

Appendix B

Building Control

Supplementary Enforcement Procedure

September 2011

1. Introduction

- 1.1 This procedural document should be read in conjunction with Herefordshire Council's 'Enforcement and prosecution Policy'

2. What is Enforcement?

- 2.1 It is a formal procedure available to Local Authorities which enables them to ensure that building work complies with the national Building Regulations.
- 2.2 Section 91 of the Building Act 1984 requires the local authority to carry out its duties to enforce the Building regulations.
- 2.3 Sections 35 and 36 contain the powers for Local Authority Building Control to take enforcement action.

3. When are these procedures used?

- 3.1 When an inspecting Building Control Surveyor sees that either work carried out does not comply with the Building Regulations or work, which would normally be required to be inspected at specified stages has been covered over without the Council having been given the opportunity to inspect the work at that stage.

4. How do the procedures work?

- 4.1 In the majority of cases, the inspecting Building Control Surveyor will try and solve the problem informally with your builder if you have employed one or with you personally if you are organising or doing the work yourself. This will usually involve having the incorrect work already done altered or, if an inspection has not been carried out when it should have been due to a failure to give the Council the necessary notice, it will mean that the work not inspected will need to be opened up for an inspection. These informal methods usually mean that the problem is sorted out within two or three days.
- 4.2 If these informal methods are unsuccessful, the inspecting Building Control Surveyor will issue on site to your builder a list of the offending items and the builder will be given a period of time to rectify the offending work or open up work as necessary. You will automatically be given a copy, a further copy is placed upon the Council's file and a fourth copy is held by a more senior member of the Building Control team. His job is to regularly monitor the progress being made to put the work right.
- 4.3 Irrespective of whether or not the Council decides to invoke statutory enforcement procedures, the existence of such a list of unresolved outstanding work on the file will mean that a Completion Certificate will not be issued.

5. What could happen next?

- 5.1 Depending upon the nature of the outstanding work, the Council has a discretion to use powers contained in an Act of Parliament called The Building Act 1984. Two options are available:
- Any contravention of Building Regulations is a criminal offence. Under section 35 of The Building Act 1984, the Council can prosecute anyone who fails to comply with the regulations. This could be your builder, or even you as the owner, particularly if you are organising the work yourself using different sub-contracted trades.. Anyone convicted of contraventions of Building Regulations will usually be fined and the

Court can also order that that person pay a fine for each day that passes following conviction until the work is put right.

- Even if the Council doesn't prosecute anyone for the contravention, it can also serve a formal notice under section 36 of The Building Act 1984 upon you as the building owner. This notice specifies the extent of the offending work and the timescale within which it must be put right.

6. What sort of contraventions of Building Regulations could lead to the Council serving a notice on me under section 36 of The Building Act 1984?

6.1 Each building project is different and so it is difficult to be completely specific about a full list of circumstances where a Notice would be served. However, as a general rule, they would be used as a tool of last resort where:

- The building was structurally defective.
- Means of escape and other fire safety precautions were defective.
- Where relevant, if sound insulation was inadequate, and
- Where relevant, suitable access and facilities for disabled people have not been provided.

7. What happens if I don't put the work right within the time allowed by the Council?

7.1 The Council may choose to do the work itself. It doesn't have to, but if it does do the work, it will then send you a bill for it.

8. Are there any ways to question what the Council is doing?

8.1 Yes. At any stage in the process you are entitled to use the Council's complaints procedures, details of which are available on-line. If the problem gets to the stage where a notice under section 36 of The Building Act 1984 is served on you, you can challenge the Council by obtaining a specialist report to try and demonstrate that the Council was wrong in serving the Notice on you in the first place. The way of doing this is specified in section 37 of The Building Act 1984.