

# Joint Oireachtas Committee on Housing, Planning, Community & Local Government

## BUILDING REGULATIONS, BUILDING CONTROLS & CONSUMER PROTECTIONS

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10 April 2017

### OPENING STATEMENT

Chairman, Committee Members,  
Thank you for the opportunity to attend this session today.

I have made a submission that sets out the background and context of Building Control in Ireland, the range of issues to be addressed and recommendations for a cost-effective and robust system that accords with international best practice.

There are four issues that I would like to summarise at the outset, but principally I would like to propose some solutions:

#### 1. HOUSE BUILDING IS HIGH RISK.

It is important to understand why house building is different –this sector is very vulnerable to non-compliance and needs robust controls of construction and reliable consumer protections.

These issues are not unique to Ireland and are a consequence of the way that housing is procured which is generally different to construction under commercial contracts.

*Housing is 'high risk' construction that requires immediate and sustained focus, particularly spec-build and self-build.*

It is useful to understand this as two separate issues:

<b>Protection of people (public)</b> State Building Control	Technical compliance <u>for owners</u> (suitable for occupation, safe, sustainable)  Technical compliance <u>for the State</u> (energy efficiency, environmental protection)	Regulatory standards for <i>all</i> buildings (residential, institutional, commercial)
<b>Protection of property (private)</b> Commercial insurances, warranties, etc.	Consumer protections (systems of redress)	Requirements vary depending on the risk  Housing requires robust protections

*The role of the State is to ensure that all buildings are safe and sustainable.*

*The need for consumer protection is different in each sector because the risks vary and some sectors already mitigate the risks in contract.*

In commercial and institutional buildings (such as schools, hospitals, hotels, factories, offices and shops) the owner and the builder are separate entities. There are mechanisms to deal with problems on site and latent defects after completion.

Owners are usually invested in the durability and quality of the new building, they are generally more experienced, engage independent professional advisors and protect the capital investment with a network of professional oversight, warranties, insurances and retention monies.

*Imposing additional administrative requirements across all sectors impacts on established commercial arrangements and efficiency. One size does not fit all.*

In housing, the role of the State is to ensure safety and sustainability through effective Building Control. There is a second requirement to protect consumers who generally have no involvement during construction and who effectively 'buy a product'.

For a homebuyer, some non-compliance may be evident, but building defects can take many years to appear and the reasons can be very complex and difficult to unravel. It can be design faults, construction errors, low quality building materials, failure of products /components; the problems can be compounded by poor maintenance, subsequent work, accidental damage or environmental conditions.

*Effective and readily accessible redress is critical. Fix the problem first and sort out the claim later.*

There are three principle shortcomings:

- an absence of independent **third party oversight** of design and construction to prevent non-compliance. A developer or self-builder is effectively owner *and* builder. This is a conflict of interest. The legal responsibility on owners is to appoint someone to 'police' themselves. That appointed person does not have to be independent and has no legal powers.
- a lack of **regulation of housing developers** to protect the buyer if they cease trading; Limited liability companies are often set up for the duration of an individual development. Many developers are not builders, most construction is sub-contracted. Speculatively built housing is for immediate sale, either to individual owners or institutions, not for durability or long term investment.
- inadequate **consumer protections** (legal rights and remedies).

The availability of documentation (which has been the principle focus of BCAR), shortcomings in new home warranties, and statutory registration of builders/ trades are secondary issues.

*BCAR has not addressed these core failings- independent oversight, regulation of developers and consumer rights.*

## **2. BCAR AS A “ROLLING SET OF GUARANTEES”**

BCAR has been presented as a solution to *both* the protection of life and the protection of property. This is a problem for a number of reasons.

Firstly, the intention to ‘stretch’ the purpose of Building Control far beyond the scope of the regulations: Building Control is not, and was never intended to be, an “asset guarantee” of 100% of investment.

Secondly, the promise of a “rolling set of guarantees”: *What does this mean? Is there single point liability or not? Is a certificate a guarantee? Is insurance available?* There is very considerable legal uncertainty about this. What is clear is that homebuyers with problems will have to litigate or enter arbitration, or both. New home warranties available in the market are limited, there is no cover available for pyrite. The expectation that professional insurance will ‘stretch’ to claims is doubtful and not sustainable over the longer term.

There is uncertainty about the scope of the regulations, a lack of clarity about responsibility among teams of designers, builders and suppliers, fears about potentially open-ended liability for the work of others. There are increased insurance costs and administrative burdens. Micro-management of responsibility is a barrier to innovation, collaboration and use of shared technologies.

*There is a cost for owners and buyers but no certainty about the benefits.*

## **3. COSTS AND COMPETITIVENESS**

BCAR was designed to be forensic, to document and record every process and component and this is very expensive. The cost/benefit has not been assessed. The market cannot bear this level of cost and, increasingly, the administrative drain on expertise. As a result there are very wide variations in interpretation of the regulatory requirements. There is no consistent standard for BCAR. At one end commercial owners are paying high costs for a quality control system and at the other the market has reverted to business as usual. There are significant risks of a repetition of past failings.

*An ineffective Building Control system has financial and environmental consequences for the State. Administrative requirements impact on competitiveness.*

## **4. RESOURCES**

BCAR started during low levels of construction activity in the commercial sector and very low levels in housing, the area of highest risk. As the industry recovers, there is a skill shortage after a decade of inactivity. Those with the necessary skills and experience for design, for site management and for inspection will have to be deployed efficiently.

*Is the system fit for purpose if there is a doubling of output, a substantial change in construction methods (Near Zero Energy Buildings by 2020) and an influx of 80,000 workers?*

## **5. SOLUTIONS**

The following is a range of solutions for an effective system, at lower cost than the current system, focusing on consistency of standards and supports for owners, consumers, designers, builders and trades:

### **PROTECTION OF LIFE (BUILDING CONTROL)**

- Inspection of design and construction that are independent of the owner and builder, under State control (local authorities and/or panel of private inspectors) paid for by the owner, at a level appropriate to the risk;
- standard national checklists for substantial compliance, common to all and centrally recorded in a common format;
- a repository of standard national 'Approved Construction Details' digitally available to all designers and builders and subject to ongoing review;
- re-establishment of BRAB (Building Regulations Advisory Board) with a technical support function to advise designers and builders;
- a standard system of licensing or registration for key professions and certain trades, with a single point of contact for consumers.

### **PROTECTION OF PROPERTY (CONSUMER PROTECTION)**

- a system of licensing or registration for speculative housing developers (who may or may not be builders), with additional consumer protection controls and bonded for consumer redress;
- a robust system of 'warranty' or a national fund for latent defects, defective materials, errors in standards;
- a national strategy for insurances in the construction sector and a review of the regulatory controls in insurance;
- active market surveillance of construction products (such as UK Trading Standards) independent of the supply chain and as intended under the EU Construction Products Regulations, to include Rapex alerts for dangerous, defective and fraudulent products.
- consumer information, similar to that available to owners from the Health & Safety Authority for owners undertaking construction work;

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