Local Government and Communities Committee

Building Regulations in Scotland

Submission from Aberdeen City Council

Should verification of building standards be extended to organisations other than local authorities?

It is Aberdeen Council’s position that public safety is too important to be a matter of choice; building standards verification should remain exclusively a local authority function.

There is evidence that competition has reduced service standards in England and Wales. Local Authority Building Control in its submission to the All Party Parliamentary Group for Excellence in the Built Environment Inquiry into the quality and workmanship of new housing in England informed that 73% of the complaints received by local authorities over the 36 month survey period were about other organisations providing the building standards service. This did not take into account complaints that were made direct to the other building standards providers.

Understandably, cost to the customer is an important consideration, but reducing fees should not be a driver for appointing building standards verifiers. Competition may reduce fees, but it would almost certainly result in reduced levels of inspections, particularly given the Scottish Government’s drive for the building standards service to be self-financing. This is raised as a concern in England and Wales, where the aforementioned All Party Parliamentary Group’s report of findings (More homes, fewer complaints; July 2016) noted that competition in building control might be fuelling “a race to the bottom” with the belief that there is a consequential need to prescribe a minimum number of inspections.

Furthermore, private sector verifiers would not be accountable to elected members. In England and Wales concerns have been raised within the House of Commons debate on Building Regulations that approved inspectors are not always operating transparently even with their customers - particularly following customer complaints (House of Commons Hansard, 11 May 2016, Volume 609). Lack of transparency is not a criticism that can be placed on local authority building standards verifiers.

Against all of this, Scottish local authority building standards verifiers are driven by public service, have no conflict of interest or commercial interest/pressure, and are both publicly and politically accountable. The Scottish Executive Policy Memorandum to the Building (Scotland) Bill introduced in the Scottish Parliament on 18th September 2002 stated that local authorities “...fulfil the necessary criteria. They are independent, competent and they are accountable to the local electorate”
Scottish Local Authorities have been appointed as they meet the conditions of appointment under the Building (Scotland) Act 2003; qualifications, competence, accountability to the public and impartiality.

The subsequent Scottish Government public consultation Improving Choice in Verification of Building Standards asked for views on extending the independent checking of building work. The Analysis of Consultation Responses, undertaken by Dundas and Wilson on behalf of the Scottish Government (September 2011) reported that 74% of respondents considered that the National House Building Council should not be introduced as a verifier. The consultation paper threw into focus the real concerns with private verification over impartiality and accountability (key findings), and more recently evidenced in England and Wales in the previously referred to House of Commons debate on Building Regulations.

This concern is contrasted by the Scottish Government’s report, independently undertaken on its behalf by Pye Tait Consulting: Evaluation of the performance of local authorities in their role as building standards verifiers (March 2016) which states “there is general confidence and agreement that verifiers are suitably qualified, impartial and accountable to the public.”

In summary, this is a service that successfully covers all types of buildings and is competent, open, transparent, impartial and independent with no conflict of interest. The service is delivered locally with local political accountability and this brings many benefits for elected representatives at both local and national level, applicants, architects, builders and, of course, the general public.

In delivering this, Scottish local authority building standards verifiers work within the national Verification Performance Framework which drives consistency. Service standards are already high, with the most recent 2016 national customer satisfaction survey rating overall national customer satisfaction at 7.1 out of 10.

In joined up working, local authority building standards verifiers have the benefit of readily accessing all relevant local authority information, are linked and integrated with other local regulatory services integral to the development process, can link verification with enforcement and, significantly, can provide a fully accountable local service with local knowledge whilst participating without commercial concerns into a national network of experience and best practice. Building standards service delivery is not an isolated function. It should not be open for private verifiers to target the more profitable building warrant projects, ignoring the bigger picture of community service delivery. If such “cherry picking” was allowed, over time this would have a very detrimental effect of local authority building standards verifiers, particularly if they were required to be the verifiers of last resort and could be compelled to process the less desirable loss making applications. This issue and many others
were raised during the 2011 Scottish Government’s Improving Choice in Verification of Building Standards public consultation.

Finally, it should also be noted that the previously referred to Scottish Government report, Evaluation of the performance of local authorities in their role as building standards verifiers (March 2016) states “The fact that building standards verification is currently placed in the hands of local authorities means the system is free from the risk of ‘profit before compliance’ – a virtue which cannot be understated.”

It is Aberdeen City Council’s position that retaining local authorities as the sole verifiers of building standards in Scotland is compelling.

**Should procedural regulations specify a minimum requirement for the inspection of ongoing building works, to ensure compliance with building standards?**

No system will ensure full compliance with the building standards. The system is based on the integrity of developers to honestly issue completion certificates to local authority verifiers and for the verifiers to risk manage by undertaking reasonable inquiry.

The emphasis on the developer’s obligation to comply with the standards in signing a completion certificate cannot be clearer. It states:

“*I/We* submit a completion certificate in accordance with the details supplied above and with any necessary accompanying information....This completion certificate is confirmation that the work was carried out and/or conversion* made in accordance with the building warrant. This completion certificate also confirms that in the case of work for the construction of a building, the building as constructed complies with the building regulations; that in the case of the provision of services, fittings or equipment in or in connection with a building that the services, fittings or equipment provided comply with building regulations”

There is no need for procedural regulation as this removes flexibility from the system. Whenever there is a statutory minimum it becomes the standard. Given the Scottish Government’s desire for a self-financing system, this is even more likely to be so.

At present, all Scottish local authority building standards verifiers issues Construction Compliance Notification Plans (CCNP) with each building warrant. Based on a risk assessment of type of work, the CCNP requests the developer to notify the authority at key stages of construction. This will enable inspections to be undertaken. Additionally, the individual officer, based on a risk assessment of the specifics of the
case (for example the builder’s track record and site peculiarities), can inspect above the minimum level.

The current system meets the demands of the question without statutory procedure.

**Should there be a statutory system to provide redress for new home buyers whose properties are subsequently found not to meet building standards requirements?**

It is important to isolate build quality from the building standards. The Responsibilities for works requiring a building warrant are explained in the Scottish Government’s The Scottish Building Standards Procedural Handbook Third Edition. “Inspections by a local authority in its role as the building standards authority does not provide a system of control on site; this is a matter for the contracts and arrangements put in place between the client and builder. It is the responsibility of the relevant person (typically the owner or a contractor employed by them) to ensure building works are done correctly.”

Furthermore, the previously reported More Homes, Fewer Complaints report recognises that “the responsibility for construction of defect free homes should rest with the housebuilder – who should not rely on third party inspections to drive up quality”.

For issues other than quality of workmanship, the responsibilities of housebuilders to comply with the building standards is equally clear as detailed in the response to the previous question.

It must also be recognised that local authority building standards verifiers primarily approve building warrants and then make inspections and checks to protect the public interest; this is the intention of the building standards system in Scotland. This can properly include the sampling of certain stages of construction across housing developments.

Home buyers expect assurances and warranties to protect their private interests including and beyond minimum building standards and covering their specific house purchase and financial investment. This issue of redress is one of private interest and therefore consumer protection, consumer rights and warranty. In this area, the previously referred to More Homes, Fewer Complaints report recommended the setting up of a New Homes Ombudsman to mediate between consumers, their builders and/or warranty providers and to be funded by a levy on the sector. This proposal was seen as the key recommendation to provide more effective consumer redress. The Commission also recommended a review of the laws governing consumer rights and thorough review of warranties as their evidence suggested that current warranties on new homes did not match the expectations of home buyers.
Are the current building warrant and associated fees set at the correct level?

It is surprising that this question is being asked given the current Scottish Government consultation on Building Warrant fees.

However, since the current building warrant fees were introduced in 2005, local authority verification costs have risen significantly to cover the increased technical complexity of the Building Standards, the additional inspection workload as required by the New Verification Performance Framework and the Scottish Government driven eBuilding Standards system. All these aspects indicate an increase in fees is necessary.

The recent Scottish Government Fees Consultation and supporting research should adequately answer this question.

Any other issues relating to the regulations which you wish to bring to the attention of the Committee?

No.

Gordon Spence
Building Standards Manager