

ANGUS COUNCIL

INFRASTRUCTURE SERVICES COMMITTEE – 13 OCTOBER 2009

CONSULTATION ON IMPROVING COMPLIANCE WITH BUILDING REGULATIONS

REPORT BY DIRECTOR OF INFRASTRUCTURE SERVICES

**ABSTRACT: This report comments on and provides a suggested basis for the Council's response to the Government's consultation paper, "Consultation on Improving Compliance with Building Regulations".**

**1. RECOMMENDATION**

It is recommended that the Committee:-

- (i) note the potential for additional duties and responsibilities to be placed on the Building Standards Section of the Council to ensure that enhanced Building Regulations are complied with on site;
- (ii) agree that any additional duties and responsibilities placed on the Council will be the subject of a further report to Committee;
- (iii) agree this report as the basis for the Council's suggested response to the Scottish Government.

**2. BACKGROUND**

- 2.1 In 2007 Scottish Ministers convened an international panel to advise on a low carbon building standards strategy for Scotland. The panel published its recommendations in December 2007 in 'A Low Carbon Building Standards Strategy for Scotland' commonly known as the 'Sullivan Report' which set out recommendations for the route to low carbon buildings via improved energy standards in Scotland. The report stressed the importance of compliance with Building Regulations and the need for robust mechanisms to ensure that improved building standards are actually met in completed buildings.
- 2.2 The Government's manifesto also included a commitment to improve enforcement of building Regulations. Direction would be given to the then Scottish Building Standards Agency to provide stronger leadership and consult on proposals to ensure that Completion Certificates comply with regulations.
- 2.3 Against this background, a Building Standards Advisory Committee – Working Party was set up to consider building standards compliance issues relating to the 'Sullivan Report' recommendations and the Government's manifesto commitments. The questions posed and views now being sought in this consultation paper were derived from this Working Party's deliberations on compliance issues.

**3. DISCUSSION**

- 3.1 This consultation is one of the first workstreams emanating from the Sullivan Report. Report No. 250/08 to this Committee refers.
- 3.2 There is no doubt that if the Government hope to achieve the ambitious targets it has set itself, that the building environment has a huge part to play. The built environment currently accounts for around 50% of Scotland's carbon dioxide emissions.
- 3.3 There is significant evidence to suggest that there is a gap between the designed and actual energy usage and hence carbon dioxide emissions from buildings.

- 3.4 It is therefore considered that there requires to be a closing of this gap by ensuring a greater level of compliance. This is considered to be of greater importance given the move towards higher standards of insulation and the use of more innovative building materials.
- 3.5 Major changes to the Regulations are proposed for Autumn 2010. These proposals contain a range of proposals which will impact, both on the construction industry and Building Standards. Many of these changes, if implemented, will certainly reduce carbon emissions on paper. Further reports to Committee will follow once results of this consultation are known and the Government has decided on how to proceed. This will have to, in some manner, transfer to full compliance on site.

#### **4. FINANCIAL IMPLICATIONS**

- 4.1 There are no financial implications arising directly as a result of the recommendations contained in this report. However, if additional duties and responsibilities are placed on the Council to ensure enhanced Building Regulations are complied with, there will be additional costs that will fall to the Council. As this is likely to be the case, care needs to be taken to ensure that any additional costs incurred are met through increased Building Warrant fees. Once the full impact of any additional duties is known a further report setting out any financial implications will be brought forward to this committee.

#### **5. HUMAN RIGHTS IMPLICATIONS**

- 5.1 There are no human rights implications arising from this report.

#### **6. EQUALITIES IMPLICATIONS**

- 6.1 The issues dealt with in this report have been the subject of consideration from an equalities perspective (as required by legislation). An [equalities impact assessment](#) is not required.

#### **7. CONSULTATION**

- 7.1 The Chief Executive, Director of Corporate Services, Head of Law & Administration and Head of Finance have been consulted during the preparation of this report.

#### **8. CONCLUSION**

- 8.1 There is no doubt that there requires to be a greater linkage between enhanced Building Regulations, particularly with regards reduced energy usage and compliance on site. This consultation document attempts to ascertain the views of major stakeholders and users of the Building Standards system on how best to achieve this. There is the potential for significant additional duties to be placed on the Council as a Building Standards Verifier and this will require to be considered on how to achieve this at a later date. Full details of any changes to the system will be reported to the Committee at a later date.

**ERIC S LOWSON  
DIRECTOR OF INFRASTRUCTURE SERVICES**

**NOTE:** No background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973 (other than any containing confidential or exempt information) were relied on to a material extent in preparing the above report.

**P&T/GWC/LM/KW  
18 September 2009**

## CONSULTATION QUESTIONS

### 1. Roles and Responsibilities

Under the building standards system, building work on both new and existing buildings must meet the building standards. The standards that require to be met (66 in total) are mandatory statements of functions that completed buildings must fulfil or allow. Through the Building Standards Division, Scottish Ministers issue guidance documents that outline possible ways of complying with the mandatory standards. The principal documents issued are the Technical Handbooks; one for domestic buildings and one for non-domestic. The intention is to permit a variety of ways of complying with the standards therefore solutions alternative to the Technical Handbooks may be used for compliance.

The mechanisms for achieving compliance with required standards in a building are met through the various duties and responsibilities placed on those involved in the process.

***Do you consider that the duties and responsibilities of those involved in the building standards system are clearly defined?***

Yes

No

**Please give the reasons for your answer:**

However having answered yes the use and legal position of "Relevant Person" still causes some confusion, particularly with the architectural profession and building owners. In our view it is correct that the "Relevant Person" provide the signed Completion Certificate. The weakness lies in the process whereby you get to that position. In our view it is not correct that the "Relevant Person" (normally the owner) signs the Completion Certificate without some form of suitable supervision having taken place during the construction process. It is also clear that since May 2005 the relevant person has not embraced or been aware of the additional responsibilities placed on them.

Situations can arise on a regular basis whereby a Completion Certificate has been submitted by the "Relevant Person" (normally the owner) whereby no supervision by a suitably qualified and competent person or no inspection regime has been carried out by a Local Authority verifier. In our view this is not correct and requires to be amended to allow greater certainty of the completed product complying with the regulations. As regulations become more complex and demanding, there is a danger that this weakness, unless addressed, will lead to Government targets in respect of carbon emissions from buildings being missed.

### 2. Compliance

Compliance may be described as: Ensuring what is actually constructed (as-built) matches the applicable building regulations all in accordance with the approved building warrant.

***Do you consider that there is a current compliance gap, for certain building standards, between design approvals and the actual completed construction of?***

Yes

No

**Please give the reasons for your answer:**

The significant number of faults noted by Building Standards staff during:-

- routine site visits;
- acceptance of Completion Certificate site visits;
- the number of Amendment to Warrants requested after Completion Certificate site visits have been carried out;

gives strong evidence that buildings are not being built as per the approved plans.

A significant number of applicants/agents do not submit start cards despite this document being provided as part of the Building Warrant approval process. Our protocol is that, unless we have evidence to the contrary, to accept the completion paperwork submitted and carry out a non-destructive site visit. Given the number of faults picked up on routine site visits as noted above when work is exposed, it would seem reasonable to assume that faults exist in buildings that are complete and which have not been the subject of routine site visits.

In addition a major warranty provider for new housing in their annual report for 2007-2008 (covering all of U.K.) reported an increase in the value of claims paid out in the previous year. Whilst care should be noted in interrogating this information it is interesting to note that the vast majority of claims in terms of value and frequency relate to foundations, superstructure and roof, all areas easily inspected and verified during the construction process.

### 3. Compliance during Construction

The Sullivan Report (A Low Carbon Building Standards Strategy for Scotland) identified that, for issues such as energy and noise, incorrect detailing or poor assembly of components can have a significant impact on overall performance.

Whilst the focus of 'Sullivan' was on energy related standards the following questions relate to all building standards.

***Do you consider that there is a need for greater certainty on compliance with certain building standards during the construction stages?***

Yes  NO

***Which standards do you consider require assessment during the construction process for compliance and why?***

The standards noted below are standards that if not verified at the construction stage, would prove extremely difficult to demonstrate compliance or pinpoint faults when the work was complete.

***What methods would you suggest could be employed during construction to confirm compliance with these standards?***

Standard 1.1

For appropriate structural elements of buildings the mandatory inspection of them on site. Also, for certain types of buildings that are covered by an Engineer who is a member of SER, it might be worthwhile considering extending the scheme to cover supervising the work on site.

Standard 3.7

The mandatory testing and inspection of drainage should remain.

In recent years there has been an upsurge in innovative drainage systems in rural locations and in our opinion these require to be carefully supervised and tested before backfilling.

Standard 5.1

We understand a requirement will be introduced that requires the testing of separating walls/floors to dwellinghouses. Furthermore, it is our understanding that this will not be introduced as a blanket measure but rather as a ratio of tested dwellinghouses to the total number of dwellinghouses being built. Clear guidance requires to be given as to what would constitute "reasonable enquiry" to establish the compliance or otherwise of the dwellinghouses not tested. There will be little or no benefit if on a multi-plot development a certain ratio of dwellinghouses are tested and found to comply and no further inspections are carried out to verify the construction of a floor/wall on other dwellinghouses.

Standard 6.0

Again we understand air tightness testing is proposed for the changes to the building regulations which come into force in 2010.

As per our comments under Standard 5.1 above there will be little or no benefit to the introduction of air tightness testing if on a multi-plot development a certain ratio of dwellinghouses are tested and found to comply and no further inspections are carried out to verify the construction of a floor/wall on other dwellinghouses.

If the proposal for 1 in 20 houses on a multi-plot development comes into being clear guidance requires to be given as to what happens when failures occur. Is there a presumption that all other house types of that design and previously completed also fail? If there is then there are no easy remedies, in our opinion, that can be taken to secure compliance. That is why it is critical that a site inspection regime, provided by the verifier or by Certifiers of Construction is required.

For projects, such as one-off houses where the simplified approach under Standard 6.1.6 is taken to compliance with no air tightness testing required, it is likely that increased insulation will be provided or expensive insulation products will be installed. Without mandatory inspection(s) at the appropriate stage in the construction process the benefits of increased 'U' Values and thereby reduced heating bills and carbon emissions may not, on occasions, be met. In situations such as these and to fulfil the Government's intention of reducing carbon emissions we would suggest that any guidance on "reasonable enquiry" include for mandatory site inspections where air tightness testing is not required.

## General

Site visits carried out in respect of energy or noise can also be used to determine compliance with the appropriate parts of sections 2 and 3.

Many agents / applicants use enhanced default values, i.e. accredited details when producing SAP Ratings and have Energy Certificates. In our opinion there is no weakness in that the use of these enhanced default values is not always checked on site. Another weakness is that site operatives' knowledge of matters such as accredited details is weak.

## 4. Verification

Although the building standards system places the compliance duty on a building owner (the relevant person), verifier test and inspection regimes have traditionally played an extremely important role in assessing compliance with standards and delivering buildings that meet the standards prescribed by the building regulations. Verifiers may require to balance inspection regimes with their other statutory duties, such as the plan checking/ processing of building warrant applications.

***Do you consider that within the building standards system the balance between plan checking and inspection is correctly weighted?***

Yes

No

**Please give the reasons for your answer:**

From our own experience our view is that on the whole sufficient resources are given over to the checking of plans. Sufficient protocols and procedures exist to ensure that plans are assessed correctly and in a reasonably timeous manner.

Traditionally local authority verifiers have been very good at carrying out site inspections but there is no doubt that inspections have lessened since May 2005. Obviously the Building (Scotland) Act 2003 and associated legislation has had an effect but the huge increase in workload faced by verifiers has also had a significant effect.

However, the principal that a verifier, before accepting a Completion Certificate must make "reasonable enquiry" is weak given that clear and robust guidance or a mandatory scheme of site visits does not exist in respect of reasonable enquiry.

If a system of mandatory site visits is not introduced and the Government wish to see an enhanced level of compliance then clear and unambiguous guidance requires to be given to all verifiers as to what level of site supervision requires to be carried out. We are not advocating that verifiers solely take on this role. Verifiers can and should take on this role until schemes involving Certifiers of Construction are significantly increased.

There would still need to be a final site visit by the verifier to verify the Completion Certificate. The complexity and how detailed this site visit needs to be would very much depend on the project in question, whether Certifiers of Construction have been used etc. It is reasonable to suggest a verifier carrying out a final Completion Certificate would have much more confidence that the built product complies with the Building Regulations if interim site visits have been carried out.

## 5. Reasonable Enquiry

In the process of accepting or rejecting submitted completion certificates verifiers are required to make reasonable enquiry to be satisfied that the work certified is in accordance with the building warrant and complies the building regulations. 'Reasonable enquiry' is not defined within the building standards system legislation and in practice verifiers across the country implement their own area specific 'risk assessment' methods to determine the level of inspection required.

***Do you consider that there is a need for enhanced guidance on what constitutes reasonable enquiry?***

Yes  No

**Please give the reasons for your answer:**

Again, if a system of mandatory site visits is noted introduced then enhanced guidance on "reasonable enquiry" will help ensure:-

- that a degree of consistency on how verifiers verify Completion Certificates will exist throughout Scotland;
- that verifiers will have a clearer understanding of how much resources require to be allocated to any enhanced site inspection regimes;
- that users of the building standards system will have a clearer understanding of what will be provided by verifiers. There requires to be a greater linkage between the fee paid and what standard of service is provided. It may be that building warrant fees have to be altered to allow for changes to inspection regimes.

***Do you consider that there should there be guidance to verifiers on risk assessment for setting inspection levels?***

Yes  No

**Please provide reasons to support your view:**

If guidance is to be introduced on how verifiers set inspection levels then there should be a marked improvement in inspection regimes. Guidance to be detailed and robust.

The guidance could be in the form of model standards with a range of inspection regimes given. Any model standards prepared and issued has to define what is meant by "risk" in this instance.

As stated above the private customer has to have a clearer picture of what standard of service he should expect from a verifier. At the present time the customer, in our view, does not have a clear understanding of what is required of him/her or what will be provided by the verifier.

Nothing will be gained if no greater responsibility is placed on the "Relevant Person" or his/her agents to ensure inspections are carried out. As mentioned earlier many verifiers do not receive notification that work has commenced. If the additional responsibilities are not laid out in a robust manner verifiers will have great difficulty in ensuring that inspections can be carried out at the appropriate time to ensure higher levels of compliance. Many verifiers do not/will not have the resources to carry out ad-hoc inspections during the construction process.

## 6. Certification

The [building](#) standards system permits the design or construction of building work to be certified by qualified, experienced, and reputable building professionals and trades-people as complying with the building regulations without the need for detailed scrutiny of designs or inspections by verifiers.

Certification is an optional procedure for the implementation of building regulations in Scotland and is only relevant to work that requires a building warrant.

***Do you consider that certification should be adapted to cover all work that needs to comply with building regulations irrespective of the need for a building warrant?***

Yes

No

**Please provide reasons to support your view:**

Any proposal to extend certification schemes to include work that does not require building warrant is premature.

Given the limited take up of certification of construction schemes it would seem logical not to extend it to work that does not require a Building Warrant.

In an effort to provide greater assurances to property owners that work carried out on their property is in order it might be prudent to mirror the various trade schemes that exist elsewhere in the United Kingdom that cover work that does not require building warrant approval.

## 7. Building Standards Register

Through Schedule 3 the building standards system permits various types of work to be done without the need to obtain a building warrant. This permission is on condition that the work meets the building standards.

***Should all work (including schedule 3 work types) that requires to comply with building standards be included on the local authority Building Standards Register?***

Yes

No



**Please provide reasons to support your view:**

Whilst we have answered no to this question it is laudable to try and maintain a public register of all building work carried out on a building.

The Scottish Government saw fit in 2005 to make a significant amount of work to buildings exempt from requiring a building warrant on condition that work complied with the Building Regulations.

Currently there is no mechanism that ensures that work that does not require a building warrant complies with the Building Regulations, other than the assurances given by the owner of the building. Until a situation exists that the work carried out is subjected to third party verification, no information should be placed on the register.

If work is included on the Building Standards Register and is subsequently found to be non-compliant, the Register will be brought into disrepute. As the Local Authority is tasked with maintaining the Register, there is a risk that the Local Authority is brought in to disrepute for work not complying with the Building Regulations.

Our view is that the work contained in Scheme 3 of the Building Regulations is too wide and requires to be amended whereby much of the work currently not requiring warrant should in fact be subjected to building warrant approval. Requiring building warrant approval will result in this area of building work being noted in the Building Standards Register.

**8 Building Warrant Life**

A building warrant is valid for a period of three years from the date of granting. This gives the owner / applicant a minimum period of three years to complete the works.

***Do you consider that the 3 year life of a building warrant is still appropriate?***

Yes  No

**Please provide reasons to support your view:**

With major changes proposed to the Building Regulations at three yearly intervals, it would seem reasonable to maintain the three year "life" of a building warrant. If the Government's intention is to "drive up" building standards, restricting the period to three years will ensure that standards applying to buildings being built will be the most up to date.

By continuing with the three year period and permitting extension to warrants, albeit with conditions, permits control over the life of a warrant but allows flexibility in individual cases whilst ensuring the most appropriate standards are achieved.

If consideration is being given to increasing the life of a building warrant, for example to five years and extension to warrants still permitted, a building being completed could in some instances comply with standards some six to seven years old.

## 9. Incomplete Applications

Under the Procedure Regulations, an applicant may be given up to 42 days in which to submit the specified plans and thereby convert an incomplete building warrant submission into a complete application.

***Do you consider that the 42 day period to submit the specified plans and complete the application for the proposals contained in a building warrant is still appropriate?***

Yes  No

**Please provide reasons to support your view:**

When major changes to the Regulations have occurred “bulges” in the number of applications have occurred. There is very strong evidence to suggest that applicants/agents have attempted to short circuit the new enhanced standards by applying for building warrant before the changeover date. Many of these applications have been deficient in detail. To discourage applicants/agents submitting applications to avoid the new Regulations we would suggest that the 42 period be reduced, say to 14/21 days. This reduced period will still give applicants/agents the necessary time to submit additional information which might have been overlooked in their original application.