

**BUILDING REGULATIONS ADVISORY COMMITTEE FOR
ENGLAND (BRAC)**

MINUTES OF THE THIRD MAIN MEETING IN 2013 HELD ON THURSDAY 10 OCTOBER, 11AM AT DEPARTMENT FOR COMMUNITIES AND LOCAL GOVERNMENT (DCLG), SPACE FOR PLACE, GROUND FLOOR, ELAND HOUSE, BRESSENDEN PLACE, LONDON, SW1E 5DU

ITEM 1: WELCOME AND INTRODUCTION

- 1.1 Members, officials and observers were welcomed to the third main BRAC meeting of 2013.

ITEM 2: APOLOGIES FOR ABSENCE

- 2.1 Apologies for absence were received from Keith Bright, Andrew Shipley, John Tebbit, Francois Samuel and Seamus McCrystal.

ITEM 3: MINUTES OF THE SECOND MAIN COMMITTEE MEETING IN 2013 HELD ON 20 JUNE AND MATTERS ARISING

- 3.1 A number of small errors were identified in the minutes of the June meeting and officials advised the meeting that there had been significant revisions to the minute record for agenda item 4 of the June meeting on the Construction Products Regulation

Action 01: BRAC Secretariat to amend minutes and recirculate for sign off.

- 3.2 The BRAC Chair formally recorded his thanks to Adrian Levett for his two terms of service on the Committee noting his helpful insights into the user perspectives of building design and replacement.

- 3.3 Officials informed BRAC that Stephen Williams had been appointed the new Building Regulations Minister as successor to Don Foster. The BRAC secretariat will formally invite him to the first 2014 BRAC meeting in February and discuss possible dates for a meeting between him and a delegation of BRAC members as had happened with his predecessor in May 2013.

Action 02 BRAC Secretariat to extend an invite to the February 2014 BRAC meeting to Stephen Williams and to start considering possible dates for a bilateral meeting between the Minister and a group of BRAC members.

- 3.4 The BRAC Chairman requested that Peter Caplehorn produce an outline plan for the annual BRAC Strategy day in November. It was agreed that it should include an item on considering the possible BRAC 2014 work programme and update on the behavioural change project where members of that working group were asked to begin developing a work-plan for its next stages.

Action 03 Peter Caplehorn to produce outline plan/agenda for the November BRAC Strategy Day.

Action 04 Tracy Aarons / Emma Clancy to start developing a work plan for the next stage of the work on the behavioural change project and to consider whether any specific support from the BRAC secretariat is required

ITEM 4: ZERO CARBON AND ALLOWABLE SOLUTIONS

[BRAC (13) P16]

[BRAC (13) P17]

- 10 4.1 DCLG provided an update on the Zero Carbon and Allowable Solutions Consultation on *Next Steps to Zero Carbon Homes* that was published on August 6 2013 and will close on October 15th 2013. It seeks views and evidence on the key principles, price cap and processes for the delivery of Allowable Solutions.
- 4.2 In response the BRAC Allowable Solutions working group met to discuss the consultation on 2 September 2013 and produced a bullet-point list of key points from that meeting (BRAC 13 P17). This paper acted as the starting point for the round-table discussion on Zero Carbon and Allowable Solutions led by David Mitchell that followed the DCLG Update. Once agreed by BRAC these bullet-points would be developed into an advice-letter for the Building Regs Minister.
- 20 4.3 The main points raised as part of the discussion were as follows:
- 'Zero Carbon' as a title was thought to be misleading as once Allowable Solutions start being applied to new homes they will not be Zero Carbon because the abatement has been parked elsewhere. It was suggested that a change in title might be useful to avoid confusion and potential damage to industry caused by creating doubt in consumer's minds. Titles such as 'Low Carbon Home' and 'Low Energy Home' were suggested by members and another suggestion was to use the 'nearly zero energy buildings' title as which would be consistent with the terminology in the Energy Performance in Buildings Directive.
 - There is a need to clarify where an Allowable Solution could be provided. Opinions were split between those favouring the flexibility to apply it across England / UK to contribute to wider carbon-reduction commitments, and those who felt the agreed action needed to be tied into the locality of the development to link it as closely as possible to the development itself but also help win hearts and minds.
 - Allowable solutions should not be restricted to the built environment; a wider approach was needed to include clarity on what constitutes an allowable solution. Within that there is an issue on application around whether Allowable Solution focusses on Carbon or energy. It was agreed that it had to be carbon to fit with the UK's 2050 carbon reduction targets and carbon budgets but that there could be some confusion between references to low carbon in some places and low energy in others. In this context it was also noted that Part L focuses on Carbon targets but also references energy efficiency at times.
 - Allowable Solutions could be used to help existing housing stock with specific reference to the funds raised by their application but care would need to be taken to ensure double-counting was avoided.
 - If Allowable Solutions were extended into the non domestic sector the fees accrued by the fund would probably double and accumulate quicker adding significantly to the viability of the proposal.
 - Roles and responsibilities in the provision of allowable solutions need to be properly defined to leave no doubt or room for misinterpretation. For new housing it is the house builder's responsibility to select the Allowable Solution in line with the guidance and regulations but for absolute clarity each part (builder, building control, the allowable-solution provider, the system of admin and audit process) needs to have clearly defined roles, responsibilities and liabilities.
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- The Allowable Solution needs to deliver what it claims to and the provider has to be able to prove it with a transparent audit and certification process to validate it.
- Collection of Allowable solutions fees could come via a fund or collection body which could be separated out from the actual provision of the allowable solutions delivering the carbon savings. It was suggested that collection would be most effectively administered via existing mechanisms rather than inventing anything new and that way collection could potentially start from 2016 with the fees accruing for a number of years prior to allowable solutions providers coming along to bid for the money.
- It was agreed that the letter should make clear that BRAC was supportive of the Zero Carbon Homes Policy and the Allowable Solutions Consultation, and that these key points were consistent with discussions by the Zero Carbon Hub.

Action 05 Dave Mitchell to meet with the BRAC Secretariat to go through key points raised in the discussion to get them into a prioritised bullet-point letter for advice to the Minister.

ITEM 5: HOUSING STANDARDS REVIEW

[BRAC (13) P18]

[BRAC (13) P19]

5.1 DCLG provided an update on the current position with the Housing Standards Review. This was published for consultation on 20 August 2013 and will close on 22 October 2013. This sought views on three possible options moving standards directly into building regulations, a staged move of standards into building regulations with a standards document as a stepping stone or continuing with a standards document alongside the building regulations.

5.2 Peter Caplehorn had prepared a few summary thoughts to lead a round-table discussion on the Housing Standards Review to try and reach a BRAC consensus view to translate into an advisory letter to Ministers.

5.3 The main points of the discussion were as follows

- BRAC supported the initiative as it is aimed at increasing the provision of new homes and reducing the regulatory burden their construction by seeking to reduce the complexity of processes and regulations and improve the level of integration between the planning and building regulation systems.
- The Building Regulations remain the most effective way to provide technical construction controls
- The half-way house option of a staged move and tiered building regulations have the potential to be the most confusing without clear communications, timeframes and roles and responsibilities.
- Tiered structures within the building regulations would be particularly confusing and extremely difficult and time-consuming to develop and put in place.
- Increases or changes to required standards should where possible be delivered through the Building Regulations as they are the most appropriate controls and are well understood by the industry.
- The industry is generally relaxed about the loss of the Code for Sustainable Homes as less nationwide variety on materials and standards to be applied would be a welcome and positive development. Similarly industry would welcome the removal of the Merton rule.
- Planning policy should continue to lead on land use and development but reducing the number of standards applicable and potentially moving more into the building regulations was seen as a potential help in the on-going issue of aligning plans and building regulations

- Any initiative designed to reduce the high level of interpretation allowed within the planning process was welcome to avoid uncertainty and delay
- Action to reduce the flexibility with and number of applicable standards would require a planning statement or other clear enforcement procedures to take away the potential for Local Authorities wanting to apply their own standards and targets.
- Potential conflict between reducing the number of standards and Ministers being keen not to discourage those Local Authorities who want to strive for higher environmental standards
- Key point was that standardising the approach should enable a more effective linkage between planning and building warranties.

Action 06 Peter Caplehorn to draft bullet-point advice letter to provide a BRAC view on the Housing Standards Review for Ministers and to circulate to BRAC members for review and comment

ITEM 6: Update on PART L

**[BRAC (13) P20]
PRESENTATION SLIDES**

- 20 6.1 DCLG provided an update on Part L confirming that the uplift announced on July 30th would deliver a 6% improvement on 2010 standards for new homes, A 9% improvement for non-domestic buildings was also forecast most of which could probably be achieved on fabric. These new standards would come into force with effect for 06 April 2014.
- 6.2 The July announcement also ruled out regulating for a new quality assurance scheme to tackle cases where new homes fail to meet their stated energy performance with the proviso that industry should continue to focus on this issue via the Zero Carbon hub.
- 30 6.3 It was also confirmed that there should be an 'elemental recipe' when setting individual carbon and fabric energy targets that remains suitably flexible to recognise that it can not be prescriptive or apply to all developers and housing types.
- 6.4 It has been agreed with DECC colleagues that a beta version of the revised national calculation methodology will be produced to help industry to enable them to start considering solutions in advance of the April go-live date for these new standards In advance of the formal launch of that on 5 November 2013, BRAC members were requested to nominate a small number of experts to help test the robustness of the software.
- 40 6.5 The detail of these part L changes and a demonstration of the BETA software were presented to industry on October 8th at BRE. The revised ADs are on target to be available online from 22nd October 2013
- 6.6 BRAC members were asked to let Officials know about suitable events to present the detail of the changes to. Dave Mitchell advised that the SAP Forum and others held regional meetings all over the country and confirmed he was happy to present on behalf of the Department if Officials would send out the slide pack to use.
- 50 6.7 Alongside the ADs, officials confirmed that they were starting to work with industry to produce pattern books for industry illustrating joint details consistent with the new standards. BRAC members welcomed this as a positive step towards the continuing development of a library of robust and buildable joints that would particularly support SMEs.

6.8 It was noted that there had been considerable work on the development of pattern books for the residential sector but that not so much had been undertaken in the non-domestic arena where any revised pattern book would need to consider both aspects using approximately half a dozen primary junctions illustrated with several (3 or 4) construction types.

Action 07 BRAC members to provide Paul Decort with suggested named individuals for testing of a new beta release to support industry.

Action 08 Part L Uplift Presentation slides to be circulated to BRAC members for them to use at any stakeholder events they attend where the Department is not represented.

ITEM 7: BCPSAG REVIEW OF KEY PERFORMANCE STANDARDS [BRAC (13) P21]

7.1 DCLG confirmed that the secretariat for BCPSAG transferred to the Department with effect from 01 October 2013 and BCPSAG would now operate as a BRAC subcommittee.

7.2 BCSPAG have been working on a revised set of building control performance standards that apply to both local authorities and approved inspectors in England and Wales. The proposed revised standards set out at Annex A of BRAC (13) P21 were designed to strengthen standards, and improve compliance and consistency of application. They now include 8 standards covering Policy, Performance and Management Systems, Resources, Consultation, Assessment of Plans, Site Inspection, Communication and Records, Business and Professional Ethics. Alongside those 3 completely new standards are also proposed to cover contractual relationships, pre-application advice and the maintenance of proper service levels.

Action 09 BRAC members were invited to review Annex A and offer comments on the proposed new standard set.

ITEM 8: INTIAL THEMES OF NEW SCOTTISH KPI SYSTEM PRESENTATION SLIDES

8.1 The Scottish Government provided an update on the New Scottish Key Performance system that had been introduced following the report of the Sullivan review. This has seen a move towards key performance outcomes rather than indicators in line with the overall aims of the changes to improve quality, compliance, consistency and predictability of verification activities based on retaining the Local Authorities as being best placed to verify compliance with the building regulations.

8.2 The new performance framework was implemented in October 2012 based around 3 perspectives: Professional Expertise and Technical Processes; Quality Customer Experience and Operational and Financial Efficiency and two cross-cutting themes: Public Interest; and Continuous Improvement.

8.3 Although still in the relatively early days of collecting data against the new framework, early indications are that it has helped to focus-minds on key customer outcomes with quicker turnaround times from Local authorities issuing first reports on compliance of building work (96% of initial reports issued within 20 days for example) and no complaints received by Building Standards Division in relation to local authority processing times. Early signs also demonstrate improvement in the quality of

compliance during the construction process with all authorities now issuing construction compliance and notification plans with building warrants.

8.4 The next stages for development of this new framework were reported as the development of a web portal for data transfer, the set up and roll out of a national customer charter and a national survey of the 32 Local Authorities in Scotland.

8.5 It was also noted that these changes to the performance framework in Scotland have all been completed without the need for legislation.

ITEM 9: CONSTRUCTION INDUSTRY COUNCIL APPROVED [BRAC (13) P22] INSPECTORS REGISTER

9.1 DCLG informed BRAC that as part of implementing the recommendations from the Ankers Report CICAIR Ltd will operate as a different legal entity from the Construction Industry Council and will need a new designation order. This was enclosed as Annex A to BRAC (13) P22 and BRAC members were invited to review and submit any comments to the BRAC secretariat.

Action 10 BRAC members to provide any comments on the proposed revised designation order to the BRAC Secretariat.

ITEM 10: GAS-SAFE [BRAC (13) P23]

10.1 Emma Clancy and Dave Mitchell presented a BRAC discussion paper comparing the operation of Gas-Safe with the framework established with Competent Person Schemes

10.2 The key points of the discussion that followed were

- Both schemes had clear strengths.
 - Gas Safe covers the whole of the UK and assesses the competence of all gas-operatives in any business operating in that industry. It also has a lower annual registration fee than with most competent person schemes which is regarded as fairer as it is staggered according to business size.
 - Competent Person Schemes consider both competence of operators and also robustness of their companies policies and procedures, annual assessment and was seen to offer clearer redress for consumers if things go wrong. The clear process of businesses becoming accredited to a Competent Person Scheme via UCAS and DCLG conditions of licence was also noted.
- Concerns were raised with the operation of Gas Safe as it stands around
 - (i) lack of insurance backed warranties
 - (ii) Insufficient focus on Health and Safety Policy and management of the installation process itself
 - (iii) lower accountability for businesses because of this focus on individual competence rather than also covering responsibilities and liabilities with installations carried out
 - (iv) perception that enforcement action against failed installations is less strongly defined, robust or auditable than with competent person schemes
 - (v) lack of consumer awareness about Gas Safe as a brand.

- A number of BRAC members also commented on a specific concern in relation to health and safety with Gas Safe around the need to train gas-installation operatives in all relevant parts of the building regulations because of the significant risks faulty installations give rise to both for customer safety but also in compliance failures for individual building regulations such as Part G.

- Action 11** BRAC members to review evidence and provide findings as applicable to substantiate their concerns about perceived lack of safety with the current arrangements under Gas Safe to assess extent of any issue.
- Action 12** DCLG was requested to schedule a meeting with Gas Safe and HSE (Gas Safe operators) colleagues to talk through the specific concerns with the current scheme with particular reference to risks to building regulation compliance and consumer safety.
- Action 13** For an update report and discussion to be included on the agenda for the next BRAC meeting in February 2014 once Actions 11 and 12 have been completed.

ITEM 11: RESEARCH PROGRAMME UPDATE

[BRAC (13) P24]

- 11.1 DCLG presented P24 to update BRAC on the Building Regulations and Standards research and development programme for 2013/14. This programme was approved by Ministers on July 25 2013 and included renewal of a number of support contracts, a review of the central administration of competent persons schemes, progressing with non regulatory approaches to the provision of facilities for disabled people, several planned reviews of individual parts of the building regulations and a joint contract with DECC to support implementation of European legislation on the development of a national building renovation strategy..
- 11.2 DCLG reported that by the end of November the renewal of a number of the support contracts including CPR would have reached the invitation to tender phase together with the Competent Person schemes review and the two under non-regulatory approaches to improving facilities for disabled people. The joint contract with DECC was confirmed as out to tender and research contracts for Part L following the recent announcement of the 2013 uplift were on track to be out to tender by the end of 2013.
- 11.3 It was also noted that new projects may be commissioned between now and the end of FY 2013-2014 with likely areas for additional research programme spend to include follow-up work from the Zero Carbon/ Allowable Solutions and Housing Standards Review consultations.
- 11.4 The research programme was then discussed in more detail with the main points as follows:
- It would be useful for BRAC to see projected spends for future Financial Years alongside 13-14.
 - Several other research areas were identified that BRAC felt was either not currently covered in the research programme at all or has insufficient spend and focus against it at the moment. These included over-heating, indoor air quality, embodied carbon, fabric first, the case for a competent person scheme for ventilation systems and new developments on drainage and the impact of sudo-infiltration drains on building foundations that could lead to part H becoming obsolete.
- 11.5 BRAC made reference to a number of other research bodies such as the NHBC that

could provide access to a wider research pool for the Department and BRAC to utilise. It was agreed that members should provide the BRAC secretariat with details of the current and planned future research programmes for these organisations so that the Department can potentially use these other sources of data and analysis where required.

Action 14 BRAC members to provide research forward work-programmes for organisations such as NHBC to the BRAC secretariat.

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ITEM 12: UPDATES FROM DEVOLVED ADMINISTRATIONS

[BRAC (13) P25]

- 12.1 Representatives from the Wales and Northern Ireland devolved administrations had sent their apologies but had provided written updates.
- 12.2 The Scottish Government provided an update on their current work programme reporting that a Better Regulation Working Group review will start by the end of 2013. This will consider whether aspects of building standards and associated guidance remain fit for purpose and appropriate and assess priorities for improvement and / or simplification as part of a package of measures for implementation in 2015. This will run according to a one in / one out principle.
- 12.3 Specifically on energy the Scottish Government recently announced that consultation proposals for a 21% reduction in emission from new homes and a 43% reduction in emissions from new non-domestic buildings will now come into force in October 2015
- 12.4 Scotland also reported that the update report by the Sullivan Panel will be published in the Autumn. This will cover extending carbon compliance beyond site-related measures, recognising the value of new-build energy standards and use of both eventual and staged standards and targets.

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ITEM 13: ANY OTHER BUSINESS

MVHR Research

REPORT

- 13.1 Neil Smith presented the final report of research undertaken into MVHR and the implications on the indoor environment from their use. This included the unintended implications of the 2006 changes to building regulation for Air Tightness Testing that might be exacerbating any existing issues with MVHR. The Report also highlights potential weakness on the domestic front and in the Competent Person Scheme on ventilation. It was felt that it would be useful to better understand the possible linkages between MVHR use, Indoor Air Quality and Overheating and it was agreed that a BRAC working group should be established to look at this in more detail.

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Action 15 Working Group on Internal Air Quality to be set up with Neil Smith to lead.

BRAC 2014 Meetings

- 13.2 The BRAC secretariat would be looking to finalise the meeting schedule for the 3 main committee meetings in 2014 by the end of October 2013 and would circulate a confirmed schedule on completion.

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Action 16 BRAC Secretariat to circulate 2014 meeting schedule once finalised