

Building Control enforcement charter

Introduction

The Council has adopted the Enforcement Concordat. This Charter sets out the Council's standards of service in relation to dealing with breaches (or allegations of breaches) of the Building Regulations and Building Act.

The Council's Planning and Regulation Service is responsible for the enforcement of a wide range of law, the Building Control Service, is centred on securing public health and safety, but also includes access to buildings and energy conservation.

From time to time breaches and contraventions occur. This Charter sets out the service standards customers can expect.

The charter - its purpose

Public health and Building legalisation is complex and care needs to be taken to ensure that any action taken reflects both Government guidance and civil law.

Land owners, businesses, applicants, neighbours and the general public are all customers of the Building Control Service. Many have only limited experience or knowledge of how the system works. It is important, therefore, to treat customers positively, helpfully and equally.

Our aims are therefore:

- (i) to provide customers with adequate information in plain language and to disseminate information as widely as possible
- (ii) be open about how we deliver the service and consult with neighbours, businesses and other relevant parties as appropriate
- (iii) deal with customers in a courteous and efficient manner
- (iv) to advise customers and assist them to comply with the relevant regulations and legislation
- (v) ensure that staff dealing with customers identify themselves by name and provide a contact telephone number and/or a mail address
- (vi) to encourage, as far as practicable, business to seek advice and information from us, so as to minimise the need for enforcement in the first place
- (vii) to advise customers, where practical, other alternative courses of action and ways of complying with the legislation
- (viii) to be consistent in our approach and to follow best practice and Government guidance and
- (ix) to be proportionate in our response to the breach of control. We will take account of the problems of small business and try to minimise unnecessary expense where this is practicable.

The Council will publish its performance in relation to the Government and its own Service Plan targets.

Summary of standards and process and response times

Woking Borough Council has adopted the Cabinet Office's Enforcement Concordat, which commits the Council and the Building Control Service to good enforcement policies and procedures. In carrying out enforcement, the Building Control Service will have due regard to the Data Protection Act 1998 and the Human Rights Act 1998 (e.g. in the latter context the right to a fair trial, right to respect for private and family life, prohibition of discrimination and protection of property).

Access to Building Control records is subject to the Data Protection Act, Environmental Information Regulations and the Freedom of Information Act 2000. Any request for access to information under the Freedom of Information Act should be in writing or email.

The Council does monitor and inspect but this service is constrained by the level of resources available. Consequently, some of enforcement work arises from enquiries from members of the public.

When an alleged breach of control is reported or suspected the site or premises will be inspected and other information sought to establish the facts. Where a breach of control is established the person responsible for the breach will be informed of what is wrong and what action should be taken to correct it. A time limit will be given and the consequences of not taking the appropriate action will be explained.

Complaints about alleged breaches of control will be treated confidentially within the Council so far as is practicable. They will be investigated within 4 hours if a danger to health others within two working days. The complainant will be notified of how the Council intends to pursue the matter and of the decision to take enforcement action, or not to do so and the reasons why not, as soon as it is in a position to do so. A response will be given to the complainant within five working days, normally matching the method of contact either phone, letter or email.

Enforcement options

Choice of enforcement approach

In any situation which requires action to ensure compliance with the Building Act/Building Regulations the surveyors will consider the following when deciding on the appropriate enforcement method:

- the degree of risk from the situation
- the seriousness of the legal contravention
- the different technical means of remedying the situation
- the particular circumstances of the case and the likelihood of its continuation or recurrence
- the general attitude of the offender to his or her responsibilities
- the past history of the person(s), company or premises involved
- the impact of the enforcement choice in encouraging others to comply with the law
- the likely effectiveness of the various enforcement options

- any legal imperatives e.g. time scales and
- any legal guidance e.g. Government circulars.

The method of enforcement selected should be calculated to produce the highest reasonable standards of compliance within the least time.

Options available

- Informal action - written or oral.
- Statutory notices.
- Prosecution.
- High Court action.
- Execution of work required by a statutory notice where the recipient has not complied.

Referrals to other agencies

Where there is wider regulatory interest, the Building Control Service will refer to other regulators relevant information received. For example, to the Fire Authority where there are problems with means of escape in case of fire or, to the Health and Safety Executive (HSE) where there are gas safety problems.

Informal action

This sort of action will be appropriate where the degree of risk from any given situation is minor. The person responsible would have no recent history of non-compliance and the surveyor would have good reason to expect them to put right the matter in question without further intervention (e.g. requires a completion certificate at end of project).

Informal action will be recorded on the case file and will be used as a basis for judgements on future enforcement action if there are recurrent problems with an offender or premises.

A completion certificate will be withheld until the contravention has been removed and the work complies with the Building Regulations. With minor outstanding issues/negligible risk self-certification may be acceptable.

Use of statutory notices

These will be subject to the many specific rules governing the use of different statutory notices. They would generally be used where there is a clear breach of the law, where the degree of risk to public health and safety is significant and where a remedy needs to be specified and secured within a set period of time.

They are appropriate where, in addition to the above, the response of the offender needs to be monitored to ensure a satisfactory outcome. The right of appeal should be set out in writing with the notice.

Subject to consideration of the evidence it is likely that negligent or wilful noncompliance with a statutory notice will result in prosecution.

The National Model of Trial Guidelines will be taken into consideration when recommending which way a case should be processed i.e. be heard at Magistrates Court or at Crown Court.

Prosecution

In accordance with the Code for Crown Prosecutors, prosecutions will only be taken if there is enough evidence to provide a realistic chance of a conviction and where it is in the public interest to do so.

The following list indicates some public interest factors in favour of a prosecution:

- (i) there is, or has been, a significant risk arising from a serious contravention or a number of lesser contraventions
- (ii) there has been some actual harm done to a third party
- (iii) the attitude of the offender is such that there is cause to believe that they knew that they were breaking the law
- (iv) there are grounds for believing that the offence is likely to be continued or repeated
- (v) a surveyor has been obstructed
- (vi) the cumulative effect of such offences would be serious even if the offence in itself was not and
- (vii) a prosecution will have a significant deterrent effect.

High Court action

An injunction may be sought from the High Court where the circumstances of any case cause a significant problem or threat to health and safety and the normal process of law (statutory notices, prosecution, work in default) is likely to be ineffective. This may be because the perpetrator has shown a careless disregard for earlier similar requirements or where the process of law would take an unacceptable period of time having regard to the particular circumstances or where there is no further choice left open.

Work in default

Where a notice has been served, and where without adequate excuse or reason, the work has not been done, then work in default would generally follow subject to the practical constraints of the case and the financial circumstances. Prior to carrying out works in default the Council will consider carefully the prospect of recovery of any costs incurred in accordance with current Council policy.

The Council will make every effort to recover the full cost of doing the work in default.

Compliance with principles of good enforcement

Openness

In carrying out all its enforcement duties, Building Control will help those it deals with to understand what is expected of them and what they can expect from Building Control in terms of formal action, informal action and advice.

To those who are potentially subject to enforcement action Building Control will:

- (i) make it clear what must be done, distinguishing between statutory requirements and what is desirable but not compulsory, in written and verbal communications

- (ii) write to confirm any verbal advice if requested
- (iii) give an opportunity to discuss the circumstances, where possible, prior to formal action being taken unless immediate action is required
- (iv) where immediate action is necessary, give an explanation as to why such action is needed and confirm this in writing and
- (v) make it clear what rights of appeal/complaint are open to them.

Helpfulness

Building Control will actively work with builders/owners to advise on and assist with compliance. Surveyors will identify themselves by name and provide a courteous and efficient service.

Full regard should be taken of the Councils Equal Opportunities Policy Statement and Customer Care Code. Where necessary any communication between the Council and a member of the public will be supported by translation into another language, Braille or spoken word cassette, Minicom or interpreted by a bi-lingual interpreter or sign language interpreter.

Proportionality

The type of enforcement action taken by surveyors must depend on the risk arising from the defect in question but must seek to secure the most appropriate standard in the particular circumstances. Action taken will be proportionate to any risks to health and safety and the seriousness of any breach.

In considering enforcement, account will be taken of relevant codes and guidance from legal authorities, Government, European/BS standards and industry.

Where the regulations require that risks should be controlled "as far as reasonably practicable", surveyors, when considering enforcement, will take into account the cost as well as the risk. However, some risks may be so serious that they cannot be permitted irrespective of the economic consequences.

Consistency

Decisions on enforcement always entail a degree of judgement and the circumstances of each case will inevitably differ in detail. Furthermore, the guidance upon which surveyors rely changes over time. Consequently there may be instances when enforcement may appear to be inconsistent for these reasons.

Nevertheless Building Control will try to ensure that enforcement action is consistent, both within the Borough and with other authorities. To achieve this surveyors will:

- (i) follow current internal procedural and guidance notes
- (ii) take due account of appropriate guidance from other authoritative bodies such as the LABC, LGA, the Health and Safety Executive and Government
- (iii) liaise with other departments within the Borough such as Planning and Environmental Health

(iv) consult with outside agencies, where required, such as the Fire Authority, Health and Safety Executive and Thames Water and

(v) take into account any new legislation or guidance

Targeting

The Council accepts that its enforcement resources are limited and that they should be targeted against those persons, building work or companies whose activities give rise to the risks, that are the most serious or least well controlled.

Surveyors will therefore carry out a programme of inspections on a risk-rating basis, taking into account statutory inspections. Building work or activities with the highest impact upon health and safety, poorest compliance and worst site management will be inspected more frequently than low risk work.

It follows therefore that most of the enforcement activity arising from pro-active programmes will be targeted on the cases most requiring them.

The second targeting mechanism is the investigation of complaints and unauthorised work where evidence, experience and this policy are used to determine the enforcement action required.

Complaints

If anyone wishes to complain about Building Control action they may do so by contacting the relevant Area surveyor or Senior or Chief Building Control surveyor.

If a complainant is dissatisfied with the result of their complaint to Building Control they may then complain through the Council's formal complaint procedure and ultimately to the Ombudsman if still not satisfied.

The above process of complaints can also be carried out jointly with the statutory rights of appeal which are written down in the letters of enforcement.

Publicity

Building Control will normally publicise details of any convictions, which could serve to draw attention to the need to comply with the law or deter others. Where appropriate, the media will also be provided with factual information about charges that have been laid before the Courts.

