

Appendix 1

Proposed Cherwell Building Control Enforcement Policy

1. Overview of our Enforcement Policy

We will not sign off (issue a Completion Certificate for) any development which in our opinion is not fully compliant with all the Building Regulations covering it. However, that does not necessarily mean we will use our powers of enforcement against every non-compliance. We recognise that enforcement is resource intensive and can be stressful for all concerned. We will consider each case on its merits and take an approach that is proportionate, makes the best use of our resources and is in the best interests of the public.

Where we elect not to use our enforcement powers (see below) we will give the applicant a full list of the non-compliances and the remedial measures he/she will have to undertake to achieve compliance. We will also point out that our not being able to issue a Completion Certificate may have consequences such as difficulties achieving a future sale of the property or raising a loan or mortgage against it.

We will not enforce against minor technical breaches that could affect only the occupiers' use of the property, cause no harm and have no life-safety implications.

Life-safety, structural stability and weather-proofness are pre-requisites of any reasonable use of a building and are matters which will warrant our intervention and ultimate enforcement. However, we will only enforce after all other means of achieving compliance have been exhausted.

We will consider each non-compliance according to its effect on who might occupy or use the development and also have regard to parallel enforcement legislation. Our Housing and Environmental teams and the Fire Service team with whom we work closely have their own powers which in certain circumstances may be more appropriate.

2. The Reasons for Enforcement

The Building Regulations exist to ensure that all buildings which people occupy, live in and work in are safe and sustainable. The Regulations cover many aspects from structural and fire safety to effective access and sanitation and increasingly to the use and conservation of essentials such as water and energy.

For the benefit of all the community the Council has a duty under Section 91 of the Building Act 1984 to ensure, as far as reasonably practicable, that the Regulations are met.

3. Your Responsibilities as a Building Owner

When developing or altering a building you as its owner have the primary responsibility to ascertain whether the Building Regulations apply to what you propose and if so to design and detail the work so that it is compliant. In these circumstances your responsibility extends to making a Building Regulations application.

If you are in any doubt whether what you are proposing falls within the Regulations come to us and we will advise. We will also help you make your application.

4. Enforcement as a Last Resort

The Council has a General Enforcement Policy which requires a proportionate sensitive and helpful approach by us at all times. We will always do our utmost to avoid formal enforcement by negotiation and giving advice.

Where we have had no contact about an application for 90 days we will contact the applicant to request a visit or require a progress report. This should materially reduce the number of cases where a development proceeds non-compliantly without our knowledge but under an application.

Where timescales are agreed to correct work that has been carried-out in breach of the Building Regulations these will be reasonable having regard to the practicalities of what needs to be done to secure compliance and the seriousness of the breach.

We will clearly set out the non-compliances so that you can engage with your builder or advisor on how to achieve compliance. We will always be on hand to respond to any queries.

When negotiations do fail, or when you fail to take our advice we will always let you know whether we intend to escalate the matter and what the next step in the escalation process will be.

We always want to avoid taking action.

5. When we will take Enforcement Action

We recognise that most people want to obey the law and not put any occupants of their properties at risk or to inconvenience. However, if negotiations to correct non-compliances have failed we will consider enforcement action having regard to the following circumstances

- The seriousness of the breach, and particularly if it gives rise to a life safety risk or may cause personal injury
- If the breach could cause a serious risk to the environment
- If the breach is the result of a blatant or foreseeable breach of the Regulations
- If prevarication occurs that gives rise to no prospect of a serious breach being corrected in a reasonable timescale
- If there is a history of similar or other breaches
- If we have been deliberately given misleading information to cover up a breach
- The intent where a breach has knowingly occurred

6. How we take Formal Enforcement Action

When we decide we must enforce we will do so by serving upon you a Statutory Notice under sections 35, 35A or 36 of the Building Act 1984. The Notice will set out in unambiguous detail what the breach is or breaches are, what you must do to comply with it and the timescale for doing so. Your failure to comply with the Notice will result in the Council prosecuting you through the Courts.

Prosecution is an expensive and resource intensive process for both the Council and those being prosecuted but will follow if a Statutory Notice has not been complied with.

The penalties following a successful prosecution are set out in the legislation.

7. Your Right of Appeal

Following the service of a Statutory Notice you have the right to appeal it under s.40 Building Act 1984. This will be set out in the Notice we serve on you along with how to appeal and the period in which you have to make an appeal.

8. Summary

Our approach to enforcement will be fair and reasonable at all times having regard to all the circumstances of the matter. It will be based on the following values:

- It will be proportionate, risk-based and targeted
- It will be equitable
- It will be open
- It will be consistent

We will address all non-compliances of “notifiable work” in a consistent proportionate and fair way having regard to the circumstances of each case and in particular whether the non-compliance could result in life safety issues or lead to injuries. What is “notifiable work” under the Building Regulations is clearly defined within them

- Our clear priorities will be where the non-compliances have led to risks of life safety
- We will address all cases of non-compliance in a sensitive manner using from the outset all means of encouragement to have them corrected
- For all applications we receive we will try to keep in contact at appropriate intervals with the applicant to minimise the risk of non-compliant work progressing to the point where it has to be dismantled or corrected
- We will use our powers of enforcement wherever we believe it is proportionate and in the public interest to do so.
- We will follow the national guidance on Building Regulations enforcement contained in <https://www.members.labc.co.uk/sites/default/files/Enforcement%20Policy.pdf>