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Building Control Services

Enforcement Policy

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Building Control Enforcement Policy

1.0 Introduction

Experience in the enforcement of statute and regulations shows that, in most cases, businesses and individuals comply with the law. Failure to do so generally stems from ignorance or carelessness but sometimes from wilfulness or malice.

The Royal Borough of Kingston upon Thames is responsible for the enforcement of a wide range of law, which, within Building Control Services, is centred on securing public health and safety, but also includes disabled access/use of buildings and energy conservation.

This policy, taken in the context of government and other guidance, seeks to ensure that the application of any enforcement is: -

- Proportionate to the offence and risks.
- Transparent – in that any person affected understands what is expected of them, what they should expect from the local authority, and the reasons for the action.
- Consistent in approach, and
- Appropriate.

There is also the recognition in this policy that enforcement resources are not limitless and need to be targeted at areas where risks are highest.

Possible enforcement approaches are set out below with some examples of the circumstances in which they will be used.

The policy cannot be absolutely prescriptive because the circumstances of each individual case and the evidence available are likely to vary so much. However, this policy should leave most readers in little doubt as to what they can expect by way of enforcement from the Royal Borough.

2.0 General Statement of Intent

It is the policy of the Royal Borough of Kingston to protect the health, safety and well being of its residents, as well as people working in, or visiting the Borough.

Building Control Services will therefore enforce against, or prosecute, those who neglect or wilfully fail to comply with their legal obligations, where that failure constitutes a risk to the public.

The use of enforcement will be proportional to any offence committed, consistent in application (including consistency with other local authorities and enforcement agencies), transparent in its operation and appropriate to the circumstances of the particular case in question.

Where enforcement is necessary because of ignorance of the law (which is not of course a defence against criminal proceedings) rather than wilfulness, surveyors will give advice and attempt to facilitate remedial works prior to or in addition to enforcement action.

Enforcement action will not, therefore, be a punitive response to minor technical contraventions of the regulations but will be forceful in situations where the public's health is put at risk or there is a significant impact due to negligence, incompetence or blatant disregard of the law or where it damages the credibility of the service. The cumulative effect of contraventions, which in themselves could be considered as minor, needs to be considered when assessing the most appropriate course of action.

The Royal Borough signed the Cabinet Office's Enforcement Concordat in 1999, which commits the Council and Building Control Services to good enforcement policies and procedures. In carrying out enforcement, Building Control Services 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 e-mail.

3.0 Enforcement Options

3.1 Choice of Enforcement Approach

In any situation which requires action to ensure compliance with the Building Act/Building Regulations 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
- 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.

3.2 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

3.3 Referrals to Other Agencies

Where there is wider regulatory interest, Building Control Services 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.

3.4 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.

3.5 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 non-compliance with a statutory notice will result in prosecution.

The procedures to be used are set out in the DSA document "Guidance notes for enforcement procedures under the Building Regulations".

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.

3.6 Prosecution

In accordance with the Kingston prosecution policy and 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:

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

3.7 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.

3.8 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.

4.0 Compliance with Principles of Good Enforcement

4.1 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.

Any service standards such as speed of response, content of inspections will be available on request and information will be provided in plain language wherever appropriate.

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

- Make it clear what must be done, distinguishing between statutory requirements and what is desirable but not compulsory, in written and verbal communications,
- Write to confirm any verbal advice if requested,
- Give an opportunity to discuss the circumstances, where possible, prior to formal action being taken unless immediate action is required,
- Where immediate action is necessary, give an explanation as to why such action is needed and confirm this in writing,
- Make it clear what rights of appeal/complaint are open to them.

4.2 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 Council's Equal Opportunities Policy Statement. 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.

4.3 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.

4.4 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:

- Follow current internal procedural and guidance notes
- Take due account of appropriate guidance from other authoritative bodies such as the DSA, LGA, the Health and Safety Executive and Government
- Liaise with other departments within the Borough such as planning and Environmental Health
- Consult with outside agencies, where required, such as the Fire Authority, Health and Safety Executive and Thames Water
- Take into account any new legislation or guidance

4.5 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.

5.0 Complaints

If anyone wishes to complain about Building Control action they may do so by contacting the relevant case surveyor or District or Building Control Manager.

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.

6.0 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.