

# Report of the Strategic Director of Place to the meeting of Regeneration Overview & Scrutiny Committee to be held on 5<sup>th</sup> September 2023

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**Subject: Building Control Services implementation of measures in response to a Local Government Ombudsman's decision.**

## **Summary statement:**

**This report provides an overview of the measures that Building Control Services have implemented and will implement in response to a decision made by the Local Government Ombudsman to a complaint received about the outcome of a resident's application process for construction work inspected by Bradford Council's Building Control Service**

## **EQUALITY & DIVERSITY:**

The measures described in this report are to be applied to all applications for construction developments received by Building Control Services and, as such, will benefit all residents of Bradford district.

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## **Portfolio:**

**Regeneration Planning & Transport**

## **Overview & Scrutiny Area:**

**Regeneration & Environment**

## **1. SUMMARY**

The Local Government Ombudsman (hereafter referred to as LGO) received a complaint from a resident of Bradford district regarding the outcome of their application process for construction work inspected by Bradford Council's Building Control Service. The LGO's decision required the following.

- a. Building Control services review its practice, procedures, record keeping and use of document management systems to avoid problems identified occurring again; and
- b. Report the findings of its review and any changes it makes as a result to the Ombudsman and to the relevant Council scrutiny committee.

The LGO requires an update on the above within three months of the decision letter, hence the need for this report coming to the Regeneration & Environment Overview Scrutiny Committee.

## **2. BACKGROUND**

A Bradford resident complained that the Council's Building Control Officer (BCO) failed to check the sewer that serves her house was connected to the main drain before giving Building Regulations approval.

The resident said she bought and moved into her new house and after several months, undrained sewage had backed up the drain and flowed into her garden.

The Council accepted it was at fault and offered a small sum in compensation, but the resident considered this inadequate for the disruption, trauma, distress, and significant impact on her amenities from sewage.

## **3. REPORT ISSUES**

Most building work requires building regulation approval. Building Regulations set out requirements and guidance that builders and building owners are required to follow. The purpose of the regulations is to make sure buildings are safe for those that use them or live around them.

Building Regulations approval can be granted by councils acting as building control authorities, or by independent 'approved' inspectors. The Council employs building control officers (BCOs) to carry out this work.

There are two ways a building owner can get building regulations approval. These are:

- Full plans application. The owner or their agent submits plans. The plans are checked for compliance with building regulations.
- Building notice application. The owner or their agent informs the council or approved inspector of their intention to begin building work. The BCO/approved inspector will visit the site at various stages of the work to check compliance with building regulations.

There have been court challenges where owners of buildings have sought to hold council building control authorities liable for defects in building work they have inspected. The courts have decided that council building control authorities are not liable to ensure compliance with building regulations – the duty to comply with

regulations lies with the building owner, who may be able to take legal action for the consequences of poor/non-compliant work against their contractor, architect or builder.

Several years ago, a builder sought Building Regulation approval for the development of houses, one of which would eventually be bought by the resident who complained to the LGO.

The Council said that its records show its BCO inspected the site and made a note on its computer record database that a further visit was needed to ensure the drains were connected to the main sewer. There is no further record to show whether a visit had taken place or, if a visit had happened, what was found.

A manager for the Building Control service explained to the LGO that there should be a record and there probably should also have been a test to show the sewer was properly connected, but there is no evidence that either of these things happened before the Council gave Building Regulations approval for the work.

It was also confirmed that BCOs use a calendar on separate software to record site visit dates and other details. Clearly if details from the calendar and/or site visit notes are not copied across to its record keeping database, it is possible that important information could be lost.

After the resident moved into the house and began using its facilities, it was discovered that the drain for the house had not been connected to the mains sewer. Foul water including human waste backed up the drain, causing obnoxious odours and outflows of waste. It took over two years for the problem to be resolved, with long discussions between the insurers and the builders, excavations, removal of floors, and cost and disruption from redecorating and refurnishing.

The resident complained to the Council, which admitted its error, apologised and offered compensation. The resident said that if the Council had done its job properly in the first place, none of this would have happened.

The BCO kept a record to say that a further visit was necessary to check the drain connection to the mains sewer. There is no evidence this happened. The LGO found that this was a fault of the Council that would need to be remedied. But for the fault, the Council would have kept a proper record and it is likely it would have also carried out tests to check the connection.

The LGO concluded that while the Council was at fault, this does not mean that it is responsible for what has happened. This is because of the way that council building control responsibilities are framed in law. The purpose of the Council's power is to protect the public generally, not the private rights and interests of individual builders and landowners. Responsibility to comply with the Building Regulations lies with these private individuals, not with the Council. When things do go wrong, responsibility and liability for the costs and losses that follow are a private matter which may eventually be determined by civil courts.

For these reasons the LGO has not recommend any further remedy for the personal injustice caused to the resident. However, the LGO made recommendations to avoid

recurrence of similar faults in the future, and the Council has agreed to carry them out.

To avoid recurrence of the fault the LGO found, the Council has agreed to:

a) review its practice, procedures, record keeping and use of document management systems to avoid problems identified in this report occurring again. The Council uses a system called Uniform Idox to process all Building Regulations applications, and the building control section are engaging with that company to use the mobile app. This app enables the BCO to log inspections and capture data in real-time, thereby reducing the incidence of surveyors missing actions from previous inspections. All surveyors have been reminded the importance of keeping site notes of inspections up-to-date and acting on previous requirements made to builders. This will be reviewed monthly by the principal surveyors; and

b) report the findings of its review and any changes it makes as a result to the Ombudsman and to the relevant Council scrutiny committee.

The Council will provide the LGO with evidence it has complied with the above actions within three months from the date of our final decision, i.e. after their 5<sup>th</sup> September 2023 meeting.

#### **4. FINANCIAL & RESOURCE APPRAISAL**

- All Building Control staff can access Uniform Idox, the cost of which is already covered by the service and IT Services as arrangements have been in place for some considerable time. The equipment/licenses required to use the mobile app would be for 23 Surveyors in total. The cost for the licences would be £6,000 per year, and the equipment plus service support would be £300 per device, i.e., £6,900. These costs would be met by the annual increase in application charge levels set each year by the service.

#### **5. RISK MANAGEMENT AND GOVERNANCE ISSUES**

There are no significant risks arising out of the implementation of the proposed recommendations.

#### **6. LEGAL APPRAISAL**

- There are no legal issues arising from this matter.

#### **7. OTHER IMPLICATIONS**

##### **7.1 SUSTAINABILITY IMPLICATIONS**

- There are no sustainability implications.

##### **7.2 TACKLING THE CLIMATE EMERGENCY IMPLICATIONS**

- The wider District's carbon footprint and emissions from other greenhouse gasses is central to the Building Regulations.

### **7.3 COMMUNITY SAFETY IMPLICATIONS**

- There are no community safety implications.

### **7.4 HUMAN RIGHTS ACT**

- There are no human rights implications.

### **7.5 TRADE UNION**

- The Director of Human Resources may advise on this aspect.

### **7.6 WARD IMPLICATIONS**

- There are no Ward or area implications.

### **7.7 AREA COMMITTEE LOCALITY PLAN IMPLICATIONS (for reports to Area Committees only)**

- N/A

### **7.8 IMPLICATIONS FOR CHILDREN AND YOUNG PEOPLE**

There are no implications for children and young people.

### **7.9 ISSUES ARISING FROM PRIVACY IMPACT ASSESMENT**

The complainant is anonymous, and only the matters and actions raised by the LGO have been reported.

## **8. NOT FOR PUBLICATION DOCUMENTS**

- None

## **9. OPTIONS**

Not applicable

## **10. RECOMMENDATIONS**

- 10.1 That the Committee note the actions in the report, which would allow Building Control Services to inform the LGO that their requirements have been met.

## **11. APPENDICES**

None.

## **12. BACKGROUND DOCUMENTS**

- None