

NOTE TO: JOINT SERVICES COMMITTEE

DATE: 18/07/2019

TOPIC: BUILDING CONTROL BUSINESS UPDATE

REPORT BY: MIKE TUCKER (BUILDING CONTROL MANAGER)

1 INTRODUCTION

1.1 The purpose of this note is to update members regarding the progress of the partnership and contains no recommendations.

2 REPORT

2.1 Staff

- 2.1.1 Staff have been under pressure as a result of increased workloads following our recruitment of a trainee in January to replace a Senior Surveyor. The training is going well and we are now going to begin to allocate workload directly which will begin to alleviate the situation. The trainee has a BSc (Hons) Building Surveying Degree but to ensure the maximum speed of development and ensure that we meet the LABC competency framework moving forward he is enrolling on the Degree in Public Service Building Control provided by Wolverhampton University which will be funded through the apprenticeship levy.
- 2.1.2 Two of our Surveyors have now gained the Level 5 diploma in Building Control awarded by Wolverhampton University via LABC scheme. This is evidence that supports the LABC competency framework for all but the most complex non-residential developments.

2.2 Approved Inspector Insurance Issues

- 2.2.1 The Hackitt enquiry and the resulting consultation document published by MHCLG have caused insurers to reassess their exposure to risk in the Building Control market.
- 2.2.2 Up to now there have only been three insurers involved in the provision of cover for private sector Building Control.
- NHBC
 - Howdens
 - Griffiths and Armour
- 2.2.3 Howdens have now decided to withdraw as they were unable to find an underwriter and are therefore they not renewing any Approved Inspector policies when they expire. NHBC only insure themselves so there is now only one possible insurer.
- 2.2.4 Initially Griffiths and Armour stated that they would not take on any of Howdens clients but following lobbying of Government to take action with regard to this situation they have reviewed this policy and are now looking at the risk profile of each Approved Inspector individually before offering cover. So far this has impacted the following AI's.

- Head Projects Building Control
- Aedis
- Guy Shattock
- Dunwoody Building Legislation
- ACT Building Control Ltd
- Celtec Consultancy Ltd
- Thames Building Control
- Meridian Consult

- 2.2.5 Three of these companies, Aedis, ACT and Celtec have a significant number of initial notices in our area.
- 2.2.6 Four of the effected companies have been successful in gaining insurance but the other four have not.
- 2.2.7 Aedis failed to get insurance and as a result has now gone into liquidation.
- 2.2.8 Our records indicate that Aedis have 17 active projects within the Partnership area that have not been issued with completion certificates. As a result the owners will need to make reversion applications to the Local Authority for which we are entitled to a fee.
- 2.2.9 As the Building Control Authority we will then need to satisfy our selves that the work is satisfactory. As the Approved Inspector no longer has insurance they are unable to issue a partial final certificate for the work that has already been completed on site. If the applicant can obtain site notes from the Approved Inspector we will take this into account in our assessment but realistically they are unlikely to be able to get this information. As a result opening up works are likely to be required to expose elements of the construction.
- 2.2.10 We are now writing to all those effected explaining the situation. Whilst we are entitled to charge for the service these projects this is unlikely to cover the true cost of the work, as these projects are likely to be problematic with a client that may well be extremely reluctant. The need for enforcement action under Section 35 and 36 of the Building Act 1984 may well also arise which will impact on our legal teams.
- 2.2.11 It is understood that a further 15 Approved Inspectors will be seeking re-insurance by November 2019. Hence, we will monitor the companies closely and will be seeking reversion applications if required.
- 2.2.12 The issues behind these events may impact on the cost of insuring Local Authority Building Control.

2.3 South Hams Building Control resolution to Council

2.3.1 The South Hams DC resolution

2.3.1.1 South Hams District Council recently passed a motion that;

'This Council will lobby MPs and write to MHCLG to express its concerns about the standards of new housing, calling for:

- 1. A minimum number of inspections to be carried out on every new dwelling by the Building Control body, local authority or private sector;*
- 2. Quality of work to be incorporated to a higher degree than present, in the Building Regulations;*
- 3. Newly constructed timber framed housing to be included in the Governments Building Safety Programme; and*
- 4. Local Authorities to become the sole provider of Building Control, at least on high risk and all new residential buildings.'*

2.3.2 NMD Building Control comments

2.3.2.1 NMD Building Control has not supported this approach for the following reasons.

1. A minimum number of inspections to be carried out on every new dwelling by the Building Control body, local authority or private sector;

We believe this is far too simplistic an approach. Effective building control is about controlling the site not the individual plot. For instance it is reasonable to front load inspection on the initial plots to ensure the required standards are clearly understood by the site management, site specific issues are identified and solutions agreed and an effective working relationship is established. It therefore follows that other plots on the site of the same design may receive fewer inspections.

This also fails to take into account modern systems utilising off site prefabrication where overall control of the system and ensuring adequately trained site operatives are the key factor in ensuring successful delivery on site. It is therefore considered critical that resources are allocated based on an assessment of risk at all stages throughout a project rather than based on a prescribed number of inspections per plot.

2. Quality of work to be incorporated to a higher degree than present, in the Building Regulations;

This has been extensively discussed over the last 10+ years. The building regulations are a minimum standard and quality is recognised as an issue that can result in this standard not being reached through Regulation 7 that seeks to control materials and workmanship. Perception of quality is subjective concept and therefore would be extremely difficult to regulate. Policing of quality would require an entirely different system of control than that provided by the current Building Control System and far greater resources.

The culture of the building industry is based on a very cost driven procurement system where the Building Regulations are perceived by many to be an aspirational standard rather than the bare legal minimum. Currently quality is a contractual issue and is therefore project specific. If this is not delivering client expectations how can generalised regulations that are intended to cover all circumstances impose an enforceable level of quality?

3. Newly constructed timber framed housing to be included in the Governments Building Safety Programme;

The Building Safety Programme was set up to consider how make sure that residents of high-rise buildings are safe and feel safe, now and in the future. My understanding is that the use of combustible materials including timber in high rise buildings is already within scope. Clearly low rise timber frame housing would not be looked at within this project and we are not aware of any significant problems with the safety of timber frame housing.

4. *Local Authorities to become the sole provider of Building Control, at least on high risk and all new residential buildings.'*

We believe that this is an opportunistic protectionist approach and does not address the real issues. It will therefore be seen as such by central government. There is no evidence that LABC does a better job of controlling risk on high risk projects. In fact the high profile failures that have resulted in the current scrutiny of Building Control have all been under the control of Local Authorities.

However, the proposals contained in the Hackett report recommending a Joint Competent Authority requiring the involvement of Local Authority Building Control

could have a significant role to play in ensuring that safety systems and methods of construction are understood throughout the life of a building and responsibilities are clearly defined.

2.3.3 The Real Issue

- 2.3.3.1 In the early years of competition in Building Control with a limited number of providers it was generally viewed as having been a success in increasing customer service and the level of professionalism within Building Control.
- 2.3.3.2 However, this improvement has not been maintained. With over 30 companies competing for work in the North and Mid Devon area a number of companies are now pricing unrealistically low to win work resulting in decreased inspection and an over reliance on the provision of photographs after the event by some providers. There is also a clear tendency to adopt the lightest possible touch with regard to interventions in order to maintain favour with customers. This competition on standards extends to the procurement process where multiple service providers are engaged in pre-submission discussions in an attempt to negotiate the interpretation of regulations prior to awarding contracts to enable selection of the least cost option. This can result in savings that far outweigh the actual Building Control fee.
- 2.3.3.3 To confuse these issues with the control of high risk developments is a mistake as it is often those projects perceived as lower risk due to the nature of the work where the Building Control Body is taking the greatest risk by reducing inspection. Unfortunately, it is also these primarily domestic and smaller commercial projects, where the least professional and most inexperienced construction companies operate. Due to a lack of training and skills development within the construction industry Building Control has become relied upon over the years to fill this gap with a practical problem solving advice delivered on site and through the identification of problems at design stage. This input is now being eroded by some providers and this is inevitably seen in a reduction in the quality of the delivered product by the eventual client.
- 2.3.3.4 We believe it is the balance between competition and enforcement that has effectively corrupted the market for Building Control Services due to poor practice in both the public and private sectors. This suggests a failure to regulate the regulators. LABC have taken steps to begin to address these issues through the adoption of a national quality assurance system to ensure a consistent approach. However, this indicates a systemic failure of CICAIR to effectively regulate approved inspectors through the licencing scheme run by the Construction Industry Council resulting in the current failing system. Therefore this must lead to the question of whether there should be competition in the provision of enforcement services.

2.4 MHCLG Circular Letter dated 1 July 2019

- 2.4.1 The Building regulations recently changed to effectively ban the use of combustible materials in the facades of buildings over 18m high. This was as a result of the Grenfell Tower fire but MHCLG came under significant criticism as this did nothing to protect residents in medium rise flats
- 2.4.2 MHCLG as a result have issued an advice note followed by a circular letter stating that the use of combustibility of materials used in facades lower than 18m should be considered under Building Regulation Requirement B4 which states that “The external wall of a building should not provide a medium for fire spread that is likely to be a risk to health and safety”. Whilst this may appear reasonable this applies retrospectively the guidance provided to demonstrate how to meet the requirement has never suggested the need to take any measures below 18m.

2.4.3 As a result every representative organisation within Building Control has objected in the strongest possible terms as this has never been interpreted by anyone as now stated in the “clarification” from MHCLG and as a result this places all building control bodies and potentially individuals in legal jeopardy.

2.5 MHCLG Consultation – Building Safety System Reforms

2.5.1 MHCLG have now published a consultation document with regard to how they intend to implement the findings of the Hackitt enquiry which is the subject of a briefing separate to this report.