

Committee: **Governance and Audit Committee**

Date of meeting: **26th April 2023**

Report Subject: **Building Control - Out of Hours Dangerous Structures Call Outs**

Portfolio Holder: **Non Cabinet Function - Chair of Planning Committee**

Report Submitted by: **Service Manager Development & Estates**

Reporting Pathway								
Directorate Management Team	Corporate Leadership Team	Portfolio Holder/ Chair	Governance Audit Committee	Democratic Services Committee	Scrutiny Committee	Cabinet	Council	Other – Planning Committee
✓	✓	✓						✓

Note for Planning Committee – this report was presented to CLT early April 2023 and option 1 was chosen. As a result, BGCBC do not now provide an out of hours rota for dangerous structures. The risk has been captured in the service risk register. The G&A Committee action sheet from the meeting that considered the original internal Audit report indicates this matter will be referred to the relevant Committee once the issue is resolved.

1.0 Purpose of the Report

To consider the issue of Building Control out of hours dangerous structures (DS) call outs and review whether existing arrangements are fit for purpose.

- 1.1 The report considers calls received outside of normal business hours. Incidents received during 9am to 5pm are responded to as normal, usually within 2 hours.

2.0 Scope and Background

- 2.1 The Building Control service is responsible for dealing with incidents where a privately owned property or structure is dangerous and poses a threat to public safety. It should be noted that property in the ownership of the Council is dealt with by the Corporate Landlord (Community Services Division) and therefore sits outside the scope of this report.

- 2.2 At the outset it is worth defining what a DS is. The term 'dangerous structure' covers not only buildings or parts of buildings but also such things as garden walls, fences, scaffolding or hoardings. In fact, any "structure", which could by its condition endanger persons.

- 2.3 For the purposes of Building Regulations, there are two types of dangerous structures:

- 2.4 a) Imminent: structures which are at risk of collapse and must be secured for public safety. The owner will normally be recharged for emergency works carried out in these cases.
- b) Hazardous: structures which from a survey are unstable but not imminently dangerous. In these cases the owner is given a reasonable time to remove the danger. Failure to respond may result in legal action.
- 2.5 The BCO will visit the site to inspect the structure and to arrange for appropriate action to be taken to remove any danger. If the structure is considered potentially dangerous, the owner of the property will be located and requested to arrange for the structure to be removed or repaired. The area surrounding the structure is cordoned off if necessary to ensure safety is maintained whilst the structure is being dealt with.
- 2.6 If the structure is considered immediately dangerous and likely to collapse, the BCO will arrange for a builder to remove or repair the structure as soon as possible, normally on the same day. The builder's costs are recoverable from the owner of the property.
- 2.7 Where responsibilities overlap with other Emergency Services, a close liaison is maintained to ensure safety at all times. If it is necessary to deal with any immediate danger, we can arrange for our own emergency contractor to carry out the work.
- 2.8 Should a major civil emergency occur, the corporate Emergency Plan would be invoked and involve staff in respect of dangerous buildings. This is also a factor needing consideration.
- 2.9 A structure may fall into the legal definition of "dangerous" by a number of means such as a road traffic accident, poor workmanship/maintenance, fire/weather-related incident or other.
- 2.10 The Building Control Officer in attendance will ensure the site is secured, liaise with the owner and emergency services and take necessary action to remove the danger. In some instances this may involve direct action by the Council. Provided prescribed steps are followed, costs are recoverable.
- 2.11 It is important that due process is followed in order that the Building Act is complied with in case legal notices be required later. It can also have a bearing on whether aforementioned costs incurred can be recovered.
- 2.12 In 2016, a review of the Standby and Out of Hours policy was carried out and the out of hours services were rationalised. Allowances were cut in line with the new policy. This affected the staff who had previously been on a formal rota. Whilst not a contractual obligation, at that time the 4 experienced BCO's shared the duties of covering the Borough and attended incidents at all times of the night and weekend.
- 2.13 However, for some time the service has been unable to guarantee an out of hours response. This is in part due to the BCO's not wishing to go on a rota

under the new policy. The new rates introduced, and mileage/flexi arrangements mean that officers are being asked to make themselves available to attend incidents which impact on their personal lives for very little recompense and if called, being out of pocket for travelling to site.

- 2.14 This is coupled with the fact that the team now has reduced capacity. Only two of the four officers now in post are experienced and qualified to attend which would result in a 7/365 rota being shared between just two BCO's.
- 2.15 The contact centre has the BCO mobile numbers but I cannot guarantee a response if the officer is sick, on holiday or otherwise unable to attend. The contact centre has been provided with a contact list and will endeavour to contact someone in a priority list but some of these people are not professionally competent to attend an incident.
- 2.16 Those Council staff that do attend should only seek to secure the site/highway until the following working day. At that point a BCO will attend and pick up the case. The disadvantage is that the BCO picking up the case may not agree with the course of action undertaken in the preceding hours or be prevented from a cost recovery exercise.
- 2.17 In addition to the issues faced by BCO's I am also concerned that the present arrangement places frontline staff from elsewhere in the Department in a difficult position should they attend an incident. They will not be conversant with the requirements of the Building Act and called upon to make decisions such as closing of highways which they may not be qualified to make.
- 2.18 This principle extends to officers who I have seen quoted as being on a reserve list such as Head of Community Services and myself. We are not professionally competent to attend an incident and ensure the requirements of the Building Act are complied with or otherwise advise on health and safety matters.

3.0 **Options for Recommendation**

3.1 Option 1 – Do nothing (preferred option)

In other words, continue as per the existing arrangement where a BCO is not guaranteed to attend an incident. The advantage of this option is that it entails least cost.

- 3.2 However, this is predicated on the Council acknowledging and accepting the risk that in the event that emergency services require professional advice on the safety of a structure e.g. to enter, then there will be no BCO in attendance.

- 3.3 RCSLT are asked to consider the potential risk and reputational damage associated with what may be a major incident and Building Control do not attend.

3.4 It may also prove impossible to instigate any cost recovery against property owners.

3.5 Option 2

Reintroduce the formal out of hours service. It was cut as a cost saving measure. At that time and based on the rates payable, the service cost was circa £25K per annum. However, the Building Control budget continues to be “top sliced” year on year for this sum despite the service not being provided.

3.6 However, in considering this option RCSLT are made aware that officers are not prepared to go on a formal rota guaranteeing a response based on the current policy and remuneration rates and my understanding is that they are not contractually obliged to do so. The “Stand by and Call Out Policy” was last reviewed in 2021. The rates are £20 for each shift of 16 hours. This rises to £30 for weekends and bank holidays though the shift is obviously much longer.

3.7 Mileage cannot be claimed and time accrued on site does not allow for travel time from home to site. This represents a significantly less beneficial terms than the previous in scheme. I can fully understand why BCO’s do not consent to being on a formal rota.

3.8 To compound matters, only two officers are currently professionally competent to attend site. Operating a rota on this basis is not sustainable in the interests of an acceptable work/life balance.

3.9 If a rota is reintroduced, then negotiation with the officers (and Trade Unions) is required and I would suggest a meaningful uplift is required for officers to voluntarily opt into the scheme. It is not known what the corporate implications of this are given officers across the Council may be on call and on what rates.

3.10 Option 3 – Outsource

I investigated this option when the service was originally cut. There are companies who could in theory provide a service. However, as it is impossible to predict the volume or nature of calls, companies either chose not to price for the contract or indicated they would have to charge significantly more than the cost of running it in house to ensure they didn’t operate at a loss.

4.0 **Evidence of how this topic supports the achievement of the Corporate Plan / Statutory Responsibilities / Blaenau Gwent Well-being Plan**

4.1 One of the key aims is to “Protect and enhance our environment and infrastructure to benefit our communities”. Failure to respond to an out of hours incident could prejudice the ability to meet this aim.

5.0 **Implications Against Each Option**

5.1 ***Impact on Budget (short and long term impact)***

This would depend on the rates being offered. Reintroducing a rota on rates commensurate with the previous scheme would place a budgetary pressure on the service in the region of £30K. However, the budget is already top sliced every year to reflect the ongoing corporate savings previously introduced.

5.2 ***Risk including Mitigating Actions***

5.3 The difficulty in capturing risk is that it is impossible to predict both the frequency and severity of incidents. The experience of recent years is that dangerous structures calls continue to come in during office hours but have all but dried up during out of hours. However, recent events in Swansea with the explosion at a residential property evidence how such incidents can happen at any time.

5.4 I have copied the following table from the Corporate Risk Management Strategy. The columns attempt to outline the escalating scale of risks against each of the prescribed headings in column 1. This is done for each of the three options.

5.5

Impact of Risk Option 1 – No rota				
Impact/ Outcome	Low	Medium	High	Critical
Financial	No financial outlay.	Ongoing saving.	Possibility that cost recovery options are not available in the event that immediate and direct action is required on site.	
Effect on service delivery	None – cases are picked up the following working day. However, actions taken at an incident may dictate how cases are progressed.	There may be occasions when handover of cases is problematic and BCO's are not comfortable professionally taking on a case where the initial action was not deemed appropriate.	-	-
Achieving key targets	-	-	Inability to deliver on "safer communities" aim.	-

Effect on stakeholders/ community	-	-	A caller may require immediate expert advice.	-
Health and Safety			No competent person on site to advise emergency services.	
Legal and reputational	There is no stat requirement to attend immediately/ out of hours.	In the event of serious incident, no competent officer attends - reputational damage	Criticism from attending services who may not be able to fulfil their roles.	

* AI = "Approved Inspectors" i.e. private sector BCO's.

5.6

Impact of Risk				
<u>Option 2 – Re-introduce out of hours service</u>				
Impact/ Outcome	Low	Medium	High	Critical
Financial	The cost of the service for building control is small in a corporate context.	Changes to the T&C's for one element of the workforce could impact on T&C's in other service areas.	None.	
Effect on service delivery	Staff attending incidents out of hours are entitled to TOIL so would be lost to the service pro rata.- thus impacting daily caseloads	Only two competent officers available to go on rota so impact on their work/life balance.	Losing staff who do not wish to go on a rota to the private sector. AI's have no DS obligations and significantly enhanced T&C's. Recruitment of experienced BCO's in the public sector is extremely challenging	
Achieving key targets	-	-	Inability to deliver on "safer communities" aim.	-
Effect on stakeholders/ community	None.			
Health and Safety	H&S issues all addressed			
Legal and reputational	None.			

5.7

Impact of Risk <u>Option 3 – Outsource</u>				
Impact/ Outcome	Low	Medium	High	Critical
Financial	-	The cost is not known. Previous attempts to outsource did not result in any interest from the private sector. This was due to the inability to predict frequency and nature of calls. If a company were to price, they would have to assume worst case scenario resulting in a cost way in excess of the likely cost of reintroducing an in-house service.		
Effect on service delivery	None			
Achieving key targets	Achieved			
Effect on stakeholders/ community	None			
Health and Safety	H&S issues all addressed			
Legal and reputational	None			

5.8 **Legal**

The Building Act 1984 Section 77 and 78 offers powers rather than a duty to Local Authorities to act if it appears that a building or structure or part of has the potential to be dangerous or become so.

5.9 My understanding of this is that whilst this does not require an out of hours service to be provided, the Council could be required to demonstrate that a response was initiated within a reasonable time period. During office hours our internal target is to respond within 2 hours.

5.10 **Human Resources**

There are no specific OD implications associated with this report, as it is for information purposes of the risks associated for RCSLT and CLT's awareness.

5.11 However, if discussions are required regarding the Standby and Out of Hours policy and the associated allowances, this would need to be considered across the Council and not in isolation of Building Control.

6.0 **Supporting Evidence**

6.1 **Performance Information and Data**

Prior to the service changes in 2016, BCO's frequently responded to out of hours calls. The frequency was impossible to predict and dependent on many factors.

6.2 One of the outcomes of the changes is that since that time, out of hours calls have all but ceased. Efforts to establish why this is the case have not provided any clear answers.

- 6.3 Having interrogated service records is over the last 5 years we have received **552** DS calls since 1st April 2018 i.e. approaching 10 calls per calendar month. None of these were out of hours though it is known that non BC staff have attended the occasional incident.
- 6.4 This data should assist in putting the risk into context. However, it doesn't deal with the "what if" scenario e.g. the Swansea incident referred to above
- 6.5 ***Expected outcome for the public***
Certainty for everyone what the adopted process is in the event of an out of hours call.
- 6.5 ***Involvement (consultation, engagement, participation)***
None to date. This report is intended to start the conversation.
- 6.6 ***Thinking for the Long term (forward planning)***
- 6.7 ***Preventative focus***
N/A
- 6.8 ***Collaboration / partnership working***
It is known that neighbouring LABC teams have similar difficulties and there is no spare capacity for cross boundary service provision.
- 6.9 I have spoken to 3 neighbouring LABC Departments. None of these operate a formal out of hours rota though contact numbers have been provided to contact centres in much the same way as we currently operate.
- 6.9 ***Integration (across service areas)***
There is no capacity or competency in other teams.
- 6.10 ***Decarbonisation and Reducing Carbon Emissions***
N/A
- 6.11 ***Integrated Impact Assessment (IAA)*** *To note a screening template no longer needs to be completed*
- 7.0 **Monitoring Arrangements**
- 7.1 *State how the work will be monitored e.g. through scrutiny or directorate performance management arrangements*

Background Documents /Electronic Links

- [Stand by and Call Out Policy](#)