



Building Control Enforcement Policy

1. Aim

The aim of this policy is to ensure the health and safety of people in and about buildings, to ensure buildings are energy efficient and provide accessibility to buildings for all.

2. Scope

This policy covers the following functional areas:

List:-

- Building Regulations
- Building Act 1984 (dangerous structures and demolitions)

3. Authorisations

In accordance with the Council's constitution, the Assets & Building Control Consultancy Manager has a duty to appoint officers with suitable qualifications, experience and level of competency to enforce, or, to ensure that appropriate officers are trained to the required level to undertake an enforcement role..

Authority to exercise executive functions in relation to Building Control has been delegated to the Director of Environment & Corporate Assets as detailed in the Council's Constitution. These powers have then been further delegated where considered appropriate and necessary, as outlined in appendix 1 below.

4. General Principles

When carrying out enforcement action it is important that the Council works within the statutory framework set out and that it follows best practice and procedure.

In particular, the Council is committed to acting in a fair and consistent manner and has adopted this enforcement policy as part of this commitment. When exercising its enforcement functions, the Council will act in such a way which is

- transparent;
- accountable;
- proportionate;
- consistent;
- targeted only at cases in which action is needed

Relevant advice/guidance and legislation underpinning this strategy includes

- Dover District Councils Overarching enforcement strategy
- Advice from CPS
- Home Office COPS and Guidance
- Regulator's Code

- Human Rights Act 1998
- Police and Criminal Evidence Act 1984
- Criminal Procedure and Investigations Act 1996
- Regulation of Investigator Powers Act 2000
- Data Protection Act 1998
- Freedom of Information Act 2000
- The Protection of Freedoms Act 2012
- Building Act 1984 (in particular sections 77,78,80, 81.82 and 91)

5. Interventions and Enforcement

After considering all relevant information one or more of the following courses of action shall be taken :-

- no action
- informal action (verbal or written)
- statutory notice
- simple caution
- prosecution
- works in default
- injunction

Not all of these options are available in every case. This underlines the need to consider powers available under each piece of legislation individually.

In making any decision on enforcement, officers will consider the following criteria:-

- the seriousness of the offence
- the offender's past history
- consequences of non-compliance
- the known or likely public benefit of the chosen enforcement action
- the willingness of the offender to prevent a recurrence and in the case of a business, the confidence in management

- the likely ability of any witnesses to give evidence and their willingness to co-operate
- the Crown Prosecution Service's Code of Practice for Crown Prosecutors

4. TYPES OF ENFORCEMENT ACTION

a) **No action** – where no problems are witnessed and there is insufficient evidence to proceed.

b) **Informal Action.**

Informal action includes:-

- Verbal advice. To be given where the offender shows an understanding and willingness to remedy contraventions of a minor nature.
- Written advice. To be used where there is no imminent risk to health and the officer believes the offender will co-operate in remedying the offence. Written advice may also be given where it is felt necessary for the offender to consider their liabilities under law.

Informal action is appropriate where;

- the act or omission is trivial nature and it can be simply remedied.
- confidence in the individual/businesses management is high
- consequences of non-compliance will not pose a significant risk to health.
- there is insufficient evidence for formal action at the time (although formal action may follow at a later date).

c) **Statutory notice**

To be issued where

- there is enough evidence to prove an offence in court
- informal action has failed
- the officer has low expectations of the individual/business remedying the problem
- the service of a notice and subsequent enforcement, e.g. works in default, is the only realistic option to abate a nuisance or secure compliance.
- there is a risk to public health

When drafting notices, realistic time limits shall be imposed and the case officer shall, where possible or appropriate, discuss these with the recipient. Where practicable officers shall also discuss with the recipient any works specified. The recipient should be advised that alternative methods of compliance should be put in writing along with requests for extension of time limits.

Failure to comply with statutory notices will lead to legal proceedings and/or carrying out the works specified in the notice in the recipients default.

Only officers with the appropriate delegated authority are able to sign any formal notices. Reference should be made to the Department's scheme of delegation.

d) Revocation of authorisation/enforcement notice/prohibition notice

- Revocation.
-

Where a Building Regulations application has been made under the full plans route and no notice of commencement has been received within a period of three years from the date of the notice of passing of plans, then Building Control write to the current owner and notify them that the intention is to revoke the application. If there is no contact within the next three weeks a formal revocation notice is issued under section 32 of the Building Act 1984.

g) Simple Caution

See guidance issued under [Home Office Circular 30/2005](#) and DDC Environmental Health Department's Simple Caution Procedure note.

Cautions should only be issued when

- there is enough evidence to prosecute
- the offender admits the offence
- the offender understands the significance of, and is willing to accept, the caution

If the offender refuses a simple caution then the case should proceed to prosecution.

Any cases where it is felt a simple caution is warranted, must be discussed with the Assets & Building Control Consultancy Manager or relevant Senior Building Control Surveyor in conjunction with legal services

h) Works in default

Under certain pieces of legislation the Council is empowered to carry out works in default and recover the costs. Works in default may be carried out where:

- a notice has not been complied with within the specified time
- there is no prospect of the person responsible carrying out the work, e.g. the person is absent or infirm
- speedy abatement is required,
- the circumstances are such that works in default are a more appropriate or effective remedy than prosecution
- the problem persists after prosecution.

i) Prosecution

When considering prosecution officers must follow the guidance in the [Code of Practice for Crown Prosecutors](#).

Prosecution shall be initiated when one or more of the following are met: -

- there is a history of similar offences and/or written warnings have been ignored
- non-compliance with a statutory notice
- failure to pay a fixed penalty notice
- refusal to accept a simple caution
- serious breach of the law leading to a risk to the health of residents and/or the environment
- there is enough admissible and reliable evidence to show an offence has been committed by an identifiable individual/business

Any cases where it is felt a prosecution is warranted, must be discussed with the Assets & Building Control Consultancy Manager or relevant Senior Building Control Surveyor in conjunction with legal services

j) Injunction

On rare occasions action under the relevant legislation may be considered ineffective, e.g. where previous prosecution has not resulted in improvement or continued wilful breaches of legislation. Any cases where it is felt an injunction is warranted must be discussed with the Assets & Building Control Consultancy Manager or relevant Senior Building Control Surveyor in conjunction with legal services

6. Policy monitoring

To ensure compliance with this policy, the enforcement activities of the Building Control Service will be monitored regularly by the Assets & Building Control Consultancy Manager in consultation with the Senior Building Control Surveyors and are subjected to a regular audit process.

This policy will be reviewed annually by the Director of Environment & Corporate Assets

7. Training and Development

Appropriate resources will be made available for training officers to enable them to successfully carry out their duties within this policy

8. Equality impact assessment

This Policy falls within the Overarching Enforcement Strategy Equality Impact Assessment

APPENDIX 1

THE FOLLOWING is to replace articles 201, 205, 206 and 207 of the constitution.

Building Control Delegations:

Delegated to:

**Director of Environment & Corporate Assets:
Assets & Building Control Consultancy Manager.**

Legislation	Description	Conditions/Exclusions
201 Building Act 1984:		
Section 8,	Relaxation of building regulations	
9	Application for relaxation of Building regulations	
10	Advertisement for relaxation of Building Regulations.	
16	Passing/rejection of plans under Building Regulations	
19	Use of short lived materials.	
20	Use of materials unsuitable for permanent building.	
21	Provision of drainage	
22	Drainage of buildings in combination.	
24	Provision of exits etc.	
25	Provision of water supply.	
32	Lapse of deposit of plans	
33	Test for conformity with Building Regulations	Formal agreement to be obtained from head of D & PP: prior to commencing legal action in relation to sections 35 and 38 or commencing work in default under section 36.
35	Penalty for contravening building regulations.	Enforcement action to be undertaken in consultation with the solicitor to the Council or other duly authorized officer.
35A	Time limits for prosecution for contravention of Building Regulations	
36	Removal or alteration of offending work.	
37	Obtaining of report where section 36 notice given.	
38	Civil liability	This section states that a breach of the Building Regulations is actionable. To provide the Council with the assurance that such action has a reasonable

		chance of success, the lead authorized officer needs in depth knowledge of the Building Regulations.
39	Appeals in certain cases	
47	Giving and acceptance of initial notice.	
50	Plans certificates	
51	Final certificates	
51A	Variation of work to which initial notice relates	
51B	Effect of amendment notice	
52	Cancellation of Initial Notice	
56	Recording and Furnishing of information.	
73	Raising of chimney	
77	Dangerous building	
78	Dangerous building emergency measures.	
80	Notice to local authority of intended demolition.	
81	Local authority's power to serve notice about demolition.	
82	Notices under section 81	
83	Appeal against notice under section 81	
91	Duties of local authorities	
91A	Registers to be kept by Local Authorities	
95	Power to enter premises	
96	Supplementary Provisions as to entry.	
97	Power to execute works.	
100	Sale of materials.	
104	Duty on local authority to give effect to appeal.	
106	Compensation and recovery of sums	
107	Recovery of expenses	
108	Payment by instalments	
109	Inclusion of several sums in one complaint.	
Schedule 2	Relaxations for Existing work	