

## **BUILDING CONTROL SERVICES**

### **BUILDING CONTROL ENFORCEMENT POLICY**

**Issue : 01  
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### **BUILDING CONTROL PERFORMANCE STANDARD**



Committee Approved 16 January 2002  
Amended 30 September 2002 and 14<sup>th</sup> October 2008

## **1.0 INTRODUCTION**

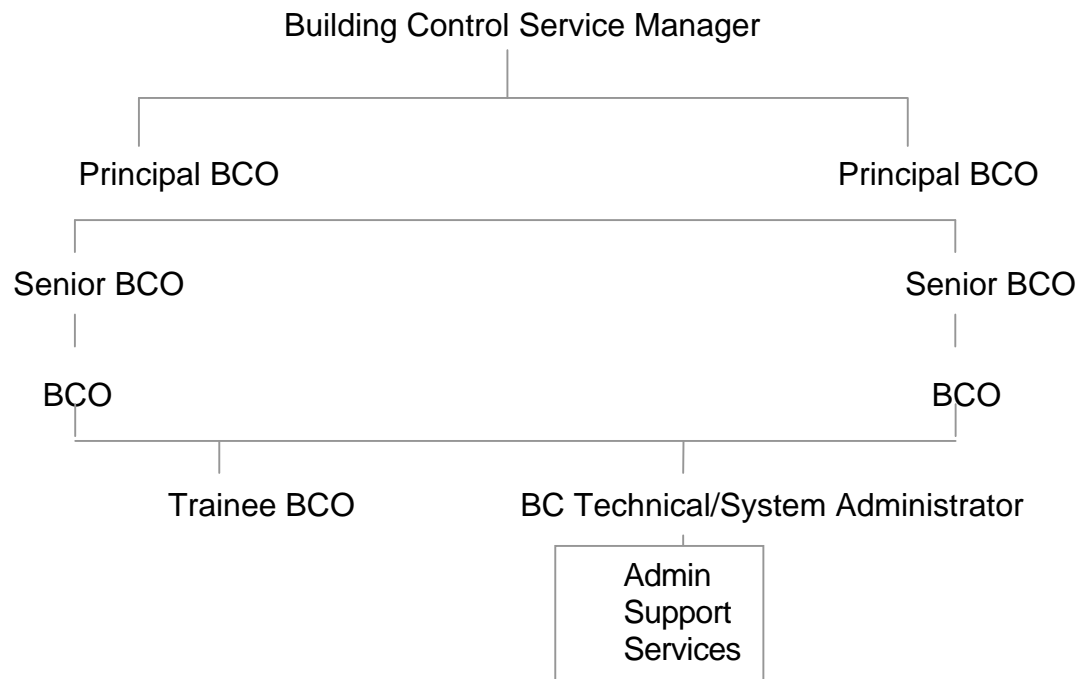
- 1.1 This policy has been written in accordance with the Cabinet Office Enforcement Concordat and the City Council's Corporate Enforcement Policy.
- 1.2 This means that when carrying out enforcement the Building Control Service will be open about its actions, demonstrate fairness and impartiality, take a consistent yet flexible approach, be considerate to complaints, treat matters with proportionality and assist service users whenever possible.
- 1.3 The policy of the City of Lincoln's Building Control Service is to ensure that all works falling under its control are dealt with in such a manner so as not to prejudice peoples' health, safety, welfare and convenience and is aimed at members of the public and business users.
- 1.4 The City Council has various means at its disposal to ensure that the legislative requirements enforced by the Building Control Service are met. These range through:-
  - giving verbal or written advice
  - giving guidance notes
  - issuing warning letters
  - serving statutory notices
  - prosecution through the criminal courts

## **2.0 LEGISLATION**

- 2.1 The Building Act 1984.
- 2.2 The Building Regulations 2000 (As Amended).

### 3.0 ESTABLISHMENT

- 3.1 The Chief Building Control Officer will deploy staff in the most effective manner to provide an efficient and cost effective enforcement service.



### 4.0 DUTY OF OTHERS

- 4.1 In the first instance it should be the responsibility of designers, builders and building owners to make every effort to ensure that they comply with the Building Regulations and associated legislation.

### 5.0 ENFORCEMENT PRACTICE

- 5.1 The Building Control Service is always willing to offer advice about the best way of securing compliance either before or during building works. The Service will operate the policy on the basis that prevention is better than cure. In all cases officers will meet and discuss any issues with property owners before confirming the Council's action in writing or by notice.

- 5.2 Formal enforcement measures are laid down within the Building Regulations 2000 and the Building Act 1984.

#### 5.3 What you can expect from Building Control Officers

You are entitled to expect our staff:-

- To give a courteous and efficient service.
- To identify themselves by name, (and produce identification if requested).
- To provide a point of contact for further dealings.

- To give clear advice, keeping that advice as simple as possible.
- To confirm advice in writing, on request, explaining why action is required and on what time scale.
- To distinguish clearly between what you **must** do to comply with the law and what is recommended as best practice.
- To minimise the cost of compliance by only requiring action proportionate to the risk involved unless the law sets down absolute standards.
- To give you a reasonable time to comply. There will be occasions when immediate action is necessary in the interests of health, safety, to protect the environment or to prevent evidence being lost.
- To notify you, as soon as is reasonably practicable, if any matter affecting you is to be reported for legal proceedings.
- In cases of dispute, to advise you of the procedure for making a complaint or representations.

#### 5.4 **Action we take if the law is contravened**

When a breach of the law is found a verbal or written warning may be given and this will be followed up by further checks. Other alternatives available to the Council, dependent on the nature of the breaches, include the service of a statutory notice to remedy the breach or the suspensions, revocation or refusal to grant or renew a licence or the application for a court order such as an injunction.

Where it is appropriate, no formal action will be taken without an opportunity to discuss the case and, if possible, resolve any differences. If a prosecution is possible then the law requires that any such discussion is conducted under caution.

There may be occasions when it is inappropriate to take formal action.

Where immediate action is necessary any explanation of why such action is required will be given at the time and confirmed in writing within five working days. Where there are rights of appeal these will be clearly set out in writing at the time the action is taken.

#### 5.5 When deciding what degree of enforcement to exercise the Building Control Service will give consideration to the following:

- The seriousness of the alleged offence in terms of its impact on people's health, safety, welfare and convenience
- The previous history of the offender(s)
- The number of people likely to be affected
- The danger caused or the value involved
- Any statutory defence that may be available
- The likely effectiveness of the various enforcement options

- Action taken to prevent any recurrence
  - Any explanation offered and, as far as the law allows, the circumstances and attitude of the offender
  - What course of action will best serve the public interest
  - The effect the proposed course of action may have on the offender
- 5.6 The choice of remedies available to the Building Control service will range from:
- Taking no action
  - Regularise by inviting an application for permission
  - To issue a formal caution
  - Taking action to rectify the work
  - Serving a statutory notice
  - Prosecution
- 5.7 Where action becomes necessary to rectify defective work Building Control Officers will make every effort to inform the owners before actioning any work.
- 5.8 Criminal prosecutions will generally follow where there has been a serious offence or a blatant disregard of the legislation.
- 5.9 All communication will be clearly written and contain clear instruction about what is required and why it is required. It will set out the legislative requirement considered not met, the measures necessary to comply and any alternatives that will be accepted. A clear distinction will be made between what is goodwill advice and what is a statutory requirement.
- 5.10 Where possible, and when within the expertise of the Building Control Surveyor, advice given in securing compliance will have regard to minimising the costs.
- 5.11 Where appropriate, reasonable and realistic time limits will be set to allow remedies to be carried out. Flexibility will be exercised where a degree of goodwill is shown by the appellant.
- 5.12 **Time Scales for Action**

For any action to be successful the correct information with regard to the following is required:-

The six month period for laying information before the Magistrates' Court runs from the date when the offending work was made part of the building. Since the date Building Control become aware of the contravention will be after that date it will be necessary to calculate the six month period from your last site visit, hence the need for frequent inspections. If the offending work was first noticed on discovering work in progress or as a result of an open up Notice, Building Control will have to make a judgement as to when the offence first took place.

Should the offence be one of an omission for providing an aspect to the building work the period will start from the time when it becomes apparent that the omission is not going to be provided.

### **5.13 Proof**

The onus of proof of a contravention lies with the Council and in this regard the Approved Documents can be used as evidence tending to show non-compliance. It will then be for the defendant to show that notwithstanding this the work nevertheless complies with the substantive requirements of the Regulations.

### **5.14 Person Responsible**

The person contravening the Regulations will be the person carrying out the work. This may be the builder, the owner, or both but ultimately the property owner is the responsible person.

5.15 Where there is an appeal procedure against a formal notice, this will be clearly explained and any time constraints made apparent.

5.16 Notices under section 16 of the Local Government (Miscellaneous Provisions) Act will be served on property owners to establish clear ownership prior to any formal action by the Council being made.

## **6.0 BUILDING REGULATIONS LEGAL PROVISIONS FOR ENFORCEMENT**

### **6.1 Background Information**

6.1.1 Section 35 of The Building Act 1984 states, "if a person contravenes any provision contained in building regulations, other than a provision designated in the regulations as one to which this section does not apply, he is liable on summary conviction to a fine not exceeding level 5 on the standard scale and to a further fine not exceeding £50 for each day on which the default continues after he is convicted."

The provision of the Building Regulations which are actionable under Section 35 are:-

Regulation 4 – requirements relating to building work

Regulation 7 – materials and workmanship

Regulation 11 – giving of building notice or deposit of plans

Regulation 13(5) – necessary plans

Regulation 15(1) – notice of commencement of work

Regulation 15(2) – notice of covering up

Regulation 15(3) – notice of laid, haunched, or covered drain or sewer

Regulation 15(4) – notice of completion

Regulation 15(5) – notice of occupation

Regulation 15(6) – open up notice

Regulation 15(7) – notice of compliance

- 6.1.2 Normally where a contravention occurred in excess of 12 months ago action cannot be taken other than where the property owner voluntarily applies to the Council for a Certificate of Regularisation for work carried out after 10 November 1985.

However, there is a time limit imposed beyond which legal action cannot be taken. This is laid down in Section 127 of the Magistrates' Court Act 1980 which states "*...a magistrates' court shall not try on information or hear a complaint unless the information was laid, or the complaint made, within six months from the time when the offence was committed or the matter of complaint arose.*" It is therefore important to determine when the offence was committed.

## **6.2 SECTION 35 PROCEDURES**

- 6.2.1 Procedures will be kept simple and easy to understand. Standard letters will be used to ensure consistency of approach. Property owners will be briefed on the Council's approach to enforcement prior to any official formal action being taken.

### **6.3 WORK – REGULATION 4**

6.3.1 This regulation states:-

- (1) *Building work shall be carried out so that –*
  - (a) *it complies with the relevant requirements contained in Schedule 1: and*
  - (b) *in complying with any such requirements there is no failure to comply with any other such requirement*
- (2) *Building work shall be carried out so that, after it has been completed –*
  - (a) *any building which is extended or to which a material alteration is made;*
  - (b) *any building in, or in connection with, which a controlled service or fitting is provided, extended or materially altered;*
  - (c) *any controlled service or fitting,*

*complies with the relevant requirements of Schedule 1 or, where it did not comply with any such requirement, is no more unsatisfactory in relation to that requirement than before the work was carried out.*

### **6.4 WORK – REGULATION 7**

6.4.1 This regulation states:-

*Building work shall be carried out -*

- (a) *with adequate and proper materials which-*
  - (i) *are appropriate for the circumstances in which they are used;*
  - (ii) *are adequately mixed or prepared, and*
  - (iii) *are applied, used or fixed so as adequately to perform the functions for which they are designed; and*
- (b) *In a workmanlike manner.*

6.4.2 The Approved Document to support Regulation 7 gives further guidance on how this particular Regulation can be met. Within the other Approved Documents there are references to solutions or standards which are acceptable in meeting the substantive requirements.

6.4.3 Once it has become evident that work does not comply and no work is being undertaken to bring the offending work into compliance Building



Control may be left with little choice but to take action under Section 35. However, in making that judgement reference to paragraphs 5.4 and 5.5 will be made.

For any action to be successful the correct information with regard to the following is required:-

## **6.5 NOTICES – REGULATION 12**

6.5.1 This regulation states:-

- (1) *In this regulation "relevant use" means a use as a workplace of a kind to which Part II of the Fire Precautions (Workplace) Regulations 1997 applies or a use designated under section 1 of the Fire Precautions Act 1971.*
- (2) *Subject to the following provisions of this regulation, a person who intends to carry out building work or to make a material change of use shall –*
  - (a) *give to the local authority a building notice in accordance with Regulation 13; or*
  - (b) *deposit full plans with the local authority in accordance with Regulation 14.*
- (3) *A person shall deposit full plans where he intends to carry out building work in relation to a building put or intended to be put to a use which is a designated use for the purposes of the Fire Precautions Act 1971(a).*

6.5.2 A person who intends to carry out building work or a material alteration must submit a building notice or deposit full plans before work commences on site. Therefore an offence has been committed should that person fail to comply.

6.5.3 This usually occurs when a discovery is made, either during your normal course of duty or upon complaint. Upon discovery you should obtain as much information as possible. Find out the name and address of the builder and if possible an admission but remember hearsay is inadmissible. Look at any drawings on site and obtain name and address of the Architect or other professionals involved and also the owner.

6.5.4 An offence has also been committed if you have only received a notice of commencement. However in this instance you will have information regarding builder and owner. In the case where a building notice would be acceptable we will not institute proceedings provided the commencement notice is received in accordance with Regulation 15 (1).

## **6.6 PLANS – REGULATION 13(5)**

This regulation states:-

*Where a building notice has been given, a person carrying out building work or making a material change of use shall give the local authority, within such time as they specify, such plans as are, in the particular case, necessary for the discharge of their functions in relation to building regulations and are specified by them in writing.*

- 6.6.1** Under Regulation 13 plans are not normally required to be submitted with a building notice. The original thinking behind this was that the building notice would be used for small jobs, where, in the main, detailed drawings are not necessary. If plans are found to required standard letter BC22 should be sent – see “Flow Chart” 3.

## **6.7 NOTICES – REGULATION 15(1)**

This regulation states:-

*A person who proposes to carry out building work shall not commence that work unless –*

- (a) he has given the local authority notice that he intends to commence work; and*
  - (b) at least two days have elapsed since the end of the day on which he gave the notice.*
- 6.7.1** A person who intends to carry out building work must give notice to that effect. Therefore an offence has been committed should that person fail to comply.

This usually occurs when a discovery is made, either during your normal course of duty or upon complaint. Upon discovery you should obtain as much information as possible. Find out the name and address of the builder. In most instances you should already have a full plan application with information regarding the Architect and owner, if not an additional offence under Regulation 11 has been committed (refer to NOTICES – REGULATION 11 above). Should you have any difficulty in obtaining information regarding the builder you should contact the Architect or owner.

## **6.8 NOTICES – REGULATION 15(2)**

This regulation states:-

*A person carrying out building work shall not –*

- (a) cover up any excavation for a foundation, any foundation, any damp proof course or any concrete or other material laid over a site; or*
- (b) cover up in any way any drain or sewer to which these Regulations apply, unless he has given the local authority notice that he intends to commence that work, and at least one day has elapsed since the end of the day on which he gave the notice.*

6.8.1 A person who undertakes such work without giving notice has committed an offence.

6.8.2 This can occur as part of a discovery or during the course of a job you have already been notified about. If it is as a result of a discovery you should obtain all necessary information as per Regulation 12 or 15(1) above. If the builder exposes the work and it is found satisfactory then no further action is necessary unless the defendant is a habitual offender.

## **6.9 NOTICES – REGULATION 15 (3)**

This regulation states:-

*A person who has laid, haunched or covered any drain or sewer in respect of which Part H of Schedule 1 (drainage and waste disposal) imposes a requirement shall give notice to that effect to the local authority not more than five days after the completion of work.*

6.9.1 A person who fails to give notice has committed an offence. However, it is unlikely we will take any legal action unless it is part of a prosecution involving a completed job for which neither a building notice or full plans/commencement notice has been submitted.

## **6.10 NOTICES – REGULATION 15(4)**

This regulation states:-

*A person carrying out building work shall, not more than five days after that work has been completed, give the local authority notice to that effect.*

6.10.1 A person who fails to give notice has committed a “procedural” offence. However, prosecution in this respect is not appropriate on this fact alone and should only be pursued in the context of a wider action involving contraventions of technical requirements.

## **6.11 NOTICES – REGULATION 15(5)**

This regulation states:-

*Where a building is being erected, and that building (or any part of it) is to be occupied before completion, the person carrying out that work shall give the local authority at least five days' notice before the building or any part of it is occupied.*

- 6.11.1 A person who fails to give notice has committed a “procedural” offence. However, prosecution in this respect is not appropriate on this fact alone and should only be pursued in the context of a wider action involving contraventions of technical requirements.

## **6.12 NOTICES – REGULATION 15(6)**

This regulation states:-

*Where a person fails to comply with paragraphs (1) to (3), he shall comply within a reasonable time with any notice given by the local authority requiring him to cut into, lay open or pull down so much of the work that prevents them from ascertaining whether these regulations have been complied with.*

- 6.12.1 Should the person responsible fail to serve the required notices then you are entitled to have the work exposed to ascertain compliance. Initially ask verbally for the work to be exposed however should there be any unnecessary delay there be no alternative but to serve a notice under regulation 15(6).

## **6.13 NOTICES – REGULATION 15(7)**

This regulation states:-

*If the local authority have given notice specifying the manner in which any work contravenes the requirements in these Regulations, a person who has carried out any further work to secure compliance with these Regulations shall within a reasonable time after the completion of such further work give notice to the local authority of its completion.*

A person who fails to give notice has committed an offence. However, legal action is not appropriate in such a case.

**If you would like this information in an alternative format:- large print or electronically, please do not hesitate to contact us on (01522) 873390 or email: [building.control@lincoln.gov.uk](mailto:building.control@lincoln.gov.uk)**