

EAST AYRSHIRE COUNCIL

DEVELOPMENT SERVICES COMMITTEE: 7 MAY 2002

REVIEW OF BUILDING CONTROL

Report by Director of Development Services

1. PURPOSE OF REPORT

- 1.1 To present to Committee a consultation by the Scottish Executive on the proposals for Improving Building Standards.

2. BACKGROUND

- 2.1 In July 2001 *Improving Building Standards*, a Consultation Paper on the Scottish Executive's proposals for the future of building standards in Scotland, was published and formed the basis of a consultation which lasted until the end of October 2001. At the Development Services Committee on the 23rd October 2001 a report into the review of Building Control was presented which welcomed the changes and provided constructive criticism of the proposals. This report formed the basis of East Ayrshire response to the consultation.
- 2.2 The outcome of the consultation response, was generally supportive of the Executive's Proposals and is summarised in the background Papers. The Consultation paper *Improving Building Standards*, published in March 2002 sets out the Executive's proposals for the future of building standards. The proposals are substantially the same as that specified within the "Review of Building Standards"; although there are areas in which the proposals have been changed in response to the previous consultation and indeed East Ayrshire Council's response.

3. PRINCIPAL CHANGES

- 3.1 The key changes between the current consultations and that of the June 2001 are as follows:-
- the removal of the proposal that an owner may start work before a warrant is granted,
 - surveys undertaken by the verifier or local authority need not require notification and may be disruptive as well as non-disruptive where circumstances warrant; and the
 - extension of the role of the Scottish Building Standards Agency (SBSA) to require it to audit and regulate the approved Certifiers of design and installation.
- 3.2 Comment:-
- 3.2.1 The initial proposals to commence work prior to the approval of a Building Warrant being granted was fraught with major problems and would have

diluted the entire Building Warrant process. Consequently, this change now links well with the other proposals.

- 3.2.2** Where work will be certified by an approved third party designer or installer those areas of work can be randomly checked by the Local Authority. This will ensure that there is no room for complacency within the building design, therefore maintaining the levels of Building Standards required for Approval.
- 3.2.3** The proposals to carry out a detailed auditing process for approved Certifiers of design and installation should be welcomed. This will provide a mechanism to ensure that the Certifiers are continually monitored to maintain the high standards required.

4. CONSIDERATION OF OTHER MATTERS ARISING

4.1 Duties and Responsibilities

In relation to all construction works carried out which are subject to Building Warrant Approval, the owner will be responsible for ensuring compliance with the requirements of the Act. Therefore, it is important that all owners are aware of the legal responsibility placed on them to ensure that he/she complies fully with the Building Standards. This responsibility applies even where the owner has commissioned a professional building adviser or contractor to design, co-ordinate and carry out the works.

- 4.2** It is agreed that this is most appropriate route for the Act to follow. However, currently the general public has little knowledge of their responsibilities as owners under the present Act. This has led to disputes between the owner and the contractor over both quality of workmanship and areas of non-compliance and the subsequent perception that Building Control should take the responsibility for contractors failings. This has no legal bearing, but often results in Building Control Surveyors providing guidance on methods of compliance.
- 4.3** To raise the public perception and ensure that building owners are aware of their responsibilities under the Act a greater public awareness of the legislation and the implications of carrying out work both with or without building warrant approval is required. Therefore, raising awareness within the general public must be included within the SBSA remit and detailed guidance provided. This type of guidance must be in simple language and targeted at all potential stakeholders.

4.4 Process

The proposals suggest that the Verifier can take enforcement action in matters relating to the occupation of a new building, or residential accommodation newly created by conversion, before the acceptance of the completion certificate. The exception to this being where the verifier had stipulated conditions on acceptance and where those conditions are explicitly stated to be no impediment to the occupation of the building. This proposal should be expanded to cater for major alterations and extensions to buildings

having similar enforcement criteria. When dealing with altered and extended buildings the level of risks to the occupiers can be as high as that for new buildings which have not been accepted by the verifier.

4.5 The legislation, when drafted should ensure that the enforcement action available to the verifier is meaningful and has sufficient force when applied to completely deliver the action and act as a deterrent to other parties who regularly flaunt the existing system. Moreover, any fines attributable to the enforcement action must be significant both to act as a deterrent and to underpin the enforcement action specified.

4.6 Building Warrants

A local authority will be able to serve a stop notice where work is ongoing and no building warrant has been applied for. This proposal is to be welcomed but should be extended to where the Building Warrant has not been granted. The levels of unauthorised works would be greatly reduced where the enforcement powers could act as a deterrent as mentioned in 4.5.

4.7 As an aim to standardise the existing practice of issuing “Letters of Comfort” all unauthorised building work will require to be subject to a Building Warrant in retrospect. All retrospective building works will require to comply with the building standards current at the application submission. This proposal will act as a deterrent to carrying out unauthorised work and assist to facilitate property conveyancing. However, there have been no proposals to cover the validity of existing “Letters of Comfort” previously issued by local authorities. This must be clarified as it has a major impact on the private housing market, which has relied on this service for the last 25 years.

4.8 Where a local authority identifies fault or omission in an application for a completion certificate, which has been approved, it will have the power to require the owner to take remedial action. In the event that the owner fails to take such action, the local authority will have the power to undertake the work itself and recover the costs from the owner. Clarification is required for this proposal as it suggests that the Local Authority can take remedial action after the work has been completed which can be a considerable time after the building has been occupied.

4.9 Responsibilities of Local Authorities

In addition to its Building Warrant and enforcement role, the local authority will also be able to provide a building standards assessment service when requested to do so by a owner. The assessment will be prepared to a consistent national format and will provide an additional income service for the local authority. However, the Consultation document offers no guidance on the specifics of the Assessment and therefore further guidance must be offered on the actual proposals.

4.10 The local authority will be able to serve a repairs notice on the owner, or owners, of a building which is in disrepair and where there is a significant impact on public health or safety, or its condition is likely to affect neighbouring properties significantly. Where an owner or owners disregard a

repairs notice, the local authority will have discretionary power to undertake work necessary to address the requirements of the notice and recover the costs from the owner.

4.11 Currently, Repairs Notices can be issued under Section 87 of the Civic Government (Scotland) Act 1982. It is proposed that this remit will be introduced under the proposed Act and consequently linked into the Dangerous Building process. The objective is to reduce the number of properties, which fall into disrepair and ultimately become structurally dangerous. However, clarification is required whether the issue of a Notice will attract grant assistance and supplementary funding.

4.12 Building Standards Register

The proposals develop the concept of a public register which aim to maintain an accurate record of buildings subject to building warrant approval, unauthorised building works, repairs notices, dilapidated buildings and dangerous buildings. This information will be recorded centrally and be available to the public at a charge which will be prescribed by the Scottish Ministers. However, to ensure that the Register is linked directly to the government's e-governance pledge of access to information it is suggested that it should be consistent throughout the 32 Councils. Therefore it should be in a computerised format and have a comprehensive property portfolio of records from a specific date as agreed with the Scottish Executive i.e. 1975.

4.13 Approved Certifiers of Design

It is proposed to include Approved Certifiers of Design within the new Act. However, it is not clear from the consultation document the level of information that the Certifier will require to provide the Local Authority on submission of a Building Warrant. In order that the Local Authority can be satisfied that the design achieves the requisite certification, detailed plans, specification and calculations must be submitted along with the application. This will allow the application to be efficiently processed. In addition this will assist the local authority's role where the certificate is challenged when the Approved Certifier has not performed their role correctly.

4.14 In addition, the fee structure for the building Warrant process may differ where Approved Certifiers are adopted on a construction project. However, where the local authority requires to challenge the approved Certifier when they have not performed their role correctly the fee structure should ensure that the local authorities involvement is remunerated accordingly.

4.15 Approved Certifiers of Installations

The consultation paper does not clarify the overall extent of Approved certification within the construction industry. Therefore clarification should be provided on the limits of installation certification.

4.16 Functions and Duties of the National Agency

It is proposed that the SBSA will provide adjudication in a dispute between the owner and either the local authority or the verifier about the extent to which a building or design meets the building standards. However, the Regulations proposed must ensure that adjudication is provided between the local authority or the verifier and the Approved Certifier of Design or Installation to ensure consistency.

5. LEGAL, FINANCIAL AND POLICY IMPLICATIONS

- 5.1** It is difficult to anticipate the likely staff implications due to the large variations in the proposed processes.
- 5.2** The proposed Fee Structure for all types of Building Warrant applications within Scotland has not been specified within the consultation paper but it is noted that the fee structure will be designed to cover all the costs involved.

6. RECOMMENDATIONS

6.1 It is recommended that the Committee:

- (a) Approve the contents of the report; and
- (b) Authorise the Head of Planning and Building Control to forward the comments set out in this report to the Scottish Executive;

Stephen Chorley
Director of Development Services

18 April 2002
(DMcD/IMB)

BACKGROUND PAPERS

- 1. The consultation paper “Improving Building Standards” (July 2001)**
- 2. Summary Of Responses To Improving Building Standards Consultation Paper (July 2001)**
- 3. The consultation paper “Improving Building Standards:- Proposals” (March 2002)**

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

Implementation:Officer: Alan Neish

AGENDA