



**Resources & Public Realm Scrutiny
Committee
09 February 2022**

**Report from the Strategic Director
of Regeneration and Environment**

Fire Safety Act 2021 and Building Safety Bill

Wards Affected:	All
Key or Non-Key Decision:	Non key
Open or Part/Fully Exempt: (If exempt, please highlight relevant paragraph of Part 1, Schedule 12A of 1972 Local Government Act)	Open
No. of Appendices:	0
Background Papers:	None
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1 Purpose of the Report

- 1.1 This report updates the committee on the implications for the building control service of the Fire Safety Act 2021 and Building Safety Bill.

2 Recommendations

- 2.1 That the committee notes the implications of the Fire Safety Act and the Building Safety Bill.
- 2.2 That the committee is assured of Brent Council's response to those implications.

3 Detail

- 3.1 The **Building Safety Bill (BSB)** is currently passing through Parliament. It is expected to receive Royal Assent in late spring/early summer 2022, with provisions coming into force, following secondary legislation, at various points in the 18 months following Royal Assent. The Bill contains a series of reforms

to building safety and is the most substantial legislative response to the Grenfell Tower fire of 2017.

3.2 A Building Safety Regulator (BSR) will be established the Health and Safety Executive (HSE). Their role will relate to buildings with 7 or more storeys or that are 18 metres high and have at least two residential units, or are hospitals or care homes. These will be known as higher risk buildings (HRB).

3.3 The BSR will rely on council building control services (and fire and rescue services) to deliver the building control regulations for HRBs, which is expected to involve multi-disciplinary teams.

3.4 The BSR will have three main functions:

- To implement a new regulatory regime for higher-risk buildings, and to be the building control authority for these buildings;

This includes building work on existing HRBs and enforcing the regime in terms of their occupation, as well as new HRBs. The BSR look at all aspects of the Building Regulations not just fire related provisions. The BSR will use a multi-disciplinary team, which will include local authority building control teams. There will be three gateway points where details must be approved before progressing to the next stage:

- planning gateway (in place since August 2021); the planning application must demonstrate that fire safety requirements have been considered and incorporated into the construction proposals;
- construction – pre construction, the regulator must approve the design as compliant with the building regulations;
- completion – at pre-occupation stage, a completion certificate will only be issued by the BSR once they are satisfied that the work is compliant with the building regulations.

- To oversee the safety and performance of all buildings;

This involves collecting data on the performance of local authority building control services, and external approved inspectors.

- To support the competence of those working in the built environment industry, and to manage the register of accredited building inspectors.

This will involve establishing an industry led competence committee and establishing competence requirements for building control professionals (who need to be in place when the system becomes operational).

3.5 The BSR will be responsible for holding local authorities and building inspectors to account, with the power to suspend or remove inspectors from the register where necessary.

- 3.6 **The Fire Safety Act 2021** became law in April 2021. It introduced changes to fire safety law for buildings containing two or more sets of domestic premises in England and Wales. It is expected to come into force early in 2022.
- 3.7 The aim of the Fire Safety Act is to clarify who is responsible for managing and reducing fire risks in different parts of multi occupied residential buildings. It has introduced new fire safety obligations to some leaseholders, building owners and managers for the building structure, external wall, common parts and doors between domestic premises and common parts.

Implications for Building Control service

- 3.8 **Role of Local Authority Building Control teams.** It appears (details still to be confirmed) that if a local authority has sufficient qualified building control officers, they will be the default building control authority (to be part of a multi-disciplinary team). This is different from now, in that Local Authority Building Control (LABC) operates in a competitive market. The implication is that there will no longer be competition from accredited inspectors (AIs) to be the building control authority, a significant change to the current system. The role of AIs in the future is unknown, early indications are that the BSR will not appoint them as the building control authority (unless the local authority does not have sufficient qualified officers) but this is not yet confirmed.
- 3.9 The indication is that instead of the team dealing with the work successfully secured through a competitive process, it will deal with all the work. This has an implication for a) resources and b) fees – more detail below.
- 3.10 Additional workstreams as a result of the Bill (assuming that all work comes to the local authority as default provider) are:
- Alterations to existing Higher Risk Buildings (HRBs)
 - Assessment of existing HRB's even if no work being carried out
 - Potential work in adjoining boroughs if they do not have resources or qualified staff
 - Work further across London via a possible 4 area London Wide Hub.
- 3.11 **Resourcing.** There is a national shortage of qualified building control professionals and there are concerns that the BSR will not be able to recruit sufficient officers to provide the service that they are being set up to deliver. A consequent impact of the increased demand for surveyors could be even greater difficulties in recruitment and retention within Brent and other local authorities, with staff potentially leaving local authorities to work for the BSR.
- 3.12 The team has a number of vacancies about to be advertised; prior recruitment exercises have twice proved unsuccessful, in a very competitive market. The Brent offer includes a market factor supplement and the potential for key worker housing. The team structure has been amended to attract more junior officers so we can 'grow our own'. An apprenticeship post has also been created to be recruited to shortly in time for the 2022/23 academic year.
- 3.13 **Training and Competencies.** Officers will need an additional qualification to demonstrate the required level of competency, relating to the provisions of the

new legislation. However the BSR is yet to publish the acceptable levels of competency criteria and assessments. This is causing uncertainty in the industry given the ever-decreasing window of opportunity. Local Authority Building Control (LABC) have recently published their own competency assessment exams but this has not yet been agreed by the BSR.

- 3.14 For surveyors to do the training it is likely that they will need to spend around a day a week on this for a few months. This will take resources out of the team and backfilling may be needed to cover for this. Surveyors will need to be suitably qualified before they can practice although it is hoped there will be some transition time for this to take place.
- 3.15 There is also a risk that some building control officers may decide not to undertake the training and leave the profession.
- 3.16 **Competition and Fees.** A local authority may provide the resource for another local authority if they do not have suitably qualified officers. This may provide an opportunity for Brent's building control team, resources permitting. Alternatively, this could mean another authority providing resource in Brent. It presents an opportunity for co-operation as an alliance of boroughs could mean greater resilience and sharing of expertise. Such co-operation has already occurred during the pandemic over coverage for dangerous structures amongst West London boroughs including Brent. The London District Surveyors are considering setting up 4 Hubs across London to help deal with work and to assist Authorities who don't have the required resources.
- 3.17 The team in Brent is currently very effective at winning major projects in a competitive market; this includes work within and outside of the Borough. The fee for this work is individually negotiated and delivers a considerable income stream for the council. Smaller domestic jobs have a set fee. Notwithstanding the success in winning projects, a number of major projects have gone to other providers over the years, for example in 2020 and 2021 five and then nine major projects in the Borough went to accredited inspectors
- 3.18 **Performance monitoring.** The BSR will be monitoring the performance of building control authorities. This will require implementation of a quality management system, which is being developed by the Local Authority Building Control organisation. However this new monitoring system will require additional resource from the Brent team.
- 3.19 **Planning.** The new requirement for a review of a fire strategy by BSR in at planning application stage (Gateway 1) is already in force. Only a few applications have been received which trigger this requirement, and to date it has not caused any delays in the planning process.

Implications of the Fire Safety Act

- 3.20 There are no direct implications for the Building Control Service from this Act.

4 Financial Implications

- 4.1 Building control income in 2021/22 is expected to be lower than the income target, due to some loss of market share and fewer major cases being built out as a result of wider economic issues. Brent's charges remain competitive however. Up until this year, Building Control has overachieved on its income target with a net positive impact on the council's budget. The current income target is £1.4m and the forecast income for this year is £1.2m.
- 4.2 If, as expected, Brent Building Control becomes the default body for all building control schemes, it is anticipated that the BSR will set fees on a cost recovery basis, removing the council's ability to negotiate individual fees in a competitive market. It is not yet known what level the fees will be set at (or how they will be set) and therefore what the impact on income will be.
- 4.3 The additional resources required for the work may require a larger team.
- 4.4 The government has given funding for training and qualifications to the LABC, so this cost will not fall upon the council. However no new burdens funding is being given directly to council's to cover the anticipated additional workload or backfill whilst officers are undergoing training.

5 Legal Implications

- 5.1 There will be new secondary legislation including for enforcement.
- 5.2 There is a need to establish where the liability lies for working as a Registered Building Inspector. This currently appears to involve a personal liability on the Registered Building Inspector as set out in 58 of The Draft Building Safety Bill (as set out in the Building Safety Bill). It is still to be ascertain as to whether it will be with the individual or the local authority, and the insurance implications.

6 Equality Implications

None directly arising from this report

7 Any Other Implications (eg HR, Property, Environmental Sustainability)

- 7.1 There is likely to be a need for an increase in the size of the team due to the new responsibilities within the BSR mutli-disciplinary team.
- 7.2 Recruitment difficulties are anticipated due to the limited pool of potential staff. Actions are being taken to address this capacity issue.

8 Proposed Consultation with Ward Members and Stakeholders

- 8.1 The Lead Member has been briefed on the proposed changes.

Report sign off:

ALAN LUNT, Strategic Director of Regeneration and Environment