



Belfast City Council

Report to: ~~Health & Environmental Services Committee~~ District Councils Health and Environmental Services Committee

Subject: ~~Outcome Involvement of Building Control Staff in Vacant Rating Project court case on the assault of Building Control Staff Information Sharing Protocol between the Council and Land and Property Services~~ Arrangements for Enforcement of Energy Performance Certificates Regulations Authorisation of Council Officers for the Enforcement of Energy Performance Certificate Regulations

Date: ~~18th 4 May August November January June 201008~~

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Relevant Background Information

Members will recall that the duty for enforcing The Energy Performance of Buildings (EPC) (Certificates and Inspections) Regulations (NI) 2008 was to be transferred to district councils. The formal transfer of this duty occurred on the 3rd December, 2009 by virtue of a statutory rule laid before the Assembly on the 12th December.

A copy of this legislation is attached at Appendix 1 for Members' information.

From this date, District Councils are the enforcement authority for the purposes of these regulations in respect of all relevant buildings, with the exception of council owned buildings for which the Department of Finance and Personnel (DFP) will retain enforcement responsibility.

Members will recall that in this regard the Committee they agreed in June, 2009 that Belfast City Council would put itself forward as the employing authority for all of Northern Ireland. Subsequently it was reported to this Committee in August 2009 that Belfast had been appointed by the DFP to act as the employing authority on behalf of the District Councils for the duration the pilot scheme. This pilot scheme is funded by the Department of Finance and Personnel of Northern Ireland. A copy of the protocol which has been agreed between the

Building Control Service and the DFP is attached as Appendix 1.

were the site and the builder, Mr Terry O' Neill had previously been abusive to staff. will recall

will be aware of the close relationships between the Service and the Land and Property Service (LPS).that the duty for enforcing The Energy Performance of Buildings (Certificates and Inspections) Regulations (NI) 2008 is to be transferred to District Councils by virtue of The Energy Performance of Buildings (Certificates and Inspections) (Amendment) Regulations (Northern Ireland) 2009.

These regulations assign district councils as the enforcement authority for the purposes of the principal, except in relation to their own buildings where the Department of Finance and Personnel Northern Ireland (DFP);

To aid this relationship a Memorandum of Understanding (MOU) was established between both organisations effective from 1 July 2009, this MOU was presented to the Strategic Policy and Resources Committee on 19 June 2009 and ratified by full Council on 6 July 2009.

One part of this MOU was an agreement to share information between both organisations through the agreed information sharing protocol.

The Information Commissioners Office (ICO) recommends the use of an Information Sharing Protocol (ISP) as best practice for organisations which share data during the course of their business organisations.

Having explained in detail to both the owners and builder why the foundation would not be acceptable the builder became irate. He threatened the Surveyor present and was generally aggressive. In order to diffuse the situation my staff decided to terminate the meeting and leave the site.

As they made their way from the only access to the site the builder challenged the Surveyor whom he had previously threatened and punched him in the face. He then followed this up by striking both managers present, occasioning one of them actual bodily harm.

The incident was reported to PSNI immediately by the staff. Following on from their visit one of the managers attended the RVH to receive stitches to a head wound. The District Rate accounts for 74% of the Council's total income. It is therefore the most important source of income to support our annual expenditure. In this context, the Council has been doing a lot of work with the leading experts in this field — the Institute of Revenue, Rating and Valuation — to ensure that the Council is maximising the level of collectable rate income it receives.

One of the key areas of work has been that of vacant properties. Currently vacant domestic properties are not charged rates and non-domestic vacant properties are only charged 50% rates. It is therefore important to make sure that properties are properly identified as being vacant. The Council in receiving its rateable income for the year receive an amount based on a calculated estimate at the beginning of each month beginning with April. This is an estimated figure and the LPS work out the actual figure by September following the close of that financial year. The Council should then receive the difference between the estimated and the actual figure for the year, known as the finalisation figure. Whilst this is usual positive, in the year 06/07 it was concluded that it was in the negative and therefore Belfast City Council had to payback £600k.

The Core Improvement Unit using their knowledge gained from the IRRV report approached the LPS Rating Services and discussed the intricacies of why this had happened and what could be done to resolve the problem.

It was agreed that one way to mitigate the loss of revenue was by addressing the issue of

properties on the vacant rating list. The vacant properties list had risen in the Council boundaries from 6% in 2005/06 to 11% in 2007. Prior to 2005, the then, Rate Collection Agency carried out vacancy inspections on an ad-hoc basis. After 2005 this was not being carried out. Building on our current partnership agreement with the Land and Property Service Agency, Building Control in conjunction with the Core Improvement Team agreed to carry out vacancy rate inspections on behalf of LPS to check whether these properties were still in fact vacant. This will mean bringing some properties classified by LPS as vacant but which were in fact occupied and therefore not paying their due rates back onto the billing system.

The registers from LPS showed that some 13500 properties were listed as vacant across the city. Maximising the value to the Council we analysed the database extracting the highest value units and then set up a regime to survey those units. Staff from the Building Control Service surveyed a total of 10521 and identified 4163 dwellings 1202 other rateable properties were actually occupied. A combined average of both domestic and non-domestic properties showed that in fact 51% was in effect occupied. This means that the Council had not been receiving rate income for over 5300 properties which it should have been.

Key Issues

The purpose of this ISP is to facilitate the sharing and disclosure of personal and property data between the Service and the LPS. It is intended that this ISP will provide the framework for which other data and information held by the Council can be shared with LPS to secure a more equitable rates base for the citizens of Belfast. Belfast City Council has been selected to act as the employing authority on behalf of the District Councils for the duration of this pilot scheme. The Belfast Council have recently appointed four Energy Performance Certificates Officers (EPC Officers) who will be responsible for ensuring compliance with these regulations. These appointments were in accordance with the authority given by the previous decisions of this Committee for Belfast City Council to act as the employing authority for the purposes of this pilot. These officers are positioned within the Building Control Service across Northern Ireland.

The statutory basis which enables the Council to disclose personal information to the LPS for the purposes of this agreement is provided for within Articles 26 & 57 (1) of the Rates (Northern Ireland) Order 1977; these provisions are appended to the ISP. To ensure the effective enforcement of these regulations each officer will be responsible for a geographical area within Northern Ireland. These Officers, although employed for the purposes of this pilot by Belfast City Council, will be required to undertake enforcement activities in Council areas outside of Belfast.

It is essential that the work of the EPC officers is co-ordinated and undertaken in conjunction with the Building Control services of the other Councils. In an attempt to ensure an effective and consistent approach to EPC enforcement across Northern Ireland, Building Control Northern Ireland (BCNI) have produced a document which outlines the relationship between the Council and the other 25 Councils. This is attached as appendix 2.

You are therefore requested to authorise these four named officers to undertake enforcement work solely in relation to EPC enforcement in our district area. In addition to safeguard the Council our own Building Control Head of Service will also be authorised to undertake enforcement as per these regulations.

The persons that are required to be authorised, are: The officers who persons that have been employed for the purposes of enforcing EPC regulations are;

Senior Energy Performance Surveyor, Fiona Cleland
Energy Performance Surveyors, Kevin O'Connor, Jonathan Glendinning, Eugene Henry, Jim Trainor

It is essential that the work of the EPC officers is co-ordinated and undertaken in conjunction with our building control section. In an attempt to ensure an effective and consistent approach to EPC enforcement across Northern Ireland Building Control Northern Ireland have produced a document which outlines the relationship between the EPC officer and the home Council. This is an attempt to safeguard the enforcement culture of the home Council while also ensuring a consistent approach to enforcement across Northern Ireland.

The information to be shared under this agreement will allow both organisations to work collaboratively with a view to securing proper payment of rates by property owners across the City. This information will also assist the LPS in maintaining the valuation list. This more accurate the valuation list will also facilitate better financial planning for the Council and promote the economic well being of the City in line with our corporate objectives.

The exchange of information between both organisations will fully comply with relevant law and statutory obligations of both organisations. The information shared under this agreement will cover two way exchanges of data between the parties to this agreement. Representatives from the Council and LPS have worked closely and had this agreement formalised with the ICO to ensure disclosure of information under this agreement is legitimate and complies with the principles of the Data Protection Act 1998.

The Service ensure that all its customers and people who make applications to it, that their information can be lawfully transferred to another organisation when their statutory duty to do so. The Service is therefore through the establishment of this ISP attempting to be transparent in respect of the information is shares with other organisations.

This ISP also provides for the quality of data which is exchanged, how such data is retained and destroyed and security arrangements relating to the sharing of information. This agreement is a voluntary arrangement and can be terminated by either party where they feel the agreement has been broken. It has been agreed that in such circumstances both organisations would accept the ICO being an independent adjudicator when disputes arise from this ISP.

In creating this protocol the Service has liaised with the Legal Services Department, and the Office of the Information Commissioner. The contents of the ISP have been approved by both parties and reflect other ISP used by the Council. Interim provisions were immediately put in place to engage with this builder's clients until such times as the PSNI determined the charges and subsequent legal proceedings.

On hearing of the incident the Chief Executive contact requested that the Assistant Chief Constable Duncan McCausland to inform him as to what had occurred and that officers

~~executing their public duty had been assaulted in the course of their workensure satisfactory due process in the interests of the safety of public representatives.~~

~~The PSNI prepared and forwarded a file to the PPS charged the builder in August 2008 on two accounts of common assault and one of AOABH. However in February the PPS notified the relevant staff that they were only pursuing the one indictable offence of AOABH.~~

~~An enquiry from Legal Services to the PPS on why the other assaults were not pursued discovered that that either the PSNI or the PPS had allowed the time frame for bringing these charges had lapsed. Therefore they were time bounded from pursuing a prosecution.~~

~~On the 9 April 2009 in the Magistrates Court in Belfast a Mr Terry O'Neil pleaded guilty to the charge of AOABH. He was fined £750 by the magistrate and ordered to pay £750 compensation. Following this conviction the Service is currently reviewing the arrangements for dealing with the builder in liaison with Legal Services to ensure whatever approach is fair and lawful.~~

~~An explanation has been sought by the Chief Executive form both PSNI and PPS on how two of these charges were allowed to lapse.~~

~~I would like Members to note that despite the injuries and trauma this incident caused none of the staff involved recorded any sick leave as a result.~~

~~The Councils rate base is more accurate and up to date, which will allow for greater equity in the rates and provide information for more robust calculation of future rateable income.~~

~~The Council will receive substantial income from the project, both now and in future years should those properties remain occupied, the figure for which will be reported to Policy & Resources Committee at its Special Meeting of 6th June.~~

~~This work was carried out by the Service at little or no cost to the Council, the Service using the skills of its staff and the financial cost being reimbursed by LPS.~~

~~The project has brought to light a number of further areas that may lead to further lost revenue from rates in the short term, but impact the equity issue of rating in the longer term.~~

~~The Council has learned from this experience of areas of work that we need to interact with LPS in the future. Whilst these include areas for the Director of Corporate Services to pursue there are areas whereby the Service can assist.~~

~~These include:~~

~~Are completion notices being followed through~~

~~Who is monitoring exemptions~~

~~What happens to those properties we did not get to visit~~

~~How future years are to be handled.~~

~~As this has been enormously beneficial to the Council there is a willingness on all sides to continue this work and develop it into a more robust partnership with LPS. This will mean changing some practices and processes within the Service but will result in increased income, efficiencies and information gathering that will inevitably bring benefits to the Council. It will put Building Control at the heart of information gathering and playing a key role in maximising the Council's rateable income.~~

~~Resource Implications~~ **Resource Implications**

Financial

Belfast City Council and the other councils shall incur no financial costs for the duration of this pilot. All costs will be covered by the Department of Finance and Personnel through a quarterly invoicing against all direct and indirect costs.

Human Resources

Four appointed officers, two of whichom are seconded from within Belfast City Council.

The resource requirements of this initial project were absorbed through, short term risk assessment in the proactive work of Building Control, overtime for staff set against an agreement by LPS to pay for all surveys carried out prior to the 31st of march.

Financial

There are no additional financial implications arising from adoption of this agreement.
There are no resource issues.

It is intended that whilst there should always be a positive financial result from this partnering work the legislative responsibility is with LPS. The Department of Finance and Personal who have the responsibility for gathering this information have been invoiced for £38K to cover the costs within Building Control. Any future projects would need to be negotiated.

Human Resources

This agreement does not give rise to additional workloads as it formalises work which is already being undertaken.

WhilstThere are there no additional human resource requirements involved in the project to date., there will be some implications should we decide to continue this into future years.

~~Decisions Required~~ **Recommendations**

The Committee is requested to note at you note the contents of this report that officers from this council, for the duration of the pilot scheme, for the duration of the pilot, will be working across the 26 district council boundaries.

Members are requested also to authorise the above named officers to enforce the EPC regulations on behalf of Belfast City Council within its boundaries.

Based on the information presented, the Committee members are asked to ;

Nnote the outcome of this and welcome the convictionestablishment of this ISP. project, the excellent work carried out by the Building Control staff and the resultant impact on the rates.

Grant permission for the Service to negotiate further and build partnership projects with LPS

on behalf of the Council in line with the rating reform agenda bringing such projects to Committee for approval

Abbreviations

BCNI - Building Control Northern Ireland

DFPNI – Department of Finance and Personnel

LPS – Land and Property Services

ICO – Information Commissioners Office

ISP – Information Sharing Protocol

MOU – Memorandum of Understanding **EPC** – Energy Performance Certificates

PPS: Public Prosecution Service

PSNI: Police Service of Northern Ireland

AOABH: Assault Occasioning Actual Bodily Harm

Documents Attached

[The Energy Performance of Buildings \(Certificates and Inspections\) \(Amendment\) Regulations \(Northern Ireland\) 2009 Appendix 1 Energy Performance Certificates – Enforcement Protocol](#)

[Appendix 2: Information Sharing Protocol Mode of Operation between EPC Officers and District Councils.](#)

[PPS Correspondence](#)