**To: Housing Panel**

**Date: 8th April 2019**

**Report of: Head of Regulatory Services and Community Safety**

**Title of Report: Building Control Enforcement**

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| **Summary and recommendations** |
| **Purpose of report:** | To inform the panel of the review |
| **Key decision:** | No |
| **Executive Board Member:** | Councillor Alex Hollingsworth, Board Member for Planning and Transport |
| **Corporate Priority:** | Efficient and Effective Council |
| **Policy Framework:** | Corporate Enforcement Policy  |
| **Recommendation:**  | That the Housing Panel resolves to note the outcome of the review |

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| **Appendices** |
| None  |

**1.0 Introduction**

1.1 The Building Control function is the process by which the Building Regulations 2010 as set down by the Department for Communities and Local Government are enforced. They are a set of standards as set out by the Building Act 1884 with regard to the design and construction of buildings primarily established to ensure the safety and access of those people who use the buildings through regulations for fire, electrical, structural safety and energy efficiency.

1.2 Historically the Local Authority Building Control (LABC) body performed this function exclusively until the partial privatisation of the Building Control sector in 1985, which created the first Approved Inspector (AI) body, that the NHBC introduced resulting in direct commercial competition between public and private regulators. The aim of introducing private AI’s was only initially only for residential applications but since April 2013 this has progressed to covering all types of building work e.g. commercial applications to inject more commercial awareness and customer focus within the industry. However, the AI does not possess any enforcement powers therefore, the AI must formally revert the application to the Local Authority should enforcement action be required.

1.3 The Building Control Service also performs other statutory enforcement duties under Building Act 1984 legislation, designed to protect persons in or around buildings from dangerous structures and also regulates demolition processes.

**2.0 Enforcement powers**

2.1 A Local Authority has a general duty to enforce the Building Regulations within its geographical area and there are a number of powers that they can implement to secure compliance.

2.2 If it is evidenced a person carrying out building work that contravenes the current Building Regulations, the Local Authority may take the necessary enforcement action and ultimately prosecute the offender in the Magistrates Court where summary conviction to a fine not exceeding Level 5 on the standard scale and to a further fine not exceeding £50.00 for each day on which the default continues after conviction. (Section 35 and 35A of the Building Act 1984). In addition, prosecution is an available action to the Council up to two years after the completion of the offending work. This action will usually be taken against the person carrying out the work (Builder, installer or main contractor).

2.3 Alternatively, or in addition, the Local Authority may serve an enforcement notice on the building owner (The Applicant) requiring alteration or removal of work which contravenes the Regulations (Section 36 of the Building Act 1984). If the owner does not comply with the notice the Local Authority has the power to undertake the work itself and recover the costs of doing so from the owner or applicant.

2.4 A Section 36 enforcement notice cannot be served after the expiration of 12 months from the date of completion of the building work. A Local Authority also cannot take enforcement action under Section 36 if the work which has been carried out is in accordance with the full plans application which the authority has approved or failed to reject. An appeal against a Section 36 Notice may be made submitted to a Magistrates Court under section 102 of the Building Act 1984.

2.5 Where an AI is providing the Building Control service, the responsibility for checking that the Building Regulations are complied with during the course of the building work will lie with the AI as set out under and in accordance with The Building (Approved Inspector etc.) Regulations 2010.

2.6 As AI’s do not possess formal enforcement powers when the inspector considers that building work does not comply with the current Building Regulations and there is a refusal from the offending party to demonstrate compliance the AI will then cancel the Initial Notice which is a legal requirement to submit to the Local Authority as part of the commencement process. If no other AI takes on the building control activity, the Building Control function will automatically default to the LABC body. From this point on, the Local Authority will have enforcement powers set out as above where it considers this necessary.

**3.0 Rates of enforcement under The Building Act 1984 & Building Regulations 2010 – The national picture.**

3.1 Research carried out on behalf of the Local Government Association (LGA) in 2017 evidenced the number of prosecutions under the Building Act and Regulations has been falling and is now roughly a quarter of the level it was 10 years ago.

3.2 The LGA concluded that the low level of fines and costs awarded by the courts meant that prosecution was not considered an effective enforcement option by local authorities. This explains why prosecutions taken by Building Control have always been rare and generally reserved for exceptional cases, with local authorities, including Oxford, pursuing informal routes to secure compliance instead. As a result the number of recorded Building Control prosecution cases per year across the UK is very low, with approximately 95% of Local Authorities not taking a single prosecution.

3.3 The LGA figures for costs from prosecutions by local authorities were:

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| Average cost to council of prosecution | £10,753.29 |
| Average fine for perpetrator | £5,127.83 |
| Average costs awarded by court | £670.60 |
| Estimated average financial gain of perpetrator despite prosecution | £12,044.44 |

**4.0 Enforcement approach for Building Regulations**

4.1 Local Authority Building Control bodies across the UK apply a graduated and escalated approach to enforcement action and Oxford City Council is no exception to this approach.

4.2 All Building Control work (As opposed to public safety and protection activities) is considered to be ‘enforcement’. For example, When Building Control Surveyors issue feedback on full plan approvals and when they provide feedback as part of the site inspection regime, it is noted and they expect our direction to be followed. The guidance and subsequent directions are scrutinised checked and closed off as part of the next stage review or inspection element.

4.3 The vast majority of interventions by Building Control Surveyors are understood and usually well received by the applicant, agent and or building contractor they generally get actioned immediately. However, for a minority of works that may present a Building Regulations contravention there is an enforcement ‘escalator’ Oxford City Council Building Control will adopt as outlined below:

* Initial intervention
* Reminder and follow-up action
* Formal request to remove the contravention
* Follow-up action to assess the status of the contravention
* Threat of legal action
* Preparation of legal action
* Serving formal papers
* Court date
* Court appearance

4.4 When assessing what enforcement action to take a key factor for consideration is public interest. In the case of building work this usually directly involves the home owner. For home owners having work done to their own homes, Building Control usually prefer the option to enter into informal negotiation in the first instance to achieve the required remedial action to achieve the issuing of the Building Control completion certificate. Ultimately the Building Control completion certificate is what the home owner needs more than a protracted legal process. A legal process may well result in a successful prosecution but with the contravening building work still needing to be rectified. There is also the issue of sub-standard building work, carried out by incompetent Builders which the LABC body can action under Regulation 7 – Materials and Workmanship of the Building Regulations 2010.

4.5 Building Regulation contraventions are recorded separately from standard Building Regulations applications and the indication is that there has been a steady decline in the number of contraventions reported to the Council involving the Building Control Service.

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| Year | Contraventions |
| 2018 | 17 |
| 2017 | 20 |
| 2016 | 28 |
| 2015 | 28 |
| 2014 | 34 |
| 2013 | 35 |
| 2012 | 47 |
| 2011 | 57 |
| 2010 | 59 |
| 2009 | 55 |
| 2008 | 44 |

4.6 Rather than pursue formal action for non-compliance the Council usually seeks to ensure compliance through a retrospective application for Building Regulations approval known as a Regularisation Application. Therefore, if the building works have already commenced or been completed without a valid application being submitted to Oxford City Council Building Control there is 50% increase applied to the standard application fee as a penalty for non-compliance and the need for Building Control Surveyors to undertake retrospective assessments and inspections which can be challenging on occasions. Also, there are times when building work is unable to be subject to the regularisation process where the building work is of poor quality or any building work undertaken prior to the 11th November 1985 cannot legally be regularised and will be recorded as a property charge on the Council records as unauthorised work. There are often additional costs for unauthorised work required to satisfy Building Regulation requirements such as opening up building works so that inspections of key elements can be inspected to demonstrate compliance.

4.7 No prosecutions have been taken by Oxford Building Control in the last ten years and only one statutory notice has been served, which was in 2018. As such our enforcement approach and rates of activity are very low however, typical of most other Local Authorities.

**5.0 Future approach**

5.1 The Hackitt Review into the Grenfell Tower fire will undoubtedly impact on how Building Control powers are utilised in future. The report has centred on the following areas where it concluded the Regulatory Systems are not fit for purpose:

* The current Building Regulations and guidance are too complex, unclear and open to mis-interpretation.
* Clarity of roles and responsibilities within the construction sector are poor.
* There is often no differentiation in competency requirements for those working on high-rise and complex buildings.
* The current compliance, enforcement, and sanctions processes are too weak.
* The current route for residents to escalate their concerns is unclear and inadequate.
* The system of product testing, marketing, and quality assurance is not clear and open for interpretation.

5.2 The Review and Implementation plan has highlighted the following areas that will be changed:

* Regulation and Guidance – Are to be more risk-based and proportionate to the building work undertaken.
* Roles and Responsibilities – Clarity on responsibility and accountability is to be provided.
* Competence – Levels of competencies across the sector are to be raised.
* Process, Compliance, and Enforcement – Stronger enforcement activities are to be adopted.
* Resident’s concerns are to be formally raised.
* Quality Assurance and Products – Products to be properly tested and certified for full compliance and end use.

5.3 Oxford City Building Control is currently planning to respond to these challenges, particularly regarding competencies and enforcement processes and additional funding has been included in the 2019 Business Plan for the service that is currently with Finance for further consideration.

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