

Working Group on Tenement Maintenance
convened by Graham Simpson, MSP
Scottish Parliament, 26th October 2022

Attendees:

Mike Heffron, Secretariat, Under One Roof
Ailsa Macfarlane, Secretariat, BEFS
Hazel Johnson, Secretariat, BEFS
Andrew Steven, Solicitor
Annie Flint, Tenement Action Group
David Bookbinder, Glasgow and West of Scotland Forum of Housing Associations
David Gibbon, Tenement Action Group
David Weatherall, Future Climate
Euan Ryan, RICS
Hew Edgar, Chartered Institute of Building
Jackie Timmons, City of Edinburgh Council
Joanne McClelland, Edinburgh Architectural Association President
Karen Stevenson, RIAS
Neale Bisset, VP, PMAS
Neil Watt, former President of the Property Managers Association Scotland
Scott Geekie, Tenement Action Group
Simon Montgomery, Historic Environment Scotland
Frankie McCarthy, Scottish Law Commission (observer)
Ian Smith, Changeworks
Graham Simpson MSP
Kaukab Stewart MSP
Paul Sweeney MSP
John Mason MSP
Miles Briggs MSP
Josh Hill, aide to Graham Simpson

1. Welcome - Graham Simpson, MSP

Thanks to BEFS as secretariat again.

Report from last session of Parliament Tenement working group:

3 main recommendations

1. Mandatory building inspections every 5 years
2. Mandatory building reserve funds
3. Mandatory owners' associations

Purpose of meeting is to have a look at activity since report, and to see if anything the group can urge SG to do now.

2. Scottish Government progress review - Ailsa Macfarlane, Secretariat/BEFS

Thank you to everyone for continued interest and to Graham for initiating meeting.

Overview of activity to date:

- November 2017, Graham Simpson MSP hosted a parliamentary reception regarding RICS tenement health check proposals.
- January 2018 the Scottish Parliament debated Ben MacPherson MSP's motion on [Maintenance of Tenement Communal Property](#).
- Cross-party group was formed, and representatives from property management, property law, chartered surveying, and architecture with BEFS and the RICS providing secretariat – the group discussed and distilled the key sticking points, and areas for change.
- In May 2018, the issue of tenement maintenance was progressed in a Scottish Parliament [debate](#) on a [motion](#) on the inadequacy of existing legislation in dealing with the condition of Scotland's tenement housing stock and there was a vote in favour of a review of the relevant legislation.
- August 2018 David Stewart of the [Scottish Federation of Housing Associations](#) organised a visit to the offices of [Dunedin Canmore](#) for members of the working group. There was a tour of tenements undergoing repairs in Gorgie and Tollcross in Edinburgh and learning about the challenges housing associations face in handling maintenance in tenements where they are not the majority owner.
- With further research and significant work from sub-groups in the CPG, interim recommendations were set out in January 2019
- Further consultation took place, and these recommendations were refined, with the Final Recommendations Report Launched by RICS in May 2019
- In September 2019 Scottish Civic Trust, BEFS, and Under One Roof held the *Tenements Today, Tenements Tomorrow Conference*. Introduction was given by Kevin Stewart, then Minister for Local Government, Housing and Planning. He committed to a substantive government response to the recommendations.
- The conference looked at policy but opened with *Voices from Scottish Tenements* – a film made for the event, which detailed the issues owners had had in having works completed to their properties, including problems relating to consensus-forming, personal liability, apportionment of costs, as well as the effects on mental and physical well-being.

- In tandem with this activity, BEFS and RICS with additional financial support from the Scottish Government - commissioned a report from Professor Douglas Robertson. “Why Flats Fall Down”.
- In Dec 2019 the Scottish Government provide a response agreeing that action was needed to improve the condition of our tenements and stating they would engage with the Scottish Law Commission on the three recommendations, with a view to referring these matters to the Scottish Law Commission to carry out a law reform project and provide a report with recommendations and a draft Bill that would implement the reforms.
- The Report’s aspiration for an Act of Parliament in 2025 was seen as ambitious and may not be achievable. This currently seems even more out of reach. Whilst legislation is being considered and in development, SG will seek to support voluntary and incremental change

It is only fair to note that COVID delayed and derailed any number of actions in 2020 / 2021.

Ongoing work and updates on the above:

1. Scottish Law Commission work: Thanks go to Professor McCarthy and her team at the Scottish Law Commission. The Scottish Law Commission has been clear that the parcel of work they are engaged in, specifically around establishing compulsory owners’ associations, will only be effective (should legislation form and pass) if the other aspects of the recommendations around sinking funds, and five-yearly inspections are also in place. The work around those needs to be completed in parallel – rather than in stages.
2. Good practice guidance exists and is given via Under One Roof as well as many other organisations and associations – this action was informal, and has been formed by the organisations themselves, rather than a central, standardised source.
3. Any research around determining the proportion, geography and tenure mix of relevant buildings may well have been done in relation to the Heat in Buildings work – unsure what has/can be made more widely available.
4. Research was commissioned in relation to **repair costs and building reserve funds**, this was awarded in April 2021 and the Diffley Partnership reported as requested. However, within separate contexts we’ve been told that there was no ability to publish the report and findings due to resource challenges.
5. Unsure if detailed engagement has taken place – on the considerations for what an affordable, viable, compulsory factoring service looks like.
6. Review of the home report, planned for 2021, is still to be formally undertaken, although conversations are ongoing.
7. The Code of Conduct for property factors has been revised and in force from August 2021.
8. Forum of finance professions has not yet been engaged to examine the building reserve fund element of work. This was designed to follow from the research by Diffley mentioned previously.
9. Proposals for a publicly accessible online platform are raised at many meetings but have not yet been progressed.

Separately from actions recommended by the Working Group, the Scottish Government was to undertake the following during 2021, which were to contribute to the improvement of condition in tenements, and in housing generally:

10. Publish a public consultation on changes to the tolerable standard. Additionally whilst there are ongoing discussions around changes to the tolerable standard, a consultation has not yet been launched.

11. Circulate draft guidance for private landlords on changes to the repairing standard. Unclear if guidance has been produced for private landlords in relation to the repairing standard which will come into force in 2024. [Link to the useful SPICE briefing in relation to housing conditions and standards, October 2021](#)

Changed context

- Declaration of a Climate Emergency – April 2019
- Infrastructure Commission Recommendations – January 2020 (Homes as part of infrastructure)
- Heat in Buildings Strategy – October 2021
- Housing to 2040 – March 2021
- National Planning Framework (NPF4) – tbc Autumn 2022

Our understanding of net-zero aims and the climate emergency have sharpened significantly over the last few years.

Related policies listed above are only some of those which action in relation to tenement maintenance can directly support:

- Our housing stock is directly listed as part of our infrastructure.
- Work around tenements will be essential to meeting Heat in Buildings targets

These policies now provide additional levers, and impetus to progress this work, however complex policies demand complex actions, and we've been seeing significant work take place across building standards, heat in buildings teams, and wider housing legislation.

Comments, questions and corrections

Correction from Graham Simpson – This group is defined as a Working Group, not a Cross-Party Working Group, as this requires additional structure, and we are looking to move quickly.

3. Discussion of future legislative changes – Mike Heffron, Secretariat/Under One Roof

Recognises through conversations with stakeholders across the sector the growing desire to get things moving across all three areas of recommendations.

Going forward: What are the 'easier' achievable outcomes – the quick wins.

Hands over to Annie Flint, Tenement Action Group, who provides a list of legislative changes that could help tenement owners progress tenement management, maintenance and retrofit work.

1. **Development Management Scheme** - Make Development Management Schemes (part of Tenements (Scotland) Act 2004) compulsory for all new flatted developments.
2. **Debt recovery** - enact land attachment provisions of Bankruptcy and Diligence etc (Scotland) Act 2007 - with suitable protections. Suitable guidance required to ensure that this is not used where the property concerned is someone's principal home. Should apply to tenanted property, vacant homes, second/holiday homes and commercial premises within tenements. Lower financial limit (say £5,000) to apply
3. **Duty to Maintain**
 - a. Legislation currently sets out duty to maintain in terms of support and shelter. This should be redefined to include matters of public and personal safety. So could include removal of dangerous overcladding, other fire risks etc.
 - b. Find a way of ensuring that repairs that are carried out under Duty to Maintain are carried out to a reasonable standard with at least a 10-year lifespan?
4. **Share of costs by Rateable Value** – abolish division of maintenance costs by rateable value. This tends to penalise commercial premises in tenements. It assumes that shop and pub owners have better income to pay for costs than domestic owners. But in older tenements this is no longer generally the case. Also, many of these commercial properties are rented on a Full Repairing Lease and the person who pays, the tenant, will see no increase in capital value of a common repair. Where costs are shared by RV in entirely domestic properties, it is unworkable as RVs were abolished in the 1980s and many RVs would be irrelevant now due to alterations to properties etc. Use provisions of TMS instead (equal shares or by floor area). Allow appeal/compensation to Lands Tribunal.
5. **Tied votes.** Many tenements have an equal number of owners, so a tied vote often occurs. This is currently a vote in favour of the status quo – and holds up maintenance. Should be changed to a tied vote being taken as a vote to maintain and in favour of action. Current provisions for appeal to Sherriff should continue.
6. **Grey areas scheme property** – the following should be clarified as scheme property:
 - a. Dormer windows: these should be treated as part of the roof with the windows and window frames being individual responsibility
 - b. Floor beams where between flats
7. **Grey areas in definition of maintenance** – the following should be added to the list of common maintenance tasks
 - a. Installation of Damp Proof Course (DPC)
 - b. Installation of energy efficiency measures, specifically insulation
 - c. Installation of micro generation, solar panels etc should continue to be defined as improvements)
8. **Provision of renewable energy generation equipment**, micro generation equipment and other heating and ventilation equipment. Owners who will not benefit (or choose not to benefit) from such installations should not be able to unreasonably prevent installation and should not be required to make any contribution towards costs of installation and running. Where such equipment is installed, a scheme which allows non-participating owners to join in future should be published at the time of installation. This should set out how the owners who set up the scheme will be recompensed.
9. **Attic, basement, and other uninhabited spaces.**
 - a. Where common services are sited in the basement, attic and other uninhabited space, owners of these spaces should be required to allow reasonable access for maintenance.

- b. Owners of such spaces should not be allowed to unreasonably prevent installation of common services (including renewable energy etc). Provision for compensation should be made and appeal through Lands Tribunal.
 - c. Where such spaces are not commonly owned, individual owners should not be able to develop into these spaces without consent of all other owners. Such development should not be unreasonably refused (give right of appeal to Sheriff)
10. **Owner contact details.** Owners should be required to provide their contact details to their co-owners. These details should include:
- a. A postal address where notices can be sent
 - b. Emergency contact details (phone number/email checked at least once every 24 hours)
 - c. Suitable protections for vulnerable/at-risk tenants
 - d. Where an agent has powers to act on the owners' behalf in an emergency, the contact details given can be the agent's address.

11. Compulsory Building Insurance

4. Discussion and next steps

Discussion

Graham Simpson: What can we ask Scottish Government to move on, that might not require primary legislation, as there will be no new primary legislation until the next parliamentary session. The challenge to the group is to think creatively, are there solutions that don't require primary legislation.

Kaukab Stewart: Secondary legislation a way to make quick change – doesn't take as long. Motion moved by David McKenzie: Glasgow Kelvin project. Came up with a change of the phrasing, moving the threshold from what is an essential repair to heat and emission focus.

Graham Simpson: Please feed this work in through the secretariat.

Miles Briggs: Housing 2040 Bill, likely introduced in December. Might be possible to get proposals added to legislation, or for comments at committee level and amendments to Bill. Suggested ideas are a good framework, suggests letter to Patrick Harvie, what of these can be included in new Bill?

John Mason: Housing 2040 Bill – send comments to committee and possibly amendments.

Paul Sweeny: Glasgow City Heritage Trust (GCHT), Wheatley Group/ Glasgow City Council – pilot proposals progressing - discussion about infrastructure acting as a pilot for skilled maintenance. Scaled through legislation. There is enough institutional interest to do this. Will progress the prototype idea with GCHT.

Hew Edwards: Under One Roof – if the provision of quality advice is there, there should be funding available to support it.

David Bookbinder: Heat in Buildings has more resource than anything else. What could be worked up in Glasgow would be a proposal to Scottish Government that a few bodies could take this project forward with Housing Associations.

Andrew Steven: Sub-group was set up as part of last Working Group and could work well here in relation to potential secondary legislation. Section 31 of Tenement Scotland Act 2004. Many of the proposals will need legislation, either primary or secondary. Housing Bill could provide opportunity to look at maintenance.

Paul Sweeney: Suggest MSPs act as leads for certain streams of work.

Joanne McClelland: Explore cooperative mindset. Package conservation repairs around retrofit. Cooperatives all over the country. Grassroots activity, promoting best practice. Lifting organisations that are doing this up and making their work more visible.

Ailsa Macfarlane: Complex series of work, with blending in to Heat in Buildings – the five-yearly inspections could be achieved through the Heat in Buildings work (e.g., can't do this work without an understanding of fabric and materials).

Neil Bisset: Communal buildings insurance is vital. To have something that is compulsory is essential.

David Gibbon: Progress five-yearly inspection work ahead of completion of Scottish Law Commission's work on owners' associations. Adapt the report and revise (professional body, RICS/RIAS) as necessary

Next steps

ACTION: Secretariat to keep a master schedule of related and ongoing work.

ACTION: Annie Flint and Andrew Steven to work up draft proposals to share amongst group for quick comment.

ACTION: Draft a letter from this group with recommendations ahead of introduction of Housing 2040 Bill.

ACTION: Questions about progress of written review to be asked of Minister(s).

ACTION: Meet as required in early 2023.