

Building Regulations Consultation
Building Regulations and Standards Division
Department for Communities and Local Government
Zone 5/G9
Eland House
Bressenden Place
London
SW1E 5DU

26 April 2012

Dear Consultation Team

Consultation on Part L 2013

I am pleased to send you the Home Builders Federation's response to the Department's consultation on proposed changes to Part L of the building regulations to be implemented from 2013.

Our response consists jointly of this letter summarising our views and proposals at the strategic level and our attached detailed answers to the specific consultation questions. These two documents need to be read together to understand our full position.

As mentioned in the conclusion to this letter, we also understand our views are largely shared by other bodies representing those whose members provide new homes, including the National Housing Federation. In view of this, we would wish to work collaboratively with these organisations to take a successful zero carbon homes policy forward, drawing on our existing experience through both the Zero Carbon Hub and the work of the Local Housing Delivery Steering Group chaired by Sir John Harman.

Introduction

The Home Builders Federation is the principal trade association representing private sector house builders in England and Wales. Our members – who range from large national companies, through regional businesses to smaller, locally based firms – between them build about 80% of new homes annually.

The HBF is committed to working with Government to deliver the zero carbon homes policy and is very conscious that its successful implementation is one of the biggest challenges facing house building companies of all sizes over the next decade. Our views in responding to the current Part L consultation reflect our considered thoughts on how the policy can best be taken forward given the position that has been reached and the issues affecting next steps. This letter sets out an overview of the

Member of the
U.E.P.C.
The Federation of
House Builders

thinking that has informed the detailed answers to the individual consultation questions and should be read together with them.

Summary of our analysis and reasoning

This is a critical point in the journey to achieving the zero carbon homes objective and our response to the consultation has therefore been subject to a very thorough and detailed discussion with our members.

We have noted that the Government has proposed two key objectives for a change in the requirements of Part L of the building regulations in 2013:

- An increase in emission reduction requirements under Part L with a recommendation that this should be an aggregate 8% increase, and;
- A proposed new quality assurance (PAS) scheme to help tackle the perceived gap between designed and actual performance.

These proposals are necessarily inter-related and require careful analysis in order to determine whether they constitute the best means of making successful progress we all wish to see towards realising the zero carbon homes objective or not.

The perceived performance gap

HBF considers that the starting point for assessing the Government's proposals must be determining whether there is a design versus as built performance gap and, if so, what its main causes are.

At this stage in the journey to zero carbon this is a fundamental issue. In practical terms, unless we can establish the facts about any "gap" robustly and agree means of tackling the reasons for such a gap any future performance standard set under Part L cannot be regarded as firm or definitive.

We have accordingly given much thought to how we best determine the extent and nature of any performance gap in discussions involving both our members and external experts. The issues these discussions have thrown up have in turn enabled us to consider whether the proposed PAS scheme is an appropriate means of beginning to address the issues involved.

In summary, our discussions have established that:

- There is at present an insufficient evidence base to enable us to understand the scale and reasons for any performance gap;
- We note in this connection that the consultation itself states that "...the available evidence is based upon a relatively small number of detailed scientific field studies";
- Importantly, much of this research is some years old and relates to design using previous versions of SAP under earlier versions of Part L. It cannot therefore be a reliable guide to the current position and the nature and extent of the issues as they exist under Part L 2010 and its associated version of SAP;

- Nevertheless, the work undertaken by the Zero Carbon Hub has clearly established that SAP is not currently fit for purpose for new build Part L requirements and will not be even when amended this year since a number of the issues identified by the Hub have not been addressed by the recent SAP consultation;
- It has been recognised by the Construction Products Association (CPA) in the 2016 Task Force that the product and build systems performance data provided by suppliers and manufacturers is not robust in terms of the actual performance of such products and systems when they are installed in the field;
- There is insufficient consistency among assessors and assessments with real doubts that assessors have an adequate understanding of the conventions used;
- Shortcomings in assessments are compounded by the complexity of SAP;
- There is not currently a sufficiently good understanding of the actual performance of main systems such as walls, floors and ceilings.

This analysis strongly suggests that there is currently both insufficient data to determine the extent and nature of any performance gap and a lack of appropriate tools and assessment expertise to address any gap if one is properly established to exist.

For these reasons we consider the proposed PAS would be an inappropriate and ineffective means of seeking to resolve the issues we face.

It would not be appropriate or cost-effective to put in place the proposed PAS when we have not established what the problem is. The PAS proposed would be a costly, time-consuming and bureaucratic procedure for the industry to implement and such a procedure cannot be justified on the blanket basis proposed. It would clearly fail the test for good regulation that it should be properly focused and proportionate, producing clear benefits for any costs involved.

In fact the PAS/ Part L proposal does not just fail this test, but is in principle unfair.

Asking house builders to choose between adopting the PAS approach or building to a higher performance standard under Part L 2013 effectively assumes that any issues involved in a performance gap are the responsibility of the house builder. However, it is clear from the analysis above that this is not the case. The shortcomings of SAP (Government's responsibility), the lack of robust in situ performance data from manufacturers and the problems with assessment capability are not by definition the house builder's responsibility. Even if we did have full details of the extent and nature of any performance gap, therefore, the proposed PAS scheme would not address the important elements of the picture that are not the house builder's responsibility.

In sum, the proposed PAS would be ineffective, costly and penalise house builders for issues that are not within their control. We do not therefore support the proposed PAS and would wish to propose an alternative approach to investigating the perceived performance gap as set out below.

HBF's proposals for determining any performance gap and tackling this

As the Zero Carbon Hub's work recommending the proposed Carbon Compliance standard for the zero carbon policy concluded, resolving any Part L performance gap relating to fabric energy efficiency effectively on a mass market scale is likely to be at least a 10 year process.

We agree with the Hub's judgement as the steps necessary to determine the extent, nature and means of addressing any performance gap are themselves significant. And then solutions have to be rolled out across the whole industry.

The first step in this process must be to gather more data and evidence to determine the nature and extent of any performance gap.

We propose that the following programme should be put in place:

- A review of the existing evidence, including that available from recent and current projects being undertaken with support from the Technology Strategy Board (TSB) to agree what that evidence is able to tell us
- Following this review, an agreed, properly focused and industry-led programme of further data gathering to supplement the existing evidence should be formulated
- The focus, content and scale of the programme should initially look to fill in gaps in the evidence base and to identify possible low-hanging fruit. HBF would welcome and propose the involvement of external experts in discussing and determining where efforts should be concentrated.
- Future data gathering would be of most use if it focused on the design, construction and performance of homes built to Part L 2010 requirements as these already entail a high level of fabric energy efficiency. At present, however, it must be recognised that there is relatively little experience of building to Part L 2010 standards and the data gathering programme will need to take account of this.
- Data gathering would look at the process beginning with the effectiveness of the SAP at the design stage, through to the build process and the completion of the dwelling.
- New in-line and end-of-line tests will need to be developed in order to gather data in a focused and cost-effective way.
- The present co-heating test is not fit for purpose and does not enable house builders to gather necessary data in a timely or cost-effective manner.
- **We have therefore discussed with DCLG and the TSB the scope for the Board to support through its programmes the development of suitable new in-line and end-of-line tests.**
- **It is essential that these are developed because use of the post-construction co-heating test will not enable us to gather sufficient appropriate data in a satisfactory timescale to address the issues of concern to Government and would entail disproportionate cost for any benefit derived.**
- Appropriate project co-ordination and management will also need to be put in place to ensure that the research programme is run effectively. Such a project

management role might be undertaken by the Zero Carbon Hub, but if so suitable funding would need to be put in place.

- The funding requirements for our proposed programme may well from our initial estimates run into some millions of pounds as well as requiring a significant commitment of time and staff resource on the part of house builders.
- **We would propose therefore that if house builders are prepared to commit their time and staff resources to the conduct of such a research programme other costs for the programme should be financed by the TSB.**
- **To take our proposal forward we would wish to advance discussions as a matter of urgency with DCLG, TSB and the Zero Carbon Hub.**

The implications of the current position and our proposal for Part L 2013 requirements

The current combination of a lack of sufficient evidence on any performance gap, the lack of robust in situ performance data for key products and systems used by builders and shortcomings in the SAP and the assessments undertaken with it mean that we have no way of knowing whether in fact the proposed FEES standard is correct or not.

Moving to the proposed FEES standard in Part L 2013 would therefore imply a degree of finality that does not exist. That in turn would encourage house builders and suppliers to invest in optimising designs and production capacity in preparation for the full zero carbon policy without actually having the assurance necessary to do so.

Going down such a path could be extremely damaging to house builders, the supply chain and the wider public interest. It could well result in dwelling designs that turn out not to be optimised in future, so that further re-designs are subsequently required if the FEES standard has to be changed. Such an outcome would be reputationally damaging for the industry and Government, but would also mean that house builders had incurred additional costs that then prove to be unnecessary.

These are very real considerations as by definition the FEES standard has been pitched at a level that is at the expected margins of what is deliverable on a consistent, mass-market basis for the full range of housing types. Yet without determining the answers to all the questions about actual component, system and building performance we cannot know that the FEES standard has been set at the right level.

For these reasons, and bearing in mind the lack of evidence to date in building to 2010 standards, we firmly believe it would be wrong and counter-productive to change Part L requirements in 2013, even on the basis of an interim version of FEES.

We would be in a much better position to implement the right standard for minimum fabric energy efficiency, cost-effectively and with optimal designs in 2016 if we were to base the 2016 regulations on the emerging findings and solutions we wish to see

developed through our proposed data-gathering and research programme summarised above rather than changing Part L requirements again now.

Costs

The cost of implementing the Government's proposals on Part L is clearly a matter of great interest to our members.

We have sought to look at and validate the cost impact, but at this stage have had to conclude that it is difficult to determine likely costs robustly because of the late availability of the latest proposed version of the SAP software that accompanied the consultation. In addition, what feedback we have had from members on the latest proposed SAP software is that it is inadequate, providing uneven results that do not appear to be correct in a number of areas.

Separately, we think the Government has under-estimated the likely costs of the proposed PAS mechanism since as noted above we see this to be extremely resource-intensive for companies, involving a lot of staff time and other company resource – and at present a very costly and inefficient co-heating test.

A further factor is that the Government has looked at the aggregate impact of its Part L proposals in its assessment of costs. The assumptions made in making such an estimate are therefore important. In this connection, we note that:

- The cost estimates have been made using SAP 2009 – which clearly will not be accurate given that even the latest proposed SAP will not meet our requirements, and;
- The estimated aggregate figures probably do not reflect the likely build mix for the period in which the proposed regulations would apply: critically we would expect the proportion of new homes construction starts represented by detached homes to increase in the next few years given the current market strategy of our members. Since the cost of the Government's proposals are greatest for detached homes, this is likely to mean that the Government's overall assessment of costs is an under-estimate.

Finally, we would ask what the "Out" is for the "In" of the costs identified for house builders. If the Government were to proceed with any changes to Part L requirements in 2013, there must be an immediate compensatory reduction in other regulatory costs for house builders themselves otherwise the impact will necessarily be negative for our members.

Conclusion

We hope the analysis and arguments set out in this paper fully explain the reasons why we strongly believe that it would be counter-productive to achieving the zero carbon homes objective to make a further change to the Part L performance requirements in 2013.

This is certainly not a "do nothing" response, however, as we accept that there is a clear need if the policy is ultimately to be successful to determine the extent and

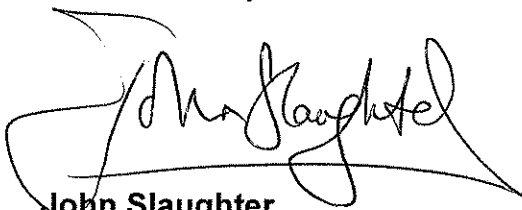
nature of any gap between designed and actual performance and to take active steps to resolve the issues that may be involved.

As a means of doing so, we have set out our proposed approach to further research and subsequent action to understand better and tackle any performance gap. We believe this is a better focused and more practical way forward than the proposed PAS scheme which would burden house builders with additional costs without the promise of the clear results the Government is seeking.

Our wish would therefore be to work collaboratively with the Government and other partners to take our proposals forward and we would particularly seek the DCLG's assistance in facilitating research work through the mechanisms and funding that the TSB can provide.

We also believe that our views on the current position and our proposed way forward are broadly supported by other industry bodies representing those involved in building and providing new housing. We would be very happy to work with them accordingly towards the shared goal of a successful zero carbon policy.

Yours sincerely

A handwritten signature in black ink, appearing to read 'John Slaughter', with a large, sweeping flourish extending from the bottom left.

John Slaughter
Director External Affairs

