

## **EAST AYRSHIRE COUNCIL**

### **DEVELOPMENT SERVICES COMMITTEE - 21 OCTOBER 2003**

#### **REVIEW OF BUILDING CONTROL**

##### **Report by Director of Development Services**

### **1. PURPOSE OF REPORT**

- 1.1** To present to Committee a review of the key changes to Building Control which will result from the Building (Scotland) Act 2003, and its implications for the services provided by the Council.

### **2. BACKGROUND**

- 2.1** The Building (Scotland) Act 2003 is now in force having received Royal Assent on the 26 March 2003. Over the next two years the Act will completely change the methods for setting and enforcing standards on building work in Scotland. These changes have been made not because the previous Act had failed, but to permit European harmonised standards to be used in Scotland as required under the Construction Products Directive (CPD). As primary legislation was essential, the Scottish Executive took the opportunity to update the entire system with two objectives:

- (a) permitting greater flexibility for designers in achieving the minimum standards for subjects such as health, safety, welfare and convenience, and
- (b) ensuring greater consistency of interpretation of the standards across the country.

- 2.2** At the same time the strengths of the previous system are being retained and the transformation proposed will see an evolution of the old system into the new, rather than a revolution.

### **3. KEY FEATURES OF THE ACT**

#### **Objectives**

- 3.1** The objectives of the building standards system remain largely unchanged. It is primarily to ensure the health and safety welfare and convenience of persons in or about, and others who might be affected by, buildings. It is also to further the conservation of fuel and power. One new objective has been added: that of furthering the achievement of sustainable development. The responsibility for ensuring that buildings meet the various standards set to achieve these objectives will remain with buildings' owners.

## **Expanded Functional Standards**

- 3.2** The current Building Regulations will be replaced by expanded functional standards, which set out what the building must achieve when in use. There will be some 60 of these arranged under the six essential requirements of the CPD (structure, fire, environment, safety, noise, energy). It is proposed that they will be clear enough for the courts to interpret and actually specify what functions the building must perform. There will, therefore, be no need for the use of words like “adequate” or “reasonable” as is currently experienced within the existing standards.
- 3.3** The expanded functional standards will be supported by a series of guidance documents that will indicate how they can be complied with. There will be no obligation to use this guidance, but the documents will be accepted by the courts as showing compliance with the regulations. To ensure that technical changes are not confused with procedural changes there will be a straight transfer from the existing to the new system. The first set of guidance documents will mirror the design solutions presently required under the Technical Standards.

## **Scottish Building Standards Agency**

- 3.4** The guidance documents will be written by a new national agency called the Scottish Building Standards Agency (SBSA), which will take over the functions of the Building Standards Division of the Scottish Executive. With the move to functional rather than prescriptive standards there will clearly be a need to provide ways of resolving disputes between regulators and applicants as to whether or not a requirement has been fulfilled. Therefore, it will be possible to refer such problems to Scottish Ministers, who will be advised by the SBSA, for specific guidance. The Scottish Executive has suggested that this will be a fast track approach to use during the design process. Therefore the use of telephone, e-mail and fax communication rather than by lengthy submissions checked by lawyers will prevail. However, this form of communication will not be a legally binding decision, and there will remain for the designer or building owner a right of appeal to the courts.

## **Verifiers**

- 3.5** Everyone wanting to build will have to gain a building warrant from a Verifier, who verifies that the proposed works will meet the expanded functional standards. The Act allows Scottish Ministers to appoint a variety of Verifiers, but they have undertaken that for the foreseeable future they intend to only appoint local authorities (for reasons of accountability and enforcement, and to avoid conflicts of interest). The Scottish Executive has also confirmed that all verifiers will be subject to regular audit to ensure that standards are maintained.
- 3.6** In order to deliver a Best Value approach to Building Control the SBSA will set out a detailed Service Level Agreement with each Local Authority. The Service Level Agreements will detail performance standards for carrying out

all aspects of the Verifier process. This structured approach will ensure that all authorities are consistent in their service delivery from processing the application to undertaking site survey work. It is expected that the service standards will require a structured number of visits to verify compliance or otherwise of construction proposals. Consequently, it is clear that the quantity of site visits to new buildings will significantly increase to ensure that the Building Standards are being suitably monitored and adhered to.

### **Certifiers**

- 3.5** The new Act also gives Scottish Ministers the power to appoint Certifiers either of design or construction. Certifiers of design will be verified and audited by the SBSA and, if deemed competent, would be allowed to certify that an aspect of the design of a building meets the regulations. For example, structural engineers might seek to become certifiers of design for the structural regulations. Certifiers of construction would be treated in a similar manner and might be able to certify that particular aspects of the construction (such as the plumbing or the electrics) complied with A warrant and the regulations. Verifiers are required under the Act to accept such certificates without further checking. This will help to regulate the more ad hoc systems of certification of certain aspects of designs which have developed to date.

### **Warrants and Completion Certificates**

- 3.6** It will remain an offence both to start building work without the granting of a warrant, and to occupy a building without the acceptance by the Verifier of a certificate by the owner saying that the building has been completed in accordance with regulations and the warrant. The duty to comply with regulations will lie with the owner, or the person who has authorised the work. It is they who must certify completion and it is against them that any enforcement action would be taken.

### **Dangerous or Defective Buildings**

- 3.7** The Act retains the obligation on local authorities to deal with dangerous buildings and strengthens the enforcement powers for buildings, which are designated as being immediately dangerous. The Act also increases local authorities powers of inspection and will enable them to undertake preventive surveys of buildings that might be at risk.
- 3.8** Following a Fatal Accident Inquiry into the sudden death of a waitress killed by falling masonry at Ryan's Bar, Hope Street, Edinburgh in June 2000 the Scottish Executive has commissioned the Construction Industry Council for Scotland to undertake a detailed research study into issues of public safety in and around buildings from falling masonry. The research reviews the current non-statutory pre-emptive actions local authorities undertake to monitor the risks to public safety from unsafe buildings.
- 3.9** The early indications of the output of this research suggests that further emphasis will be placed on local authorities to maintain a register of high risk

buildings in their area along with associated powers to undertake enforcement actions including inspection and maintenance. Should this set of proposals be introduced within the SBSA's defective buildings procedures then the structural monitoring duties will significantly increase to ensure that building owners take all reasonable steps to prevent their premises from adversely affecting public safety.

### **Crown Buildings**

- 3.10** The Act also includes the requirement for Crown premises to comply with the Building Standards. Therefore work to any Crown Building in Scotland will have to comply with Building Regulations and go through the building warrant and completion certificate procedures. However, Scottish Ministers have yet to decide exactly which verifiers will be appointed to deal with different parts of the Crown Estate and whether the verifiers will come from the private or public sector.

### **Fee Structure**

- 3.11** Draft fee scales have yet to be published for consultation purposes, however, the Scottish Executive has issued a pre-consultative document to the Scottish Association of Chief Building Control Officers (SACBCO) for discussion. The purpose of the discussion paper is to aid in the development of the new fee structure and suggests 18 general principles, which could underpin the Fee Regulations.
- 3.12** The Scottish Executive have confirmed that the proposed fees system must ensure that the Local Authorities and the Scottish Building Standards Agency, once established, have enough income to fulfill their functions promptly and efficiently. The general principle adopted in the Act is that Local Authorities will be acting both as verifiers and as the enforcing agency. In the role of verifier they should be funded by building owners, while in the enforcement of the regulations and in their continuing duties related to dangerous and defective buildings they should be funded from grant-aided expenditure (GAE).
- 3.13** This potentially will require Building Standards fees to be split between warrant fees and completion fees. The warrant fee should be paid when an application for a building warrant is made to the verifier. The completion fee should be paid when a completion certificate is submitted for consideration by the verifier. It is also suggested that applicants who carry out retrospective unauthorised works and/or occupy buildings illegally will be penalised by paying a higher fee in order to act as a deterrent and cover additional costs associated with examining the works.
- 3.14** The SBSA should be mainly funded from the Scottish Executive, as at present. However, there are a number of new functions, which the SBSA will undertake which offer direct benefit to the users and which, therefore, should be funded by those users. These are the functions related to certification, verification of Crown Buildings, and the giving of formal opinions on specific projects (under clause 12 of the Building (Scotland) Act).

## **Building Standards Assessments**

- 3.15** The Act places a new duty on local authorities for the provision of a Building Standards Assessment (BSA) of a building where the owners request such a survey. This assessment will be set against the standards in force at that time of the survey and will offer information on the issues such as the energy efficiency of the building. However, owners who have carried out unauthorised works will require to apply to the local authority for a retrospective building warrant under the above procedures.
- 3.16** It is intended that these surveys will assist in the property transfer system by replacing the existing letters of comfort with a uniform and meaningful assessment. However, within East Ayrshire the market place has approximately several hundred house sales per annum, which may be subject to the requirements for a BSA, which could significantly increase the volume of work in comparison to the number of Letter of Comfort Inspections currently being carried out.

## **Building Standards Register**

- 3.17** Every local authority will be required to keep a Building Standards Register which will list all warrants applied for and granted, all completion certificates submitted and accepted, and the details of any statutory notices (dangerous or defective buildings) served upon a building. It was initially anticipated that these registers would be freely available on the Internet and it is expected that they will become the first point of checking in house purchases. However, the Scottish Executive has suggested that a minimal fee may be required to be paid for accessing the information. Local authorities are being allowed to set up their own registers so that they can co-ordinate them with other electronic registers under a corporate property database which they might be establishing to cover property, planning, highways or other data.

## **Timescale**

- 3.18** The Act is now passed, but the Scottish Executive has confirmed it will be two years before the system is fully operational. During that time there will be a series of public consultations on the details of the new system. The guidance documents and Building Regulations have been out for consultation for a 3-month period since July 2003. The Procedures Regulations should be issued in draft form in the autumn and the Fees Regulations in the winter. It has also been suggested that the Scottish Building Standards Agency should be set up in the first half of 2004, though the location of the agency's premises is still to be decided by Scottish Ministers. The changeover date from old warrants to new warrants is scheduled to commence in the spring of 2005.

## **4. RESOURCE IMPLICATIONS AND STAFFING**

- 4.1** The evolution of the Building (Scotland) Act and the focus on service delivery and best practice processes will redefine the way that the Building Control Service is offered to public. However, the implementation of the Act to meet the Service Level Agreements will significantly increase the workload in the following areas: -
- (a) Retrospective applications currently considered under the Letters of Comfort process will be substituted by Building warrant applications estimated at 150 per annum;
  - (b) The number of site inspections carried out for each building to meet the new minimum criteria will rise by 75% compared to the current statutory surveys;
  - (c) The introduction of Building Standards Assessments as a house sale survey will create a new self financing business process ; and
  - (d) The site monitoring and enforcement role required to be undertaken to cater for defective buildings within the area will significantly increase.
- 4.2** In addition, there has been a 22% increase in the number of Building warrant applications received over the two years to March 2003. This rapid increase in applications and site surveys can be attributed to changes in the scope of Building Warrants, the increased development potential within East Ayrshire and the new development opportunities created by the Council's Local Plan. Coupled to this, low interest rates are enticing more homeowners to alter and extend their property with the development of the M77 further encouraging developers and new house owners into the area.
- 4.3** The new Act redefines Building Control's role as an independent body in the verification and enforcement of the Building Standards within Scotland. It has been recognised that the verification and enforcement role will rest more comfortably with local authorities than with the private sector. Although there will not be external competition by the private sector at this juncture, the Scottish Executive have clearly indicated that long-term maintenance of the verification role within the public sector depends on the achievement of delivering an effective and efficient Building Standards service. Failure by a local authority to deliver the Service to the proposed Service Level Agreements will permit the SBSA to transfer the verification role to either another local authority building standards service or alternatively to an approved verifier from the private sector.
- 4.4** It is intended that the verification role and that of providing Building Standard Assessments will be entirely self-financing with funding supplied from the users of the service, but the enforcement role will be funded from Grant Aided Expenditure. The increased revenue and the self financing of the

service is intended to allow sufficient resources to be deployed to meet the business needs and thus allow service delivery targets to be maintained.

**4.5** Currently, a limited budget is provided for dealing with private dangerous or defective buildings, which present a risk to public safety. Thereafter, debt recover measures are initiated to recoup the expenditure. An additional 'revolving fund' budget might be required to act as a holding reserve which will enable enforcement works to be effectively undertaken with the expenditure recouped through the debt recover process.

**4.6** As part of the e-government initiatives the new Act introduces the requirement for the local authorities to provide an electronic Building Standards Register, which will hold all the relevant information relating to all buildings within the district. Building Control is currently investing in a new computer system to integrate all its building standards, enforcement and licensing functions. As a part of the procurement process the successful system will require to provide a Building Standards Register to a level accredited by the Scottish Executive. Therefore the current investment will meet the demands of the new Act.

**4.7** It is proposed to draw up a transition programme to manage the conversion from the existing regime to the regime which will be required to deliver the services as re-defined by the Act. This programme will be based on an assessment of the implications for staff and resources including:

- the potential increase in workload
- projected increases in fee income
- the projected gap in funding to be met through increased Grant Aided Expenditure
- the need for additional staff
- the potential for work to be carried out by technical support staff rather than fully qualified Building Surveyors
- the implications for data systems and procedures

## **5 LEGAL AND FINANCIAL IMPLICATIONS**

**5.1** There are no legal or financial implications arising directly from this report. Legal and financial implications arising from the review set out at para 4.7 will be considered in due course.

## **6. RECOMMENDATIONS**

**6.1** It is recommended that the Committee:

- (a) note the contents of the report; and
- (b) note that a further review of anticipated increase in workload, future income and future staffing requirements as set out at para 4.7 will be submitted to a future meeting of the Committee following the publication of revised fee structures.

**Stephen Chorley**  
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2 October 2003 (DMcD/SA)

### **BACKGROUND PAPERS**

1. The Building (Scotland) Act 2003
2. Building Scotland Act 2003 - Fees Regulations Discussion Paper
3. Risk to Public safety from Unsafe Buildings: - Research Study
4. Accounts Commission 2002/2003 Performance Indicator Report
5. Development Services Statistical Analysis Reports.

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

**Implementation Officer: Alan Neish**