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HEALTH AND SAFETY EXECUTIVE

CONSTRUCTION INDUSTRY ADVISORY COMMITTEE (CONIAC)

HSE's Local Authority Construction Engagement (LACE) Project – a Progress Report

A paper by: Cathy Kerby and Mike Harrison

Cleared by Stephen Williams, Chief Inspector of Construction

Summary

For information only

This paper updates CONIAC on progress with HSE's Local Authority Construction Engagement (LACE) Project, and covers the various ways in which LAs are able to influence health and safety standards in construction. It highlights opportunities for them to use their influence and become more involved and proactive in relation to the Construction (Design and Management) Regulations 2007 (CDM 2007). Members are invited to note its progress and emerging findings.

Issue

1. This paper updates CONIAC on progress with HSE's Local Authority Construction Engagement (LACE) Project, which has been underway since October 2007.

Timing

2. Routine.

Recommendation

3. CONIAC Members are invited to note the LACE Project's progress to date and its emerging findings.

Background

4. The LACE project forms part of HSE's Construction Division (CD) Programme and encompasses a number of elements relating to HSE's current or potential engagement with Local Authorities (LAs), and the capacity HSE envisages they have to influence health and safety standards in the construction industry. There are a number of work streams within the scope of the LACE project, reflecting LAs' varying roles:

- Better integration of CDM with Building Control (BC) and Planning regimes
- LA as construction client
- Environmental Health Officers (EHOs) and Building Control Inspectors (BCIs) as regulators
- EHOs and BC as providers of information to dutyholders
- Planning
- Highways
- Trading Standards

5. During the earlier phases of the project a considerable amount of effort focused on contacting LA and HSE inspectors to obtain information on, and examples of, joint working on construction issues. Given that there are around 400 LAs, differing widely in size, personnel, resources, organisation, management structure and political affiliation, HSE was unsurprised to find that there is no consistency in their approach to construction health and safety. While this provides an opportunity to identify and encourage enthusiastic LAs to adopt new approaches that benefit construction health and safety, it also offers the challenge of communicating, disseminating and creating enthusiasm for these approaches through a large and disparate group.

Current position and Project findings

6. This paper aims to provide a comprehensive review of the work done so far, and a flavour of the emerging findings, and these are set out below in relation to the various elements concerned.

Better Integration of CDM with Planning and Building Control Regimes

7. HSE's work to consider the scope for better integration of the CDM, Planning and BC regimes began during development of the CDM 2007 Regulations. It was given fresh impetus by post-consultation discussions and research, and by the Parliamentary "Prayer" Debate which took place after CDM 2007 came into force. Complete integration is necessarily a complex and difficult undertaking and is therefore likely to remain a long-term goal. Work is therefore progressing steadily, with a view to seizing opportunities to influence the Planning and BC regimes; and achieving "quick wins" which provide practical assistance for dutyholders (particularly small or occasional construction clients).

8. HSE's Construction Policy Team leads on policy discussions with CLG and other relevant Government Departments, and has had useful input from LACE's BC consultant (Richard Suttle). There is ongoing liaison with CLG and arrangements for regular bilateral meetings with CLG's Sustainable Buildings Division are now in place (last held in September 2008, with the next scheduled for January 2009). As a result, agreement has been reached to place links to HSE's CDM guidance on the CLG Planning Portal¹ (see paragraph 32 below).

9. Formal responses have also been made to consultative documents from CLG and the Scottish Executive on modifications to, and reviews of, the Planning and BC regimes in England and Wales and in Scotland.

¹ the national website for Planning and Building Control information.

Local Authority as a construction client

10. To date, LACE has not undertaken a great deal of work on this issue, although CD's work (from both the operational and policy perspectives) is ongoing. Following on from the two high-level Construction Summits (in 2001 and 2005) and, more specifically, the Buying for Life event and follow-up workshop in 2006, CD continues to encourage public sector clients to procure construction work in a way that acts as an exemplar to other clients, and meets CDM 2007 and the health and safety provisions in Office for Government Commerce (OGC) Common Minimum Standards Guidance.

11. Work by the CD field force with LAs as construction clients, specifiers or procurers has been largely restricted to reactive work or to particular campaigns, such as those looking at designing out manual handling risks from laying of kerbstones. However, a re-energised work programme is currently being drawn up, and OGC, the Department for Business, Enterprise and Regulatory Reform (BERR) and others will be consulted on how it fits in with the wider agenda to encourage improvements in the way in which publicly funded construction is procured. An important element of the programme will be improvement of the evidence base, to better inform future interventions and CD is seeking shortly to commission research to follow-up on the findings of Research Report 556, published in 2007 "*Health and safety in public sector construction procurement*"².

Environmental Health Officers (EHOs) as enforcers

12. One of the key areas of LA influence is their potential for driving forward improvements in construction health and safety standards via embedding and enforcing the Construction (Design and Management) Regulations 2007 (CDM 2007).

13. In mid 2007, HSE provided the Local Authority Co-ordinators of Regulatory Services (LACORS) with draft guidance on how (and in what circumstances) EHOs can enforce CDM 2007.³ Although this is available on the LACORS website, the indications are that (although there are exceptions), a large majority of EHOs seem unaware of the opportunities provided by the enforcement demarcation changes (from CDM 1994) in CDM 2007. Relatively few case studies have been identified, either where EHOs have intervened with clients⁴ on design issues at the planning stage or where health and safety problems in the use or maintenance of the completed built environment could have been prevented by ensuring Workplace (Health Safety and Welfare) Regulations 1992 requirements were considered at the design stage.

Influencing clients at the design stage

14. For EHOs to influence "their" CDM clients effectively, they need to be able to identify them via access to Planning and Building Regulations applications. LACE has been reviewing how EH currently access plans, and has encouraged some

² <http://www.hse.gov.uk/research/rrpdf/rr556.pdf>

³ Alec Ferguson's: Draft Position Paper on Enforcement of the Construction (Design and Management) Regulations 2007

⁴ Where they are the Enforcing Authority under the Health and Safety (Enforcing Authority) Regulations 1998 for the workplace, once completed

EHOs to identify appropriate targets for advice. LACE has also prepared material to assist, including: a briefing note on the Planning and Building Control (BC) system and draft standard letters that can be sent out in response to relevant notifications. To extend the scope of EH interest in the CDM approach, these include draft letters that can be used by Food and Licensing, as well as Health and Safety teams.

15. The potential benefits of encouraging effective EH involvement with design for LA Sector enforced clients are considerable – not least in terms of HSE's FIT3⁵ priorities such as falls from height, workplace transport and slips and trips.

Support and training

16. HSE anticipates that comprehensive support, including provision of case study material, the briefing note and the draft letters referred to above, will be essential to persuading a "critical mass" of EHOs to pursue design issues with clients for whom they are the Enforcing Authority. This material has been made available to LAs through HSE's Extranet; and to HSE Inspectors through internal guidance.

17. Feedback from a number of the LA County Groups to whom LACORS circulated HSE's draft enforcement guidance, indicated that CDM 2007 training is also an issue, together with a need for support or "buddying" by HSE inspectors, to establish EHO competence in this area. HSE's CD has already taken account of this in its 2008/09 Operational Plan, and is considering various options for taking this forward.

Construction-related "matters of evident concern (MoEC)"

18. Although EHOs can (and often do) resolve problems on construction matters without specific use of enforcement powers, the Health and Safety (Enforcing Authority) (EA) Regulations 1998 limit the action they can take in dealing with construction related "matters of evident concern" (MoEC) or complaints. The exception is where EHOs are operating under an appropriate joint or flexible warranting scheme.⁶

19. There are a number of proposals to introduce joint /flexible warranting schemes, building on experience in pilot areas, and a high proportion of the recorded interventions under these schemes involved construction work. Feedback from LACORS County Groups indicates a significant (but not universal) interest in including construction in joint/flexible warranting schemes, and this could prove to be a useful tool in embedding CDM 2007 in LA and industry consciousness, to achieve behavioural change and improved construction health and safety standards.

20. While there are potential benefits in EHOs being empowered to take action on construction MoEC or complaints on behalf of HSE, especially where issues arise in remote locations, concerns also exist regarding the potential risks of EHOs attempting to deal with unfamiliar issues – not least the risks to their own health and safety. Consequently, training would be a key issue for any LA participating in a joint/flexible warranting scheme covering construction.

⁵ See: <http://www.hse.gov.uk/fit3street/ataglance.htm>

⁶ See HELA update paper at: http://www.hse.gov.uk/aboutus/meetings/committees/hela/171007/h4_03.pdf

EHOs as providers of information to dutyholders

21. Some LA Environmental Health websites do provide links to general health and safety information and to the HSE website, but LACE has found relatively little evidence of EHOs as providers of construction-related health and safety information. HSE believes there is scope for EHOs to distribute HSE leaflets and information sheets; signpost HSE web-based material and develop jointly-badged material (e.g. one LA developed guidance for architects and designers on reducing slips, trips and falls in the workplace jointly-badged with HSE).

22. There is also potential for joint seminars for specific construction industry target groups. In particular, EHOs could usefully encourage an understanding of CDM client duties among “small and occasional” clients in the commercial, service and leisure industries (BC may offer a more effective route to target designers and contractors). Undoubtedly, LA provision of information to groups such as clients and designers could prove beneficial to all parties, particularly where the LA has a vested interest, (i.e. where it would be the enforcing authority for the ultimate work activity on the site.)

Building Control Inspectors (BCIs) as Enforcers

23. LACE has identified that, because BCIs visit construction sites at several different stages of the work - and understand the construction process, most HSE CD Inspectors see them as a more appropriate point of contact with LAs on construction issues than EH. However, there are some concerns that not all BCIs have a working knowledge of construction health and safety.

24. From the BC perspective, there are commercial concerns about potentially losing work to the private sector Approved Inspectors, if BCIs are perceived to be too closely aligned with HSE - although some BC managers recognise the business benefits in offering a more “joined up” service.

25. Most existing HSE contact with BC falls in the area of providing information about sites, typically in connection with compliance enquiries or complaints, and is beneficial in enabling complaints to be resolved rapidly. Some BCIs are prepared to visit sites and resolve problems through advice to dutyholders. They may also provide material to enable HSE staff to assess and prioritise the situation. Other potential means of obtaining and using BC intelligence are still being considered.

26. The greatest area of mutual enforcement interest between HSE’s CD and BC is dangerous structures, structural safety and building collapses. There has been successful liaison on such matters, and many BCIs seem keen to resolve structural and site access issues using their powers - although there are reported differences of approach between different BC Departments (and individual BCIs). LACE findings anticipate benefits in publicising details of effective interventions; and in publishing up-to-date guidance for HSE Inspectors (and BCIs).

BC as Providers of Information to Dutyholders

27. Some BC Departments currently act in a number of different ways as a helpful conduit for construction-related health and safety information, (an intervention which could most usefully be multiplied across the board). Examples include making HSE website information available through hot links or duplicate pages on their websites, (although not all of these are up-to-date); and/or providing information in leaflet, information sheet or other formats. Good examples include:

- providing links to specific CDM information on the HSE website's construction pages;
- adding CDM text and web-links when sending out acknowledgement and approval letters;
- providing HSE CDM (or other health and safety) information when sending out forms/approvals etc to applicants, e.g. scaffolding guidance (based on HSE guidance) on the reverse of their downloadable scaffolding permit form;
- distributing HSE campaign material or advice/construction information sheets to clients/contractors where appropriate, e.g. INDG411 "Want Construction Work Done? – A quick guide for Clients on CDM 2007"
- providing own-badged health and safety information, often based on HSE material, e.g. HSE guidance on removal of asbestos from buildings.

28. HSE believes there are opportunities to co-operate with BC over Safety and Health Awareness Days (SHADs) or similar events for particular target groups, e.g. small designers and contractors. Some work has been done through Working Well Together (WWT) in the South West, with the incentive of CHAS accreditation for attendance. However, planned BC involvement in these workshops, e.g. by promoting attendance, proved disappointing and lessons learned would need to be applied if this approach is to be taken forward elsewhere.

Planning

29. As with BC, Complaints and Compliance Officers also use Planning Departments (PDs) as a source of information on site addresses and contact details. However, there is much less contact between HSE's Construction Inspectors and PDs than with BC. This may reflect the much smaller number of Planning Enforcement staff, compared with BCIs, and also the different natures of the two regimes.

30. The fundamental differences between the nature of the Planning, BC and CDM regimes, are not universally recognised. CDM 2007, for example, is not a permitting regime, and its scope and aims are not those of BC and Planning legislation it complements, but does not duplicate. There are concerns that the granting of planning approval may be misinterpreted by applicants as meaning that on the particular issue, the approval covers all legislation. Some LAs are approaching this by inserting a disclaimer in their planning approval responses, stressing that approval is being granted only for planning purposes and not in relation to other statutory requirements.

31. Little evidence could be found that PDs currently provide much, if any, health and safety information to planning applicants, so more work needs to be done to explore whether there are opportunities for involving them in this way. It seems that some PDs would be prepared to send out “informatives” on specific, key topics such as site fencing – which could be useful for particular CD campaigns.

32. There is an obvious benefit in individual LA websites having links to information on the construction pages of HSE’s website, which would enable highlighting of information on issues of local relevance. Following discussions with HSE, CLG has agreed to establish appropriate links from the CLG Planning Portal - which provides a less tailored, but more efficient way of disseminating information. Specific proposals for establishing links between the BC pages on the Portal and HSE’s construction pages have been received from CLG, with further proposals concerning links from the Planning pages also expected shortly.

Highways

33. Responsibility for scaffold licensing generally falls to Highways Authorities (in County Councils or Unitary Authorities) although in some cases it may be dealt with by BC. LACE has identified a number of instances where scaffold licensing has been used in different ways as a lever to improve scaffolding standards:

- agreeing and publishing as a protocol the standards that the LA would enforce;
- regional agreement to enforce uniform scaffolding licensing standards;
- requiring developers (rather than scaffolders) to apply for a scaffold licence and refusing licences to scaffolding firms with a poor safety record;
- requiring method statements from scaffolding contractors and seeking HSE comments.
- providing detailed guidance on scaffolding safety on the LA website and as a hard copy booklet.

34. Highways Authorities can also provide useful intelligence to help target enforcement activity, e.g. information on pavement licences for HSE’s recent refurbishment initiative.

Trading Standards (TS)

35. There appear to be several possibilities for HSE to work with Trading Standards (TS), but these have not yet been explored in any detail. For example, through their Local Authority Approved Trader Scheme Network (LAATSN), TS have an interest in competence standards. Although criteria for membership of their scheme are different from the competence criteria for CDM purposes, HSE believes there may be scope for co-operation over this issue.

Future Priorities for LACE

36. At present, LACE is mainly concentrating on work streams that appear to show most potential for delivering effective outcomes, while continuing work on other areas with a lower priority. Given the wide-ranging nature of the project, some areas potentially falling within scope are yet to be explored. LACE's current priorities are:

- providing support for HSE's CD operational staff in their joint work with LAs including:
 - facilitating contacts between the field and EHOs, BC, Planning, etc
 - developing or assisting with the preparation of materials to support the field in joint working with EH, BC and Highways
 - making support materials available on dedicated web pages;
- developing and delivering training for EHOs on CDM;
- working to establish better links between HSE's construction webpages and the Planning Portal and individual LA websites. (A specific project for HSAOs on health and safety information on LA websites will be starting shortly.);
- supporting HSE's Construction Policy Team work on the CDM/Planning and Building Control alignment/integration agenda;
- establishing and maintaining contact with others within HSE (and externally) who can assist with delivery of the LACE programme.

Next steps

37. The main aim of LACE so far, has been to identify and encourage a relatively small number of "pathfinder" LAs that are already undertaking, or are prepared to undertake work that will contribute in some way to improving standards of health and safety in the construction industry. The next stage will be to build on their enthusiasm to generate the momentum to develop a critical mass of LAs who regard taking action to improve construction health and safety as a legitimate and beneficial aspect of their business. Creating this bandwagon effect has been an important and effective means of establishing and taking forward the Fit3 agenda with LAs.

38. To assist in taking forward the work streams outlined above, LACE has liaised with both LACORS and Local Authority Building Control (LABC)⁷ and will continue to do so. HSE is meeting the Association of Consultant Approved Inspectors (ACAI)⁸ shortly, to explore the possibility of them disseminating CDM 2007 information to their construction clients. The project is currently funded by HSE for 2008/09, and its CD has secured further resource for the project to extend its work into 2009/10.

Contact

Mike Harrison,
HSE Construction Sector, 5SW Rose Court, 2 Southwark Bridge, London, SE1 9HS.
Tel: 0207 556 2163 E-mail: mike.harrison@hse.gsi.gov.uk

⁷ The member organisation representing all LA Building Control Departments in England and Wales.

⁸ The trade body representing the interests of private sector building control consultancies and inspectors in England and Wales