

## Report to OVERVIEW AND SCRUTINY BOARD

# Building Control

### **Portfolio Holder:**

Cllr Elaine Taylor, Deputy Leader and Cabinet Member for Decent Homes

### **Officer Contact:**

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### **Purpose of the Report**

To provide an update on the latest position regarding the national changes that have directly impacted on the Building Control profession and to inform members on how these changes have impacted on the Council's building control service, current pressures, challenges, and options for addressing the varying issues.

### **Recommendations**

To note the update and consider the proposed approach.

## Building Control

### 1 Background

- 1.1 Building control continues to operate in a challenging environment and unlike most regulatory services, both individuals and commercial developers have the choice and option to decide on whether to engage the services of the local authority or a private provider for any work that requires building regulation approval.
- 1.2 The exception to this, under the new building safety regulation regime, is work to, or construction of high-rise buildings (HRB) where the new Building Safety Regulator oversees applications and decides who delivers the function.
- 1.3 Requirements placed on local authorities when carrying out building control functions are set out in the Building Act 1984, the Building Safety Act 2022 and in the Operational Standards Rules, published by the new Building Safety Regulator (BSR).
- 1.4 As well as this competitive market described above, where contractors and homeowners can chose to use the Council's service, the Council has to provide the statutory function element of the work and this involves a duty to pursue and take formal action for any contravention of the regulations, as well as respond to reports of dangerous buildings.
- 1.5 The Council is often referred to as the "inspector of last resort" as the Council has no choice over the work it receives, either by exercising its enforcement powers, or by having to receive work when a private provider can no longer complete the inspections and the work is "reverted back" to the Council to resolve.

### 2 Current Position

- 2.1 The service can charge for a limited and restricted number of activities through the various charging regulations and the client pays a fee for this service. This is similar to the private providers, and as such, the Council must remain competitive to retain and sustain income for the service and Council.
- 2.2 Many other functions of the service, classed as statutory in nature, such as maintaining various registers and carrying out formal enforcement action where necessary, are not chargeable functions. The service also has to maintain an out of hours response to respond to concerns of dangerous buildings.
- 2.3 During the period 19 September 2023 to 18 September 2024 (1 year) the **Council received 300 requests** to carry out the full Building control function for a client/

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homeowner. During the same period, the Council was informed of **570 initial notices from private building control providers** who were acting on behalf of homeowners/contractors carrying out works in Oldham.

- 2.4 This shows, that in 12 months, the Council was only acting on 34% of all applications requiring Building Control supervision across the Borough, with the other 66% being supervised by the private sector.
- 2.5 Where works are found to be defective, and the chosen private Building Control provider is unable to resolve the contraventions, there is a process available for the applications to be reverted to the local authority for potential formal action that can include prosecution. These applications are called 'reversions'.
- 2.6 A reversion can also be made where the approved private inspector is unable to continue their function as they are no longer able to trade due to losing their registration.
- 2.7 Recently, the Council has received a large number of reversions from one private building control company that ceased to trade following their failure to re-register (as a result of the change in regulations). In this instance alone, over 60 applications, at various stages of work, with some already complete, have been reverted to the Council for action. This means the applicant must apply again with the cost of the application to the Council having to be paid again. Officers then have to assess the work completed, the records kept and complete inspections with a view to issuing a completion certificate.

### **3. Latest national legislative changes**

- 3.1 Following the Grenfell tragedy and the independent review of Building Regulations and Fire Safety by Dame Judith Hackitt, published in May 2018, the Government established the Building Safety Regulator (BSR) as the Building Control Authority in England.
- 3.2 The inquiry and the resulting changes strive to deliver improvement of the various building standards as well as to implement a new, more stringent, regulatory regime, introduce more powers to order remedial works and the use of enforcement 'stop notices'.
- 3.3 The journey to change the way building control and construction projects are delivered continues; further changes will inevitably follow as the recommendations and actions outlined in the phase 2 enquiry report are introduced.
- 3.4 There is an expectation that the Building Control function will return to a regulatory role, stop operating in the commercial world as well introducing a clear expectation through statutory reporting indicators, that the Council is taking appropriate enforcement against non-compliance.

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## **4.0 Staffing and resource issues**

- 4.1 The BSR oversees the provision of the Building Control function nationwide and has the power to direct a Local Authority to support its work. The authority must ensure all staff involved have the appropriate competence, skills, knowledge, experience, and behaviours. Certain activities (Restricted Activities) for example, inspections for purposes of Building Control, can only be undertaken by an appropriately qualified and Registered Building Inspectors.
- 4.2 The Regulator has established and maintains a register of Building Inspectors as well as one for the private sector Building Control Approvers (formerly called Approved Inspectors).
- 4.3 The service has supported current full-time staff members in registering with the regulator and undertaking the challenging competency requirements that are now imposed. There is an ongoing requirement for registered individuals to renew registration every 4 years and to comply with the operating standard rules and codes of conduct. Action will be taken against individuals and organisations if they are found to be failing. The authority has a duty to support individuals in maintaining requirements and ensuring CPD is achieved.
- 4.4 The registration process has resulted in many building control practitioners leaving the industry and retiring from the profession. The register of building inspectors is a public document and can be viewed online; all staff currently employed are registered and able to practice at the appropriate level.
- 4.5 Before a Restricted Function (issuing of certificates or notices) is undertaken, the Local Authority must obtain the advice of a suitably competent Registered Building Inspector (RBI) and must employ staff who are RBIs at the respective grades and levels to undertake the activity at that level. In respect of other buildings, the Regulator can set minimum performance standards for local authority building control bodies and Registered Building Control Approvers and has powers to investigate and sanction non-compliance or poor performance.
- 4.6 There is a resultant vacuum in the profession and the building control world with an acute shortage of surveyors available for employment.
- 4.7 The authority has not been able to recruit to permanent posts in Building Control despite efforts over the last 3 years. This is echoed in many neighbouring authorities as well as nationally. The Council currently operates with one full time permanent Building Control officer and 2 administrative members of staff with the remaining Building Control Officer vacancies (3 FTEs) being covered by the use of agency staff at significant cost to the Council.
- 4.8 It is unlikely that this will change in the short to medium term as recruitment drives have delivered no suitable applicants. The cost and hourly rate to employ agency staff continue to increase and place a large financial burden on the service.

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- 4.9 Salaries attached to current posts are not competitive and do not meet current expectations within the industry. Many neighbouring authorities incentivise posts with higher salaries, retention payments and market rate supplements.
- 4.10 In response to this crisis in the industry, the Council is in the process through the national Local Authority Building Control body (LABC), the organisation representing all local authority building control services, of employing a trainee, however, resourcing and supporting this opportunity without permanent staff will be a challenge. Current Agency staff are willing and supportive of the process and prepared to assist in training and developing individuals so hopefully this initiative may go some way to resolve staffing issues but this will take 2/3 years before the individual is fully competent. This in addition to an imminent restructure of the service to review grades/roles with a view to attracting and retaining more personnel.
- 4.11 Following successful recruitment and training, it is crucial that job offers need to be available to retain trainees through competitive conditions and salaries as many authorities report frustrations with private providers 'cherry picking' staff once they are trained and fully operational.
- 4.12 Internally, the service recognises the need to provide additional resource and capacity to support the necessary changes required through creating more efficient internal processes, quality management system (QMS) and the use of an electronic back-office recording system.
- 4.13 There are new statutory requirements imposed as part of the Building Safety Act 2022 through additional Key Performance indicators (KPIs) and revisions to national operating standard rules. Also contained within the Act are service codes of conduct and requirements to carry out visits and draft reports every 28 days for every current job.
- 4.14 To ensure Council's are carrying out these additional functions the BSR will be carrying out audits at some point in the future. We await the first audits of local authorities to understand the implications and expectations of the regulator. Currently the service is analysing where it requires improvements such as to the back office system where there is a requirement to maintain electronic recording as part of the quality management system.

## **5 Key Issues for Overview and Scrutiny to Discuss**

- 5.1 The new regime imposed via legislation introduces more stringent requirements on individuals who practice as registered Building control officers and the local authority like others across the region is struggling to recruit fully qualified officers. There is a reliance on agency staff at the moment to deliver the service and this comes at an increased cost to the Council.
- 5.2 More far-reaching enforcement powers are also now available with an expectation that they will be used. The current structure has 3 FTE Building Control Officer

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vacancies that are backfilled with agency staff and although the Council is looking to employ a trainee it is this immediate resource issue together with the changes to the legislative requirements that are causing concern as the service tries to respond to the issues it faces.

- 5.3 There is a national shortage of qualified building control officers with many leaving the profession and it is how the Council responds to this with attractive conditions, remuneration so that the structure in place can be fully staffed and the reliance on agency support reduced.
- 5.4 Consider and the proposed approach for additional recruitment of substantive officers, reduce reliance on agency staffing, reduce the overspend and ultimately, provide a viable service that is able to meet the new regulatory regime and the needs of local residents and developers.