

Building Control Enforcement Policy Framework

Introduction

West Lindsey District Council operates a responsive, proactive and helpful building control service, which is delivered with the client in mind. We aim to help developers, businesses and local people achieve successful building projects.

We want to be part of your team from the outset and provide you with the high quality advice and support that can save you time and money, as well as avoiding problems.

When you come to occupy, sell or lease your property you will need to have evidence that the building work you have done satisfies the national building regulations. We will provide all the paperwork you need at the end of the job.

You might ask what happens if the work doesn't comply with the building regulations. This is quite a complex area and there are various pieces of legislation that apply. It is the role of West Lindsey District Council to resolve any issues and make sure you can get your approval certificates.

Almost always we will be able to sort out any problems with you and work together to get the scheme right. In the most exceptional cases we might need to use some of our legal powers to deal with the more serious issues. There are very few examples of this approach but it is always the final option that we have.

As well as the building regulations our team also deals with some other legal issues relating to the health and safety of buildings. We may need to use our legal powers in cases where a building presents an immediate or likely danger to occupants or the public.

So that you know exactly what will happen West Lindsey District Council has a policy framework for dealing with potential legal issues. This is described in the following pages and broadly covers four distinct areas:

1. Building work has been carried out but the person responsible for the work has not made an application for approval under the building regulations
2. Works have being carried out which do not comply with the building regulations and could present a hazard of some form to the present or future occupiers
3. The building is dangerous and presents a hazard to safety
4. The building has security, welfare or environmental issues

What happens if I don't apply for building regulation approval?

Many things you would think of as "building work" need approval under the building regulations. Most electrical and heating works needs approval as well. If the use of a building changes this can fall under the building regulations.

Sometimes an agent or an installer will sort out a building regulation approval and the builder occupier may not be aware that this has been done.

West Lindsey District Council keeps a record of every approval, irrespective of how it has been issued.

Sometimes (often at the time that a property is sold or changes occupancy) we discover that a person has carried out a project that required consent – but no approval is in place. Then we need to do something to regularise the situation.

The responsibility for ensuring that approval is obtained always lies with the owner of the building, even if it is a building tenant, a builder or an installer who actually carries out the work.

If work has already started but is not substantially complete West Lindsey District Council will normally accept a retrospective application for building regulation approval. Our surveyors may ask for some of the work to be exposed. This is so we can check that there are no problems. From this point forward the scheme is treated as a normal application and a building regulation completion certificate will be issued when the works are finished.

If the work has already been completed the law does not allow us to accept an application for building regulation approval or issue a completion certificate. In these circumstances West Lindsey District Council will accept an application for regularisation from the owner and if the works appear to comply with the building regulations (we may need to expose some of the work to confirm this) we will issue a regularisation certificate.

Summary

If you don't apply for building regulation approval on a controlled scheme the remedy will depend whether the works are complete.

If you have not yet substantially finished the works you will be able to get a building regulation completion certificate. This is assuming the work complies with the building regulations.

If you have completed the works and they are found to be satisfactory then you will be able to get a regularisation certificate.

For advice on what will happen if your work does not comply with the building regulations please see our separate guidance note.

The legal position

The law on this subject is contained in the Building Regulations 2010 (Sections 3 -the meaning of Building Work, 5 – the meaning of Material Change of Use, 12(2) -the requirement to make an application, 17(1) –the issue of Completion Certificates and 18 – the issue of Regularisation Certificates).

What happens if the work is wrong?

Building work can be complex and things don't always go smoothly. Our aim is to help you avoid problems and complete a successful project. The best way to do this is to liaise closely with our building control surveyors and seek advice if you are in any doubt. All our surveyors will be more than pleased to help you.

West Lindsey District Council will check your project at defined stages and may carry out other checks as needed. We will do a final completion inspection when the project is finished.

Where we discover that some element of the work will not comply with the building regulations we will advise you of the issue and work with you to reach an acceptable technical solution. Our aim is to get all such issues resolved in advance of the final completion visit. This means that we will be able to issue your completion certificate immediately after the job is finished. Sometimes it can take some time to resolve complex issues but West Lindsey District Council always tries to maintain this informal and collaborative approach at all times.

On very rare occasions it is necessary for the council to adopt a more formal approach and issue an enforcement notice. This would only happen if there was an immediate health and safety issue or if the informal procedures were not working.

The law sets down some legal procedures we need to follow for formal action and there are time limits and rights of appeal that apply.

West Lindsey District Council has the legal power to issue a building regulation enforcement notice at any time within 12 months of the work being undertaken. The notice will give the person carrying out the work (who may be the builder or the owner of the property) a period of 28 days to resolve the issue. If the notice expires the council can seek an order from the Magistrates Court and undertake the necessary works itself. The cost of this remedial work can be recovered from the owner of the property.

There is another procedure that the council can follow if the works were completed more than 12 months ago. This involves a direct approach to the courts and would only be used in cases presenting a high risk to health and safety.

Summary

The building control surveyors will work with you to resolve any issues that arise on your project. We will try to make sure that you can have a building regulation completion certificate when the works are complete.

If we are unable to agree a technical solution the council may consider formal enforcement action.

This can lead to the council carrying out the necessary work and claiming the costs from the building owner

The legal position

The power to issue building regulation enforcement notices is contained in Section 36 of the Building Act 1984. This Section also covers the provisions for appeal and the recovery of costs. All enforcement action takes into account the current legislation on data protection, human rights and the collection of evidence.

What happens if a building presents an immediate hazard to health and safety or welfare?

Every year there are number of accidents and incidents relating to buildings, walls or other structures that are dangerous or present a hazard to health and safety?

West Lindsey District Council has legal powers to take action to remove such hazards.

The procedures to be followed depend on whether there is a current building project in progress.

Where West Lindsey District Council is supervising works under the building regulations (and the hazard arises as a result of the building work) the council will always seek to resolve the issue in an informal way and agree a technical solution. If this is not possible then we may look to issue a formal enforcement notice. This is only ever done as a last resort and for the purposes of protecting the health and safety of people who may use the building. The enforcement notice will require the builder of the building owner to remove the potentially dangerous feature of the structure. If the danger is not removed the council can ask the courts for permission to do this work in default and recover the cost from the building owner.

Most issues of this type are resolved informally by discussion and it is very unusual for the council to follow the formal enforcement option.

If West Lindsey District Council receives a report about a potentially dangerous building where it is not currently supervising building works there is other legislation that applies.

Where it appears that the building could become a danger the council will attempt to deal with the issue through discussion with the owner. In some cases we will seek the advice of a structural engineer. Most of these instances are dealt with by the owner taking the appropriate action to remove the danger. On rare occasions, the council may request a Magistrates Court order. This will specify

the remedial work required and set a timescale. If this is not met the council will assume the power to do the works in default and reimburse the cost to the owner.

Sometimes the building, wall or other structure will present an immediate hazard to health and safety. In these circumstances the council can take emergency action to remove the danger. The law allows the council to do this without reference to the owner, but in practice we will always try and make contact first. The emergency action may involve demolition or structural work or it may involve providing temporary barriers. In all cases the minimum amount of work needed to remove the danger will be done. All costs are chargeable to the owner.

Summary

If we feel that a building, wall or other structure is or could become dangerous we will attempt to remove any risk through discussion with the owner.

If this does not work we retain the option to obtain a court order. This could lead to the council taking positive action to remove the danger.

In cases of emergency we may need to use our powers to take immediate action to

The legal position

The legislation relating to dangerous buildings contained in the Building Act 1984. Section 77 covers the court order procedure and Section 78 refers to emergency action.

What other action can the council take on land and buildings?

Where buildings are not dangerous, but by virtue of their poor condition present an environmental or welfare issue to the neighbourhood there are a variety of legal options open to West Lindsey District Council. Although these are managed directly by other council services the building control surveyors may have some involvement.

Empty buildings can sometimes become unsecured and easy to access for intruders. Where this may constitute a health or welfare issue the council will seek to contact the owner and agree a course of action. If this is not possible the council will assume legal powers to make the building secure.

Where land or buildings adversely affect the visual amenity of a neighbourhood the council can require the owner to tidy up or clean the site by way of a statutory notice. In more serious cases there is an alternative procedure which can result in demolition or the total clearance of the site.

If the building or land is prejudicial to health in some way, there is a stronger power involving the issue of an abatement notice.

These powers can only be invoked where the owner has had a reasonable time to remedy the situation.

There is an emergency procedure available to the council where immediate action is required. This can only be used where the building or land is highly prejudicial to health.

In all these cases the council can assume the power to undertake the necessary work and recover the cost from the owner. In extreme cases the council may be able to force a sale of the land.

Summary

There are a range of powers available to West Lindsey District Council to deal with unsightly, neglected or derelict buildings. The actual legislation used to address these issues will depend on the nature and the severity of the problem.

The council tries to work with the building or land owner to reach a solution that will ensure health and safety and restore the visual amenity of the locality.

The legal position

Unsecured buildings are covered by section 29 of the local government (miscellaneous provisions) act 1982

Untidy sites and buildings can be remedied through the use of section 215 of the town & country planning act 1990

Neglected buildings and land causing serious visual impact can be dealt with under section 79 of the building act 1984

Abatement notices are issued under the environmental protection act 1990

The emergency procedure for highly prejudicial buildings is outlined in section 76 of the building act 1984