

Dangerous and Defective Buildings and Structures

Powers of West Lindsey District Council

West Lindsey District Council has powers to deal with dangerous buildings under a number of statutes:

1. The Building Act 1984: Section 77 : The Court Order Procedure
2. The Building Act 1984: Section 78 : The Emergency Measures Procedure
3. The Environmental Protection Act 1990 : The Statutory Nuisance Procedure
4. The Building Act 1984: Section 76 : The Defective Premises Procedure

Meaning of Dangerous and Defective Building or Structure

The term dangerous structure covers any building, part of a building or other structure, where it poses a serious danger to the public. Examples of ways that the building or structure could be dangerous include loose slates/tiles, vehicle damage/collapsing walls, loose chimneys, leaning garden walls, broken hoardings and the like.

Buildings or structures can become dangerous as a result of poor maintenance, fire, storm, vehicle impact or neglect.

A defective building does not pose a serious danger to the public but will have a significant impact on the visual amenity of an area and pose a risk to public health and welfare.

The term does not cover buildings which are simply dilapidated or run down. There is other legislation that covers this type of building.

Building Act 1984, Section 77: The Court Order Procedure

If it appears to West Lindsey District Council that a building or structure, or part of a building or structure, is in such a condition, or is used to carry such loads, as to be dangerous, the authority may apply to a magistrates' court. The court may:

1. Where danger arises from the condition of the building or structure: make an order requiring the owner to:
 - execute such work as may be necessary to obviate the danger, or
 - demolish the building or structure, or any dangerous part of it, and remove any rubbish resulting from the demolition
2. Where danger arises from overloading of the building or structure, the council can request an order restricting its use until the court withdraws or modifies the restriction, on the basis that it is satisfied that any necessary works have been executed

Penalties for non-compliance

If the person served with the order fails to comply with it within the time specified West Lindsey District Council may

- execute the order in such manner as it thinks fit, and
- recover the expenses reasonably incurred by it in doing so from the person in default

In addition, the person is liable on summary conviction to a fine not exceeding level 1 on the standard scale.

Building Act 1984, Section 78: The Emergency Measures Procedure

If it appears to West Lindsey District Council that:

1. Any part of a building or structure is in such a state, or is used to carry such loads, as to be dangerous, and
2. Immediate action should be taken to remove the danger

The council may take any necessary steps for that purpose.

Notice

Before exercising its powers West Lindsey District Council should, if it is reasonably practicable to do so, give notice of its intention to the owner and occupier of the building, or of the premises on which the structure is situated.

Costs

West Lindsey District Council can recover reasonably incurred expenses from the owner (Building Act 1984, section 78(3)–(6))

Expenses relating to the fencing off the building or structure, or arranging for it to be monitored, are not recoverable after:

1. The danger has been removed by other steps under the s 78 power
2. An order made under section 77 (above) has been complied with or has been executed by West Lindsey District Council following non-compliance

The court has discretion to:

1. Decide not to award expenses under s 78 if it considers that West Lindsey District Council could have used the powers under section 77(1) instead
2. Consider whether any part of the expenses should be borne by another person (in which case that person must be given notice of the proceedings and an opportunity to be heard), and
3. Make such order concerning the expenses or their apportionment as appears to the court to be just

Compensation

Owners or occupiers have a right to claim full compensation for any damages incurred as a result of West Lindsey District Council's actions, if it can be shown that the owner or occupier has not been in default of any obligations under the building act 1984.

In dealing with dangerous buildings West Lindsey District Council will:

- Be proactive and take early action
- Make an application to court under section 77 as soon as possible, before it becomes necessary to take immediate action under Section 78.
- Only exercise its powers under section 78 in circumstances when it has no choice but to take immediate action to remove the danger and such action cannot await a decision under section 77

The Difference between Section 77 and Section 78

The difference between sections 77 and 78 is that section 77 allows for determination by the Courts, whereas section 78 may be exercised by West Lindsey District Council without notice, giving those affected no right to object.

The section 78 procedure restricts the circumstances within which West Lindsey District Council may obtain payment of its expenses and the council is at risk of having to pay compensation if the use of the emergency procedure is subsequently deemed unnecessary.

Environmental Protection Act 1990, Section 80: The Statutory Nuisance Procedure

West Lindsey District Council has the right to serve an abatement notice for a nuisance caused by a structural defect on the owner of the defective premises or structure. The owner commits a criminal offence if they do not appeal to the court within 21 days and fail to abate the nuisance. There is no requirement to compensate parties affected.

Building Act 1984, Section 76: The Defective Premises Procedure

Local authorities have powers to deal with defective premises (premises considered to be in a state that is prejudicial to health or causes a nuisance) where there would be an unreasonable delay in remedying the defective state by following the procedures prescribed by the environmental protection act 1980: section 80. West Lindsey District Council may serve on the person who would have received an abatement notice under the environmental protection act 1980 a notice stating that the authority intends to remedy the defects and recover the expenses incurred.

The person responsible has the right to serve a counter-notice within seven days of the section 76 notice and carry out the necessary work to abate the nuisance itself within a reasonable time.

As with the section 78 power, West Lindsey District Council may receive a claim for compensation from parties that are not in default.

In dealing with defective buildings the council will:

- Be proactive and take early action
- Make an application to court under the environmental protection act 1980: section 80 as soon as possible, before it becomes necessary to take emergency action under the building act: section 76.
- Only exercise its powers under section 76 in circumstances when it has no choice but to take immediate action to remove the danger and such action cannot await a decision under section 80