

IN CONFIDENCE - MEMBERS ONLY

ODPM
BUILDING REGULATIONS ADVISORY COMMITTEE

MINUTES OF THE THIRD 2005 MEETING HELD AT 10.30AM ON WEDNESDAY 6 JULY
IN ROOM G/L&M, GROUND FLOOR, ELAND HOUSE, BRESSENDEN PLACE, LONDON
SW1E 5DU

PRESENT

A list of those present is at Annex A.

ITEM 1: INTRODUCTION AND WELCOME

1.1 **The Chairman** welcomed everyone to the meeting. He advised that:

- **Peter Hewlett** had written a letter of thanks for his time representing BBA as an observer on BRAC;
- BD were now located back in Eland House and an organisation chart would be emailed to members shortly; *[Secretary's Note: This was emailed to members on 9 August.]*
- information paper P27 had been cancelled as there had been no Parliamentary Questions relating to the Building Regulations since the last meeting.

ITEM 2: APOLOGIES FOR ABSENCE

2.1 Apologies had been received from 5 members – John Conway, Chris Mills, Thiru Moolan, Kelvin Williams, and Janet Young.

ITEM 3: MINUTES OF THE SECOND 2005 MEETING HELD ON 4 MAY AND MATTERS ARISING **[M2]**

3.1 With reference to the discussions recorded in item 6 of the minutes, members' views were sought on the new 'cabinet-style' of minutes and the following individual views were expressed:

- they gave insufficient detail to understand the nature and context of the debate, which would not be helpful for absent members;
- they did not record the strength of feeling;
- there was insufficient indication of action items and more use could be made of bullet points;
- they were easier and quicker to read because they were much shorter, although there was scope for them to be reduced even further;
- members may wish to keep their own notes of any particular issues they had raised, as the minutes were not attributable; and

- references to 'Parts' of the regulations in the title of agenda items should include the title of the Part.

3.2 Officials advised that, whilst members' views were noted and would be taken on board where appropriate, the minutes would continue to be prepared in the revised format to enable BRAC to comply with the requirements of the Freedom of Information Act (FOI). The inclusion in the minutes of 'Secretary's Notes', where an action point had been fulfilled in the period between meetings and the production of the minutes was considered to be helpful and would also be continued.

3.3 The minutes of the 4 May meeting were agreed subject to the following amendment:

Page 1, line 7 – replace "FIRST" with "SECOND".

3.4 With reference to paragraph 14.4 of the minutes, members were advised that the CEBC Report was being reprinted and would be sent to them within the next month.

Action: DS

ITEM 4: BUILDINGS DIVISION CURRENT AND UPCOMING ISSUES

4.1 Officials advised that new Ministers were now in place and the ODPM Minister responsible for the work of Buildings Division (BD) was Yvette Cooper. She was a Minister of State and, due to her heavy workload, she had not yet made a decision on the future direction for BD.

4.2 Officials also advised the following:

- BRAC Annual Report 2003 and 2004 – subject to Ministerial approval, this should be published shortly; [*Secretary's Note: Ministerial approval was received on 11 July 2005 and the annual report was published on 5 August 2005.*]
- BRAC Publication Scheme – this was now being reviewed, along with the current classifications and distribution of BRAC papers, and the information on the BRAC area of the ODPM website. A revised draft scheme would be put to members for consideration and agreement at the next meeting;
- Code for Sustainable Buildings – a BD official was now working full time on this, in consultation with the Project Manager of the Code, as it needed to be compatible with the Building Regulations. It was hoped to publish the consultation on the Code in September 2005, with publication of the final Code in April 2006;
- Part B (Fire safety) – the consultation would be published shortly; and
- Security – the scoping study contract let to BRE was due for completion around the end of July/early August. Members had already volunteered to Chair and serve on a working party.

4.3 In response to questions raised by members, officials further advised that:

- BD was now based in the Sustainable Communities Group, within the Thames Gateway and Sustainable Buildings Directorate, which grouped both BD and the Project Manager of the Code for Sustainable Buildings together;

- the BD Work Programme had not recently been put to BRAC for lengthy discussion and questions as in the past, because the aim was to refocus the Committee on its primary role to provide advice to Ministers. However, the useful information update it provided on changes to the Building Regulations was appreciated and consideration would be given as to how to provide that to BRAC in future; **Action: AH**

- BRAC's role was explained in the Members' Handbook and the Committee's 'Terms of Reference' were set out in section 14 of the Building Act 1984. Various Ministers responsible for the Building Regulations had endorsed BRAC's advisory role and strategic agenda in the past. But officials would give consideration to producing a paper or making a presentation on BRAC's future role for members to discuss, after the new Minister had expressed her views. Members made a plea for the Minister to engage as soon as possible in the policy issues on buildings to clarify her agenda; **Action: AH**

- although the Code for Sustainable Buildings, was not mandatory, compliance would be a condition to qualify for public funding for housing, and planning authorities would be encouraged to make it a condition of planning permission, when it was published in April 2006; and

- the Research programme was another matter awaiting a decision by Ministers.

ITEM 5: LOCAL AUTHORITY REGISTERS OF BUILDING CONTROL INFORMATION [P20]

5.1 Officials advised that the purpose of P20 was to seek BRAC's advice on the potential to make it a legal requirement for local authorities (LAs) to keep and disclose building control information and documents in a register, which would be consistent with the current requirement for LAs to retain and disclose certain information about approved inspectors' (AIs) notices and certificates. This could range from the simple retention/disclosure of completion certificates only – a requirement of the Home Information Pack (HIP) procedures – to including all key documents. Other considerations included copyright and privacy restrictions; retention periods; the need for a Regulatory Impact Assessment (RIA); and the need to consult outside of LAs.

5.2 The Building Control Performance Standards Handbook ('Green Book'), which was currently under review included, at Standard 7, that LAs should store all their building control records for an appropriate period, possibly up to 15 years, and make them publicly available, subject to any copyright/data protection restrictions.

5.3 Comments had been received in writing from a member who had been unable to attend the meeting. He raised various concerns relating to copyright, privacy, security, and liability, and believed that the proposed registers should include only minimal information and be available in limited and prescribed circumstances. He concluded that an RIA and full consultation were imperative before the proposal could be justified. Other points/questions raised by members included:

- the time and cost implications for LAs in storing the information, and in converting information currently kept on microfiche to an electronic format, although it was accepted that most LAs already held and made information available to the public;
- would the proposed requirement for LAs to keep registers be linked with the drive for e-government initiatives?

- Building Regulation plans would not necessarily reflect what was built, so they would not be of any real value. Although the Construction (Design and Management) Regulations (CDM) required 'as built' drawings for owners of new homes, the Building Regulations did not;
- the CDM Regulations also required information to be stored, and the proposed 'building log-book', an idea which BRAC had supported for some time and which BD were currently considering, may contain similar information;
- 10 • the Energy Performance in Buildings Directive (EPBD) would require house/building owners to have energy performance certificates available at time of sale or rent, and these should be part of both the proposed LA register and the HIP; and
- would information relating to security be kept on the register and made publicly available?

5.4 In response to some of the points/questions raised, officials advised that:

- 20 • as there were few LAs that currently kept no information, it was not felt that the impact of the proposal would be that great;
- e-government legislation did not say how the data should be stored, although the 'Green Book' could include guidance to encourage electronic storage. Experience with information received relating to the Competent Persons Scheme had shown that some LAs had difficulty with electronically based systems, but it was hoped that that experience could be built on;
- 30 • whilst it was useful to have certain information when carrying out alterations to a house or other building, the purpose of the proposed regulations was to cover what LAs were required to keep to enable them to check compliance;
- it was appreciated that new homeowners had to be given 'as built' plans, but on a change of ownership that often did not happen and those concerned had to approach the LA or builder for the information, which was sometimes withheld under copyright restrictions;
- 40 • research was being carried out by BD on the 'building log-book', but that was in relation to homeowners keeping the information, whereas the proposal for a register was about what LAs would keep;
- the Building Regulations required an energy assessment to be undertaken when certain work was carried out, specifically on new dwellings, a copy of which should be posted in the house and given to the LA to prove compliance. However, in practice that was usually not done, and it was hoped that if such a requirement was included in the register it would encourage compliance. The EPBD was still being considered; and
- 50 • concerns about security were valid - there was no intention to make detailed plans of security systems publicly available.

5.5 **BRAC** supported the proposed approach in P20, subject to their concerns being considered and the proposed consultation being widened to include the building industry and consumers.

ITEM 6: FIRE SAFETY PROCEDURAL GUIDANCE

[P21]

6.1 Officials advised that the purpose of P21 was to seek BRAC's views on the proposal to issue for consultation the attached draft revision of the Procedural Guidance on Building Regulations and Fire Safety. It would facilitate the Minister's approval, if she had the support of her three relevant advisory committees: BRAC, the Business and Community Safety Forum – who had just confirmed their approval, and the Practitioners' Forum.

10 6.2 The paper explained that the revision of the 2001 edition of the Procedural Guidance was only to reflect the provisions of the Regulatory Reform (Fire Safety) Order (RRO) which was expected to come into force on 1 April 2006. There were no other substantive changes, and that could be checked via the 'track changes' version of the document which had been provided for members' benefit. The aim was to get the document out to consultation by mid-July.

20 6.3 Members expressed their pleasure at now being able to confidently recommend the updated document for consultation, which they considered was long overdue, and needed to be finalised in time for the introduction of the RRO. However, concern was raised in relation to the implication, at paragraph 1.7 of the paper, that liaison between the applicant and the building control body (BCB) was the applicant's responsibility.

6.4 Officials advised that the document was not intended to be a statutory requirement but good practice guidance, particularly in relation to developments where there was more than one BCB. It would help the applicant if relevant information was available to all relevant parties, which was why in terms of guidance it was suggested that the applicant should be responsible for this. It echoed revision of the 2001 edition which emphasised the importance of consultation between all relevant bodies on a continuing basis from the earliest stage of the approval process.

30 6.5 Officials explained that the "fire and rescue authority" was usually "the fire and rescue service", although cases did exist where it could be the Health and Safety Executive, and in relation to Crown buildings it would be the Crown Premises Inspection Group. However, under the building control process the fire and rescue authority would be the service.

40 6.6 It was noted that LA BCBs and AIs were required (under section 16 of the Fire Precautions Act 1971) to consult with the fire authority, but did not have to comply with the advice given. Nevertheless, although members agreed that this guidance worked, they were concerned that the emergence of many AIs had made consistent application difficult, especially on large complex sites with multiple BCBs. They felt that this needed to be addressed either in statute or in a performance measure, and discussions had been held with officials about how the 'Green Book' might help. Many concerns had been raised about 'standards' on fire safety in relation to AIs, and members felt this would need to be reconsidered at a later date.

6.7 **BRAC** supported the proposals in P21, and agreed that any further comments would be relayed directly to officials by 15 July. Members would also have the opportunity to formally comment during the consultation stage.

ITEM 7: SUSTAINABILITY WORKING PARTY

[P22]

50 7.1 The Chairman of the Sustainability Working Party (WP) advised that P22 accurately reflected the many initiatives taking place on sustainability. One was the Code for Sustainable Buildings, and there were issues about how regulation would follow if the Code was to set the standards for water and waste. WP members were not aware of how the

Code would take forward the 'materials' issues which they considered were a major priority. Another initiative referred to was the work that the Sustainable Development Commission (SDC) was doing on the challenges of the existing stock, which had drawn in key issues about existing housing, energy, water, waste, and materials in relation to those.

10 7.2 There was concern that WP members had raised particular key issues about sustainability which were not currently being dealt with, such as the relationship with planning policy and standards, and the issue of compliance and enforcement of the Building Regulations as they currently work. It was hoped that, with more work having been done on the Code, it would be clearer how the WP could contribute more fully by its next meeting.

7.3 It was noted that although landscaping was not a Building Regulations matter it used a lot of materials which gave scope for reuse of materials and it was also considered to be an important part of security for buildings. The issue of landscaping had arisen because new research had indicated its therapeutic effects, and the Code had set a wider remit for health and well being.

20 7.4 Officials hoped that the consultation on the Code would be published in September 2005, and felt it would be useful for the WP and main BRAC to comment on it.

7.5 **BRAC** noted the progress report.

ITEM 8: PART L (CONSERVATION OF FUEL AND POWER) WORKING PARTY [P23]

30 8.1 The Chairman of the Part L WP advised that P23 reported the WP's discussions on how the proposals for amending Part L, and implementing the EPBD, should be revised in light of the consultation responses. The main issues discussed were the proposed changes to the ADs arising from the legal recasting; the findings of the technical and the building control audit workshops that tested the current version of the ADs (the results of the audits formed an Annex to P23); and the estimated performance improvements.

8.2 On timing, officials reported that the Minister would be consulted shortly, and it was hoped that she would give the go ahead so that the proposed 'minded to' statement could be released. Contingency plans had been prepared in case the Minister was not content with the proposals, but the aim was to let the industry know this summer what was expected. With regard to training and dissemination, the 'training the trainers' sessions were going well and it was reported that:

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- BCBs were expecting study packs in July/August;
 - BCBs would receive invitations to attend management seminars at the end of September;
 - 8 roadshows would be held around the country which would be open to everyone in the construction industry; and
 - 30 workshops, covering L1 and L2, would be held on consecutive days at various locations within the regions.

50 8.3 Members felt that the more complex the changes, the longer the bedding in period needed to be, but were concerned about the misinformation being circulated, and believed there was a need to progress positively with the suggested timescale. They believed that the industry needed guidance now, particularly if the 'minded to' statement was not released before Parliament went into recess and were concerned that the time and cost involved

should not be underestimated. They also pointed out that there was an opportunity in the Directive for countries to defer implementation of some requirements by up to 3 years if there was not adequate training of energy inspectors.

10 8.4 Officials responded that from the comments made they felt that BRAC largely supported the proposed timescale. The ADs were available through the various industry working groups so people knew about the proposed changes, and these would be made publicly available as soon as the Minister had agreed them. Ministers were also minded to be fairly generous with the transitional provisions. It was accepted that bedding-in would take time, but the comprehensive training and dissemination programme would help this process. Smaller businesses would be targeted in the autumn, and ODPM would be talking to their support organisations and the DTI about training.

8.5 Officials added that the Energy Performance Certificates would be introduced by the European Communities Act (ECA), rather than the Building Act 1984 (BA), as there were doubts as to whether all the powers needed to implement the Directive were available under the BA.

20 8.6 Members concluded that the transitional provisions needed to be couched carefully, and should be made known as soon as possible. Members were advised that the operational rating did not come under the Building Regulations but was an EPBD matter. Officials agreed to circulate the 'minded to' statement to members when it was made, together with added comments to cover the concerns raised. **Action: SB/TK**

8.7 **BRAC** noted the progress reported.

ITEM 9: PART G WORKING PARTY – SANITATION, HYGIENE AND WATER CONSERVATION [P24]

30 9.1 Officials advised that P24 requested BRAC to note progress on the review of Part G, and its interface with the Water Supply (Water Fittings) Regulations 1999, together with the report on the industry liaison group meetings.

9.2 Members agreed that the main emphasis of the WP's work was water conservation and suggested that the title of future papers should put that subject first, followed by sanitation and hygiene, to which officials agreed.

9.3 **BRAC** noted the progress report.

40 ITEM 10: DATES OF COMMITTEE AND OTHER MEETINGS IN 2006 [P25]

10.1 Members were content with the dates suggested in P25 for BRAC meetings in 2006. **[Secretary's Note: The usual meeting room and the Eland House Restaurant function area had now been formally booked for these dates.]**

50 10.2 The dates of 6 and 7 November 2005 were noted for the BRAC 2005 Awayday, and a decision would be taken on whether to hold an Awayday in 2006 after that. Members were asked to email any views they had for a particular topic for discussion at the 2005 Awayday, to the Chairman or Deputy Chairman for consideration. The Chairman confirmed that a change of venue and start day would be considered for future Awaydays.

10.3 Members suggested that the Minister, Yvette Cooper, be invited to address BRAC at a forthcoming meeting or at its Awayday. **Action: AH**

10.4 In view of the uncertainty surrounding BRAC's future direction, it was decided to postpone the Think Tank meeting that had been planned to take place after the next Committee meeting on 5 October.

ITEM 11: ANY OTHER BUSINESS

10 11.1 Members were reminded of the offer by the Scottish Building Standards Agency (SBSA) to give a presentation on its new Building Standards procedures, and it was suggested that this might take place following lunch at the next BRAC meeting on 5 October. Officials would discuss with the SBSA. **Action: AH**

11.2 Members asked if officials could establish and report back on what had happened with the Fire and Rescue Sounding Board, which the previous Minister, Nick Raynsford, had set up. **Action: TL**

11.3 In response to a question about what had happened to the Cabinet Office review of the regulatory burden on LAs, officials advised that the scope of the review no longer covered Building Regulations.

20 11.4 Members suggested an energy plan for buildings was needed that was consistent with the White Paper target of a 60% reduction in carbon emissions by 2050. Officials suggested members might appreciate a presentation on the changes to Part L, when appropriate. **Action: SB/TK**

11.5 BRAC congratulated Ted King (BD) on the recognition he had received for his work in relation to energy conservation, i.e. the CIBSE Silver Award and at the recent Building Services Journal awards.

30 11.6 Finally, it was reported that London had just won the bid to host the 2012 Olympic Games, which BRAC warmly welcomed. It was noted that this may have workload implications for BD and BRAC, particularly as BD was part of the Thames Gateway and Sustainable Buildings Directorate.

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The Chairman reminded members that the **date of the next BRAC meeting** was **Wednesday 5 October 2005**. The meeting closed at approximately 12.55pm.

PRESENT**BRAC Members**

Mr M Finn	Chairman
Dr A Soane	Deputy Chairman
Mr A P Allen	Member
Mrs J Cowans	"
Mr D Gibson	"
Mr D Holliday	"
Prof P Jones	"
Mr F Sheehan	"
Mr D Smith	"
Mr J Stanton	"
Ms L Sullivan	"
Mr P Warburton	"

BRAC Observers

Mr I Herd	SBSA	Dr A Hall	BSI
Mr S McCrystal	DFP(NI)	Mr D Lush	CIC
Mr G Cooper	BBA	Ms C Atkinson	BRE Trust
Mr R Whittaker	EH	Ms A Pipes	LGA

ODPM/BD Officials

Ms A Hemming	Head of BD
Mr S Barnes	BD
Mr T Lord	"
Mr T Nawaz	"
Mr I Drummond	"
Mr D Hobbs	"
Mr P Philippou	"
Mr R Shipman	"
Mr G Gower-Kerslake	"

Mr D Petherick	BRAC Technical Secretary
Mr K Flanagan	BRAC Secretary
Mrs L A Fletcher	BRAC Secretariat
Mrs K Morris	"
Mr C Botterill	"