

TONBRIDGE & MALLING BOROUGH COUNCIL

PLANNING and TRANSPORTATION ADVISORY BOARD

3 June 2008

Report of the Director of Planning Transport and Leisure

Part 1- Public

Matters for Recommendation to Cabinet - Non-Key Decision

1 BUILDING CONTROL REGULATIONS

Summary

This report provides a detailed analysis of the wide ranging review of the Building Control procedures and recommends various responses that could usefully be made.

- 1.1** The Department of Communities and Local Government (DCLG) is consulting on the future of Building Control and seeking views on proposals for changes to the building control system in England and Wales. The proposals are designed to address weaknesses in the current system, as identified by the users of the system and the building control industry itself and are intended to both improve compliance with the Building Regulations and further reduce the perceived burdens associated with the system.
- 1.1.1** The Building Regulations set baseline regulatory standards to ensure that our buildings are safe, energy efficient and accessible for everyone who lives and works in and around them. Building Control is the system through which these standards are updated, applied and enforced. The regulations apply to most new buildings and many extensions and alterations to existing ones, whether domestic or non-domestic.
- 1.1.2** It is perhaps worth commenting that the first Building Regulations in this country were brought in following the great fire of London in 1666, when it became quite clear that there was a risk of fire spread from one building to another. The Regulation set standards for space separation between buildings. In more recent times the regulations were based on the Public Health Acts of 1936 and 1961.
- 1.1.3** The current regulations are made on the Building Act of 1984 which also opened building control to competition from the private sector. However the statutory notices and inspection regime were left unchanged and the current system clearly shows where the roots of the regulations come from as they all tend to relate to works up to slab level and nothing beyond. As the regulations have been changed and updated to focus more on a much wider set of issues such as thermal insulation and climate change, sound insulation, glazing and electrical

installations, the notification and inspection process has become outdated and requires change.

- 1.1.4 It is however acknowledged that the Building Regulations have brought benefits to society. The quality, variety and performance of buildings in this country are a testament to this. However demands on the building control system are changing and it is now expected to ensure that our buildings are not only safe but that they are sustainable and make a direct contribution to tackling climate change. As a consequence the system has to take account of ever more complex technologies whilst remaining easy to understand and comply with.

1.2 Summary of Consultation Proposals.

- 1.2.1 The consultation covers a wide range of proposals and asks a number of questions on each. The proposals fall into the following five areas.

- Developing a vision for building control
- Establishing a better approach to the way we deliver regulations and guidance
- Modernising inspection and enforcement
- Providing alternative routes to compliance
- Enabling improved performance and capacity

The specific questions and some commentary and proposed response is set out in the rest of this report.

1.3 A vision for Building Control

- 1.3.1 The current challenges of climate change and the pressure to increase the number of new homes needs a system that is strong in compliance and of minimum burden to the construction industry and the public at large.

- 1.3.2 In order to achieve and maintain this into the future there is a call for a shared vision for building control. Developing such a vision at the moment is difficult because:

- 1) Many people do not understand what building control does and how to use it to ensure that they get a good job done which meets their needs and meets minimum standards.
- 2) Many people do not understand their role or that of the builder or designer in the system so either assumes that building control does something it cannot do or tries to avoid it altogether.

- 3) Many people do not understand the connection between building control and other regimes, particularly planning.

1.3.3 There is also a current misconception that building regulations cover the quality of a building as opposed to key performance standards, which is not the case. For example, the regulations play no part in resolving a grievance between a building owner and a designer or builder on an issue of aesthetics or quality of finish. The regulations do however cover the standard of the materials and workmanship as set out in Regulation 7.

1.3.4 The DCLG sets out its vision for building control as follows:-

Our vision is for a service which delivers safe, healthy, accessible and sustainable buildings for current and future generations.

To deliver this vision we need a building control system which:-

- Works with the customer to help them achieve a building project which meets their expectations as well as building standards and the public need.
- Works hand in hand with other regulators to provide a coherent service to customers
- Ensures the level of inspection is appropriate to the risk and the need.
- Gives local authorities the powers needed to enforce the building standards.
- Ensures all Building Control Bodies regularly assess and improve their performance.
- Is professional, well managed and ensures resources are used appropriately.
- Offers end users an effective means of resolving disputes about compliance

We also need to be clear with customer that building control will not:-

- Act as a 'clerk of works' monitoring every stage of the construction process on site. That is a matter for the contracts and arrangements put in place between the client and the builder. Ultimately, compliance is the responsibility of the person carrying out the work.
- Address issues such as finish and aesthetics of the final project where these are not Building Regulation standards- these are a matter for designers, builders and new home warranty providers.

- Offer protection to a client in a contract with a builder. This is a matter of contract law.

In publishing this vision the following questions are asked:

Q1 Do you agree that a vision for building control, based on that set out above would be useful.

Q2 Are the areas covered in the text generally the right ones.

Q3 Are there other areas a vision statement should cover.

Q4 is what we say about quality generally correct.

Q5 Are there any other issues under quality that should be covered.

Our response. We believe that the vision for building control is generally correct and that the matters covered are appropriate in defining the role and limits of Building Control. We would, however, wish to see Building Control in the forefront of achieving higher standards of sustainable construction and this should be an essential feature of a 'vision'.

1.4 Proposal. A procedural guide.

- 1.4.1 In support of the vision the Government believes there is a case for a more comprehensive guide to the building control system. We already have the explanatory booklet and as an authority we have published our own guides targeted mainly at householders carrying out domestic projects.
- 1.4.2 Stakeholders have indicated that they would value a procedural guide along the lines of the *Manual to the Building Regulations*, which was last updated in 2001 and set out the processes and procedures of the system and the work to which the regulations applied, describe the two alternative systems of building control Local Authority and Approved Inspectors (LA's and AI's) and containing the regulations with an explanatory note of how they might be met.
- 1.4.3 We agree that there is a case for this kind of guide which would act as a useful tool for both LA's and AI's.
- 1.4.4 The issue has also been highlighted that building control can be seen as a negative function rather than one which can add value to a project. There is a strong case for turning this potentially negative experience around to give building control a more positive perception in facilitating as a modern service and source of independent advice in the community it serves.

Q6 Do you agree that a procedural guide which sets out the purpose of building control, the processes, role and responsibilities and a brief explanation of the regulations would be helpful?

Q7 An online only version of the procedural guide which could be downloaded by users would be easier to keep updated. Would you support this approach?

Q8 Do you agree more needs to be done to communicate the benefits of using building control and that raising awareness particularly amongst those who pay the fee should be an explicit part of the building control service responsibility?

Q9 Do you have any good examples of which we should be aware or organisations that should be engaged to lead in co-ordinating this work?

Our Response. A clear and concise procedural guide would be most helpful to all concerned and that the building control function needs to be clearly communicated together with the benefits it brings for the customer.

It should be noted that at T&M we have already done much in this respect including the production of our own guides.

1.5 Proposal. To create a seamless planning and building control service.

1.5.1 In their review of overlapping regulatory regimes with stakeholders the DCLG found that the interface between planning and building control raised the most issues and needs to be a prime focus for further work. There seems to be some support for considering a merged planning and building control process that require both, thus providing one entry point into the LA approval process for the end user.

Q10 Do you think we should do more to require planning and building control to operate as a single function to ensure better joining up for the customer?

Q11 Do you have examples of successful close working relationships in your LA which we could disseminate?

Our Response. Whilst there are many ways of creating a more integrated service, the two functions of Development Control and Building Control have clear and separate objectives and this should remain to be recognised in the way they are administered.

There are many detailed and practical ways in which to integrate service provision, both in terms of application and processing and in planning our future use of Uniform systems. On cases we already employ a 'development team approach' with strong relationships with Development Control, Environmental Health and Licences Services.

Questions

Q12 Do you agree with our aim to further e-enable the building control system and its processes.

Q13 What are the barriers to more e-enabling that we need to address.

Our Response. It is clear that the e-enablement of services is the way forward and is welcomed. The planned development of Uniform 'Building Control – End to End' will enable more public access especially e-application submission. It is important however to remember that we have to serve the whole community and not forget those who may not have ready access to such a facility. It may be therefore that we have to continue to provide alternative methods for people to access our services.

1.6 A better Approach to delivering Regulations and Guidance.

- 1.6.1 The Government is committed to reviewing and amending the regulations and the corresponding Approved Documents (AD's) over time to make sure they remain up to date and achieve the purpose for which they are set out. The current system of review means that a number of parts may be changed and updated every year. Changes to regulations may also be driven by outside events such as a major fire or structural collapse, European legal obligations and significant technical advances. Construction projects can have quite lengthy lead in times and stakeholders have told us that the current frequency of changes to the approved documents can create uncertainty, with the subsequent difficulty in planning ahead and the ability to ensure compliance. This also has implications for Building Control Bodies who may have to commit training and resources into getting to understand major changes to several ADs at the same time.
- 1.6.2 In addition the large numbers of technical requirements and guidance (14 parts) can be complex, especially for smaller businesses. This is particularly true where, for example, small builders who specialise in domestic extensions may have to wade through documents aimed at much larger and complex schemes. Small builders tend to rely heavily now on Building Control Officers to give them the information they need to comply and keep up with new regulations.

1.7 Proposal Introduce a periodic system of review

- 1.7.1 In order to create a more open and transparent system that gives industry more time to prepare and innovate and ensure better compliance, DCLG should have a fixed periodic cycle for the review of regulations during which the necessary changes would be made across the full body of regulations.
- 1.7.2 The government would still retain the right to make changes in response to critical issues or EU law, but it is anticipated that this would be the exception rather than

the rule. It is thought that 3 years strikes the right balance and will better enable industry to prepare and for changes made to 'bed in'.

Q14 Do you support the introduction of a three yearly review of the regulations, whereby no one subject/issue will be reviewed more than once in every two cycles (ie 6 years) unless necessary through exceptional circumstances?

Q15 Do you agree with the view that a shorter or longer time frame does not work?

Q16 Do you agree that we should start the first cycle of review in line with the commitments to review Part L (energy efficiency) starting in 2010?

Our Response. It has been clear for some time that the building regulations are being extended to cover matters that there were never traditionally meant to cover. In doing so they have become much more complex and we welcome the idea of a 3-year cyclic review which will help both industry and Building Control. Part L is of growing importance in contributing to the Climate Change agenda and should be a priority. This review should set clear statutory thresholds and due to the rapid pace of technological change a more frequent review may be justified.

1.8 Proposal Introduce a standstill period between reviews.

1.8.1 Q17 Do you support the introduction of a six month standstill period?

Our Response. This is to be welcomed and should have been in place already.

1.9 Proposal. Rename, revise and reduce Approved Documents.

1.9.1 The Government has considered options for a more radical approach to restructuring the ADs. Consideration has also been given to clustering the technical requirements and the ADs in order that they are considered during the design and construction phase under the headings Structure, services and Sustainability. Although this may seem to be more logical many overlaps would still occur and sustainability, which should be seen as an integral consideration at all times may be seen more as a 'bolt on' instead and therefore be seen as less important.

1.9.2 Having considered these options the government is not convinced that this would be the right way to go and that the amount of work involved would distract from the other reforms proposed. Nevertheless there is compelling reasons for the guidance to be presented in a clear and understandable way. To highlight this it is suggested that the ADs might be renamed as 'Official or Technical' guidance and their status to remain the same.

- 1.9.3 Since 2002 some of the documents have already been split into building types (Part L and Part B) and we believe this has made them easier to use and we will continue to adopt this approach.

Q18 Do you agree the Approved Documents should be renamed? Any Suggestions?

Q19 Do you think our approach to merging and reducing the number of ADs over time is the right one?

Q20 Do you use the ADs online or did you purchase a full bound set.

Q21 Do you have other suggestions to improve the presentation and usability of these documents? I) hard copies ii) electronic copies.

Our response. Generally we would support any measures that helped with the clarity and purpose of the regulations. We believe that better understanding is required in respect of the approved documents between what is actually the regulation and what is intended as guidance only. All these documents are already available in hard and electronic copies.

1.10 Proposal. Project guides

- 1.10.1 The Government recognises the need to help the public, industry and BCBs to better understand and comply with the regulations. To this end they are proposing to compliment the ADs with specific project guides. With this idea they are minded to focus on Loft Conversions and domestic extensions as a matter of priority.

Q22 Do you support the development of the project guides for domestic extensions and loft conversions?

Q23 what in your view are the other areas where compliance is thought to be low and a project guide would be of help?

Our response. T&M we have already produced such guides. We would be happy to provide copies to help produce nationally recognised guides in a timely way.

1.11 Proposal. Establish criteria for reference to third-party documents.

- 1.11.1 The Government believes that the ADs should be as self contained as possible. They want as much guidance to be incorporated into one document. There is of course much value to be gained from professional institutions and trade associations and others providing additional information. It is recognised that all this information needs to be assessed to ensure it meets an important need

before being referred in the ADs and will in future be assessed against a set of criteria.

- 1.11.2 This will include issues such as the extent to which the documents are free and easily available on the internet, not commercially based or favouring one product over another and presented in a clear and accurate way.

Q24 Do you find references in the approved documents helpful?

Q25 Do you think the proposal to access third-party guidance set against a set of criteria as described is correct.

Q26 what other criteria needs to be applied.

Q27 Are there any other problems with third party documents that we need to address.

Our Response. The approved documents need to recognise that there is a wealth of information available particularly since the growth of the internet. However it is felt right that this needs to be judged against criteria to ensure its use and validity.

1.12 Proposal. Make best use of the Planning Portal.

- 1.12.1 Since the government set up the planning portal it has grown and includes excellent guidance for both planning and building regulations. It is known by us that some customers make good use of this facility for both planning advice and building regulations. However it is recognised that the 'branding' of the planning portal is not as helpful as it might be in communicating the building control content, despite the wealth of information it holds. The future ownership and governance of the portal is currently under review and although the future is unknown it is committed to developing the Building Control content and they will be considering the implications of re-branding the portal to better reflect its wider use to the community.

Q28 Do you agree the Planning Portal needs to reflect its role in hosting Building Control content

Q29 Do you use the Planning Portal

Q30 Do you find it useful.

Our Response There can be little doubt that the title of 'Planning Portal' does not adequately reflect the amount of excellent information available on Building Control and to this end some re-branding would be useful.

The use of the planning portal has grown over time and it is recognised that the content for both planning and building regulations is excellent and should be further enhanced.

1.13 Modernising inspection and enforcement.

- 1.13.1 As discussed earlier the current notification and inspection regime clearly reflects the roots of the building control system, bedded as they are in the public health acts and concerning themselves with structural stability, drainage and other health issues. Whilst this remains a vital issue for building control, the regulations have moved on to include a whole raft of environmental issues such as energy conservation, sound insulation, glazing and electrical safety. None of these issues can be inspected and where necessary enforced by simply relying on the current regime of notification and inspection. Tonbridge & Malling have long recognised that relying only on statutory notice would not be performing the service in the correct manner. Further it is worth noting that if the work is given to an AI then no such statutory notices exist and the work is carried out on a risk assessment basis.
- 1.13.2 It is also worth noting at this stage that as well as the ability to use the private sector for the building control function, building owners also have two routes they can use through the local authority by choosing to use a full plans application or (for domestic work) a Building Notice. There has long been a feeling that on occasions the use of Building Notices have been abused and they have been seen purely as a 'soft option to the full plans route, in as much as no plans are required to accompany the notice, no approval is given and works can commence after 48 hours. Building Notices were intended as an expedient for facilitating small works, for example putting in an extra window or perhaps a toilet under the stairs. However we have had them used on much more larger projects such as loft conversions and two storey extensions. It is felt that better information is required in this respect as customers sometimes don't appreciate that they have very little protection with this method compared with a properly approved plan that they or their builder is working to.
- 1.13.3 Current feeling in the services is that the inspection regime for a particular project should be based on a 'risk assessment for the project and might include considerations such as the type or complexity of the job and even the known performance of a particular builder. Whilst the moves to restrict the use of Building Notices is generally seen as a good thing, it is felt that here at T&M we do not have the same problems that might be experienced in large Metropolitan Boroughs or City Centres. We are perhaps fortunate that we do not generally experience the same problems, mainly due to the fact that we have forged strong links to trade associations such as the Federation of Master Builders (FMB) and Chartered Institute of Builders (CIOB). We also host seminars for our builders and agents to help both our CPD requirements and their information.

Enforcement issues

- 1.13.4 Failure to comply with the Building Regulations is a criminal offence and the Local Authority (not the private sector) can serve an enforcement notice against the building owner under S 36 of the Building Act requiring the removal or alteration of non-compliant work, although this action is 'time barred' and cannot be used after 12 months from the date of completion of the non-compliant work. The burden of compliance in these circumstances falls on the owner rather than the builder. It has always been felt that this is somewhat unfair and that the perpetrator of the offence is not be prosecuted when they might otherwise be.
- 1.13.5 Local Authorities can also take criminal prosecutions in the Magistrates court under S 35 of the Building Act for breaches of the regulations. If found guilty a person can be fined up to £5000 for each contravention and £50 for each day the contravention continues. However at present the prosecution must be brought within six months of the offence taking place. It should be noted that fines are relatively low and it is unlikely that the fines match the level of effort and economic benefit expended by the local authority in bringing the case.
- 1.13.6 In summary these enforcement powers are seen as not providing an effective enforcement regime especially for dealing with serious problems or persistent offenders. It seen as penalising the owner rather than the 'cowboy builder' and takes considerable time and effort.

1.14 Proposal. Provide specific guidance on risk assessing projects.

- 1.14.1 The Government is committed to continuing to support the approach set out in the Building Control Performance Standards which encourage LA and AI Building Control Bodies to take risk assessed approaches to inspection regimes.
- 1.14.2 It is proposed to develop with all stakeholders specific guides on how to risk assess certain projects and would welcome any examples of where risk assessment has been undertaken.

Q31 Do you agree that specific guidance on risk assessment would help?

Q32 for what particular projects would you most welcome guidance in the first instance?

Q33 (BCBs only) what guides do you currently use to help risk assess applications and draw up inspection frameworks.

Our Response. We agree that it would be helpful to have guides on risk assessment as the Regulations are national legislation and should be applied consistently by both Local Authorities and Approved Inspectors. We have produced additional guidance for loft conversions as these have inherent problem areas not covered by the current inspection regimes.

1.15 Proposal. Remove statutory notification stages for local authorities and replace with a risk based approach to inspection (a project service plan).

Q34 Do you agree that we should remove the statutory notification stages?

Q35 Do you agree that we should replace them with a requirement to issue a project service plan?

Our Response. Given the changing emphasis placed on building regulations, both these suggestions appear to be good and worthy of support.

1.15.1 In addition it is proposed to make it mandatory to issue completion certificates following the successful completion of building work irrespective of whether or not it was carried out using a Building Notice or Full Plans. Currently it is only a requirement to do so on Full Plans applications.

Q36 Do you agree with making the issuing of Completion Certificates for all works mandatory, whether submitted using a building notice or full plans?

Q37 Do you agree that there should introduce one mandatory inspection as part of the project service plan and to support the issuing of a completion certificate?

Q38 what might the practical implications and problems be of making at least one inspection mandatory be?

Our Response. We have never made the distinction between Building Notices and Full Plans applications in respect of giving a completion certificate. In order to continue to do this we would always wish to carry out at least one inspection. As to what that inspection might be would have to depend on the project type and should therefore be part of the risk assessment and project service plan.

1.16 Proposal. Limiting Building Notices to minor work.

1.16.1 As discussed earlier the use of building notices have, as far as we are concerned been a good thing for clients, agents, builders and indeed ourselves, providing they are used in the correct way. Importantly, whether or not we are comfortable with the use of a BN would depend on the awareness of the implications for the client and the competency of the builder. In a sense there is not a problem as long as the builder is competent to do the work involved. Currently proposals include requiring full plans applications for:-

- The erection of new buildings
- The extension of buildings

- Loft, cellar and garage conversions.

Q39 Are we right to want to limit building notices?

Q40 Are the areas we propose to require Full Plans the right ones (i.e. Loft Cellar and garage conversions, erection of new buildings and extensions)?

Q41 what might the unintentional consequences be?

Q 42 Are there any areas we have not covered which in your view need to be considered.

Our Response. As previously stated we do not find a particular problem with building notices although our view has always been that they should not be used for large extensions, loft conversions or the erection of new buildings. However we recognise that others may not be as fortunate in terms of the quality of their builders (or clients) and that the use of building notices might be abused. We would therefore suggest that there should be some guidance for the limits placed on BNs but that the final discretion to accept them for a particular project is left to the risk assessment by each authority.

1.17 Proposal. Allow Local Authorities to issue stop notices.

1.17.1 The Regulatory Enforcement and Sanctions Bill, which has recently been introduced into parliament sets out a number of enabling provisions that could allow regulators a range of enforcing options. The proposals for Stop Notices and fixed monetary penalties are dependant, firstly on this bill becoming law and subsequently on a substantial majority of Local Authorities being able to show that their enforcement polices comply with the Regulators Compliance code. Stop notices would perform two related functions. Where a person served with the notice is already carrying on the activity, they will prevent the activity being further carried on until the steps taken in the notice have been dealt with. They may also be used for preventative purposes to stop a significant risk of harm occurring whilst presently it does not.

Q 43 Do you agree that stop notices would be of benefit to local authorities in enforcing Building Regulations?

Q44 In what circumstances might they most usefully be applied and what are the perceived difficulties?

Our Response. It is felt that the use of stop notices would be a useful tool in the armoury of a local authority in seeking to enforce building regulations in that they would be a speedier way of rectifying offending work. Care would need to be taken that they were not used in such a way as to prevent lawful work being carried out by lawful traders.

1.18 Proposal. Allow Local Authorities to issue fixed penalties.

- 1.18.1 As noted earlier this is an option being considered in addition to stop notices. They would be in addition to the more traditional routes of court proceedings with the thinking that they might act as a more effective deterrent to non compliance with the building regulations.
- 1.18.2 Fixed monetary penalties (FMPs) are fines of relatively low fixed amounts that are intended to be used for low level, minor instances of non compliance. They are seen as a way in which local authorities can deal with less serious offences which is more proportionate and less complicated procedurally than prosecution through the courts. The criteria for establishing the amount of the penalty would be decided by the Department and would need to be considered further. Therefore the Department would wish to work with local authorities in identifying the criteria for applying FMPs as well as working up an appeals procedure.

Q45 Do you agree that the threat of a fixed monetary penalty could act as a useful deterrent to breaches of the regulations.

Q46 if the power to issue fine existed how might local authorities most appropriately apply them? What criteria should we consider using?

Our Response. The use of fixed monetary penalties is seen as being a useful tool in dealing with serious breaches of the regulations, in that they would directly affect the perpetrator of the offence and not a potentially innocent third party. However, given that there will be an appeals procedure and that if this went against the authority there could be financial implications for the authority, the judicial use of FMPs would be essential.

1.19 Proposal. Extending time limits for prosecution.

- 1.19.1 This is something that Building Control practitioners have long been asking for and has recently been granted in respect of Part L (Energy efficiency) only.

Q47 Do you agree that it would be useful to set the enforcement action time limits for all forms of formal enforcement at two years?

Our Response. Yes we very much welcome this proposal.

1.20 Alternative routes to compliance.

- 1.20.1 There are a number of options available to demonstrate compliance with the regulations which compliment the use of the local authority or AI. These include the use of Competent Persons schemes and there are a number of these schemes already in existence. At the moment they tend to cover mainly the 'building services' area of the regulations such as gas, electrics and replacing windows. Competent Persons schemes offer good protection to the consumer

through the provision of robust complaints systems and insurance backed warranties, together with support for the trades via training schemes. The government is committed to extending them wherever possible into new appropriate areas.

- 1.20.2 Other ideas involve 'Third Party Certification'. This can be identified as a third person (not LA or AI) taking responsibility for certifying compliance with the Building Regulations for parts of the project. This person would not have been directly involved in all or part of the work, but may be employed by the same organisation or contracted in by the developer.
- 1.20.3 Another idea might be the 'Pattern Book Approach whereby guidance might be produced similarly to what we now know as 'robust details' for certain repetitive types of construction.
- 1.20.4 In the case of medium or large projects a further idea is that there should be an 'Appointed Person' to assist with the identification of the ownership of a project and the delivery of information to the Building Control Body. The absence of a single person on site that was once the 'Clerk of Works' or site supervisor function sometimes makes for difficulty in checking for compliance as there is no clear line of responsibility. The role of the appointed person was envisaged in the amendment to the Building Act 1984 by the Sustainable and Secure Buildings Act 2004 and further developed in research commissioned by the Department.
- 1.20.5 There is little doubt that the current competent persons schemes have been very successful and indeed if they had not been in place it is difficult to see how building control bodies could have coped with the increased levels of plan checking and inspection that would have been necessary. However, care needs to be taken as to how these might be expanded and the thought is they should be limited to trades and professions where a robust trade association exists as now such as CORGI (gas) and NICEIC (electrical installations).

Q48 Are we right to continue with our current approach to encourage more schemes in the existing areas and to continue to approve Competent Persons Schemes in areas of structure, fire and underground drainage as built.

Q49 Do we need to do more to improve existing schemes than our current proposals (i.e. to require AKAS accreditation, encourage publication of leaflets, resolving data transfers and addressing difficulties.

Our Response. We agree that the current level of Competent Persons schemes have been a useful introduction to the system and that they should be limited to their current areas of use. Most of the other professional bodies for example Architects, Structural Engineers and Fire Engineers actually prefer to have the current independent check carried out by local authorities so we see no reason for them to be extended into these areas.

The current schemes have by and large now bedded in well and the data transfer has improved. That is not to say that it is perfect and we would welcome further work on this aspect.

1.21 Proposal. Investigate the case for other forms of certification.

1.21.1 The case for whole building certification has generally not been welcomed and indeed respondents to this idea over time have always been strongly opposed. The department has also looked at other countries where this has been tried recently (Norway) and noted that it has not been successful and that moves are afoot to return to the traditional independent verification by Building Control.

1.21.2 Notwithstanding the above point the case for looking at and extending third party certification by widening the use of properly regulated Competent Persons schemes does seem to have support throughout the industry. One example could be the certification of the fixed building services requirements of Part L but not to extend them to areas such as structure, fire and underground drainage.

Q50 Do you see any merit in whole building certification?

Q51 Do you think it is appropriate to develop third party certification, but only within the Competent Persons framework?

Q52. If yes into what areas.

Our Response. We agree that whole building certification should not be pursued and that the framework of the Competent Persons schemes is the right format to develop further particularly in the areas of building services.

1.22 Proposal Extension of the Pattern Book approach.

1.22.1 There has been broad support for the introduction of the pattern book approach as it is seen as being particularly helpful to builders in trying to meet the requirements of the regulations in a functional way. Building Control Surveyors get asked 'What do you want me to do' on an almost daily basis and really this revolves around the fact that most small builders find the regulations complex and difficult to understand. The use of a pattern book which gives clear details of standard construction, which, if followed would lead to compliance with the regulations would be difficult to argue against.

Q54 should the pattern book approach be extended?

Q55 what areas do you think the pattern book approach should cover?

Q56 Do you agree that a pattern book scheme could be developed to cover air tightness testing and accredited details for Part L in dwellings.

Our Response. It seems to us that the idea of some clear and simple guidance showing details of methods of construction would be of great benefit to builders. Potentially this could be an extensive task as there could be any number of equally acceptable construction methods for each detail. This may raise the issue of cost and who would be prepared to pay for such a service.

It is quite conceivable that pattern books could cover areas such as foundations, walls floors, insulation and roofs.

The current system of showing compliance with part L by registering with 'Robust Details' which are to all intents and purposes 'pattern books' already exists for part L and seem to work very well. However the idea that they could be extended to cover air tightness testing seems to be outside their useful remit, which if properly developed could be enormous.

1.23 Improved performance and capacity.

1.23.1 The introduction of private Approved Inspectors into the Building Control system, back in 1985 and extending it in 1997 caused a massive problem for Local Authority Building Control in that it was inevitable that a proportion of staff would be tempted to the private sector and indeed as a previous monopoly there was nowhere else for them to obtain staff other than from local authorities. This led to a sharp skills shortage within the building control profession which still exists to this day. Fortunately here at T&M we have had a strong training policy and we have embarked on a development programme within building control to provide for the future and to manage the experience profile within the service.

1.23.2 The fact that Building Control was fully open to competition meant that when the government developed performance indicators for most other sections, building control was left virtually untouched. In this context we have developed a range of Local Performance Indicators which we have introduced for ourselves. The government is therefore keen to look at ways to strengthen the performance management system and address the accusation that the presence of competition in the building control system acts as a barrier to delivering a quality service. It is also right that the question of the local authority charging regime is looked at in the light of this total review.

1.24 Proposal. Embed and develop the Building Control performance indicators.

1.24.1 The Government is committed to continue to work with stakeholders to enable them to review the effectiveness of the building control performance indicators as already set out in the performance standards. The Building Control Performance Standards Advisory Group (BCPSAG) has already set voluntary performance indicators from both public and private sectors and the results of these are expected shortly. The data will assist in demonstrating how the service is achieving national standards for the benefit of its clients.

Q67 Do you agree that we should further develop the building control performance indicators?

Q68 Do you have any further suggestions on how to improve the monitoring and performance of building control?

Our Response. We agree that a set of standards to which both public and private sectors are required to sign up to and be monitored on are developed. Only in this way will there ever be any transparency of service offered by both sectors for the benefit of the client. In any event Local Building Control Authorities should be encouraged to adopt local indicators appropriate to local circumstances and levels of activity.

1.25 Proposal. Strengthen the overarching performance management system.

1.25.1 It is the Government's view that local authorities and Approved Inspectors are best placed to identify their own development needs and how to address them either through building in-house capacity, or by supplementing in house skills with those from external specialist sources. With appropriate support it is hoped that building control bodies will put in place structures and adopt tools such as peer reviews or audits, across the two sectors to support and drive sustainable business improvement through shared learning and the development and dissemination of best practice.

1.25.2 If this is to work successfully we need a scheme which can span both sectors whilst not putting undue pressure on industry or local authorities and in line with the principles of better regulation.

Q69 Do you agree some form of peer review/audit for the reasons described here would be helpful.

Our Response. We have carried out service audits on aspects of the Building Control Service. However it would be helpful to have a common and readily applicable process in order to take such revisions further.

1.26 Proposal. Continue to promote industry standards in a competitive marketplace.

1.26.1 Government is keen to ensure there is open competition between local authority building control and approved inspectors, without artificial constraints. Also they do not want competition to drive down standards, instead they are keen to maintain and improve them. The view is that competition should be used to provide a greater stimulus to greater efficiency and higher levels of customer service. It is hoped that the Industry wide BCPSAG performance indicators will provide the means by which these can be achieved.

1.26.2 It has been suggested in the past that the AIs provide a lower level of service than LAs. However the legislation places certain duties on both. An AI is required to take such steps as are required to ensure the compliance with the regulations in the same way that LAs are.

1.26.3 The DCLG currently conducts no formal monitoring of AIs itself. Instead this is carried out by the Construction Industry Council (CIC) who also appoints AIs. This formal investigation of complaints is open to all involved in the building control process e.g. clients LAs and other statutory bodies. A range of sanctions can be applied including, ultimately, the removal of the AIs registration. LAs of course provide their own complaints procedure and if the client is still not satisfied the Local Government Ombudsman procedure.

Q70. Do you think these complaints procedures are fit for purpose?

Q71 how might they be improved.

Our Response. On the face of it the fact that there is a complaints procedure for both sectors is adequate. However, one might question the fact that the CIC is both the appointee and arbiter of AIs and whether or not this system really operates in a transparent fashion in the way LABC does.

1.27 Proposal. Promote shared approaches to working.

1.27.1 This is very much on the agenda both locally and nationally and has been highlighted by Best Value and CPA regimes of challenging traditional methods of delivery in order to drive efficiency. Currently T&M have started talks with our neighbouring authorities (Tunbridge Wells and Sevenoaks) to look at the possibility of providing collaborative services. This has the potential advantage of enabling better use of resources, developing staff, together with the potential for increased resilience. We are already providing some low level support to Sevenoaks to help them in this respect.

1.27.2 There are a number of other good examples such as the work we have done and continue to do through the LABC partnership scheme, and system approval. Other examples include things such as joint training arrangements, secondments, mentoring and study groups.

1.28 Proposal. Enabling a 'level playing field'

1.28.1 As mentioned above the government is committed to ensuring the presence of competition in the building control system and to seeing that this does not act as a barrier to delivering a quality service. It has, however, become apparent that there are a few variances between the public and private sectors which need to be addressed. It is therefore proposed to undertake a review of Approved Inspector regulations to determine how they operate. This will include the requirement for signatures on Initial Notices and notice of intent to local authorities. Survey result

show that around 80% of applications are handled by agents who typically sign applications on behalf of clients. It is felt that this might ease the burden for both LAs and AIs. On the other hand this removes the opportunity to encourage and educate the customer about building control. Similarly, the need for an AI to send a copy of their insurance certificate is being reconsidered. There would of course still be the facility for a local authority to check the validity of an AI via their registration through the CIC. In addition the distinction between an 'individual' and a 'corporate' approved inspector may be removed.

1.28.2 Another area to look at is the clarification of Regulation 10 which requires that an AI must not have a professional or financial interest in the work they are seeking to supervise. In addition the whole process of approval might be improved by reviewing and refining the circumstances with statutory consultations and approvals are required by both LAs and AIs. These proposals, along with others will be consulted upon later this year.

Q 73 Do you welcome the move to review the AI regulations in the following way.

- Remove the need for a signature of the person carrying out the work on an initial notice?
- Remove the need for a signature on the insurance certificate
- Simplify the approvals process by establishing a single class of AI
- Clarification of the regulation 10 requirement.
- Removal of some stages of statutory approvals.

Q74. Are there other areas covered under the AI regulations which you think should be covered by the above review.

Our Response. Local authorities have long asked for a level playing field for the building control function. We think it is right that the regulations governing AIs should be reviewed in the way proposed and we look forward to receiving the details in due course.

1.29 Proposal. Review of the LA building control charges regime

1.29.1 As an organisation LABC regards the current building control charges system to be inflexible, restrictive and uncompetitive, thereby contributing to the non-level playing field which is not good value to the public. The government is therefore currently reviewing the local authority charging regime and considering what more can be done to safeguard charges income.

1.29.2 Responsibility for setting charges was devolved to individual LAs in April 1999 (via the Building (Local Authority Charges) Regulations 1998) which provided for local authorities to directly reflect the full cost of carrying out their functions in their

charges, thereby encouraging more efficiency and competitiveness in the building control service. Although this has served the purpose reasonably well, LABC believes there needs to be more flexibility and has been particularly concerned about the requirement to pre-fix and publish all their charges in advance of handling any building control project. This has restricted their ability to set accurate charges based on their costs, particularly for larger projects which have led to over and under charging.

1.29.3 The review will therefore aim to introduce a more flexible regime i.e. reviewing what LAs charge for and how they set their charges. And better matching costs so that the LA building control service is adequately resourced. These proposals will include:-

- introducing a system for quotations for building control services in relation to major schemes
- Introducing a range of different factors for LAs to base their charges on and to remove the restrictions relating to charging according to the cost of work and floor areas.
- Removing the link between the charges for full plans and building notices and other prescribed functions and considering whether LAs should charge for other functions.
- More discretion to make reductions and refunds, including for green/sustainable projects and those using competent persons schemes.
- Clarification of the exemption relating to work for disabled persons

1.29.4 The review will also aim to introduce more transparency so that it is clear that charges income, including surpluses, is used to cover the cost of building control only. We propose to do this by:-

- amending the accounting requirements in the charges regulations
- issuing accounting guidance, and
- Clarifying the requirement for details of building control income and expenditure to be clearly indicated in the accounts, which auditors and others can monitor.

It is anticipated that these changes will be consulted upon later in 2008. However it would be helpful if consultees would respond initially on:

Q 75 Do you agree that the current local authority building control regime is inflexible and restrictive and is in need of review, particularly with regard to competition with approved inspectors?

Q76 Is there evidence that surpluses derived from LA building control charges is being used to fund other services within LAs?

Q77 Do you believe the proposals identified in paragraph (30.2) will provide the flexibility and transparency sought?

Our Response. The review of the charging regime is welcomed particularly in respect of the clarification of the statutory functions and other functions that might be charged for. An example of this might be SAP ratings.

We have reservations about the idea of discounts or refunds for green/sustainable projects as these are likely to be more complex and require a very high level of expertise to control. Again this is something that should be addressed by other government funding regimes.

For the other questions raised above we feel it would be best to wait and see following the promised consultation exercise noted above.

1.30 Legal Implications

1.30.1 None.

1.31 Financial and Value for Money Considerations

1.31.1 None (this to be the subject of a separate review).

1.32 Risk Assessment

1.32.1 None.

1.33 Recommendation

1.33.1 That Members note the detail of this report and give their endorsement to the responses suggested.

Background papers:

contact: Mike Ingram

Nil

Steve Humphrey
Director of Planning Transport and Leisure