

Building Consultancy – Enforcement Policy

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SMBC Building Consultancy Enforcement Policy

Introduction

Building Control has adopted this policy which sets out what individuals, businesses and others can expect from our Building Control Surveyors whilst seeking to ensure compliance.

The aim of proper enforcement is to protect the public, the environment and groups such as consumers or workers, whilst supporting economic progress.

This policy commits us to good enforcement policies and procedures with the sole aim of supporting compliance.

This document sets out the basic principles followed in enforcing building control legislation in Sandwell.

The work of Building Control includes:

- Processing Building Regulations applications.
- Inspecting work under construction.
- Controlling building demolition and dealing with dangerous structures.
- The preparation and enforcement of general and special safety certificates and the enforcement of fire safety standards, under the Regulatory reform (Fire Safety) Order 2005, for Sports Stadia and certificated stands in sporting venues.

What is enforcement?

Building Control Services are responsible for using a wide range of Acts of Parliament and Statute Laws. "Enforcement" means action carried out in the exercise of, or against the background of, these Acts and Laws. This includes studying documents and reviewing drawings, making inspections of premises to check compliance with legislation and providing advice to aid compliance – this we term 'interventions' since they are aid to achieving and supporting compliance and aren't what is traditionally referred to as 'enforcement'. Local Authority Building Control can also take enforcement actions that escalate through a staged process that involve more formal correspondence, the issue of legal notices and ultimately prosecution.

Our enforcement activity is informed by risk assessment to ensure our regulatory efforts and resources are targeted to be most effective and in the best interests of the public.

Building Control's aim is to protect the public, the environment, consumers and workers.

Our Enforcement action is intended to:

- Ensure that we enforce the law in a fair, equitable and consistent manner.
- Assist businesses and others in meeting their legal obligations without unnecessary expense.
- Focus on prevention rather than cure.
- Take firm action against those who repeatedly offend, or act irresponsibly, or whose actions could cause serious harm.

Why do we need an enforcement policy?

It is important that our customers, businesses and others who might be affected by enforcement action have access to a clear statement of what they can expect from our Building Control Surveyors. It also commits us to following good enforcement policies and procedures.

Our primary role is to secure the health, safety, welfare and convenience of people in and about buildings, further the conservation of fuel, prevention of waste or misuse of water and protection of the environment.

In addition, we support the protection of public health, environmental quality and quality of life by responding to dangerous structures, emergency incidents and controlling the demolition of premises.

Carrying out enforcement works in an equitable, practical and consistent manner helps to promote a thriving local economy.

We are committed to these aims, to ensure the health, safety and well-being of all residents, visitors and workers.

How do we apply this policy fairly?

We are committed to the following principles of fairness:

- Openness – we will be open about how we set about our work and will provide information and advice in plain language.
- Consistency – arrangements are in place to ensure that our Building Control Surveyors take a similar approach in similar circumstances to achieve similar aims, and that our approach is consistent with other local authorities and enforcement bodies.
- Proportionality – any action we take to secure compliance will be proportionate to the risks to public health and safety and to the seriousness of any breach.
- Targeted – we will target action on those whose activities result in the most serious risks or least well- controlled hazards.

How do we decide when to take enforcement action?

Building Control Surveyors will consider several factors before deciding when to act:

- The seriousness of the breach.
- The track record of non-compliance.
- The continued risk to health, safety or the environment.
- The effects of non-compliance.
- The likely effectiveness of enforcement choices.
- Legislation and guidance issued nationally or locally.
- The need to consult with other authorities and enforcement bodies.

We recognise that most people want to comply with the law. We will, therefore, take care to help them meet their legal duties but will take firm but fair action against those who act illegally or behave irresponsibly.

How do we decide what action to take?

No action

If we cannot prove any breaches of legislation then we will take no action other than to tell the relevant people.

Informal action

Where the act is not serious, the history of compliance is good, confidence in management is high and where non-compliance will not pose a significant risk to public health, safety or welfare then we will take informal action. This will result in verbal and/or written advice or warnings. The Building Control Surveyor will clearly distinguish between legal requirements and elements of good practice.

Formal action

Where there are serious breaches of legislation, a history of non-compliance, lack of confidence in management, potentially serious effects or where legislation requires it, then we will serve a statutory notice. We will give an opportunity to discuss the issues unless immediate action is needed.

The time limit on notices will be realistic and we will tell recipients of their rights.

What are the penalties for non-compliance?

Failure to comply with a statutory notice will result in Prosecution or Formal Caution or Injunction and undertaking works in default.

When is it necessary to prosecute?

We will consider prosecuting:

- Where the offence involves a blatant breach of the law.
- Where the offence involves failure to comply with a statutory notice or order
- Where the offence results in an imminent risk to public health, safety, or the environment.
- Where there is a failure to correct an identified serious risk within a reasonable time.
- Where there is a history of similar offences.
- Where there is obstruction or assault of a surveyor or where a surveyor is given false or misleading information.

How can I appeal against enforcement action?

Those affected by enforcement decisions have a right of appeal to a Court or Tribunal. Appeals must be made within a certain time – usually 21 days. We will set out these rights in writing at the same time that we take action, or serve notice.

You can also ask to discuss the matter with the Building Control Surveyor or their Team Leader, the Building Control Manager, or you can make a formal complaint against the service.

Principles of Enforcement and Supporting Compliance

Building Control standards are enforced having regards to the Regulators Code and the Code for Crown Prosecutors.

This means that the Building Control team will be open, helpful and fair to ensure that any enforcement action is proportionate to the risks.

- Sanctions should **change the behavior** of the offender.
- Sanctions should ensure that there is **no financial benefit** obtained by non-compliance.
- Sanctions should be **responsive** and consider what is appropriate for the particular offender and the particular regulatory issue.
- Sanctions should be **proportionate** to the nature of the offence and harm caused.
- Sanctions should aim to **restore the harm caused** by regulatory non-compliance.

Approach to Supporting Compliance

Prevention

The first step in enforcement is to help prevent contravention of the law by raising awareness and promoting good practice. Building Control can, on request, or through web pages provide written guidance on aspects of the law and should be happy to discuss and explain requirements with residents and businesses alike.

Stage 1 (Intervention) - Informal Action

Best efforts should be taken to resolve any issues where the law may have been broken without issuing formal notices, or referring the matter to the courts. This is the first option when the circumstances indicate that a minor offence may have been committed and there is confidence that appropriate corrective action will be taken. The situation should be written in a clear manner with an explanation as to why any recommended remedial work is necessary and over what time-scale it should be completed. When writing to residents and businesses it's important that legal requirements are clearly distinguished from recommendations.

Stage 2 - Written Notice of the impending service of a Notice

If the contravention is not minor Building Control will write to the applicant / agent and / or contractor advising what work should be undertaken and what action will be taken if contraventions are not removed within a given period of time (usually 28 days).

Stage 3 - The service of a legal notice

The legislation that Building Control enforces provides for the service of formal notices on individuals, businesses or other organisations requiring them to meet specific legal requirements.

Where a formal notice is served, the method of appealing against the notice and the time-scale for doing so will be provided in writing at the same time.

The notice will explain what is wrong, what is required to put things right and what the likely consequences are if the notice is not complied with.

In most situations, before formal action is taken, Building Control will provide an opportunity to discuss matters and hopefully resolve points of difference. However, this may not always be possible where immediate action is considered necessary, e.g. in the interests of health and safety, or to prevent an imminent risk to health, or to protect the environment.

Stages 4 & 5 - Prosecution – the last resort

Where the circumstances warrant it, because of the seriousness of the matter or due to repeat offending, and the alternative actions mentioned previously in this policy are considered inappropriate, then prosecution may result. This formal prosecution action will be in the first instance, to seek summary conviction in the Magistrate's Court following which is formal prosecution action to seek an injunction in a higher Court.

Building Control will consider the following factors when deciding whether or not to prosecute:

- The seriousness and effect of the offence.
- The foreseeability of the offence, or the circumstances leading to it.
- The intent of the offender.
- The history of offending.
- The attitude of the offender.
- The deterrent effect of a prosecution, on the offender and others.
- Whether there is enough evidence to prove the offence.

Additional Notes

A Consistent Approach

Building Control will be consistent in enforcement approach by following the criteria and guidance set down in relevant legislation and codes of practice.

Building Control will always be objective to ensure that decisions are based on facts and evidence.

Time Limits for Prosecution

The 1991 guidance note stated the law relating to enforcement at the time, and in particular the time limits controlling prosecutions brought before Magistrates. The guidance is still valid now.

The cases of Hertsmere Borough Council –V– Alan Dunn Building Contractors Ltd [1986] LGR and Torridge District Council –V– Turner [1991] TLR, provide the law in respect to when a contravention has occurred and from when the enforcement clock begins. This is particularly necessary insofar as section 127 of the Magistrates Court Act 1980 (c.43) is concerned, in that:

- (1) ... a magistrates' court shall not try an information or hear a complaint unless the information was laid, or the complaint made, within 6 months from the time when the offence was committed, or the matter of compliance arose.

This rule is equally applicable to any prosecution or action being considered under other parts of the legislation that Building Control deals with, for example section 81 of the Building Act 1984 (Demolition).

Accordingly, to pursue a financial penalty, under any section of the Acts – except section 35A of the Building Act (see below) – the action must be laid within 6 months from when the alleged offence occurred.

Where the solution is to remove a contravention then the specified time limit will also run from when the contravention occurred. As such, to remove a Building Regulation contravention, by way of the service of an enforcement notice by the application of section 36 of the Building Act, the 12-month time limit to take action will begin at the time the contravention occurred – not when the contravention was brought to Building Controls attention.

In the following examples (the list is not exhaustive) the date when the alleged offence was committed is easily definable: -

- (a) Failure to deposit plans or a building notice – the 6 months time limit begins to run from the time the work commenced.
- (b) Failure to provide a notice about certain stages of work – the 6 months time limit begins from the date that the notice should have been received and after the work involved has been carried out.
- (c) Failure to provide a notice about the demolition of a building – the 6 months time limit begins from the date that the work commenced.

In other cases – except those to which section 35A of the Building Act 1984 applies – evidence must be laid, to begin proceedings, within 6 months of the work being completed.

The date of completion of the work can sometimes be difficult to determine, but if the Council is aware that contraventions have existed for more than 6 months, or there is sufficient doubt about how long the work has been underway, then prosecutions for a fine are unlikely to succeed.

It is also worth noting that case law directs that time limits for proceedings commence when a part of the building, which is in contravention, has been completed – not necessarily when all the work has been completed.

For example, a staircase in an office block that is installed at too steep an angle. The staircase may be structurally complete before the rest of the building work; however, the alleged offence time limit begins at the time of the completion of the staircase – not upon the completion of all the building work.

The time limits mentioned above have been modified with respect to section 35 of the Building Act 1984, which was amended by section 13 of the Climate Change and Sustainable Energy Act 2006 and introduced section 35A – in particular:

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- (1) DESPITE ANYTHING IN SECTION 127(1) OF THE MAGISTRATES' COURTS ACT 1980 (C. 43), AN INFORMATION RELATING TO A RELEVANT OFFENCE MAY BE TRIED BY A MAGISTRATES' COURT IF IT IS LAID AT ANY TIME—
- (A) WITHIN THE PERIOD OF TWO YEARS BEGINNING WITH THE DAY ON WHICH THE OFFENCE WAS COMMITTED, AND
- (B) WITHIN THE PERIOD OF SIX MONTHS BEGINNING WITH THE RELEVANT DATE.
- (4) IN SUBSECTION (1)(B) ABOVE, “THE RELEVANT DATE” MEANS THE DATE ON WHICH EVIDENCE SUFFICIENT TO JUSTIFY THE PROCEEDINGS COMES TO THE KNOWLEDGE OF THE PERSON COMMENCING THE PROCEEDINGS.
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This amendment became effective on 21 August 2006. However, it was unable to be applied until a designating order was made to identify which regulations would be considered to be a relevant offence.

On 10 March 2008 amendment regulations (S.I. 2008/671) were made and then laid before Parliament on 13 March 2008. These amendments inserted a new regulation 22A into the Building Regulations which effectively designated regulations 4 and 6(e) – so far as Part L was concerned – and regulations 4A, 4B, 17C and 17D(f) to allow section 35A of the Building Act to be applied.

However, regulation 22A only came into force on 6 April 2008 and was not able to be applied retrospectively.

There was concern that the application of these longer time limits solely to energy performance contraventions was uneven and, following a consultation process, it was considered that similar time limits should be applied to all the regulations.

The mechanism for extending the prosecutions time limits, to all provisions of the Building Regulations, was provided for in the Housing and Regeneration Bill. This became law on 22 July 2008, with the publication of the Housing and Regeneration Act 2008 (c17) (H&RA08).

Within the H&RA08 section 317 amended section 35A of the Building Act to allow any contravention of Building Regulations to enjoy the same time limit freedoms as those introduced for energy conservation offences.

However, section 317 of the H&RA08 did not come into force automatically and was – by virtue of section 325 – to be introduced on such a day appointed by the Secretary of State.

On 9 September 2008, in a circular letter (CI/43/19/1) to all Building Control Bodies throughout England and Wales, the Secretary of State confirmed – thereby appointing – the date when section 317 of the H&RA08 was to come into force – this being 22 September 2008.

Again, the application of section 317, and therefore section 35A, is not retrospective and can only be applied to any contraventions – including energy efficiency regulations covered by regulation 22A – that occurred on or after 22 September 2008.

To assist in understanding the impact of these, a time table was provided by government.

Date of offence under section 35	Provisions to which section 35 applies breached	Time limit for bringing prosecution
Before 6 April 2008	All provisions	Six months
6 April 2008 to 21 September 2008	Provisions designated by regulation 22A	Two years, subject to maximum of 6 months from date of obtaining sufficient evidence to bring
6 April 2008 to 21 September 2008	Provisions not designated by regulation 22A	Six months
From 22 September 2008	All provisions	Two years, subject to maximum of 6 months from date of obtaining sufficient evidence to bring

It should be noted that Regulation 22A is, by virtue of section 317 H&RA08 and section 35A BA84, unnecessary after 22 Sept 2010 – after which time all Building Regulation contraventions were able to be handled under section 35A BA84.

Application of section 36 Building Act 1984

The use of section 36 notices should only be used where a serious contravention occurs and there is an intention that the Council intends for it to be removed.

Case law suggests that, having served a section 36 notice within the required 12-month time period, the Council has an infinite period of time in which to enforce the notice (*Bello v London Borough of Lewisham* [2003] EWCA Civ 353).

As such it was held that there was no time limit by which a Local Authority has to use its powers under section 36 of the Building Act 1984. In the case in question Lewisham Council enforced the removal of a contravention some 12-years after the service of the original notice.

As such the Council will, in all cases where it considers the contravention of Building Regulations to be justifiably serious enough to warrant the application of section 36, serve a notice on the owner of the building and have the details of the notice included on the Land Charges register for the property.

The Council will then make all reasonable attempts to require the owner to remove the contravention themselves.

Should powers of persuasion fail then the Council will remove work undertaken in default.

Inspection of premises and powers of entry

As a part of its normal routine, evidence will normally be gathered through the process of notified inspections for Building Regulations matters.

Where a matter is by way of complaint, surveyors will make all reasonable attempts to gain entry to a property to carry out an inspection by way of invitation by the owner/occupier. However, where the matter is considered to be serious or access is being unreasonably withheld, surveyors have the authority to enter premises at reasonable hours – unless the matter relates to a dangerous building and/or emergency measures are necessary outside normal working hours.

Failure to allow entry to an authorised surveyor will result in a warrant being obtained from a Magistrate and the warrant will be used and entry gained – by force if necessary.

Building Control surveyors carry photographic identification badges and warrant cards, which will be displayed on request.

Building Control will, in the application of gathering evidence and inspecting any allegation of an offence or dangerous and dilapidated building, have regard to and apply the principles set out in the Home Office publication: Code of Practice – Powers of Entry (December 2014).

Service of Building Control enforcement notices

All Building Control enforcement notices will, except notices in relation to actions carried out to deal with emergency measures for a dangerous building – by virtue of section 78 of the Building Act 1984, include information regarding rights of appeal and appropriate time limits to make any such appeal.

In most cases notices will be served on the owner as identified by reference to the most up-to-date records held by the Land Registry, or where an owner cannot be identified notices will be served by addressing them to – “The Owner(s) and/or Occupier(s)” and posted or affixed to the property in question.

Where the owner is a business, the notice will be addressed to the Company Secretary.

The council will, as far as it is reasonably practical to do so, make reasonable enquiries about the name and address of the owner and address any notice accordingly.

Notices will, in most cases, be delivered by surveyors to the owner's address – where this is within the authority boundary. In some cases, recorded or registered mail will be used.

Where notices etc. are delivered by hand these will be confirmed by reference to a certificate of service, signed by the surveyor concerned and, where possible, accompanied by a dated photograph of the place where the notice etc. was addressed to, e.g.: house number and post/letter box.

Dangerous buildings – emergency measures

In some instances, there might not be the time available to make enquiries about ownership – where the nature of an incident, such as a severe dangerous building occurs. In these cases, simple enquiries about ownership will still be made but, if these come to no avail, surveyors are authorised to take appropriate action under section 78 of the Building Act 1984 – to remove any immediate danger.

Following any action under section 78 full enquiries will be undertaken as soon as it is practical to do so and a notice then served on the owner as indicated on the Land Registry records.

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 – the list is not exhaustive

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

You can find more information or receive a copy of the Policy form the Councils Building Control Team

Accountability

When delivering this enforcement policy, we will remain independent in our decision making and accountable for our actions. We will strive to provide effective consultation and remain cooperative in our relationships with people when undertaking enforcement.

Alternative formats

If you would like a copy of this Policy to be provided in another format (for example large type, Braille or audio tape) please contact Building Control Services.

Where can I complain about this Policy?

If your concern is with the way in which the Council has handled your case, you can complain using the Council's complaints system at:

https://my.sandwell.gov.uk/en/AchieveForms/?form_uri=sandbox-publish://AF-Process-85d7e187-e1b9-4d15-908e-b104e268ac01/AF-Stage-8c7c894b-16df-45a5-8f8a-8bdc5c1f1156/definition.json&redirectlink=%2Fen&cancelRedirectLink=%2Fen&consentMessage=yes

If your complaint is that you have suffered injustice as a result of maladministration, you can ask for your case to be investigated by the Local Government Ombudsman. The Ombudsman is independent from the Council. Whilst they cannot set aside a decision of the Council, they can make recommendations and can, where they find that it is appropriate, recommend that the Council pays compensation where they determine that the complaint is justified. Generally, the Ombudsman will expect you to have used the Council's own complaints system before they will look into a complaint.