

Committee:	Development Management Committee
Date:	Tuesday 15 <sup>th</sup> July 2008
Subject:	INFORMATION REPORT – The Future of Building Control CLG Consultation
Responsible Officer:	Head of Development Management and Building Regulations, Andy Parsons
Portfolio Holder:	Portfolio Holder for Planning, Development and Enterprise, Councillor Marilyn Ashton
Exempt:	No
Enclosures:	None

## **Section 1 – Summary**

This report is to inform Members of the Department for Communities and Local Government consultation paper on the Future of Building Control

It is recommended that Members note its contents

**FOR INFORMATION**

## **Section 2 – Report**

### **Introduction**

2.1 On 18<sup>th</sup> March 2008, the Department for Communities and Local Government published a consultation paper on the Future of Building Control, which sets out a package of options they are minded to develop further and

invited interested parties to provide suggestions on how the reform should proceed.

The publication follows detailed discussions with key members of industry on the strengths and weaknesses of the current system, which highlighted the strong case for reform.

The paper recognises a number of important shortcomings with the current system including the lack of a clear future vision for the purpose of Building Control, the current piecemeal approach to regulatory change and the complexity of guidance. Problems with achieving compliance and with effective enforcement are also highlighted as key areas for action.

The consultation is broken into 5 sections:

- A Vision for Building Control
- A Better Approach to Delivering Regulations and Guidance
- Modernising Inspection and Enforcement
- Alternative Routes to Compliance
- Improved Performance and Capacity

### *Consultation*

## **2.2 A Vision for Building Control**

There is a general concern from Government and stakeholders that there is little in terms of a guiding strategic vision for the future of building control – what it is for, how it should operate and how it needs to be supported to develop in the future.

It is suggested that the Government, Local Authority and private sector Building Control bodies, industry and customers need to work together to develop a high-level vision that sets out shared ambitions for the system and how we will all work within it.

It is this shared vision that will drive the work programme of the Government's Sustainable Buildings Division to improve the way the system operates and ensure that the Building Control industry and others who use the system are properly supported in their efforts to ensure compliance. For Building Control Bodies, the vision will set the framework for operations and provide additional impetus to examine how they could work better, reflecting on the likely risks and opportunities of the future.

For users of Building Control, it will set out what they can expect from the

service. Suggestions including the possible creation of a customer focussed, seamless and accessible planning and building control service, with better use of the internet, one-stop shops, closer working between services, and a collaborative approach to climate change challenges. Harrow Building Control have already adopted elements of this approach by checking certain planning conditions, attend planning pre-application meetings, and joint working on sustainability issues, to benefit the service users.

The suggested vision in the consultation paper is:

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

To deliver this vision it is suggested that building control bodies need a 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 that the level of inspection is appropriate to the risk and need
- Gives local authorities the powers needed to enforce 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

It is also suggested that Building Control bodies need to be clear with their customers to ensure they understand that they do 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 builder. Ultimately, compliance is clearly the responsibility of the person carrying out the work
- Address issues such as the finish and aesthetics of the final project where these are not Building Regulations 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.

### **2.3 A Better Approach to Delivering Regulations and Guidance**

It is suggested that a more open and transparent system is created to give

industry more time to prepare and innovate, and ensure better compliance. The proposal is to have a 3-year fixed periodic cycle for the review of the Building Regulations where changes would be made across the full body of the regulations. A further intention is to introduce a standstill period of six months between publication of the new legislation and its implementation. This will allow time to rollout a robust implementation strategy covering training and raising awareness for both Building Control and industry.

Other discussion points under this area are whether there is a need to:

- Rename, revise and reduce Approved Documents
- Produce project guides
- Establish criteria for reference to third-party documents &
- Make best use of the Planning Portal

#### **2.4 Modernising Inspection and Enforcement**

It is proposed to create an inspection and enforcement regime that can operate effectively to meet rising demands on the Building Control system and help achieve good levels of compliance with the regulations.

In particular, the Government is concerned that compliance in areas such as energy efficiency is often perceived to be lower than is the case for the traditional health and safety related regulations. Stakeholders also suggest that Building Control Bodies tend to focus on issues that are critical to safety, such as structure and fire, at the expense of newer regulations such as those relating to sound insulation, air tightness and energy efficiency. Reasons for this include pressure on resources, a lack of understanding of the new regulations, and because they do not have enough information about the project. It is also suggested that the public tend to be more concerned about life safety issues than energy efficiency.

It has been identified that current Building Control enforcement powers are restrictive and it is proposed to:

- Remove statutory notifications and move towards a risk based assessment process
- Allow Building Control to issue stop notices
- Allow Building Control to issue fixed monetary penalties &
- Extend time limits for prosecutions to two years

This would enable Building Control bodies to have a more robust enforcement policy.

## **2.5 Alternative Routes to Compliance**

There are a number of options available to demonstrate compliance with the Building Regulations that complement the traditional route of engaging the services of Local Authority Building Control. These include, for certain building works, using a Competent Persons scheme or the application of a Pattern Book approach, such as the one provided for sound insulation by Robust Details Ltd.

It is proposed to determine whether the existing system of determinations and appeals is effective. The Government have suggested an alternative that would speed up the appeals process. They will work with the Building Control Alliance (BCA), which brings together the representative organisations of private (ACAI) and local authority (LABC) building control bodies, along with the ABE, RICS and CIOB, to deliver such a scheme. This would offer a simple, consistent process with quick turnaround times through a review of the case by a panel of private and public Building Control professionals and a consumer or design representative. The scheme would be available in relation to all Building Control disputes at any stage of the plans or building work process.

## **2.6 Improved Performance and Capacity**

Stakeholders are concerned that barriers to improved performance are not picked up because of a lack of performance information. In the absence of specific objective evidence it is difficult to communicate what Building Control is for and uphold the added value of the profession.

The Government therefore proposes to:

- Embed and develop the Building Control performance indicators
- Strengthen the overarching performance management system
- Continue to promote industry standards in a competitive marketplace
- Promote shared approaches to working and,
- Enable a level playing field (removing some of the restrictions placed on local authorities)

There is also to be a review of the local authority Building Control charges regime. The LABC regards the current Building Control charging system to be inflexible, restrictive and uncompetitive, thereby contributing to a non-level playing field, which is not good value for the public. In addition, there is concern that resources, which should be used to fund LA Building Control functions, including supporting services such as recruitment, training and development, appear at times to be used for other purposes. The Government is therefore

currently reviewing the local authority Building Control charging regime, and is considering what more can be done to safeguard charges income.

The consultation identifies that the annual monitoring exercises carried out by the Government have shown that some LAs have consistently set unnecessarily high charges which have generated significant surpluses (i.e. income over costs), and that the Government is concerned that this money may have been used for other local authority services instead of being reinvested back into the Building Control service (i.e. either by offsetting against future costs, resulting in reduced charges, or used to improve the quality of delivery of the Building Control Service). LAs are not empowered under the charges regulations to levy charges other than for the purpose of recovering the costs of carrying out their prescribed Building Control functions. In the Government's view, if charges are fixed which are consistently disproportionate to the cost of the Building Control functions performed, this means that LAs may be acting outside of their powers to charge. Some Local Government Auditors have also made findings to this effect in relation to some authorities.

The Government aims to introduce into the Building Control charging system more flexibility and accuracy, i.e. reviewing what LAs charge for and how they set their charges and better matching charges with full costs of functions so that the LA Building Control service is properly resourced. These proposals include the possibility of:

- Introducing a system for quotations for charges for Building Control services in relation to major schemes;
- Introducing a range of different factors for LAs to base their charges on and removing the restrictions relating to charging according to estimated cost of the work and floor area;
- Removing the link between charges for Full Plans, 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 Person Schemes;
- Clarification of the exemption relating to work for disabled people.

Again the Government aims to introduce more transparency so it is clear that charges income, including surpluses, are used to cover the cost of providing Building Control only. They 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 LA accounts, which auditors and others can monitor.

### **Legal Implications**

- 2.7 This consultation clearly indicates some risks and benefits to the Authority. Further enforcement powers and a simplified appeals process are likely to enhance the Building Control Service, however greater legal restrictions on the use of Building Control income may have financial implications for the Authority.

### **Financial Implications**

- 2.8 The consultation paper is looking at changing current legislation to ensure all Income and Expenditure is ring fenced within the Building Control Trading account. Current Legislation allows surpluses from the Building Control account to be used to subsidise other Council Services. Recent Government Guidelines and Council Auditors are currently trying to address the issues of their perception that use of this income outside of Building Control account is an illegal Local Tax benefit.

### **Performance Issues**

- 2.9 The proposals suggest that performance should be improved by removing barriers and restrictions, and putting better monitoring and performance systems in place. This would benefit all stakeholders and service users.

### **Risk Implications**

- 3.0 Based on the suggested changes to the Building Control service, the only risk to this Authority relates to the possible restricted use of Building Control income and surpluses as stated above.

## **Section 4 - Contact Details and Background Papers**

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Background Papers: The Future of Building Control – Consultation by CLG  
This can be accessed via the Communities and Local Government website at:  
[www.communities.gov.uk/futurebuildingcontrol](http://www.communities.gov.uk/futurebuildingcontrol)