

EAST AYRSHIRE COUNCIL

DEVELOPMENT SERVICES COMMITTEE: 23 OCTOBER 2001

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 Review of Building Control.

2. BACKGROUND

- 2.1 The Consultation paper Improving Building Standards, published in July 2001 is the first comprehensive review of the Building Control Function since the inception of the Building (Scotland) Act following the Guest Report in 1957. This paper supports a previous consultative exercise by the Scottish Executive, which was reported on August 2000.
- 2.2 The consultation paper provides detailed recommendations which the Scottish Executive propose to introduce to develop a consistent national approach which will aid development, maintain public interests and reduce the inconsistencies currently experienced.

3. CONSIDERATION OF ISSUES

3.1 Scottish Building Standards Agency

The Consultation paper proposes that the Building Standards in Scotland are co-ordinated by a single National body called the Scottish Building Standards Agency (SBSA). The SBSA will be accountable to Scottish Ministers and in turn answerable to the Scottish Parliament and sits between the Scottish Executive and the 32 local authorities. Scottish Ministers will maintain their role in providing political direction in defining which issues of public interest should be covered by the Building Standards. Local Authorities will maintain their current role as verifiers of building design requiring building permission and be accountable both to stakeholders and the SBSA. The name "Building Control" being replaced with "Building Standards".

- 3.2 The SBSA role will consist of auditing and monitoring the competence of local authorities fulfilling their building standards function. This role will also include the research, development and preparation of guidance and procedural documentation in support of the national building standards. In addition, this body will provide adjudication on major technical issues under dispute, set a national fee structure, verify that Crown buildings meet the Building Standards and maintain registers for both Approved Certifiers of Design and Approved Certifiers of installations.

3.3 Comments:

These proposals will reinforce the evolution of the building control system which has taken place in recent years by improving the consistency with which standards are applied and the effectiveness of review mechanisms.

3.4 Building Standards - Scope

The proposals recommend that the building standards should be harmonised throughout the United Kingdom. Therefore, standards will apply to all new buildings, and to alterations, extensions, changes of purpose group, and where work is required under other legislation. Routine maintenance and repairs are excluded as will be issues related to the quality of construction except in so far as the control of quality is necessary for the effective functioning of the building in respect of building standards. In addition, Building Standards should exclude issues more correctly covered by the planning legislation but will be the benchmark for all other legislation or guidance related to buildings e.g. licensing, housing standards, environmental issues or programmes to improve the building stock etc.

3.5 The aim of the Building Standards will also include provision for research into development of sustainable building technologies and into the role of building standards in increasing the extent of sustainable construction. It is also suggested that research should be continued into other issues which might be considered to merit inclusion within the standards, in particular measures for crime prevention, the alleviation of fuel poverty, and flood prevention.

3.6 Comments:

- The issue of Cowboy Builders and the quality of construction work have not been brought within the building standards system as originally suggested under the consultation exercise. It is suggested that a national insurance scheme should be introduced for the construction industry. This could regulate the small buildings projects which concern domestic users. The local authority in partnership with the Scottish Building Standards Advisory could help provide a monitoring system as a check on this process. This would help to reassure that Cowboy Builders are identified, controlled and measures implemented to reduce unnecessary hardship to the public during building work.
- The commitment to maintaining research into development of sustainable building technologies is welcomed.

4 Building Standards – Form and Responsibilities

4.1 The Buildings Standards will be written in the form of expanded functional standards, and it is these which are proposed to be made mandatory. The functional standards are a statement of a function that the building should fulfil in order to satisfy the public safety objectives. The expanded functional standards will be accompanied by a set of advisory performance requirements, which will be developed from the existing technical standards. Advisory prescriptive specifications are proposed for the most common building works often found in residential accommodation.

- 4.2** As with the current system the owner (dutyholder) retains the responsibility to ensure that the construction works carried out comply with the Building Standards. However it is proposed that the owner should be given the option of accepting more flexibility in exchange for greater professionalism and an acceptance of a greater share of the risk. This will permit the dutyholder to apply for a Building Warrant and begin work when requested to the local authority, even before a building warrant is granted, provided the local authority have no reason to believe that the duty holder will not comply with expanded functional standards. The range of methods of compliance with the building standards will therefore be increased to include both prescriptive and performance based standards.
- 4.3** The verifier (local authority building standard surveyors) will have the discretion to inspect any aspects of the building work during construction. The duty holder must ensure that they have submitted a completion certificate confirming to the verifier that they have complied with the building standards. Prior to occupation the local authority must be satisfied that the works fully comply with the building standards. It is also proposed that it will be an offence (Subject to court action) to occupy a new building before the acceptance of the completion certificate by the verifier. It is also recommended that responsibility for verifiers lie with the local authorities at this time but privatisation has not been completely ruled out for the future.
- 4.4.** These proposals also enable local authority verifiers to support another local authority who have identified through the best value process that their own resources are not able to meet the demands of the construction industry within their area. An example of this would be where the local authority has a major development in its area and has not the technical expertise or staff resources to meet the increased demand. Obviously the benefit of sharing resources in this fashion will require that the income for the particular project be proportionally divided amongst the participating Councils.
- 4.5.** Another key change relates to the introduction of Approved Certifiers of Design and Installations, which introduces a degree of self-certification into the Building Standards system. The use of Approved Certifiers of Design will reduce the amount work for verifiers in terms of site surveying of projects. However, with this comes reduced income for the local authority and potential problems at the end of the development where the Approved Certifiers assessment is at odds with verification carried out by the local authority. Whether this is a benefit to the public safety for the buildings end user is therefore debatable.
- 4.6. Comments:**
- The change from prescriptive standards to functional standards will be beneficial to the designer and offer more flexibility in the selection of design techniques and materials adopted. But it is apparent that while change to functional standards may be appropriate for large multi-million pound projects, they are inappropriate to 99% of the small projects with which Building Control continually cater for. Prescriptive standards will continue to have a valuable place in the system.

- The suggested concept of commencement of work without benefit of Building Warrant Approval is a system which in practical terms will not work effectively given the current experience of the construction industry. As an alternative it is suggested that the Staged Building Warrant process currently contained within the existing legislation should be developed to maintain the levels of service, which the developer demands.
- The paper maintains that future consideration will be given to the privatisation of the local authority verifiers. Currently, this proposal is operating within England and Wales. The impartiality, accountability and access to enforcement procedures must be a role, which is not diluted by placement wholly, or partially within the private sector otherwise concerns over the public interest will arise.
- The introduction of Approved Certifiers of Design (ACD) is a move for the entire construction project to be self certified by a third party outwith the local authority. Given current experience with private companies providing architectural and building consultancy advice, major concerns arise over the independence of the ACD given the financial pressures on private companies to meet their client's financial objectives. Therefore the public interests in respect of health and safety matters would not be well served by this process. In addition projects which are subject to other legislation such as Licensing may well provide conflict with local authorities where building standards identify that a building fails the minimum criteria already approved by the ACD.

4.7 Buildings in Use – Letters of Comfort

The proposals develop the concept of a public register which aims to maintain an accurate record of buildings subject to building warrant approval, repairs notices, dilapidated buildings, dangerous buildings, and unauthorised building works. This information will be recorded centrally and be available to the public free of charge thus linking with government's e-governance pledge of access to information.

- 4.8** 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. There are no proposals to cover the validity of "Letters of Comfort" previously issued by local authorities. In addition, the local authority will also be able to provide a building standards assessment service, prepared to a consistent national format, when requested to do so by a dutyholder which will provide an additional income service for the local authority.

4.9 Comments:

- The proposals to develop a free Building Standards register will provide a single source of accurate public information for property conveyancing transactions.
- The replacement of “Letters of Comfort” with Retrospective Building Warrant Applications will standardise the property conveyancing transactions and assist to reduce unauthorised works.

4.10 Liaison with Planning

The concept of integration of Planning and Building Standards functions has been developed further through this paper to ensure that there is an increased positive approach to development. In particular proposals are made for:

- integrated Planning and Building Standards applications for small routine developments
- a link between planning permissions and demolitions warrants
- site supervision and issue of the completion certificates linked both to the planning permission and building warrant approval
- consultation with the planning service before enforcement action is taken on a dangerous building which is listed or in a conservation area.

4.11 Comments:

- The proposed links between Planning and the Building Standards process will assist to provide greater co-ordination for the public in all areas of the development process.

5 LEGAL, FINANCIAL AND POLICY IMPLICATIONS

5.1 There are no legal, financial or policy implications that arise directly from this report on the current consultation. However, the decisions that the Scottish Executive make following the consultation period will have significant legal, policy and financial implications for the Council. Until these decisions are finalised and communicated to the Councils it would not be appropriate to speculate what the full implications may be.

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
 17 October 2001 (SC/JR/DMcD/SA)

BACKGROUND PAPERS

1. The consultation paper “Review of Building Standards”

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

Implementation Officer: Alan Neish

AGENDA