

Building Control Enforcement Policy

Introduction

The purpose of this policy is to secure efficient compliance whilst minimising the burden to the Building Control Service, individuals, organisations and businesses.

The policy explains in general terms, as it may be applied to a wide range of situations, the approach adopted by the Building Control service when enforcing Building Control legislation. This policy is to be read in conjunction with the Cheshire East Corporate Enforcement Policy.

The policy is built on five guiding principles:

- **Consistency:** to ensure that similar issues are dealt with in a similar way.
- **Fairness:** to ensure a fair and even-handed approach.
- **Proportionality:** to ensure that action taken relates directly to the actual or potential risk to health, safety, the environment, and the continuance of discrimination against people with disabilities.
- **Transparency:** to ensure that the enforcement action taken by the relevant Council is easily understood by individuals, organisations and businesses having to comply with Building Control legislation, and that clear distinctions are made between legal requirements and advice or guidance about what is desirable but not compulsory.
- **Objectivity:** to ensure that decisions are not influenced by the gender, ethnic origin, religious or political beliefs or sexual preferences of the offender, victim or witness. Sensitive consideration will be given where persons involved have a significant mental or physical disability, are children, or are elderly.

Decision Making – Authorisations

The Council's Scheme of Delegations authorises Officers to act under relevant statutes subject to being satisfied on the Officer's competence, appropriateness of qualifications and experience.

General Approach to Contraventions of Building Control Legislation

A Minor Contravention of Building Control legislation occurs when controllable work, commenced in accordance with the procedural requirements of the relevant legislation, is constructed differently from the approved plan and contravenes the Building Regulations on site.

When an Officer becomes aware of, or observes, a minor contravention the Officer will:

- notify the builder, applicant, owner, or other person as appropriate, of the contravention, verbally in the first instance where it is considered practical and safe to do so, and request that the work is rectified
- verify that the work has been rectified at the next site visit or within an agreed period
- If the matter is not satisfactorily resolved within an agreed period, the Officer will refer the matter to a Senior officer for evaluation to determine whether further action is necessary.

A Major Contravention occurs when controllable work has been commenced (whether in accordance with the procedural requirements of the relevant legislation or not) and is constructed or executed contrary to:

- an approved plan and contravenes the Building Regulations; and
- has not been rectified to satisfy the Building Regulations, and the defective work is significant in terms of health and safety, energy conservation or the potential to encourage discrimination against people with disabilities
- cannot be inspected due to the advanced nature of the works and is considered significant
- requires extensive alteration to secure adequate standards of health and safety, energy conservation or equality for people with disabilities; or is contrary to requirements set out in a properly written and served statutory notice.

When an Officer becomes aware of, or observes a major contravention the Officer will:

- notify the builder, applicant or owner, or other person as appropriate, of the contravention, where it is considered practical and safe to do so, and request them to rectify the works; and
- refer the matter to a Senior officer for evaluation and to determine whether further action is necessary.

Levels of Enforcement Action

The Council may enforce Building Control legislation by one or a combination of methods that may include:

Promotion: to raise awareness about Building Control law, required standards and to promote good practice amongst those who carry out or design work controlled by Building Control legislation. This is typically achieved by:

- the issue of informative correspondence
- making leaflets and other forms of written guidance available to the public and businesses
- by publicising new government guidance to selected groups
- by face to face contact
- by placing information on the Council's Web site and by providing links to other web sites containing relevant information.

Formal Enforcement: this includes the use of statutory notices, works in default, formal cautions, use of injunctions, prosecution and powers of access. Formal action would be taken following procedures laid down in legislation, codes of practice and government guidance notes and will generally only be applied to actual or suspected major contraventions of Building Control legislation as defined below. Section 16 of the Building Act 1984 requires that plans are formally approved or refused to a prescribed time scale.

Statutory Notices

The Building Act 1984 continues to be the main legislation within the jurisdiction of the Building Control service and provides for the service of statutory notices, which require a person, business or organisation to comply with specific legal requirements. Where a formal notice is served, the method of appealing against the notice (if you feel that the notice is unjustified or excessive in its requirements) 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 will happen if the notice is not complied with.

An authorised officer of the Council will give a realistic period for compliance but should also take into account any previous informal notice issued to the recipient. An Authorised officer of the Council may extend the time period of statutory notices if they are satisfied that the recipient is making reasonable progress with the work or has genuine reason for requesting more time.

In general, failure to comply with a properly written and served statutory notice will make the recipient liable to prosecution. The Council can also carry out works to comply with the notice and recover the cost of doing so from the recipient of the notice. In certain circumstances it is possible to prosecute as well as serve a notice in which case failure to comply with the notice is then an additional offence.

Formal Cautions

In certain circumstances, a formal caution may be an alternative to prosecution. This option will be considered before prosecution. A formal caution is a serious matter and is recorded on the Central Register of Convictions. It may be used to influence any decision whether or not to institute proceedings if the person should offend again, and it may be referred to in any subsequent court proceedings. It will not be referred to in respect of any offence committed more than three years before.

The purposes of formal cautions are:

- to deal quickly and simply with less serious offenders;
- to avoid unnecessary appearance in criminal courts;
- to reduce the chance of offenders offending again.

Before issuing a caution, which will usually be administered by letter, the following conditions must be satisfied:

- there must be evidence of guilt sufficient to give a realistic prospect of conviction;

- the suspected offender must admit the offence, usually by signing a declaration;
- the suspected offender must understand the significance of a formal caution and give an informed consent to the caution.

Prosecution

The Council will use discretion in deciding whether to initiate a prosecution. Other approaches may be effective but, where the circumstances warrant it, prosecution may take place.

The Council will consider prosecution if:

- it is appropriate in the circumstances, as a way to draw attention to the need for compliance with the law and the maintenance of standards required by law. Especially where there would be a normal expectation that a prosecution would be taken, or where, through the conviction of offenders, others may be deterred from similar failures to comply with the law; or
- where there is the potential for considerable harm arising from the breach; or
- the gravity of the offence, taken together with the general record and attitude of the offender warrants it.

The decision to prosecute will always take account of the criteria set down in the code for Crown Prosecutors and section 222 of the Local Government Act 1972.

The Council will also identify and prosecute, or recommend for prosecution individuals, including company directors, and managers, if they consider that such a conviction is warranted and can be secured.

Before deciding to prosecute there must be sufficient evidence for a realistic prospect of conviction taking account of any defence that may be available, and it must be in the public interest. Legislation places the responsibility to demonstrate the existence of any contravention on the Council.

Public Interest Criteria

The Council will normally take the following Public Interest Criteria into account when deciding on the relevance of legal proceedings, however, the list is not exhaustive:

- Consistency with the Council's priorities as stated in its Corporate Plan
- The prevalence of the type of offence
- The need for a suitable deterrent
- The risk of danger or injury to people in or around the building or structure
- The extent to which the adequacy of measures to secure adequate energy conservation are affected
- The extent to which the adequacy of measures to secure equality for people with disabilities are affected
- The failure to comply with a statutory notice or respond to advice about legal requirements

- The disregard of legal requirements for financial reward
- Significant potential or actual financial loss to a third party
- A history of similar offences
- Persistent breaches of legislation
- Where fraud, gross negligence or guilty knowledge is a factor
- Multiple minor offences
- The probability of progressing the offence to conviction within any statutory time limit that applies.

Where possible the Council will inform an offender, as soon as we obtain sufficient evidence, if a prosecution may follow. The Council will bring all prosecutions without unnecessary delay.

Enforcement of Dangerous Structures

The purpose of this policy is to demonstrate the responsibilities, powers and work of Building Control Service in addressing the problems of Dangerous Structures in the community of Cheshire East.

The council has a duty to protect members of the public in the area of Cheshire East from dangers arising from any structures in the area.

Dangerous structures are buildings, parts of buildings or other structures that pose a structural threat, for example, possibility of collapse, to persons in or around them.

In the event of a building or structure becoming dangerous the council will require the owner, agent or occupier, to remove the danger by taking appropriate action, either by repairing, securing or demolishing the structure.

If the owner or occupier of the dangerous structure does not take the appropriate action, the council will carry out this work in default to ensure any imminent dangers to the public are removed. The council will then pursue the owner for any costs accrued in carrying out this work.

Legislation

The council is empowered to take action, in relation to dangerous buildings, under the following legislation:

Building Act 1984. This act applies to dangerous structures; this includes all buildings and anything affixed to, or projecting from buildings and walls. The most common types of dangerous structure include chimneys and walls, but other items such as shop awnings, gutters and roof timbers are also included.

Building Act 1984 Section 77 This section of the act enables the council to apply to a magistrate's court requesting an order requiring an owner to carry out works in respect of dangerous buildings. The order may require the execution of such work as may be necessary to remove the danger, or to demolish the building or structure.

A person who does not comply with such an order is liable on summary conviction to a fine.

Building Act 1984 Section 78 This section of the act enables the Council, where it considers a building or structure to be dangerous and immediate action should be taken, to take such steps as may be necessary for that purpose. Before exercising these powers, where it is practicably reasonable they should give sufficient notice to the owner or occupier of the premises. The council may recover any expenses reasonably incurred by them.

Principles of Good Dangerous Structures Enforcement

We will carry out our duties in a fair, equitable and consistent manner and will endeavour so far as is practicable, to;

Apply this policy to all structures where known danger exists and where we possess legislative responsibilities.

Train staff annually relating to their duties and responsibilities in surveying dangerous structures and places in accordance with this policy.

Develop a staff guide to accompany this policy to advise and assist all our staff as to their responsibilities in relation to the implementation of this policy for dangerous structures and places.

Ensure surveyors responsible for such sites will at all times retain personal protective equipment and wear it as necessary.

Ensure our contractors produce a method statement that outlines a plan of works that are to be performed in regard to a dangerous structure or place, and their work will be carried out in accordance with a Health and Safety Plan as required by the Construction (Design and Management) Regulations.

Ensure all owners, agents, or persons responsible in relation to a dangerous structure or place will be issued with a dangerous structure notice and a letter within 72 hours of discovering the danger.

Respond promptly to reports of dangerous structures both during and outside normal working hours in accordance with its categorisation. (Refer to 6.0)

Pro-actively resolve any dangers presented by buildings to which we have legal responsibility.

Proportionality

We will attempt to minimise the costs of compliance by ensuring any action we take is proportionate to the risks and will endeavour so far as is practicable, to;

- Ensure that any intervention is lawful and proportionate.

- Assess the extent of any danger and categorise it into category A, category B or category C in accordance with this policy.
- Ensure that our decisions in respect of dangerous structures will be evidence-based.
- Use the most appropriate legislative powers to deal with the dangers posed in the most effective and efficient manner.
- Ensure that sites are levelled off when our contractors have undertaken this work in default.
- Order the immediate demolition of a dangerous structure if it poses a severe and imminent threat to public health and safety.

Our commitment to work with others

The council is committed to working with others whenever the need arises in carrying out its role in relation to this policy. This commitment to work with other organisations is essential in ensuring the proper, effective and efficient implementation of this policy.

Where a potential overlap in duties exists between the council and other organisations, the service will seek to consult with the relevant organisation to ensure a holistic approach is taken.

This policy will be shared with organisations that have a vested interest in protecting members of the public in Cheshire East from dangers arising from any structure.

It is our belief that through joined-up working arrangements with other organisations the council can ensure that dangerous structures in Cheshire East are dealt with in the most effective manner and relevant organisations properly perform their respective duties.

List of organisations for consultation:

- Guinness Housing
- Dane Housing Association
- Peaks and Plains Housing Association
- The Cheshire Fire and Rescue Service
- The Cheshire Police Service
- Heritage and Design Service
- Electricity Supplier
- Highways Service
- The Health and Safety Executive
- United Utilities Water Service
- British Gas / Transco

Categorisation

To guarantee a proportionate response is delivered by the Council we will categorise a dangerous structure depending on the basis of the information known. The aim of categorisation is to ensure our response to a danger will be efficient, effective

and reasonable.

Category A Danger: When the complainant has specifically stated that the building or structure is in their opinion in a dangerous condition and there is a potential for immediate collapse the complaint will be given a Category A rating. If verified by the appropriate officer they will arrange to secure and close off the vicinity in conjunction with relevant agencies so as to prevent any danger to the public. Category A will be our default position in respect of dangerous structures and places when, due to lack of information, the appropriate officer cannot make a category assessment from the information received. This may be revised following initial site inspection.

Response to Category A Danger: Where, in the opinion of the surveyor, the structure is on the point of collapse, or is in a ruinous and dangerous condition, the appropriate officer will secure immediate demolition as required under appropriate legislation. This decision will be based on all available evidence so it is legally defensible. Further to an initial assessment the appropriate officer will devise a plan of action with all relevant stakeholders, preferably on site. In addition, following the categorisation of a building as being a Category A danger the surveyor will ensure that this work remains his priority until such times as the building is made safe or is secured.

Response time: Immediate

Category B Danger: Complaints which fall into this category are buildings which are not in danger of imminent collapse but are of ongoing concern such as slates blowing from a roof.

Response to Category B Danger: Where it is established that certain works are required to render the property safe but such works are not immediate, the appropriate officer will take the necessary action as required under the Building Act 1984.

Response time: within 24 hours

Category C Danger: These are complaints where a danger exists but it is not affecting the public.

Response to a Category C Danger: Where a place or structure may constitute a danger but poses no threat to the public the appropriate officer will classify the property as safe and advise all other relevant parties of this decision.

Response time: at the discretion of the service

Site Investigation

Upon arrival on site, the officer who performs the site investigation will take photographs of the site.

When site investigations involve special circumstances, such as contaminated land, asbestos, sports grounds or petrol stations the appropriate officer will consult and work in partnership with other relevant council officers.

If required an officer will place warning tape around the structure or place, and place visible signs to inform the public of the danger which is posed. Where necessary the council will obtain the permission of the Highways Service to erect a hoarding on a public road or footpath. If required the officer will instruct a contractor to erect proper hoarding or fencing to secure the danger.

When possible an officer will give written notice to the owner or occupier if known, and also place a notice on the door or other conspicuous part of the building. This notice will require the owner or occupier to take down, secure, or repair the danger in accordance with relevant legislation.

Where appropriate action is not taken in a timely manner in response to a notice, the council may take the case before the magistrates court to seek an order for the owner, or the occupier if appropriate, to carry out the requisite work.

Ownership

When possible notices will be served on the property owner or, where it is rented property on the agent. Conclusive proof of ownership is often difficult. When appropriate the council will appear before the magistrate's court to secure an order to carry out the necessary remedial works where the owner remains unknown.

Where the property is owned by an individual or an individual acts as agent for a rented property, the notice will be served on that individual at their normal place of residence.

In the case of a Registered Company, the notice will be served in the name of the company and served at the company address or offices.

In the case of a partnership, all partners will be served with a notice, or where a partner has specific responsibility for that area of the company's operation, on that particular partner.

Where the ownership of a property is held by trustees the notice will be served on all trustees or on the person the trustees have elected to represent their interests, normally this will be a solicitor.

Form of Notice & Subsequent Action

The wording of the notice the Council serve will follow the wording stated in the relevant legislation; and will give the recipient of the notice the choice of: 'taking down, securing, or repairing the property', to the satisfaction of the surveyor.

The appropriate officer will seek to reach agreement with the person responsible for compliance with the notice as to their method of compliance and the timeframe in which such remedial works will take place.

The notice will also state the time period in which the works are to be carried out, although where possible we will contact the recipient and agree an appropriate time period in which the work must be carried out.

The council will provide any reasonable adjustment to the notice to cater for any disability the recipient may have.

The site will be monitored on a regular basis following the issue of the notice to ascertain the continuing risk, if any, that the site poses and to confirm that the condition of the structure has not deteriorated. These monitoring visits may be more frequent depending on the nature of an individual case.

If, during this period, the requested work has been satisfactorily completed and the danger adequately removed, the appropriate officer will ensure that all necessary details are recorded, the owner is notified and the file on the case will be closed.

If, at the end of the notice period or the period agreed with the owner or agent, the requested works have not been completed or are not completed to the satisfaction of the appropriate officer, legal proceedings will be initiated.

A case file will then be prepared and forwarded to the Legal Services Department at the earliest opportunity to begin legal proceedings

Legal Proceedings

All legal proceedings shall be conducted through the Councils Solicitor.