

BUILDING REGULATIONS ADVISORY COMMITTEE (BRAC)

MINUTES OF THE THIRD MAIN MEETING IN 2009 HELD ON THURSDAY 8 OCTOBER, 10AM AT COMMUNITIES AND LOCAL GOVERNMENT (CLG), SFP ROOMS 1, 2 & 3, GROUND FLOOR, ELAND HOUSE, BRESSENDEN PLACE, LONDON SW1E 5DU

PRESENT

10 A list of those present is at **Annex A**

ITEM 1: WELCOME AND INTRODUCTION

1.1 Members, officials and observers were welcomed to the meeting.

1.2 BRAC congratulated four members who had recently been reappointed to the Committee by the Minister for further terms - Neil Cooper (Deputy Chair), Dave Mitchell, Thiru Moolan and John Tebbit. As she was attending her last BRAC meeting, the Committee also wished an official - Paula Higgins – future success in her new post in CLG.

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ITEM 2: APOLOGIES FOR ABSENCE

2.1 Apologies were received from: two members – Keith Bright and Andrew Shipley; the DFP-NI observer - Seamus McCrystal; and the WAG observer - Francois Samuel.

ITEM 3: MINUTES OF THE SECOND MAIN MEETING IN 2009 HELD ON FRIDAY 5 JUNE AND MATTERS ARISING

30 3.1 The minutes of the last main Committee meeting were agreed. There were the following matters arising:

- *Item 3.1 second bullet* - The draft risk assessment guidance was on today's agenda (item 4) for discussion.
- *Item 3.1 third bullet* - The annexes to P41 contained details of CLG research projects in 09/10.
- *Item 4.3 seventh bullet* – Details on the current use of smart meters to measure energy consumption in Northern Ireland could be found in P40.
- *Item 4.4* – The paper (P44) recording BRAC's response to the former Minister following the May meeting had not yet been issued. The Chair proposed to present the paper to the new Minister at their forthcoming meeting on 15 October. A report of this meeting would be given to members at the BRAC Awayday on 5/6 November.
[Secretary's note: P44 was issued on 12 October 2009.]
- *Item 7.2 fifth bullet* - The Part J (Combustion appliances and fuel storage systems) consultation had been published on 3 September.
- *Item 8.4 first bullet* – The increase in the number of BSI and other guidance publications would be discussed at the BRAC Awayday.
- *Item 13.1 fifth bullet* - EPBD2 and HESS updates were given in P41.

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3.2 With reference to item 11.3 of the June minutes, it was noted that the theme for this year's BRAC Awayday was "Shaping the future". Members were content with the draft agenda circulated. There would be two/three guest speakers who would be invited to attend the Thursday evening dinner and selected members had been invited by the Deputy Chair to give the other presentations. A suggestion for the after dinner discussion was for all members to speak briefly on "My worst experience in the Industry". CLG would contact members to confirm attendance and accommodation requirements.

10 **ITEM 4: PROGRESS ON FUTURE OF BUILDING CONTROL IMPLEMENTATION PLAN AND PERIODIC REVIEW** [BRAC(09)P33]

4.1 CLG introduced P33 which updated BRAC and sought views on progress made against some of the key milestones in the Implementation Plan since publication relating to: performance management; risk assessment guidance; mapping regulatory regimes; and the initial periodic review of the Parts of the Building Regulations.

4.2 It was reported that Alan Crane (BRAC member) would shortly be taking over as Chair of the BCPSAG and that CLG was seeking other nominations to appoint to the group as indicated in P33 (and P41). BRAC noted progress on the Implementation Plan and the following comments were made on two of the projects in discussion with CLG:

20 Risk assessment guidance

- It was noted that BRAC was represented on the risk assessment project working group. The brief was to replace the statutory notification system with a requirement for building control bodies to produce a service plan based on the risk assessment guidance. A good practice guide would be issued shortly to building control bodies on the stages of work that should be inspected on a risk assessment basis and feedback would be invited. The main areas of risk in the construction process were put into the matrix and scored. Outputs were relatively simple. P33 explained that the guide would be piloted and consulted on.
- 30 • Initial testing on householders was encouraging, but there would be nervousness about the new risk assessment approach amongst local authorities (LAs) and a culture shift would be needed, although some were already adopting this approach. LAs would be making subjective judgements about the ability of builders - it would not be a prescriptive process. Records on non-compliance needed to be kept but there was concern amongst LAs that the new approach could lead to more Freedom of Information requests.
- Unknown and unreliable builders were a problem, particularly in city areas and during the recession. Removing statutory notification stages for inspections could be a problem if builders did not comply with the new approach, eg when foundations were covered up. It was suggested that the new approach should be extended to designers.
- 40 • As raised at the June BRAC meeting, it was felt that the draft risk assessment guidance remained too focused on structural safety and needed to be more inclusive of all Parts of the Building Regulations.
- BRAC agreed that it was crucial that the risk assessment guidance was explained and promoted to the public/press as this change would impact greatly on building regulations and could cause confusion.

Mapping Regulatory Regimes

- There was concern that the mapping documents at Annex B of P33 were complex, although it was considered a useful approach. Future changes to the construction

process (eg Sustainable Urban Drainage Systems) needed to be accommodated and the risk assessment guidance could be linked to this work.

- It was suggested that builders should be prevented from commencing with work until plans were approved, which would make a real difference to the construction process. Some concern was expressed about the delay in addressing the abuse of building notices which would form part of the planned wider consultation on changes to the building control system in late 2010.
- The role of project guides was raised. In BRAC's view, these guides provided a greater appreciation of the work of CLG and an updated guide or 'manual' on the Building Regulations would be helpful. The planned domestic extension guide would take on board the risk assessment approach but it was too late for the loft conversion guide. These guides were being produced with the support of RIBA Enterprises who were giving consideration to the need for plain English; however some concern was expressed that this could lead to ambiguity as the re-writers did not understand the technical meaning. As the Approved Documents review was also subject to this process, it was considered that this needed careful management.

ITEM 5: REVIEW OF COMPETENT PERSON SCHEMES- PRE CONSULTATION

[BRAC(09)P34]

5.1 CLG introduced P34 about a review of competent person self-certification schemes (CPS). CLG hoped to publish a consultation document in the new few weeks along with a monitoring report on the performance of existing schemes. Comments were invited from BRAC on the draft consultation document. *[Secretary's note: The consultation was published on 23 December 2009.]*

5.2 The results of this exercise could lead to administrative changes to the conditions under which schemes operate which may come into effect from 6 April 2010. New schemes would need to demonstrate compliance with the proposed revised conditions immediately; older schemes would be given reasonable period to comply. One aim of the proposals was that there should be more transparency by competent person scheme operators to the benefit of their members and consumers which would encourage a higher level of compliance with building regulations.

5.3 BRAC noted the proposals and the following comments were made in discussion with CLG:

- In response to a question, CLG explained that whilst it had been reluctant in the past couple of years to authorise further schemes, the Department had recently done this for the new Part G of the Buildings Regulations in relation to cold water supply and water efficiency calculations and also for combustion appliances.
- There was concern about 'business as usual' and how this might affect consumer protection, especially where schemes were not meeting current requirements (as stated in the monitoring report). It was noted that consumers could take out insurance (which was not that expensive) against quality of work carried out and that this offered protection but that the warranty would only come into effect once the competent person was no longer operating.
- It was observed that there was no proposed further training and development requirements for competent person schemes in the draft consultation document, although some made provision for this. All Part P (Electrical safety) schemes update training and development to meet the standards in the 17th edition of the wiring

regulations. Installers were required to do this by end December 2009 or they would put their competent person status at risk. *[Secretary's note: A criterion on Training & Development was added to the consultation document.]*

- There was also some concern that gas fitters were not up to date with regulations. CLG would check the position; however this was primarily a matter for Gas Safe Register and Health & Safety Executive.
- 10 • It was also suggested that the consultation needed to consider whether business plans prepared by competent person schemes stacked up and whether they had sufficient members. There should also be a requirement to maintain competence and to keep information acquired secure. *[Secretary's note: These issues would be covered in the consultation.]*
- The problems relating to how LAs were notified of schemes was raised, of which CLG was aware. LABC was working with the scheme operators to try to resolve the problems.
- 20 • There was a cost associated with using UKAS accreditation which had been considered by the impact assessment; however, it was not clear whether the cost of management time was included in this cost.
- All schemes except replacement window schemes were seeking Microgeneration Certification Scheme approval which meant they were seeking UKAS accreditation also for that purpose. This would reduce costs if they applied for accreditation also for competent person purposes. This was not the case for the three replacement window schemes for which the full cost of UKAS accreditation was accounted for in the impact assessment.

30 **ITEM 6: SELF-CERTIFICATION OF LARGER COMBUSTION APPLIANCES: CONSULTATION [BRAC(09)P35]**

6.1 CLG introduced P35 which sought BRAC's views on proposals in the attached consultation document "*Removal of restrictions on the self-certification of the installation of combustion appliances*", which was published on 18 September. CLG said that in many cases, particularly in replacement work, such work was not notified to a building control body and therefore no one was checking the energy efficiency of large combustion appliances.

40 6.2 BRAC members were invited to respond formally to the consultation exercise which had a closing date of 6 November 2009, but the following initial comments were made in discussion with CLG:

- The removal of the current restrictions would provide for the self-certification of any size of boiler, but it was suggested that there should be an extra competence check for larger combustion appliances. CLG stated that firms would have to demonstrate their competence before acquiring the right to self-certify larger combustion appliances. National occupational standards were also being developed for large boilers.
- 50 • The accuracy of the statement in paragraph 14(f) on page 10 of the consultation document was questioned. It was believed that the high level of compliance of self-certification of combustion appliances was a result of a combination of various elements, including building control, not just self-certification.

- It was observed that paragraph 2(i) in P35 was not technically correct. It was also argued that the logic in paragraph 4 of the paper was fundamentally flawed as replacement work would have to be checked by scheme operators. CLG mentioned that scheme operators would carry out random monitoring of the installation of larger combustion appliances as they did for smaller ones.
- There were questions about the validity of the impact assessment and estimated savings, including the issue of double counting. For example, if a heating system was to be self-certified the LA would not have to check it. Building control charges could therefore be reduced which could result in savings.

ITEM 7: REVIEW OF THE CODE FOR SUSTAINABLE HOMES PRE-CONSULTATION **[BRAC(09)P36]**

7.1 CLG introduced P6 which updated and sought BRAC's views on the current set of proposals for changing the Code for Sustainable Homes in 2010. Members were also invited to email written comments to CLG prior to a formal consultation exercise. *[Secretary's note: The consultation was published on 16 December 2009.]*

7.2 The Code Advisory Group (CAG) and Code sub-groups had discussed most of the proposals. It was identified that five of the nine categories of the Code needed some changes. The main areas currently planned for change and inclusion in the forthcoming consultation were referred to, ie energy, waste, health and well-being; and management, which were detailed in P36. Work was still on-going, especially in energy efficiency and identifying the definition of zero carbon (a robust definition was needed). The main proposal was to realign the energy category (ENE) in the Code containing the current nine issues so that it could follow the zero carbon hierarchy. The role of the Energy Efficiency Task Group was also explained. SUR 1 (Management of surface water run-off from developments) was not discussed in the paper; a sub-group meeting would be held shortly to consider. *[Action: CLG to re-circulate membership list of Code advisory group and sub-groups to BRAC as Annex A of P36 was incomplete.]*

7.3 A member (Peter Warburton) expressed interest in attending the ENE subgroup meeting, which was agreed. Members queried the definition of the waste category in the Code and the need to ensure that there was no conflict between the security proposals and fire safety requirements in regulations.

ITEM 8: ZERO CARBON - NEW NON DOMESTIC BUILDINGS PRE- CONSULTATION **[BRAC(09)P37]**

8.1 CLG introduced P37 which set out the main elements of proposals for all new non-domestic buildings to be zero carbon from 2019, and all new public sector buildings to be zero carbon from 2018. The annex to the paper also provided an update on the zero carbon homes policy. CLG sought the Committee's views on the proposals, particularly on the questions raised in paragraph 17 of the paper.

8.2 BRAC made the following comments in discussion with CLG, although further comments were also invited by email prior to a formal consultation exercise: *[Secretary's note: The consultation was published on 24 November 2009.]*

- With regard to paragraph 7(a), it was suggested that there was a conflict between defining zero carbon at the point of build/completion and not taking account of performance in use due to user behaviour which could lead to its value being diminished. CLG explained that work was ongoing on use of existing buildings.

- CLG was aware that compliance software tools needed to be developed and that there were concerns about SBEM. A review of SBEM would be part of the proposals.
- Concern was raised about the scope for confusion if different carbon compliance targets were set for domestic and non-domestic buildings. 'Unregulated' energy use could also be a problem, eg in sheds.
- Paragraph 17 questions: (a) - Planning involved making strategic decisions and Building Control was mainly technical - these needed to work together so interaction was vital on zero carbon proposals; (b) – there would be a sharp learning curve for Building Control; (c) – whole developments would need to be considered in future so early consideration should be given to the knock-on effect and the need for changes to building regulations; (d) – Building Control would need more procedural guidance; (e) there could be practical difficulties with implementation.

ITEM 9: CLIMATE CHANGE ADAPTATION AND THE BUILDINGS REGULATIONS

[BRAC(09)P38]

9.1 CLG introduced P38 which provided an update on the broad approach the Department proposed to take in dealing with climate change adaptation in the Building Regulations and in future revisions of the Code for Sustainable Homes. DEFRA followed this with a presentation explaining the UK Climate Projections 2009 and proposed some questions for BRAC to consider (copies of the slides were at Annex A to P38). The following comments were made in discussion with CLG/DEFRA:

- There was a suggested solution of more urban green space. A 10 per cent increase in green space could solve the high scenario of climate change prediction. More research was needed into passive houses to understand whether they could withstand heat waves without more air-conditioning units. 2006 was the first year peak electricity used in summer was a direct result of more air conditioning use. There was a need to design for hotter climates without air conditioning. The Green Roof Organisation was looking at how this worked.
- The practice had been to design buildings to suit past weather and climate conditions and not the future. The UK could learn from other European countries with hot climates. The question was which of the three climate change scenarios (high, medium and low) should be used – a risk management approach was needed. It was noted that these did include data on 'wind' as projections were difficult to model.
- Extreme events caused major problems for buildings. Snow/wind/rainfall intensities/floods can all have dramatic effects; more information was required on these types of events as it was impossible to design for all eventualities. There were three main issues in the built environment: damage; design standards (should an upper temperature limit be set?); and failure of infrastructure, but wider development needed to be taken into account.

9.2 DEFRA explained that the climate change models provided a tool for variables. The approach to dealing with impacts was to manage risk across the various sectors; it fell to CLG and BRAC to consider, with stakeholders, the impact on the built environment. More information could be found on the DEFRA website. As explained in P38, a CLG commissioned project called *Drivers for Change* would be commissioned shortly which would look at the effect of climate change on the planned periodic reviews of the Building Regulations and on the Code. BRAC members would be invited to key stakeholder meetings and would be notified of the findings of the project.

[Action: CLG]

9.3 BRAC would be giving further consideration to the effects of climate change on the built environment at its forthcoming Awayday.

ITEM 10: BUILDING REGULATIONS - USER BEHAVIOUR

[BRAC(09)P39]

10.1 CLG presented P39 which explained in detail the research CLG was carrying out to review the extent to which building regulations took account of human behaviour in buildings and the need for future research and development work. This work was commissioned by CLG's Sustainable Buildings Division and conducted internally by the Department's Office of the Chief Scientific Advisor. The presentation and much of the discussion with BRAC followed the content of the paper but the following additional points were made:

- Members referred to earlier discussions by BRAC on user behaviour and their recommendation that some buildings needed a 'log-book' or manual and 'MoTs' or post occupational reviews. Feedback was also needed from building occupiers.
- Monitoring would be needed in the case of the Water Calculator (Part G – Sanitation, hot water safety and water efficiency) to evaluate whether people did just use the assumed 125 l/p/d.
- There was data available on how public buildings were performing in energy consumption as there had been 28,000 DEC assessments. It was questioned whether CLG/BRAC should analyse these for building regulations purposes.
- It was noted that some reviews of the Building Regulations had acted on user behaviour issues (eg Part B - Fire safety - and the use of door closers). However, the discussion concluded that there was a critical need for all reviews to consider user behaviour issues in future, particularly in the light of the zero carbon agenda; this needed to be on every working party agenda. It was vital that user behaviour was integrated from the start.

10.2 BRAC was invited to email CLG with any further comments on P39.

ITEM 11: UPDATES FROM NORTHERN IRELAND, SCOTLAND AND WALES ADMINISTRATIONS

[BRAC(09)P40]

11.1 P40 was presented and the updates in the paper from the absent Northern Ireland and Welsh administrations were noted.

11.2 In his update, the Scottish observer commented in particular on:

- the forthcoming fatal accident enquiry into a Care Home fire that took place five years ago. It was scheduled to take up to six months and would hear evidence from various witnesses including the owners, Scottish Government and the Fire Service;
- the recent consultation on compliance with building regulations - findings would be presented to CLG/BRAC when conclusions had been reached on the future direction of travel. Early indication was that more local authority inspections may be needed;
- how Scotland had the most challenging piece of Climate Change legislation anywhere in the world and that the targets set were very demanding.

ITEM 12: ANY OTHER BUSINESS

12.1 The following other business was raised by BRAC members and CLG officials.

- CLG gave brief updates on the reviews of:

- Parts A (Structure) & C (Site preparation and resistance to contaminants and moisture); The working party meeting planned for 4 November would be replaced by a meeting between officials and the BRAC WP Chair to discuss next steps.

- Part G: It was accepted that it was difficult to measure real use of water using the water calculator; there may be better technology in future such as smart metering. As stated in P31, the amendments to Part G had been delayed until April 2010 due to representations received from the European Commission. BRAC would be informed of developments. *[Action: CLG]*

- A member asked CLG to check the Part L (Conservation of fuel and power) consultation responses to ascertain if there were any issues in relation to top and side lit shed buildings. *[Action: CLG]*

- In response to a query from a member, CLG advised that consideration was being given to acoustics in schools. Open-space teaching could be problematic for the hearing impaired. There was concern that Building Bulletin 93 was not being adhered to. Discussions were ongoing with Ministers and there would be an update at the next BRAC meeting. *[Action: CLG]*

- CLG advised that the relevant page on its website had been updated with notification of the revised timetable for introducing new local authority building control charges regulations and that it was content for the LABC to promulgate this to authorities.

12.2 BRAC was reminded of the dates of forthcoming meetings stated at the end of the agenda for today's meeting. The meeting closed at approximately 4pm.

BRAC Secretariat
Sustainable Buildings Division, CLG

PRESENT (for all or part of the meeting)***BRAC Members***

Michael Finn	Chair
Neil Cooper	Deputy Chair
Tracy Aarons	Member
Ziba Adrangi	"
Peter Caplehorn	"
Alan Crane	"
Nick Cullen	"
Trevor Haynes	"
Adrian Levett	"
David Mitchell	"
Thiru Moolan	"
Alastair Soane	"
Lynne Sullivan	"
John Tebbit	"
Peter Warburton	"
Stephen Wielebski	"

CLG Officials

Sarah Sturrock	Deputy Director, Sustainable Buildings Division (SBD)
Anthony Burd	Head of Technical Policy, SBD
Guy Bampton	SBD
Claire Brailey	"
David Crane	"
Paul Decort	"
Ian Drummond	"
Jeannette Henderson	"
Paula Higgins	"
Clover Summers	"
Kevin Flanagan	BRAC Secretary, SBD
Robbie Allen	BRAC Secretariat, "
Emma Joyce	AEAT (Assistant minute taker)
Mark Davis	Climate Change and Sustainable Development Division
Gray Raw	CLG, Chief Scientists' Office

Observer

Bill Dodds	Building Standards Division, Scottish Government
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DEFRA (Item 9 – presenters)

Lucy Harbron	Department for Environment, Food and Rural Affairs
Clare Hawley	"