



SOUTH THAMES GATEWAY BUILDING CONTROL PARTNERSHIP

ENFORCEMENT POLICY

1.0 Introduction

1.1 Local Councils enforce legislation to protect the individual and the community as a whole. Council enforcement services carry out a range of activities with the aim of achieving this and to achieve compliance with legislation by individuals and businesses. The purpose of this policy is to publicly summarise South Thames Gateway Building Control Partnership's (STG's) enforcement policies adopted to seek such compliance. This document outlines the STG's policy and sets out how it will support the achievement of the overall aims of STG. The purpose of the policy is to secure effective compliance with legislation while minimising the burden to the four Councils, citizens and to businesses. It is ultimately the responsibility of individuals and businesses to comply with the law.

2.0 Legal Duties

2.1 The duty to enforce Building Regulations is contained in the Building Act 1984, Section 91.

2.2 Local authorities have a responsibility to enforce the Building Regulations in their area. The South Thames Gateway Building Control Partnership was formed on 01 October 2007 and brought together the building control sections from Gravesham, Medway and Swale councils. On the 1st April 2018 it expanded to incorporate Canterbury City Council. The Partnership operates under delegated powers from a Joint Committee made up of members representing the four authorities and now has the responsibility of administering and enforcing the building regulations on behalf of the three authorities.

2.3 The sole responsibility for prosecutions and serving notices under the Building Act 1984, Section 35 and Section 36, rests with local authorities. Approved Inspectors do not have this power.

3.0 The Relationship Between Enforcement and Compliance With Legislation

3.1 The role of Building Control in carrying out the administration of Building Regulations and associated legislation is complex. It takes many forms: at the first level it is an enforcement role; at the second level it is a role that helps to ensure compliance with the legislation without necessarily using enforcement powers.

- 3.2 In practice, the inter-personal skills, together with the technical and legislative skills of the Partnership's staff are key to achieving the correct standard of work. The skill is in using a combination of advice and assistance to ensure compliance and only reverting to enforcement in its strictest sense as a last resort. Evidence that this approach works is witnessed by the fact that there are only a few prosecutions annually in the Magistrates Court in respect of contraventions of the Building Regulations.
- 3.3 The largest part of the role is assisting clients towards compliance; this is a two stage process in the area of plans submission, and when the work is in progress on site. The plans submission system lends itself to the surveyors helping the client towards compliance through good communication.
- 3.4 The site work is an area where compliance assistance and enforcement sit side by side. The two systems of work, the Building Notice route (which does not need plans to be submitted) and the Full Plans route (where builders work to the submitted application) sometimes require a different approach by the surveyors.
- 3.5 Under the existing system of Building Control anyone can build work to which the Regulations apply as there is no system of registration as in some other parts of the world. So there can be a full range of builders in terms of knowledge, experience, expertise and the finished quality of the building construction. Building Control Surveyors will help towards compliance by giving advice and by encouraging the builder to work correctly where necessary or to correct mistakes that have been made.
- 3.6 Enforcement will be necessary if contraventions occur on site and the builders do not correct the work, then the process of prosecution under the Building Act 1984, Section 35, may need to occur.
- 3.7 If the contraventions of the Building Regulations are not corrected on site and are deemed to be serious then a notice will be served under the Building Act, Section 36. This notice is served upon the owner and not the builder and requires the alteration, removal or correction of the offending works within a 28 day period. If this is not done, then the Partnership can recommend the relevant local authority to undertake remedial works in default and recover from the owner its reasonable expenses in connection with the work. There is a time limit of twelve months after which time the Act prohibits the serving of a notice.
- 3.8 Not all unauthorised work is discovered by surveyors and some may remain undiscovered for some time. Most unauthorised works come to the notice of the Partnership when the property is being sold. This is particularly so when dwellings are being sold. Beyond twelve months of the work being carried out, the Partnership has no power under the Building Act 1984 to serve notice upon the owner. However, in extreme cases the Council may apply to the Court for an injunction for the work to be put right. This power is used in extremely rare instances and the local authority must "come to the court with clean hands". In

other words, they are likely to fail in their application for an injunction if they or someone else in another department of the Council had perhaps already known about the work.

4.0 Regularisations

- 4.1 The Building Regulations were amended some years ago to allow those people who had building work carried out that was unauthorised to apply to the local authority for a regularisation certificate.
- 4.2 Where work has commenced after 11 November 1985, and plans or notices were not submitted to the local authority the applicant can apply in writing to the Partnership for a regularisation certificate. The applicant is required to send with the application, plans and details of the work together with plans that show any additional work to be carried out to secure compliance with the Building Regulations that were applicable to the work when it was carried out.
- 4.3 This route is not a panacea and can be fraught with difficulties because the Partnership may take steps to determine whether relevant requirements are met. This may include laying open the work and taking samples. The Partnership will only issue a regularisation certificate when they are satisfied that the work complies and even then it may not be conclusive evidence that the relevant requirements specified in the certificates are met.

5.0 Prosecution of Builders for Contravening the Building Regulations

- 5.1 If a person carrying out building work contravenes the Building Regulations, the local authority may decide to take them to the magistrates' court where they could be fined up to £5000 for the contravention, and up to £50 for each day the contravention continues after conviction (section 35 of the Building Act 1984). This action will usually be taken against the builder or main contractor, and proceedings must be taken within two years from the completion of the work.
- 5.2 The Building Act 1984, Section 36, is the power for the Partnership to have offending work removed or altered. The subtlety is that the notice to carry out the work is served upon the owner of the property and not the builder, although in some cases they may be the same person. The owner may have had the misfortune to employ a poor builder and is then served a notice to carry out remedial work. Most cases that get this far result in the builder being removed from the job by the owner. The owner then has to pay another builder to have the work corrected. The Partnership has a twelve month time limit in the notice procedure from the time the work was completed after which it is unable to serve notice in default. The local authority may then do the work and recover from the owner reasonable expenses in carrying out the work.

- 5.3 Owners of buildings who have had a notice served upon them for the removal of offending work may get a suitably qualified person to write a report in connection with the offending work. If subsequently the report makes out a case and the local authority withdraws its notice then the local authority may pay to the owner the expenses reasonably incurred as a consequence of serving the notice.

6.0 Dangerous Buildings and Structures

- 6.1 The Building Act 1984, Sections 77 and 78, give the Partnership powers on behalf of the Councils to deal with dangerous buildings and allow emergency measures to be taken where necessary.
- 6.2 A simplified explanation of the powers is that the building problems can be classified as those that require instant emergency action (The Building Act 1984, Section 78) and those where an unsatisfactory condition exists which needs to be corrected but not immediately. The powers differ quite significantly according to the seriousness of the situation.
- 6.3 Emergency situations can arise because of a variety of reasons such as storm damage, vehicle impact, collapse or partial collapse due to many factors. The Partnership will be called, probably by the police or fire service in most cases, and then will assess whether immediate action should be taken to remove the danger.
- 6.4 The local authority may take such steps as is necessary for the purpose of removing the danger but before doing so must give notice to the owner and occupier of the building or the premises, on which the structure is situated. Of course, it is not always possible to contact the owner and Section 78 recognises this and allows action to be taken if the owner cannot be contacted.
- 6.5 The local authority may recover from the owner the expenses reasonably incurred by them under this Section. The emergency measures may involve many technical solutions such as complete demolition, shoring, propping, or evacuation of personnel and isolating the area affected.
- 6.6 In other than emergency situations Section 77 is used. Then the course of action is through the Magistrates Court. The Partnership may apply to the Court for an Order to carry out such works as may be necessary to obviate the danger. Such Orders may include demolition of the building or part thereof and the removal of any debris resulting from the demolition. It may include an Order restricting use of the building or part thereof (due to overloading) until the Magistrates are satisfied that there is no further risk.
- 6.7 If there is no response by the person responsible then the local authority may execute the order in such a manner as it thinks fit and then recover the expenses reasonably incurred by it in doing so from

the person in default. The person in default may be liable on summary conviction to a fine by the Court.

7.0 Defective Premises and Demolitions

- 7.1 The Local Government (Miscellaneous Provisions) Act 1982, Section 29, gives local authorities, through the Partnership, the power to protect unoccupied buildings in their area or buildings where the occupier is temporarily absent if it appears that the building is not effectively secured against unauthorised entry or is likely to become a danger to public health.
- 7.2 This often results in either boarding or securing windows or doors or some form of fencing off preventing access into the property. The local authority may recover expenses reasonably incurred from any person to whom it has given notice or would have given notice had they been contactable under this Section.
- 7.3 The Partnership has the power to serve notice about intended demolitions where notice has been given under The Building Act 1984, Section 80. A copy of the notice is sent to the owner and/or occupier of any building adjacent to the one to which the notice relates. Further copies are sent to statutory undertakers, the Fire Authority and the Health and Safety Executive.
- 7.4 The notice may require shoring up, weatherproofing, repair and making good damage to any adjacent building. It may also require removal of material and rubbish, disconnection and sealing drains or sewers and making good the surface of the ground disturbed in so doing. The notice may also require arrangements for the disconnection of the supply of gas, electricity and water to the building and may stipulate conditions in which the site is to be left on completion of the demolition in order to protect the public and preserve public amenity.

8.0 Compliance

- 8.1 A range of activity is used to ensure compliance with legislation. Building Control staff carry out inspections of sites and premises on a routine and programmed basis in response to requests for statutory and non statutory inspections and as a response to complaints and enquiries from the public about businesses and individuals. There also education and intelligence-based activities as well as information passed on from other colleagues in the three authorities. Where non-compliance is discovered, options to seek and promote compliance include:

Explaining legal requirements and, where appropriate, the means to achieve compliance;

Providing an opportunity to discuss points in issue and where appropriate consideration of reasonable timescales to achieve compliance;

Service of advisory letters, warnings or statutory notices detailing non-compliance;

Enforcement actions including, but not limited to; cautions, prosecutions, injunctions and notices requiring works to be carried out within specific timescales, with the potential for work to be carried out in default as a last resort.

9.0 Principles of Enforcement

9.1 In March 1998 the Cabinet Office, Better Regulation Unit, issued a document aimed at Principles of Good Enforcement. This is known as the Enforcement Concordat and this document makes it clear that the expectations are that a firm but fair approach is required. This was later strengthened by the Regulators' Compliance Code which came into force in April 2008 to promote 'Better Regulation'.

9.2 The four Partner Authorities have signed up to the Concordat and Compliance Code and therefore its principles will be followed by STG Building Control Partnership.

9.3 The following principles underpin this approach:

- Standards and Procedures
- Helpfulness
- Openness
- Transparency
- Proportionality
- Consistency
- Targeting
- Complaints about Service

9.4 Standards and Procedures

The Partnership produces standards and procedures in respect of the level of service and performance to be expected across the range of Building Control issues. Such standards are produced following consultation with relevant parties.

The Partnership publishes its performance against the standards. The standards and procedures are readily available to businesses and others who are regulated.

9.5 Helpfulness

The Partnership will deal courteously and efficiently with all individuals, organisations and businesses that it comes into contact with. Staff will identify themselves by name and contact numbers will be made available. Electronic means of communication (for example, e-mail) will be facilitated wherever possible.

9.6 Openness

Information and advice will be provided in plain language, and details of charges etc. will be made readily available. Translation services will be made available where practicable to assist customers who do not have English as their first language.

9.7 Transparency

Transparency is important in maintaining public confidence in the Partnership's regulatory capability. The Partnership will help those being regulated and others to understand what they need to do and how it may be achieved and will also make its own role in the matter clear.

The Partnership will explain carefully (and, if necessary, in writing) why the action is necessary, who must carry it out, and by what date it must be carried out. A clear distinction will be made between legal requirement, a request, and best practice.

The Partnership will give every reasonable opportunity for discussion before formal enforcement action is taken, unless urgent action is necessary to protect the health and safety of the public or protect the environment, or to prevent the destruction of evidence that would compromise the case. In such circumstances, the Partnership will give a written explanation of its reasons for taking immediate action and this will be done as soon as practicable after the event.

The Partnership will give written notice of any rights of appeal against enforcement action at the time that the action is taken.

9.8 Proportionality

Proportionality means relating enforcement action to the risks. Enforcement action will be proportional to the degree of harm / risk the seriousness of any breach and to the particular circumstances of the case.

In taking enforcement action, the Partnership will attempt to minimise compliance costs, and recognises that householders, small businesses and voluntary and community groups frequently have to achieve compliance at minimal cost.

9.9 Consistency

The Partnership will carry out enforcement in a fair, equitable, and consistent manner in accordance with its policies and procedures. Similar approaches will be taken in similar circumstances to achieve similar ends. However, the Partnership recognises that consistency does not mean uniformity and staff are required to take professional decisions that take account of a wide variety of situations and circumstances. Staff are also expected to take account of local and national standards and guidance, and be aware of this policy. The attitude of the person or organisation subject to enforcement action will also be considered in deciding how enforcement action should proceed.

9.10 Targeting

Targeting means making sure that enforcement activity is targeted primarily on those whose activities give rise to the most serious risks or hazards which are least well controlled; and that action is focused on those who are responsible for the risk and who are best placed to control it.

9.11 Complaints Procedure

The Partnership has a formal complaints procedure and first stage complaints against the service are dealt with directly by the Partnership. Second stage complaints follow the procedure set by each partner authority and this can be found on the Partnership's website: www.stgbc.org.uk/complaints/ .

9.12 In addition to the Partnership's own complaints procedures, the Local Government Ombudsman hears complaints regarding local government mal-administration, and details of this service are available from the Partnership's website.

10.0 Enforcing Building Control

10.1 The Council's primary concern is to ensure compliance with the Building Regulations. This is best achieved by encouraging those responsible for the design and construction of buildings to comply with the functional requirements of the Building Regulations and associated legislation.

10.2 As a signatory to the Government's Enforcement Concordat and Regulators Code, STG has adopted a graduated approach to enforcement, commencing with an educative approach.

10.3 Officers will be aware that they are an important source of help on the maintenance of good standards in conformity with the law and will therefore provide education and guidance wherever practicable.

- 10.4 Officers have to exercise considerable discretion when approaching individual cases and will initiate the type of enforcement action warranted by the nature and severity of the risk, hazard or contravention that has been identified. A combination of types of action may well be appropriate.
- 10.5 In determining the course of action, an Officer will have regard to the current willingness and intentions of the responsible person to comply and their previous record of compliance.
- 10.6 If an Officer identifies any risk, hazard or contravention, this will be drawn to the attention of the person responsible for the work activity at that time or as soon as that person can be identified and contacted.
- 10.7 Whatever the type or nature of action chosen, it will be because it achieves the Officers primary concern as described above, and will be proportionate to the level of risk identified and the seriousness of any breach.
- 10.8 Departures from the Enforcement and Prosecution policy must be exceptional and the reasons will be documented.

11.0 Powers of Entry

- 11.1 The Partnership cannot carry out their enforcement role without having the ability to enter premises. Building Control Officers have a power that is set out in the Building Act 1984, Section 95. This power is one of the most important responsibilities carried by the organisation and its individuals and so the Act is quite specific about the conditions pertaining to the right to enter.
- 11.2 The officer must be authorised by the Partnership through the delegated powers of the Joint Committee and if so required produce a duly authenticated document showing their authority. This is done by an identification card that has a photograph, signature and authorisation from the four authorities to the Partnership.
- 11.3 The officer can enter premises at all reasonable hours providing there is a legitimate reason for doing so, such as ascertaining whether there are contraventions of the Building Act 1984 or the Building Regulations. Entry to factories or workplaces can be demanded under the requirements of the Act but in other premises if entry is refused there must be 24 hours notice given to the occupier.
- 11.4 If entry is refused then the Partnership may ask the Justice of the Peace to warrant under his hand and authorise the Partnership by any authorised officer to enter the premises if need be by force.
- 11.5 The Building Act 1984, Section 96, does allow the officer to take other people into the premises with him as may be necessary. This may, in extreme cases, mean the police but in many cases it may be a builder or perhaps a fire officer.

12.0 Content of Enforcement Notices

- 12.1 Notices served under the Building Act 1984, Section 36, have to be served in accordance with the Building Act 1984, Section 99, which requires the notice to indicate the nature of the works to be executed and state the time within which they are to be executed.
- 12.2 If the person required to execute the works fails to do so within the time limit the Partnership, through the local authority, may themselves execute the work and recover from that person the expenses reasonably incurred by them. The defaulter may be liable on summary conviction to a fine and to continuing daily fines on which the default continues after conviction.

13.0 Modernising the System

- 13.1 The results of the recent consultation on the Future of Building Control identified a number of issues of concern to stakeholders. Levels of inspection and compliance particularly in areas which are perceived to be optional (ie those not directly related to health and safety) are lower than they should be; Building Control bodies are under increasing resource pressure which is pushing levels of inspections down; enforcement options are limited and do not provide an effective mechanism for dealing with serious problems or persistent offenders.
- 13.2 One potential action that has been proposed is to build on the current Building Control Performance Standards to further develop an effective risk based approach to inspection and enforcement. Building on the recommendations of the Macrory Review and best practice developed in other regulatory regimes, develop and implement a clear risk based compliance and enforcement strategy which would provide a framework to aid Building Control bodies in raising compliance levels. This could, for example, help identify those organisations and/or projects that presented the greatest risk of non compliance with one or more parts of the regulations. Further development of a stepped approach to achieving compliance under different circumstances could range from education and on site advice at one end to full inspection at the other. This would also provide the use of a broader range of risk based sanctions.
- 13.3 A further action that is proposed is to develop a wider range of sanctions for non compliance and greater powers of enforcement, particularly against persistent offenders. Although the majority of difficulties can be resolved by the type of early interventions referred to above, in a small number of cases sanctions are needed to ensure compliance. At present local authority enforcement powers in relation to Building Control are subject to restrictive time limits and financial penalties are often relatively minor, which can encourage evasion. The Macrory Review suggested the development of a wider range of sanctions and the Government are looking into whether some of these may be appropriate for Building Control. Options could, for example,

include powers to issue stop notices, powers to levy administrative penalties, powers to prevent occupation until compliance is achieved, and/or heavier fines linked to the cost of correcting non compliant work.

14.0 Building Control Enforcement Policy

14.1 The aim of STG Building Control Partnership is to administer and enforce the Building Regulations, Building Act 1984, and any associated legislation to protect the health and safety of people in and around all types of buildings and provide for energy conservation and access to and use of those buildings.

14.2 The decision to use enforcement action will be taken on a case by case basis and, to ensure consistency of approach, in accordance with this and any other more specific policies which may be relevant. The action taken, which may be immediate, will be proportionate to the gravity of the non-compliance.

14.3 Factors that will be taken into consideration include, but are not limited to:

The risk that the non-compliance poses to the safety, health or economic welfare of the public at large or to individuals;

Evidence that suggests that there was premeditation in the commission of an offence;

The alleged offence involves a failure to comply in full or in part with the requirements of a statutory notice or order;

There is a history of previous warnings/cautions, or the commission of similar offences;

Aggravated circumstances such as obstruction of an officer or aggressive behaviour towards the public;

The offence, although not serious itself, is widespread in the area where it is committed;

There has been reckless disregard of health and safety requirements;

False information has been supplied wilfully, or there has been an intent to deceive.

14.4 In general, when taking enforcement action, the Partnership will:

Target resources towards those activities that give rise to the most serious breaches and any enforcement action taken will be primarily against those who have greatest responsibility for any breaches;

Seek to adopt the most effective approach to enforcement by co-ordinating action between other regulatory services, both internal and external to the council;

Clearly explain what needs to be done, why and by what date it needs to be rectified;

Distinguish between requirements that are stated in law and recommendations that are intended to achieve higher standards;

On complex matters, confirm in writing any legal contraventions that require rectification and the consequences of failing to remedy them;

Provide an opportunity to discuss issues before formal action is taken, unless it would provide an unacceptable delay in achieving compliance or in removing danger;

Seek to resolve disagreements about contraventions and remedies. Explain any rights of appeal that exist where formal enforcement action is taken, for example where a legal notice is served.

- 14.5 Prosecution will only be instigated following review of the matter by the Director of STG Partnership in consultation with the Partnership's legal advisors and the relevant council's legal department.

Before taking action the Partnership will normally consider whether there is a shared or complimentary role with another agency, for example the police, and liaise with that agency as far as is practicable and the urgency of the matter permits.

15.0 Legal and Policy Context

- 15.1 Enforcement actions are taken within the context of a legal and policy framework. The Partnership will carry out their enforcement-related work with due regard to the Enforcement Concordat and Regulator Code. This concordat and code arises from a central government initiative and has been adopted by each of the Councils. The concordat and code lay out the principles of good enforcement. These are:

Publishing clear standards, setting out the level of service and performance that the public and businesses can expect to receive;

Dealing with the public and the business in an open and honest way
Providing a courteous, efficient and helpful service;

Responding promptly and positively to complaints about the service;

Ensuring that enforcement action is proportionate to the risks to the public;

Carrying out duties in a fair, equitable and consistent manner.

15.2 A full version of the Enforcement Concordat is available by visiting the national archives at <https://webarchive.nationalarchives.gov.uk/+http://www.cabinetoffice.gov.uk/regulation/documents/pst/pdf/concord.pdf> and the Regulator Code is available at <https://www.gov.uk/government/publications/regulators-code>

15.3 Where a decision to prosecute is made, this decision will be taken in accordance with the Code for Crown Prosecutors, which details considerations to be taken into account before commencing prosecution proceedings. A full copy of the code is available from:

The Crown Prosecution Service

29 Union Street

Maidstone

Kent ME14 1PT

Tel: 01622 356300

Fax: 01622 356370

Web:

<https://www.cps.gov.uk/sites/default/files/documents/publications/Code-for-Crown-Prosecutors-October-2018.pdf>

15.4 Enforcement decisions and actions will be made with due regard to the provisions of:

The Human Rights Act;

The Crime and Disorder Act;

Equal rights and anti-discrimination legislation;

Service specific legislation;

All other relevant legislation applicable from time to time.

15.5 If it is in the public interest, matters concerning non-compliance may be shared, where appropriate, with other enforcement agencies. Any such action will be undertaken in compliance with the General Data Protection Regulation.

15.6 The Partnership is aware of the need to ensure that all members of the community allowed equal access to services. It will offer assistance to those who do not speak English as their first language and make appropriate arrangements to assist those who consider themselves disabled within the meaning of the Equality Act 2010.

16.0 Authorisation of Officers

16.1 Only officers who are competent by training, qualification and/or experience will be authorised to take enforcement action. Officers will also have sufficient training and understanding of this enforcement

policy to ensure a consistent approach to their duties. Officers are required to show their authorisations on demand.

17.0 Review of Policy

- 17.1 The implications and effectiveness of this policy will be constantly monitored.
- 17.2 This policy will be reviewed every twelve months to reflect the changes indicated by internal monitoring, by legislation or by guidance from Communities and Local Government or Local Authority Building Control.

As of 1 September 2020