

TONBRIDGE & MALLING BOROUGH COUNCIL
PLANNING and TRANSPORTATION ADVISORY BOARD

24 July 2006

Report of the Director of Planning & Transportation

Part 1- Public

Matters for Recommendation to Cabinet - Non-Key Decision

1 BUILDING CONTROL – PART L

Summary

This report draws Members attention to a new and important part of the Building Regulations. It also draws attention to an unusual set of circumstances whereby the Council as a Building Control Authority was constrained in the implementation of the requirements of the new Building Regulations, the reasons why this came about and the action taken.

1.1 Background

- 1.1.1 A new part of the Building Regulations (Part L) was introduced on 6 April 2006 in respect of the thermal efficiency of new and existing buildings and encapsulated in new 'Approved Documents'. These brought in major changes to the regulations and reflect the government's decision to use Building Regulations as a means to help meet the commitments to reduce energy consumption.
- 1.1.2 The new regulations not only increase the thermal efficiency of buildings but also widen the scope of the regulations into matters such as solar gain, cooling, shading and orientation of buildings together with the efficiency of heat producing appliances and controls. In addition for the first time an entirely new area of 'consequential improvements' to buildings was introduced. This means that if a building is extended or altered, works may also be required to the existing building to make it more thermally efficient by up to 10% of the contract sum.
- 1.1.3 This is a major step forward and the new regulations should be welcomed in principle as a means of ensuring higher standards of construction in respect of energy conservation. It also gives the Building Regulations function a higher profile and will increase the opportunity for integration with other sources such as planning and environmental health.
- 1.1.4 As might be imagined these regulations are extremely complex and great care will need to be exercised in their introduction and implementation. However, this is where the problems have arisen for Building Control Authorities.

- 1.1.5 The normal convention when making major changes to the regulations is that a 'six month lead in' period is given in order for both Building Control Authorities and the development industry, designers and other professions to have a chance to assimilate them, organise necessary training and make changes to products and materials and be in a position to implement them on the first day of application. As indicated earlier these Regulations are very complex and took longer than expected to draft within Government. On the other hand the government found itself under extreme pressure not to delay the implementation date due to various agreements reached within the EU.
- 1.1.6 The end result of this was that despite previous assurances, by the then ODPM there was no 'lead in' period at all and whilst the implementation date of 6th April 2006 remained the same, the new documents were only available on the former ODPM website at the very end of March and not even published in hard copy format until after the implementation date. Supporting 2nd and 3rd tier documents (to which the Approved Documents refer) were not actually available until much later. This resulted in training that had been organised having to be cancelled and re-scheduled after the implementation date both for Building Control Authorities and the industry at large.
- 1.1.7 Nationally Local Authority Building Control (LABC) services issued the following statement 'The consensus of opinion of this organisation is that we will not be in a position to enforce the new requirements of the new parts L until 1 October 2006.
- 1.1.8 Similarly the RICS issued a statement saying 'RICS also has concerns regarding the timescale for implementation in relation to the information available.
- 1.1.9 As will be appreciated by the state of affairs the Council along with every other Building Control Authority were put into an impossible position in terms of having legislation in place which we were not in any practical position to immediately apply or enforce. It is right therefore that the authority should do all it can to establish a pragmatic way forward in the interim period which will allow for consistency and predictability for its customers.

1.2 The Way Forward

- 1.2.1 Gaining the level of understanding and appreciation necessary will be an ongoing learning process and we have already made good progress in this direction with all building control staff having attended training sessions. Clearly our position will develop towards full implementation as our knowledge progresses. This, however, must be carried out in a managed way and we are currently formally agreeing each step at our regular technical meetings.
- 1.2.2 Additionally we have carried out much work in both keeping customers informed of our position and in providing formal training for regular service users through the efforts of the Kent Building Control Officers Group.

- 1.2.3 A target date for full implementation of October still appears to be reasonable leaving us to carry on our policy of working towards this goal and implementing the regulations as our training and knowledge increases. In addition it should be noted that under certain circumstances this is also the formal date allowed for in the Transitional Regulations.

1.3 Conclusion

- 1.3.1 The new 'Part L' will, in due course, provide the ability to ensure consistently higher standards of thermal insulation and other important environmental standards through the Building Regulations.
- 1.3.2 Members will see this authority together with every other building control authority were not in a position to implement fully the requirements of the new Part L from day one. Equally I was not able or prepared to ignore the requirements of the new regulations. However I believe we had no alternative but to take the course of action we did and take the sensible view that we would 'work towards full implementation'.
- 1.3.3 It is pleasing to note that our knowledge and understanding is increasing all the time and I am confident that we will be fully implementing the requirement ahead of the suggested date. However I felt that it was right that members were also aware that we were not in a position to enforce from day one and the reasons for it.

1.4 Legal Implications.

- 1.4.1 The Building Control Authority has a statutory duty to enforce the law. Notwithstanding the position in which it found itself, the Council may find itself liable in respect of any consequences of failure to enforce these regulations from 1 April.

1.5 Financial and Value for Money Considerations.

- 1.5.1 None

1.6 Risk Assessment.

- 1.6.1 As the Building Regulations only call for 'reasonable provision' the actual risk of not being in a position to fully implement the new regulations is low.

1.7 Recommendation

- 1.7.1 That members note the reasons for bringing this report to their attention and **ENDORSE** the line of action taken.

Background papers:

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Approved documents

Parts L1A, L1B, L2A, L2B.

Steve Humphrey

Director of Planning & Transportation