

### 1. Introduction

The Building Control section's purpose is to ensure that the Council has fulfilled its duty to implement the relevant sections of the Building Act 1984. In particular it implements the Building Regulations, which are made by the secretary of state under section 1 of the Building Act.

The Building Regulations are intended to: secure the health and safety of people using buildings; conserve fuel and power and provide access for all. There are duties on both building owners and people carrying out building work to submit Building Regulation applications and to notify the Council at prescribed stages of the construction work on site.

The primary role of Building Control is to check that both the information submitted with the application and the work on site is in compliance with the Building Regulations. This function is carried out in competition with private Approved Inspectors, which means that service delivery is customer focused, proactive and adds the value of the section's expertise to the design and construction processes. Customer care is always to the fore and the policy is to encourage achieving compliance with Building Regulations by informal means where possible. Therefore office procedures oblige Building Control staff to exhaust informal avenues before instigating formal enforcement action. This document relates to the various aspects of formal enforcement action.

The enforcement role can only be undertaken by local authorities, not Approved Inspectors. In fact if enforcement becomes necessary on projects, where Approved Inspectors carry out the Building Regulations function, the project "reverts" to the local authority to undertake the enforcement.

### 2. Areas of Legislation

The powers under which the Building Control Section may take action are:

- Building Act 1984- in particular sections 35 & 36.

These sections stipulate the enforcement action a local authority may take when a contravention of the Building Regulations has been discovered. The Building Regulations themselves are functional requirements, and practical guidance on some ways of achieving compliance are provided within the Approved Documents.

- By injunction – civil remedy.

### 3. **Objectives**

There are two principal objectives. The first is to avoid the need for enforcement action by being proactive in helping anyone undertaking building work to achieve compliance with the Building Regulations.

The second is to pursue enforcement action against the most appropriate person in an open, honest, fair and proportionate manner.

To achieve the first objective there is clear guidance in the Building Control Service Charter so that all officers are aware of their role.

To achieve the second objective the policy in this document, supplemented by the relevant office procedures, will be followed in all cases.

Our policy normally is to pursue only a substantive contravention of the regulations. The objective is to remove or alter offending work to meet the provisions of the Building Regulations, in other words to achieve health, safety, conservation of fuel and power and access.

Only in exceptional circumstances would enforcement action be taken in respect of a procedural contravention and these would normally only be taken in conjunction with action against a substantive contravention.

The various types of enforcement listed below involve different parties; have different legal constraints and the Council needs to be consistent in its enforcement policy. Therefore a risk assessment exercise will be undertaken by the Building Control Manager in consultation with the Senior Building Control Officer and, where necessary, the Council's legal section.

The criteria on which the judgement about whether to pursue enforcement action are detailed in the "When is Enforcement Action Taken" section of this document.

### 4. **Types of Enforcement**

- Section 36(6) of the Building Act expressly provides that nothing in the section shall affect the right of a local authority ... to apply for an injunction for the removal or alteration of the offending work. This is the option of the last resort given the risk to the Council of costs being awarded against it.
- Where a contravention occurs on site and the building work has been undertaken in accordance with plans, which were deposited and passed by the Council, the court on granting an injunction has power to order the local authority to pay compensation to the owner of the work.
- Powers of entry- section 95 Building Act.

A duly authorised officer has the right to enter premises to ascertain whether or not there is a contravention. The section provides for the Local Authority to obtain a warrant if entry is refused. Legal action could emanate from protracted failure to gain entry.

In addition, the following powers, (although not directly related to enforcement of the Building Regulations), should be noted:

- Action under sections 77 and 78 regarding dangerous buildings and structures.

The Building Control section responds immediately to reports of dangerous structures, whether by letter, e-mail, telephone or in person. An assessment is made of the reported danger and an informal approach is usually adopted, whereby the section works with the building owner to avert or remove the danger.

In cases where there is a lack of co-operation the section would approach a magistrates court to seek an order requiring the building owner to execute work to make the building safe or (if the building owner elects) to demolish the dangerous part of the building.

Where there is an immediate danger the powers under section 78 can be invoked. The section would instigate and co-ordinate the minimum work necessary to remove the danger before seeking to recoup the costs from the building owner.

Anyone reporting a dangerous structure is asked if they wish to be kept informed of progress. If so they will be made aware, in a timely manner, of any significant actions and the results of those actions.

- Action under section 79 Building Act 1984 in respect of ruinous and dilapidated buildings.
- Serve counter notices under sections 81 & 82 Building Act in respect of demolition notices. An office procedure details the actions taken when a counter notice is served under the above sections.

## 5. **Contacts**

A specific substantive contravention is usually discovered by the Building Control Officer during site visits. To report a contravention or unauthorised works members of public can:

- Telephone building control on 01279 446827 or 01279 446655
- or by sending an e-mail to [building.control@harlow.gov.uk](mailto:building.control@harlow.gov.uk)
- To report a Dangerous Structures out of office hours telephone 01279 446666

## 6. What happens next?

Where possible unauthorized work is reported or found the Building control officer (BCO) will need to formulate an action plan, which will include the following:

- visit the site.
- ascertain the facts.
- establish the identity of the owner and where possible the builder.
- establish the approximate dates that work was carried out.
- record all necessary evidence in accordance with the Enforcement Concordat.

Where requested, the BCO will report back to the person who reported the unauthorized work/contravention about the steps taken. This is to be done in a transparent manner.

## 7. When is enforcement Action taken?

The office procedure regarding enforcement and unauthorized work culminates in a report being made to the Building Control Manager who considers, in conjunction with the Council's legal section where necessary, whether to proceed to formal enforcement and if so, the next steps. In making the decision regard will be had to:

- a) the nature of the contravention in particular the severity of its impact on health and safety;
- b) the circumstances of the people concerned in particular how much experience of Building Regulations they have had;
- c) whether the individuals concerned have previously been involved in enforcement action associated with the Building Regulations and allied legislation.
- d) the options in terms of enforcement taking account of the statutory time limits.

In the case of a contravention of a procedural requirement criteria (b), (c) and (d) will apply.

The decision and the reasons for it are recorded in order to establish evidence of consistency and proportionality.

## 8. Consistency and Proportionality

The issues of proportionality and consistency are addressed by the office procedures, which require the Building Control Manager to review any potential enforcement at the earliest stage and evaluate against the criteria defined in the section 7 above.

## 9. Rights of Appeal

There are no internal rights of appeal about the decision to proceed to formal enforcement action.

There is a statutory right of appeal against a section 36 notice. Section 40 of the Building Act 1984 gives details relating to the appeal and states that it should be made within 28 of the giving of the section 36 notice, (This can be extended to 70 days where the person appealing against a section 36 notice intends to commission a report to support his/her case).

#### 10. **Recovery of reasonable costs incurred to enforce a notice**

Where the council incurs any costs or charges to enforce a notice in default, then this will be recovered from the owner and/or placed as a specific financial charge on the Land Charges register. Charges not paid in good time will accrue interest and it is in the interest of property owners to resolve any outstanding debt(s), made against the property, as quickly as possible.

Anyone purchasing a property after a notice has been served, and after costs have been incurred for the enforcement of a notice, may become responsible for the debt. Debts left unpaid for any length of time may result in the council seeking a county court judgment or even seizing the property and selling it at auction to recover all or part of the debt.

Examples of costs might include :

- Council staff time in dealing with the matter
- Contractor charges – labour, materials, plant & equipment
- Professional advisor(s) charges
- Legal charges
- Court costs

#### 11. **Complaints**

Anyone reporting a dangerous structure, unauthorised work or a contravention of the Building Regulations can if they so wish be kept informed of progress. If so they will be made aware, in a timely manner, of any significant actions taken by the section, together with the results of those actions.

Complaints about the failure of the section to deal with reports of a dangerous structure, unauthorised work or a contravention of the Building Regulations in a satisfactory manner will be dealt with in accordance the councils complaints procedure.

#### 12. **Policy Reviews**

This policy will be reviewed in light of changes to the building control legislation or intervals not exceeding 2 years.