a charge on the title and it extended for 30 years, there would be a reasonable chance that somebody would want to do something with the property within that period. It is about reasonableness. It would be possible to extend the scope if the period was 50 years.

Stuart McMillan (West Scotland) (SNP): This question is for Mr Delamar and Ms Torrance. You agreed on a point regarding the means to pay. Would additional administration costs not be incurred in dealing with each individual case on its own merits?

John Delamar: That would be done through discussion with the relevant people involved. If a block of flats with multiple owners were involved, the scale of costs would come down in relation to each person. If we were dealing with a substantial building under one ownership, taking into account the person's means to pay, there would be negotiation about how much we would expect to have on a yearly basis. Through discussion with the building owner, we could agree a suitable repayment scheme, rather than just assuming a 30-year period.

Susan Torrance: I concur. It is a matter of providing flexibility. If an owner genuinely wants to pay but simply cannot do so because of resources, we would enter into negotiation. On the other hand, in circumstances in which it is not possible to find the owner or the owner is clearly not co-operating, applying a charge over 30 years would at least provide some remedy in order to get the cash back within that time.

Stuart McMillan: Everyone has used the phrase "substantial costs". What is your interpretation of a substantial cost?

Susan Torrance: Mr Wilson spoke about a bill of £36,000 being attributable to an owner. Where roof repairs or substantial stonework repairs are concerned, we could be talking about a bill of £200,000, perhaps shared between six proprietors. Three of the properties might be owned by the housing association, and it will be more than willing to bear its share—and it will undertake the works—but it is then possibly left in a position of having to write off £100,000.

Alistair MacDonald: I agree; £30,000 and upwards is probably substantial.

The Convener: Does everybody agree with that figure?

Gillian McCarney: Yes.

The Convener: Mr Sutton, you do not seem to be quite in agreement on that.

Dave Sutton: It depends how much the person has and what the value of the property is. I keep coming back to the need to consider the charging order against the liability order. I refer to paper companies with minimum value. I have had experience—albeit not in Scotland—of people chopping and changing ownership to try to evade repayment.

When a council has to give warning and serve notice and the owner keeps changing, we have to check weekly at Registers of Scotland to see whether there has been any change. One of the issues with the charging order is that a gap must not be created between the giving of notice to the owner that the council may do the works in default and the point at which the charging order is registered, which could otherwise be a three or four-month period. In my experience, people will consider £10,000 to be a substantial amount and they will change ownership to another £100 paper company to evade responsibility.

Sarah Boyack (Lothian) (Lab): I want to follow up on two issues—the 30-year period and when people pay the money back. The bill assumes annual payments, but Mr Sutton suggested that it would be helpful to have more flexibility. Where people want to pay off the debt, I presume that there will be capacity to negotiate, set terms and agree that there will be monthly or quarterly payments over the year rather than annual payments, which could be much more difficult for people to pay. I note that there is a trade-off, given the administration of that. What are your views on the alternatives for how people might pay back the money?

The Convener: Mr Sutton, do you want to answer first?

Dave Sutton: My experience is that councils will be as flexible as possible in order to get back as much as possible. The issue with the bill is that it suggests that the sum is flexible from the council's point of view. We have to pay out the money, and

provided that what is done is legally defensible, I do not see why the sum should be negotiable.

I have discussed the matter with my building standards colleagues and it appears that the approach is that the sum is negotiable, but given that the council has had to spend taxpayers' money to undertake the works in the bigger public interest, the sum should not be negotiable, provided that we ensure that we have the cheapest tender, give due notice and so on.

Sarah Boyack: That is not the point that I was asking you about. My question was about flexibility in repayment schedules.

Dave Sutton: If someone receives a monthly salary, it may be more helpful for them to have a monthly charge than to have a lump sum requested once a year. I think that most councils will apply a degree of flexibility provided that they get the money back within a reasonable period.

The Convener: I ask the building standards folks to comment. Is it your experience that there is that flexibility of repayment?

Gillian McCarney: It would be appropriate for councils to allow that level of flexibility, depending on the circumstances. For example, in the case of a block of tenement flats with different owners, we would probably want flexibility for people to pay in monthly or quarterly instalments, but that might not be appropriate in the case of a large company or landowner. We would want flexibility to consider the issue with people.

John Delamar: As I said earlier, anything that helps with the recovery of costs is good, and that is the case even if some people in a multiple ownership building want to pay monthly and others wish to pay annually. As long as we can be seen to be recovering the money, we would probably accommodate that.

Alistair MacDonald: The current position on debt recovery is that North Lanarkshire Council provides negotiated expenses and flexible payment periods depending on people's individual circumstances. We also offer a discount if somebody is willing to come to us and talk to us about the situation. The bill proposes that, if someone is willing to pay the sum, they may get a discount with the local authority's agreement where the period is less than 30 years. We already do something like that.

Sarah Boyack: The other issue is the length of time. Mr Sutton, you state in your written submission that there could be issues with longer-term payments, which could create legal problems. I refer to paragraph 6A, in which you talk about

"legal property issues"

and

"retention documents having a maximum 5 or 10 year life."

Are you worried that a 30-year repayment period is too long because people will be able to get out of repayment through other legal mechanisms?

10:30

Dave Sutton: The question is, how do you ensure that that is consistently the case over a period of time? If a site is flattened and has its lowest possible value at that point, in due course there will be a question of whether there is a new positive use that will add value to it and attract someone to develop it. In my experience, sites can remain empty for perhaps 10 years. I think that 30 years is on the long side. We have seen a downturn in the market, but it has gone up again. In areas such as North Lanarkshire, for example, it is difficult to get schemes to stack up. Even on blank sites which were handed over or bought for £1, it can still be difficult to ensure that the end value will cover the development costs.

Sarah Boyack: With regard to the bill, will the council be at the front of the queue to get money back if are other debtors?

Dave Sutton: My colleagues from North Lanarkshire might have another view, but my understanding is that there is a £70,000 budget and, if we do not chase up repayments from that, there will be no budget to tackle new work. That is the constant pressure that councils' budgets are under. There are general responsibilities to the general public good, but those cost money and, unless the costs can be recovered, the council is out of pocket

The Convener: North Lanarkshire has been mentioned. Does Mr MacDonald have a comment to make?

Alistair MacDonald: I agree with something that Dave Sutton said. The recovery of expenses at the end of a sale or whatever is a good thing, especially if the owner cannot be found or the owner is overseas or something. In North Lanarkshire, there can be the negative equity factor, where the site is functionally worthless. That means that people may not have the same degree of confidence that they will get back the money that they laid out initially. That is a problem.

At the stage of the sale of the property, again, people want to have a degree of confidence that they will get back any money that they have laid out. There might be political pressure to drop the debt so that the site or the property can be developed. Sometimes, we need to think about the overall community. Depending on what the building or the site is, if a burden is put on that site, a prospective buyer or developer might be

unwilling to do what they were proposing to do, because of the debt that has been attached to it. In that case, the council might decide that it is better to write off the debt in order to enable the development to progress. That might have been overlooked.

The Convener: So, you do not think that there is flexibility in the bill to do that.

Alistair MacDonald: No.

John Wilson: Are you saying that the council would write off the debt accrued because of the work that it had carried out if it thought that the land or the building would be used productively, rather than chasing the money that was owed?

Alistair MacDonald: In relation to building standards, we would go through legal and financial routes to pursue the debt. However, if we were dealing with a building or a property that was causing the problem to the community, and a prospective developer who proposed to do some work came to the council and said, "I want to improve this site, but I have to pay £30,000 initially because of the burden on that property," the council might think that it would get a greater benefit by letting that £30,000 go, in order to let the proposal go forward. Obviously, the situation would vary on a case-by-case basis. Individual cases would have to be examined, rather than there being a general rule.

Sarah Boyack: The SFHA submission talks about the tenement management scheme that was established by the Tenements (Scotland) Act 2004. It says:

"Housing associations currently have to rely on the provisions of the title deeds of each tenement".

To what extent does the bill give you opportunities to recover money and get work done? Has the tenement management scheme worked with regard to major works that need to be done in order to make a building safe? Under the scheme, there must be 50 per cent agreement among owners. Will the provision in the bill fill the gap when people cannot get things going?

Susan Torrance: I do not think that it will solve some of the issues to do with the Tenements (Scotland) Act 2004, particularly those that involve non-housing association factors who manage some tenement stairs, which happens in Glasgow. It is all about getting the power to carry out the works legally. Obviously the 2004 act provides one route, but that does not apply if the association owns less than 50 per cent of the properties—only two out of six properties, say. There are issues to do with that that the bill will not rectify.

However, given a fair wind the title deeds supply the power to act. There can be a tenant management arrangement in place whereby the majority of owners want the work to be done. However, one or two owners may be recalcitrant in paying their share, so if the ability existed to work with local authorities and find some way of using the charging order route, our members would whoop with joy.

This is a huge issue for our members: as responsible landlords, they have a duty to carry out repairs, ensure that their tenants are living in safe environments and follow through the Scottish housing quality standard and all the other standards that are imposed on housing association ownership. The issue is how to fairly recoup from owners who for various reasons cannot or will not comply. That has a substantial cost to and burden on our members.

Sarah Boyack: I am trying to test whether you think that the bill will deal with that. I have lots of casework in which the majority of people want works to be carried out, but unless builders are paid up front, nothing will happen. Will the bill enable owners who want work to be done to get on and get it done under the management of the local authority?

Susan Torrance: I am not sure that it will at the moment, which is why we asked for some way of ensuring in guidance, secondary legislation or whatever that that could happen. Guidance notes would probably be the best way of addressing the issue. We would like some way of linking collaboration with housing associations.

I would suggest that we would provide the money up front to carry out the works. We had a discussion about liabilities resting on local authorities to put the capital up front to help works progress. Housing associations would more than pay their liability to undertake that. However, at the moment local authorities have a recovery mechanism that housing associations do not. We would like some way, through guidance or legislation, to link into that.

The Convener: We all know that housing associations and most other public housing owners would willingly pay money up front. However, although others in the building might want the repairs to be done, if one flat in a block of six belongs to a housing association and they do not pay up front, the repairs are not likely to happen. I think that that is Ms Boyack's point.

Susan Torrance: My point is that housing associations would and do step into the breach at that point. I discussed the bill with our members a few weeks ago. That is the practice because, as responsible landlords who own four or six properties in a close—or even one out of six—they have a responsibility to ensure their tenants' safety.

If an association owned one out of six properties and there was a £500,000 repair, it might make a slightly different decision in terms of having the resources to carry out that repair, but that would be very extreme. They would move in, carry out all the works and then attempt to recover costs—as they do—from individual owners on whose behalf they have carried out works through the powers in the 2004 act, the title deeds or whatever.

The Convener: Does anyone else wish to respond on Ms Boyack's point? No.

Sarah Boyack: I have seen the other side, where even the housing associations will not put the money up front. I am trying to see what difference the bill would make. I presume that the local authority would still have to agree to pick up and manage the issue, so I suppose that we need a response from local authority colleagues.

Susan Torrance: Yes; I think that that would be good.

Sarah Boyack: Do local authority colleagues see the bill leading to more pieces of work being initiated by you? How do you view that?

Gillian McCarney: For clarification, is Susan Torrance saying that, in certain instances, a housing association would pay all the repair money up front then ask the council to recover the costs on its behalf?

Susan Torrance: Yes. We would like to have the flexibility of charging orders rather than having to go through the courts as at present, where, in many cases, there is a lot of expense and we do not recover anything, so the sum is written off.

Gillian McCarney: My only comment on that, as a representative of a public authority, is that that would mean taxpayers' money being used to recover the costs for a housing association as opposed to the housing association recovering the costs for itself. My concern would be about the administration and additional costs for the council. It would certainly be worth thinking about that further. I am not so sure that the bill covers that.

John Delamar: I am of the same opinion. It sounds like a good idea and a benefit, but the legal implications for local authorities taking on the burden of private sector debt through a charging order would have to be looked at.

Alistair MacDonald: My answer is the same.

Sarah Boyack: Mr Sutton, your submission talks about whether the bill will lead to people being more prevention oriented. Will the bill change the way in which people make decisions? You talk about exploring whether the council tax could be applied at a different rate. We did that in the Parliament last year when we passed legislation that covered empty properties. Has that had any impact on your thoughts about the bill?

Dave Sutton: Not particularly. I am not sure that the bill will do that by itself. A more concerted approach is needed across all the relevant legislation. Councils are getting better at having housing, building standards and planning all working together. We are looking for a solution.

I apologise for returning to the Dundyvan example. Four or five years ago, we were able to work with the local housing association to get a scheme that stacked up and left a residual value on that property so that the paper company that had acquired it for £10,000 would have walked away with about £35,000 of profit. When we reran that costing with the housing association two or three years ago, and again a year ago, we suddenly had a deficit of £100,000 to £200,000.

Schemes that used to stack up because of joint working no longer stack up. There has been a general overall tightening of the lottery conditions, for example, so that if a trust takes on an old building and makes a profit on it, that profit goes back to the trust rather than into a rotating fund. There has been a general tightening up. Most trusts or bodies that try to take on and resolve such problems will get 80 to 90 per cent of the capital, but getting that last 5 to 10 per cent of the capital is the issue.

One of the concerns about the proposed community empowerment (Scotland) bill is that although the building can be sorted as a one-off capital cost, the running costs will also have to be covered. There are examples in which communities have taken on buildings with all the best intentions and interest, but the scheme has fallen flat on its face because the revenue plans were too optimistic or whatever.

There are difficulties that need to be thought through about bodies that are working together with tenants or residents or whoever, and how they can unlock some of the difficult sites. That is the situation that exists in North Lanarkshire. Even working together with housing or the lottery or whatever, we are still struggling with finding a solution for some sites.

Sarah Boyack: The other side of that is that there are areas in which land is phenomenally expensive, such as bits of Aberdeen, Dundee, Glasgow and Edinburgh, but where there is a problem with defective buildings and the costs are much more extreme. In that context, the bill would play a different role when people have deep enough pockets to pay for their repairs but are not prepared to do it. I am interested in seeing the extent to which the bill would help to meet some of those gaps.

10:45

The Convener: Will the bill help in that regard?

Alistair MacDonald: Yes. If a substantial sum of money is involved, I think that the bill will help. That said, if the person who owns the property, land or whatever has deep pockets, it is perhaps a disadvantage to give them 30 years to pay off the debt. Perhaps that should be sooner, depending on the amount of debt that there is.

The Convener: Certain folk with deep pockets often have a poacher's pocket that they can slip money into without anybody knowing. How do we get around that?

Alistair MacDonald: I do not know, but I think that that could be done by putting the burden on the property. If a person has property, land or a building that is attractive, it is more likely that a sale will take place in the future, and I think that the bill will help with that.

John Delamar: I agree that, where there is confidence that the people who are being pursued for repairs have the money to pay, there will be more confidence to go ahead with the notice to repair and there will be a better chance of recovering the cost of any work that the local authority undertakes.

The Convener: Are you currently pursuing folk whom you know are likely to have more than enough to pay for the work that you are doing, but you are unable to get that? Will the bill overcome that situation?

John Delamar: I am not sure whether this person has the money, but we are dealing with a property with two owners. There was a gable deterioration of a chimney stack that is directly above a neighbouring single-storey property and above a public footpath right beside a bus stop, so there was a requirement to go in there straight away to fix the chimney by putting up scaffolding. The owner on the first floor is more than happy to pay and has been doing so, but the person who was on the ground floor has not paid. We are now in difficulties because the person on the ground floor, who had a business and other property, died, unfortunately. Therefore, we can no longer pursue the costs involved under our civil debt recovery methods. In that instance, we could serve a charging order on the property, knowing that the building will be sold or whatever at some point and we will be in a position to recover costs.

Gillian McCarney: We have a site with an absentee owner—I believe that he lives in Antigua. The council has incurred substantial costs in keeping the building safe. We understand that the owner is in discussions with several people to buy the site, and we have to continually check to see whether it has been sold. In such circumstances, a charging order would be ideal for us, because we would then, I hope, be able to recoup the costs on the sale of the land.

The land values in areas of East Renfrewshire are three times higher than those in other towns in the area. In some instances, the regeneration aspects are more important for the selling of the site for development so that it stops being a blight on the community. We know that we do not necessarily need to get involved in other areas because the land will sell itself and the land values of the development on completion will outweigh any charges on the site.

The Convener: I am aware that time is wearing on and that we have to take in Mr Stewart at the end. If possible, questions and answers should therefore be brief.

Sarah Boyack: In the "Disadvantages" section of its submission, East Renfrewshire Council asked for clarification on what local authorities could include in the final charging order.

Gillian McCarney: Yes.

Sarah Boyack: Is that because of how the bill is written? Could that be dealt with in guidance? For example, East Renfrewshire Council asked whether it would be possible to include the costs of council staff putting together work to come up with survey work, any work that had to be done in the council and, I presume, negotiations on what is reasonable as payback. Should that be set out explicitly in the bill or should it be in guidance from the Scottish Government?

Gillian McCarney: I think that we would be happy with that being in guidance. If clarification was required, I would be happy with that being in guidance, as long as it was clear what the council could recharge.

David Stewart (Highlands and Islands) (Lab): Thank you for inviting me along, convener.

I have a couple of questions to put to the witnesses. It has been a very interesting question-and-answer session, but we must set the bill in context—as a member's bill, it cannot sort out every problem that the witnesses rightly raise. The bill is about cost recovery for repairs to dangerous and defective buildings. Given the statistic that, according to the Scottish Government, there is £3.9 million of outstanding debt, we know that we have a real problem.

I am interested in the witnesses' points about charging orders, which are the main issue here. I am quite relaxed about changing the 30-year period to a five-year period at stage 2, or having a variable period or something that is technically competent. I take on board the point that the period should vary according to the level of the

debt. If the debt is only £5,000 or £6,000, five years would be a better period.

As you well know, the 30-year period was not invented by me. It echoes other legislation—it echoes what happened from 1959 until 2003. The bill lifted from existing, well-used legislation. How would panel members feel about such a variation at stage 2?

Dave Sutton: I would be supportive of it.

Gillian McCarney: We would be very supportive of those proposals.

John Delamar: We welcome them.

Alistair MacDonald: We fully support them, as the 30-year period is one of the things that has cropped up as being a disadvantage. Introducing flexibility would be an improvement.

Susan Torrance: Flexibility would be welcome.

David Stewart: I am conscious of the time.

As you know, a notice of liability has been developed as part of the proposed community empowerment (Scotland) bill. How would the panel feel if, at stage 2, I incorporated the notice of liability in my bill, in a hybrid form or as a separate aspect?

Dave Sutton: I would very much support that. We have made the point that the liability order applies to the individual and that ignorance is no excuse. I am sorry that I keep coming back to paper companies, but there are some people who are involved in such companies.

The Convener: In Antigua and other places.

Dave Sutton: No, not quite—in Leicester. Would the fact that one of the directors was in Leicester rather than Scotland mean that English law would have to be used to recover the money? That can be an issue.

A liability order removes any excuse. It is a case of telling someone that they are liable and going through the proper procedures. The proposal that is in the community empowerment bill is already a provision in the Historic Environment (Amendment) (Scotland) Act 2011. As far as I am aware from conservation officers, there is no experience yet of it being used in Scotland, but it is certainly a useful tool in our negotiations with such companies. We would welcome having that choice.

Gillian McCarney: I would be quite happy with that.

John Delamar: I agree. The more tools that we have in our belt, the better.

The Convener: Does anyone disagree? No one does.

David Stewart: I have met local authorities extensively over the past year and I have had some representations that there should be an element of backdating of the charging order, which lost its life in 2003. There would have to be a time limit of some sort—perhaps two years. Given that we are talking about nearly £4 million-worth of debt across Scotland, what does the panel think about having a short period of backdating of charging orders for work on dangerous and defective buildings, if it were legally and technically possible to do that?

Dave Sutton: That is a difficult one, because I am always mindful of what the legal defences are to the use of the listed building legislation. Part of that is that the owner has been given an opportunity to undertake the works directly themselves. If there is clear evidence that they have been given that opportunity, that it is the most cost-effective solution and so on, one might be prepared to consider that, but I am more concerned about getting legislation that is good for the future. I think that the backdating of charging orders raises all sorts of other issues.

Gillian McCarney: From a personal point of view, I might have some concerns about that, just because of the procedures involved and how the process would be administered. Would it be for everyone on whom we have ever served a notice? That could involve quite a number of people and quite a lot of administration. I would be happy if we brought in legislation that allowed charging orders from a fixed point in time and moved forward on that basis.

The Convener: A building could have a number of owners over quite a short period of time. Have you had experience of that?

Gillian McCarney: Off the top of my head—no.

John Delamar: I know that there are authorities that have requested such a provision because of the amount of money that has been laid out on single properties, and I recognise the argument for it.

If it can be proved through documentation that a single owner is involved and that a clear audit process has been followed, I do not see why, if a charging order could be backdated, that could not be utilised on specific jobs on which it was considered beneficial to do so.

The Convener: Have you had experience of defective buildings changing hands quite quickly?

John Delamar: That is the fear that we have in the case that I mentioned earlier. We are worried that the building might be sold from under our feet without our being able to recover the costs.

Alistair MacDonald: I do not think that having the ability to backdate charging orders would be a

great benefit. Finding out when a building had changed hands would involve administration and legal costs. Sometimes, the ownership of properties is moved unscrupulously from the husband's name to the wife's name, or from one company to another. I think that we would end up tying ourselves in knots, so I do not think that that would be beneficial.

The Convener: You have had similar experiences to those that I had as a councillor.

Susan Torrance: What was I going to say? My mind has gone blank. I concur with everyone else.

Dave Sutton: Something that is extremely important is having the ability to pre-register a charging order with Registers of Scotland. If there is a period of three or four months between the point at which notice is given and the building work is committed to and the point at which registration takes place, that provides a gap for the unscrupulous. In my view, allowing a charging order to be pre-registered so that that cannot happen is a much more important gap to plug than allowing charging orders to be applied retrospectively.

David Stewart: That is a reasonable point, which is why it would be advantageous to have a hybrid creature that would be partly a notice of liability and partly a charging order. That would fill the gap.

I know that I am preaching to the converted, but if the bill is successful, there will not be an element of compulsion on local authorities. A risk assessment will be carried out by building control and legal officers to decide whether such action is appropriate. Most people pay for repairs, but cost recovery has always been an option. It is a case of giving authorities another tool in their armoury. I have no more questions.

The Convener: Do the witnesses have any comments on that final statement by Mr Stewart?

Dave Sutton: We now have planning performance indicators. If what is proposed were identified as a performance indicator, we would be able to gather data not only on whether it was being used, but on whether councils were applying the legislation in practice.

The Convener: The committee has done a lot of work on performance indicators. If you would like changes to be made to performance indicators, you might need to talk to the Convention of Scottish Local Authorities, which has done a huge amount of work on that lately.

I thank all the witnesses very much for their evidence.

10:58

Meeting continued in private until 11:23.

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