

Guidance Note: Design Advice and Building Control Advice

This guidance has been drafted by the Building Control Working Group of the Industry Competence Committee with the support of officials from the Health and Safety Executive (HSE) and the Ministry of Housing, Communities and Local Government (MHCLG). It follows a sensible and proportionate approach to complying with the relevant legislative requirements in the Building Safety Act 2022 and the Building Regulations 2010.

Introduction

This note sets out how advising on compliance can be undertaken by Registered Building Inspectors (RBIs) when carrying out regulatory activity in accordance with the Regulator's Code ([Regulators' Code \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)) without assuming the role of the designer (as set out in Part 2A of the Building Regulations 2010). It provides common examples on to how to avoid providing 'design advice'. The examples given are for illustrative purposes only and are not comprehensive. It is the responsibility of the RBI to consider each request for advice on a case-by-case basis and form their own professional judgement. The note also touches on the responsibility building control bodies have to ensure they have adequate conflict of interest procedures in place.

How may I give building control advice to a client without it being considered design advice under the Building Regulations?

Those who are carrying out regulatory building control activity and functions and give building control advice may include advice to the dutyholder which sets out indicative ways in which compliance may be achieved in the context of an inspection or the checking of plans. If this advice is framed around indicative examples or considerations only, then this is unlikely to be considered design advice as it would still be for the dutyholders (i.e. clients, designers, contractors) to determine how to ensure compliance and act accordingly.

While this may include advice and instruction on how designs may or may not meet statutory requirements, they should not provide exhaustive advice based on the preferences of the inspector (rather than indicative ways to achieve compliance and/or identify potential sources of guidance). This could be considered design advice even if it is not deemed to be taking on the responsibilities, and thereby duties, of designers.

An RBI may work for an organization that offers consultancy services that include design advice. An RBI cannot carry out building control regulatory functions on a project for which they are also engaged in consultancy work. This would constitute a conflict of interest and building control bodies must have conflict of interest policies in place to make sure this does not happen.

Case Study #1:

An RBI has received plans to check for compliance with the Building Regulations and observes a non-compliance with Requirement B1 of Schedule 1 to the Building Regulations 2010. In this case, the exit widths for a room appear too narrow by reference to the guidance contained in Approved Document-B Vol 2 and no justification or explanation has been given. The RBI indicates where on the plans the alleged non-compliance has been identified. The RBI should explain how they have arrived at their decision and that the dutyholder will need to provide evidence that Requirement B1 has been complied with. The RBI should not provide a compliance solution to the alleged non-compliant

work but could indicate to the dutyholder where appropriate guidance could be found. The dutyholder will need to supply evidence to counter the RBIs opinion or to amend the plans to address the alleged non-compliance, having regard to the concerns raised by the RBI.

Case Study #2:

An RBI visits a site for a Building Notice where foundations are being excavated in clay soil. The RBI observes that the depth and width of the excavation are not as those shown in Approved Document-A and that there are also mature trees close by and therefore they may not be compliant with Requirements A1 and A2 of Schedule 1 to the Building Regulations 2010 as a result. The RBI explains that they do not believe the foundations to be suitable for the situation and why they have come to that conclusion i.e., they outline the matters of concern. The dutyholder asks what the RBI wants to see. The RBI responds by advising that the dutyholder should present a compliant excavation, they may point the dutyholder towards areas of guidance or guidance on where compliance may be found.

Case Study #3

An RBI is called to site to inspect the drains before they are covered over. The RBI observes that one of the drains displays signs of backfall. The RBI explains to the dutyholder that the drain has backfall, and the RBI instructs that the drain should be re-laid to an appropriate fall in the direction of flow. The RBI may point the dutyholder towards areas of guidance or guidance on where the appropriate fall could be found. The RBI asks to be called back to inspect the altered drain when changes have been made and compliance can be demonstrated.

Case Study #4 – Giving design advice

An RBI undertakes a plan check for a new dwelling. The cills height to the first-floor opening windows are only 600mm from the finished floor level and as such could pose an issue for protection from falling and protection from impact with glazing (Requirements K2 and K4 in Schedule 1 to the Building Regulations 2010). The dutyholder is a small local firm and the RBI knows the principal well. As part of the feedback to the architect on the plan check, the RBI informs the dutyholder of the issue. The dutyholder asks the RBI how they could make the design comply with the functional requirements of the Regulations. Instead of referring the dutyholder to the guidance in the Approved Document, the RBI proceeds to tell the dutyholder to install guarding across the window reveals at a height of 900mm and that the guarding should be constructed with vertical balustrades that cannot be climbed with a gap of no more than 100mm between them. Although this does present a compliant solution, as it provided an exhaustive solution to the dutyholder for them, it has been effectively designed by the RBI and as such is in breach of the Code of Conduct for RBIs.