

TONBRIDGE & MALLING BOROUGH COUNCIL

PLANNING and TRANSPORTATION ADVISORY BOARD

18 November 2009

Report of the Director of Planning Transport and Leisure

Part 1- Public

Matters for Information

1 THE FUTURE OF BUILDING CONTROL – PROPOSED IMPLEMENTATION PLAN

Summary

This report sets out the latest proposals from the Department of Communities & Local Government (DCLG) to make the Building Control system work better for both Local Authorities and the construction industry.

1.1 This recent Government publication is founded on a vision to ensure the that Building Control system is fit for purpose now and in the future due to its central role in delivering more and better homes and buildings, in addressing the challenge of climate change and sustainability and because it performs such an important service to the public at large. The document sets out how it is intended to do this: to limit changes to regulation to pre-published periodic review points and to set out a path to a formal risk-based compliance mechanism reducing unnecessary inspections by focusing on areas of greatest risk.

1.2 The Review is split as follows:

- A New Future for Building Control
- A Better Approach to Regulation and Guidance
- Modernising Inspection and Enforcement
- Reform of Disputes and Complaints
- Alternative Ways to Comply
- Strengthening Performance Management

1.2.1 This report sets out to comment on each of these in turn.

1.2.2 A New Future for Building Control

- 1.2.3 The document sets out a vision for Building Control to ensure buildings are safe, healthy, accessible and sustainable for current and future generations. To deliver this vision a Building Control system is required which:
- is based on objective and fair standards, developed through consultation and supported by clear guidance to aid compliance in common building situations and;
 - works with the customer to achieve a building project that meets both their expectations and building standards designed for the public good.
- 1.2.4 The document seeks to define more clearly what Building Control should and should not do. In response to previous consultations the vision has been revised to reflect more clearly that the building control service is responsible for ensuring safe, healthy, accessible and sustainable buildings, rather than being directly responsible for ensuring that building work complies with the building regulations. Such responsibility remains with the person carrying out the work and ultimately the building owner and this emphasis is reinforced. It should, however, be kept in mind that Local Authority Building Control is the only Statutory and Regulatory service open to competition from the private sector but is also the only body able to carry out formal enforcement of the Building Regulations. Successful delivery will require the engagement of a broad range of stakeholders in order to create and apply this new culture of compliance, responsibility and understanding.
- 1.2.5 The document also recognises the fact that the Development Control and Building Control systems are complimentary and that any lack of clarity and effective linkages between the two can cause problems and duplication for customers of both services. The DCLG is committed to making it easier for customer to navigate between the two services. They note that some good examples exist, for instance, pre-submission advice meetings, joint training and seminars and commenting on the planning/building regulation aspects of applications. Many of these examples of good practice are in place here at Tonbridge and Malling and there is a high degree of coordination which is of course lost when Building Control work is carried out by Approved Inspectors. The use of The Planning Portal, an on-line planning and building control information service, is seen as being an important tool to improve the exchange of information between the two services.
- 1.2.6 The plan further recognises the importance of 'right first time' seamless and accessible services and that the e-enabling has the potential to deliver a faster Building Control service that is more integrated with planning. The large majority of previous respondents supported this aim, whilst recognising the need to provide for those without access to the internet and the continuing need for paper plans for certain purposes.

1.3 A Better Approach to Regulations and Guidance

- 1.3.1 The DCLG is committed to keeping the Building Regulations and the supporting guidance as up to date as is reasonably practicable. However, it recognises that the previous piecemeal way of reviewing the regulations made it difficult to the industry and building control service alike to keep abreast of the regulatory changes, often requiring them to undertake training throughout the year just to cope with the frequent updates. In order to cope with this situation training and awareness sessions are regularly held by the Building Control team, in association with local construction sector people and users of the service.
- 1.3.2 It is therefore proposing to introduce a new regular and systematic way of reviewing the Building Regulations, to be known as the periodic review process. It is hoped that such an approach will reduce the burden of change and ensure the changes they introduce are proportionate, justified and transparent. This will make the changes easier for stakeholders to plan for and adapt to the technical changes. It will also provide clear signposting of future planned changes. The proposal is to now review the technical parts of the regulations in three yearly cycles with revisions in 2010, 2013, 2016 and onwards.
- 1.3.3 There has been strong support for some proposals to improve the guidance available to aid compliance, to apply a consistent style and structure to the current suite of Approved Documents and to introduce and encourage project guides. It is intended that the project guides will help those carrying out smaller projects to have a much clearer picture of what they need to do to comply across the suite of building regulations.

1.4 Modernising Inspection and Enforcement

- 1.4.1 It has been clear for some time now that the current 'statutory notifications' (inspection requests) no longer suits the ever more wide ranging job that the Building Control Service are now intended to achieve. The current system of inspection was born out of the old Public Health Acts and reflected the issues of those days such as structural stability, fire protection, sanitation and dampness. Whilst these are still very important requirements the Building Regulations now deal with a wide range of environmental aspects of buildings which have increased in more recent times such as thermal insulation, sound insulation and contaminated land and sustainability.
- 1.4.2 In considering a new inspection regime changes are proposed to reflect a move away from Statutory Notifications and Inspections to a more 'risk assessment' based set of inspections which can be tailored to suit each construction project. This would be accompanied by changes to the fee charging schemes made by local authorities. It is hoped that in this way professional judgement can be used to focus on the project, the builder employed and areas of higher or highest risk. The intention will be for Local Authorities to draw up a service plan for each job which will detail the likely stages of inspection following a risk assessment of

relevant factors. The recipients of these plans would then be legally required to notify the local authority so these inspections can be undertaken.

- 1.4.3 It will be interesting to see the detail in these proposals as I can predict problems with possibly charging different fees for similar jobs, depending on the builder to be used, the nature of the construction and possibly even the location.
- 1.4.4 A detailed consultation is planned for late 2010 on these and other changes which will include a full analysis of the costs and benefits of the proposed changes and their interrelationships.
- 1.4.5 Other proposed changes are being considered to the Building Notice system to further limit the scope of work that can be undertaken under the immediate commencement system and making completion certificates mandatory. At Tonbridge and Malling, it seems we have been ahead of this change as we have been adopting this approach since previous changes in 1995.
- 1.4.6 Another aspect of the proposed reforms is on the question of enforcement. The Government wants to ensure that there are sufficiently robust and flexible powers of enforcement in place to stop those who flagrantly or persistently do not meet the standards required by the Building Regulations. A common misinterpretation of the meaning of 'enforcement' is that it is only about the number of prosecutions recorded. Our adopted enforcement regime is by our 'intervention' on site by preventing or correcting breaches of the regulations before they have gone too far. We have recently adopted a recording mechanism which will allow future reporting on this aspect of our work.
- 1.4.7 Within the document there are proposals to bring in 'Stop Notices' and monetary penalties. These initiatives have been generally welcomed by some sections of the industry to deal with the worst areas of non-compliance, although it is also recognised that this is an approach of last resort and should not be allowed to become the normal means to achieve compliance. That is far better achieved in most cases by using our skills and reputation to shape projects in a correct fashion.
- 1.4.8 The DCLG has launched a study to examine in more detail how the use of these new sanctions might be made to work and we will have to wait to comment on the outcome of that study.

1.5 Reform of Disputes and Complaints

- 1.5.1 Effective dispute resolution is an important aspect of any regulatory system and is essential in supporting high level of compliance generally. It appears currently that most disputes are resolved between the parties themselves either directly or using the LABC arbitration service. It is acknowledged that very few are referred to the Secretary of State and at Tonbridge and Malling I am only aware of this ever occurring on one occasion. A large majority of stakeholders agree that the current statutory determination and appeal provisions are in need of reform and it is

proposed that a fast track alternative dispute resolution would be a welcome addition and would build on the already successful local and national arbitration system that is in place.

- 1.5.2 Complaints about the Local Authority Building Control service are fairly rare and again, I cannot recall one here at Tonbridge and Malling. However, it has been noted that there are currently two systems to deal with complaints one for the Approved Inspectors through the Construction Industry Council and another for local authorities, firstly through their own complaints procedure and of course through the Local Government Ombudsman. Competent person schemes are also required to have a robust complaints procedure in place in order to be authorised by Government.
- 1.5.3 There have been some suggestions that there should be one system dealing with complaints relating to Building Control, but it is recognised that this is not achievable at this time as it does not recognise the fundamental difference between Local Authorities and Approved Inspectors in terms of their governance and accountabilities. It is therefore a commitment to strengthen the performance management system for all building control bodies and it is hoped that this will provide a good opportunity to gain a better insight into the two complaints avenues and to ensure that performance standards are being maintained.

1.6 Alternative Ways to Comply

- 1.6.1 There are currently a number of paths that can be followed in the building control system to demonstrate compliance with the regulations. Besides the traditional route of making an application to the local authority by means of depositing full plans or a Building Notice, or by engaging the services of an Approved Inspector or making use of the current 'Competent Person's schemes, one can follow a 'pattern book' such as the ones registered by Robust Details Ltd to meet noise insulation standards.
- 1.6.2 The Government is committed to extending these approaches where there is a clear case for doing so and to explore other possibilities and mechanisms. For example the appointment of an 'Appointed Person' to encourage developers to take more responsibility for building regulation compliance.
- 1.6.3 It has been suggested that there could be an extension of the competent person's scheme (which currently includes matters such as electrical installations and glazing replacement) into new areas but with the exception of structure, fire safety and drainage.

1.7 Strengthening Performance Management

- 1.7.1 The Government does not wish to stipulate or impose reporting requirements on the Building Control service at large and believes it is for the service to demonstrate its own performance and effectiveness in achieving compliance and managing its own performance.

- 1.7.2 The Government is encouraging Building Control bodies to work together to find a way of self-regulating by collecting and analysing independent and verifiable performance information to show that they are delivering their functions effectively and that the generally high standards are not being compromised because of competition.
- 1.7.3 The Governments view is that a credible system will need to:-
- set appropriate indicators
 - Collect and analyse the performance data, including auditing and benchmarking
 - Publish and disseminate the results
 - Measure continual improvement.
- 1.7.4 This may be difficult to achieve given that Local Authorities and Approved Inspectors are coming at this from differing perspectives and this will be carefully examined to ensure a fair and proper comparison across the sectors is achieved.
- 1.7.5 The Government is keen to have evidence of compliance and to be able to show that Building Control is effective in achieving its wider remit. With this in mind we have recently (from 1st October) introduced a new form of recording our 'pre-contravention interventions' which we hope will help to demonstrate more clearly how we believe we 'add value' for all our customers, developers, builders and owners alike and to be able to show how our approach to enforcement is the right way to do business.

1.8 Legal Implications.

- 1.8.1 None arising from this report.

1.9 Financial and Value for Money Considerations.

- 1.9.1 None directly arising from this report.

1.10 Risk Assessment.

- 1.10.1 The emerging approach to Building Control encapsulated in the Governments current document would introduce a more risk based assessment to the delivery of our services. That will ultimately require a greater and documented level of risk in respect of each Building Regulation case.

1.11 Conclusion

- 1.11.1 It is recognised that no industry 'stands still' and building control is no different in this respect. The emerging approach will introduce a major change to the culture of Building Control. However, we will have to wait until the full details of this

current review are known before being able to assess the specific impacts it may have on our current service and its delivery and any changes that may be necessary to achieve the reviews aims and objectives.

Background papers:

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Nil

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