

## **EAST AYRSHIRE COUNCIL**

### **DEVELOPMENT SERVICES COMMITTEE - 29 JUNE 2004**

#### **CONSULTATION ON THE INTRODUCTION OF NEW FEE AND PROCEDURE REGULATIONS SUPPORTING THE BUILDING (SCOTLAND) ACT 2003**

##### **Report by Executive Director of Development and Property Services**

## **1. PURPOSE OF REPORT**

- 1.1 To inform the Committee of a further consultation paper by the Scottish Executive on the detailed fees and regulations which support the Building (Scotland) Act 2003.

## **2. BACKGROUND INFORMATION**

- 2.1 Members will recall previous consultations on the introduction of a new system of Building Standards in May 2002 and October 2003. This new consultation relates to the detailed implementation of the new system which comes into force in May 2005.
- 2.2 Principles already established from the earlier consultation were;
- a system of certifiers (external) who certify that a construction element or design meets the Building Standards;
  - a system of verifiers (local authorities for the time being) who verify that every application meets the Building Standards;
  - a strengthened enforcement role for local authorities;
  - setting up of a Scottish Building Standards Agency to advise on compliance with the Building Standards
- 2.3 The Council has broadly supported these changes and this new consultation covers their detailed implementation which is commented upon below in Section 3.

## **3. PROPOSED CHANGES**

### **3.1 BUILDING WARRANT PROCESS**

3.1.1 There are four major proposals.

- (1) verifiers will be appointed for an initial period of 8 years;
- (2) a verifier (local authority) may not deal with a proposal in which they have an interest unless directed by Scottish Ministers;
- (3) certifiers of design and construction will be appointed by the Scottish Building Standards Agency;

- (4) the requirement for a specific number of site inspections has been removed in lieu of a risk assessment approach.

***This clarification is welcomed but there is no certainty regarding the verification role of local authorities for their own developments. This needs to be resolved quickly by Scottish Ministers well before the implementation date of May 2005.***

### **3.2 BUILDING STANDARDS ASSESSMENT**

- 3.2.1 It was originally proposed to make property transactions easier by surveying the building to verify that the building complies with the current Building Standards through a Building Standards Assessment. This would have informed new prospective purchasers of the status of both approved and unapproved work in relation to current Building Standards. This is not being introduced at present and letters of comfort will remain as the alternative until there is further clarification.

***This is regretted and it is hoped that further clarification is provided quickly.***

### **3.3 UNAUTHORISED WORK**

- 3.3.1 Work started without a warrant can now be dealt with in two ways. A verifier can now accept a late application for a warrant at any time before a completion certificate has been accepted for the work. It is expected this will become the normal way of dealing with such cases, particularly where the person doing the work has not understood the legal requirement. However the application must be judged against the regulations and guidance current when the application is made.
- 3.3.2 A second alternative is that a completion certificate may be submitted after the work is complete, and a warrant is not required. However, the completion certificate must be submitted with full drawings as for a warrant application, and the fee will take account of the difficulty the verifier has in establishing whether the as built construction actually meets the regulations.

***In addition, the regulations against which such an application will be judged are those at the time the completion certificate is submitted.***

### **3.4 DANGEROUS BUILDINGS**

- 3.4.1 Building owners remain responsible for their buildings when they fall into a dangerous condition. The powers given to local authorities by the Act does not diminish this responsibility, but merely provides a 'safety net' that must be used to protect the public when it appears to a local authority that, for whatever reason, a building owner has failed in the duty to fulfil this responsibility. The powers available to the local authority are wide-ranging and can be applied to any structure that meets the definition of a building within the Act.

3.4.2 Consequently, where a local authority becomes aware of a building that constitutes a danger to persons in or about the building, or to the public generally, or to adjacent buildings or places, then it has a duty to act. The local authority **must** carry out such work (including if necessary demolition) as it considers necessary to prevent access to the dangerous building and to any adjacent parts of any road or public place which appear to be dangerous because of the state of the building. Any other work considered necessary for the protection of the public and persons or property in places adjacent to the dangerous building must also be carried out. Where urgent action is needed to reduce or remove the danger the local authority may, after giving the owner such notice (if any) as the circumstances permit, carry out the necessary work, and recover the costs from the owner.

***This is an important role for local authorities which is not significantly different but requires to be adequately resourced.***

### **3.5 DEFECTIVE BUILDINGS**

3.5.1 Section 87 of the Civic Government Act 1982 has been repealed and replaced with the Defective Buildings Notice. The inclusion of this type of repairs notice within the Building Standards System will allow action to be administered on a building owner in cases where a local authority considers that a building has defects that require to be dealt with to prevent significant deterioration. The Act describes the defects that can be dealt with as those which require rectification in order to bring the building into a reasonable state of repair having regard to its age, type and location'.

***This power is welcomed as another opportunity to improve the condition of buildings but again adequately resources are required to ensure proper implementation.***

### **3.6 THE BUILDING STANDARDS REGISTER**

3.6.1 The proposals introduce a Building Standards Register which is a detailed register providing all verification and enforcement information which must be available to the public and open for public inspection at all reasonable times. The basic register information and decisions must be kept in electronic format, accessible by the internet, and drawings, specifications, certificates and other information must be available for inspection during normal office hours. Accessing information held on the register is proposed to be free of charge, however, a fee can be set for the provision of copies of documents and entries in the Building Standards Register.

***This authority has made some provision for electronic registers but the second phase regarding on line submission of applications is subject to a submission under MGF3.***

## **4. CONCLUSION**

4.1 Whilst the proposed changes are generally supported the following concerns remain;

- the short time scale for the transition to the new regime
- the uncertainty regarding funding particularly in relation to enforcement
- the opportunities for retrospective applications may tempt some to ignore compliance prior to construction
- the uncertainty around Councils being given the role of processing applications for work undertaken by the Authority

4.2 Finally given the extent and significance of the proposed changes from the current system it is recommended that advance publicity should be undertaken by the Building Standards Agency.

## **5. FINANCIAL IMPLICATIONS**

5.1 At present fees are set at a level that attempts to fund the whole service. The proposal is to increase fees by 11.5% to provide transitional support and to recover the extra costs incurred in the verification role. Enforcement of dangerous buildings is not funded through fees and the Executive must make appropriate provision in the GAE. The Council should pursue the ring fencing of any contributions with the Scottish Executive in the first instance. It will be important if this does not happen to address this in the Council's own budgetary process.

## **6. PERSONNEL IMPLICATIONS**

6.1 A report will be issued to the Corporate Governance Committee on the implications of the new Act and its associated regulations.

## **7. RECOMMENDATIONS**

7.1 It is recommended that the Committee;

- (i) note the contents of the report;
- (ii) authorise the Executive Director of Development and Property Services to submit a report to the Scottish Executive on the Councils views as contained in Section 3, 4 and 5.

**James Lavery**  
**Executive Director of Development and Property Services**

4 June 2004

FV/AN

## **LIST OF BACKGROUND PAPERS**

1. Building Standards (Fees) (Scotland) Regulations Introductory Paper
2. The Draft Building (Fees) (Scotland) Regulation 2004
3. Building Standards (Procedure) (Scotland) Regulations Introductory Paper
4. Building Standards Procedure Handbook
5. The Certification Scheme proposals
6. The Draft Building Standards (Procedure) (Scotland) Regulation 2004
7. Minutes from the Building Standards Forum
8. Review of Building Control Committee Report:- 6th May 2002
9. Review of Building Control Committee Report:- 23<sup>rd</sup> October 2001

Anyone wishing to inspect the above papers please contact David McDowall on (01563) 576749.

Implementation Officer: Alan Neish