

Dangerous Structures & Demolition Policy

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1.0 **INTRODUCTION**

- 1.1 Building Control Services on behalf of the local authority provides a major contribution to the quality of health and safety of the public. The duties and powers conferred on the local authority under the legislation for dealing with Dangerous Structures must be undertaken in such a manner as to ensure that reasonable standards of safety are achieved.
- 1.2 Defective premises and demolition is defined for the purposes of this document as the administration process involved in the enforcement of statutory requirements as defined in the Building Act 1984.
- i) Taking appropriate action when dangerous structures are reported or occur.
 - ii) Dealing with demolition notices as received.
- 1.3 The objective of these processes is to ensure that, as far as practicable, the general public is safeguarded against possible danger from defective and deteriorating structures of all kinds, also demolition works and associated services. (Electricity, Gas, Water, etc.).

2.0 **LEGISLATION**

- 2.1 The legislation under which the local authority deal with dangerous structures is the Building Act 1984, Section 77 and 78,
- 2.2 Demolition legislation falls under the Building Act 1984 Sections 80,81, 82 and 83.
- 2.3 For Ruinous or Dilapidated Structures, The Building Act 1984, Section 79, may be of assistance in certain circumstances, as may also the Local Government (Miscellaneous Provisions) Act 1982, Section 29 – Protection of Buildings.

2.4 **OTHER LEGISLATION**

- 2.5 Planning (Listed Buildings And Conservation Areas) Act, 1990.
- 2.6 If the potentially dangerous building is:
A listed building
A building which is the subject of a preservation order, or
A building situated in a conservation area,
- 2.7 Section 56 of the Planning (Listed Buildings and Conservation Areas) Act, 1990 (the 1990 Act) requires the local authority to consider exercising their powers under the 1990 Act rather than under the 1984 Act. Sections 47 and 48 of the 1990 Act allow the local authority to acquire a building in need of repair and Section 54 allows the authority to carry out urgency preservation works.

- 2.8 The Highways Act 1980.
- 2.9 In certain circumstances, where the building is near a highway, provision exists in the Highways Act 1980 (the 1980 Act) for the highway authority to become involved.

3.0 BUILDING OR STRUCTURE

- 3.1 The word “building” is defined in Section 121 of the 1984 Act as any permanent building and includes any other structure or erection of whatever kind or nature (whether permanent or temporary).

4.0 CONDITION OF THE BUILDING

- 4.1 On receipt of information regarding a building or structure, which is in such a condition as to be a potential danger, it will be necessary for the appropriate officer to inspect the building and prepare a full report as to its condition. The information should be recorded on the appropriate Building Control software system. This report may be needed as evidence to a Magistrates Court.

5.0 TRAINING

- 5.1 Building Control Services will ensure that staff are adequately trained to carry out the function. It is essential that the training allows officers to show both a professional and confident approach when dealing with the general public in what will sometimes be difficult and stressful situations, sometimes involving their property due to damage caused not by neglect but by unforeseen circumstances. If officers feel they require more training on any aspects they should make their team leader aware in order for the appropriate training to be put into place.

6.0 HEALTH AND SAFETY

- 6.1 It is the responsibility of each officer to ensure that their health and safety is not compromised in any way. A risk assessment should be carried out prior to entering the site of a dangerous structure. If a risk is considered to be present it should be logged on a risk assessment form by the officer.
- 6.2 A Risk Assessment for attending dangerous structures and lone working has been carried out and is available for the officer upon request.
- 6.3 All officers will be required to follow the policy on lone working.
- 6.4 Adequate and appropriate personal protective equipment (PPE) will be issued to all staff and it will be their responsibility to maintain and use it, on all relevant occasions.
- 6.5 Before resorting to PPE all staff have a duty to eliminate or control the risk as far as is reasonably practicable, by some other means.

DANGEROUS STRUCTURE PROCEDURE

7.0 GENERALLY

7.1 Under Section 77, if it appears to a local authority that a building or structure is in such a condition or is to carry such loads as to be dangerous, the authority may apply to a magistrate's court for an order requiring the owner to:

- i) Execute such work as may be necessary to obviate the danger; or
- ii) If he/she so elects, demolish the building or structure or part; or
- iii) Restrict its use.

It is imperative that the Building Control Service Manager, HoPS and Legal Services are consulted at every stage of this process.

7.2 In practice it is customary to serve an informal notice requesting the owner to remedy the problem (within a stated period), before court action is resorted to. It should also be noted that consideration should be given to the provision of the Planning (Listed Buildings and Conservation Areas) Act, 1990 relating to listed buildings, building preservation orders and conservation areas.

7.3 Section 78 provides that, if it appears that immediate action should be taken, the local authority ***"may take such steps as may be necessary for that purpose"***. However, Section 78(2) states that before exercising that power, the local authority shall, if reasonably practicable, give notice of their intention to the owner and occupier.

7.4 Upon notification of a Dangerous Structure the responsible Building Control Officer on behalf of the local authority will: -

- i) Record all of the relevant details on the appropriate Building Control software system.
- ii) If possible check with the Development Control Section to ascertain if listed building or within a conservation area
- iii) Carry out a site inspection
- iv) Record and photograph (if necessary)
- v) Ascertain who is the owner
- vi) Decide upon action and record on the appropriate Building Control software system.
- vii) Issue any Notices.

viii) Follow up notices as necessary

ix) If an external contractor has been used, invoice the relevant person for the costs involved.

ix) Close the file on satisfactory completion.

7.5 If the structure is dangerous, Building Control Services may: -
“Shore up or otherwise secure the structure and may erect a proper hoard or fence for the protection of public and shall cause notice in writing to be served on the owner or occupier of the structure requiring him/her forthwith to take down, repair or otherwise secure it as the case requires”.

If the structure is not in imminent danger of collapse then serve a notice under Section 77 of the Act giving the owner a reasonable time period to rectify the reported danger.

8.0 NOTICES

8.1 Statutory Notices must always be phrased so as to take account of any historic building’s listed status and should not require demolition or removal without the agreement of the Conservation Officer. See also the Planning (Listed Buildings and Conservation Areas) Act, 1990, Section 56.2.

8.2 When undertaking work to remove a Dangerous Structure there are occasions when the property will be left insecure or exposed to the elements. Although Section 78(4) implies that “fencing off the building or structure, or arranging for it to be watched” may be carried out, the Local Authority may decide to undertake additional works under the Building Act 1984 (S80-83)

9.0 SECTION 77

9.1 Under Section 77, the Building Act allows a Local Authority to apply for a Court Order: the Local Authority may act in default to execute the work.

9.2 If the owner or occupier fails to comply “as speedily as the nature of the case permits” on complaint by the Council, a Magistrates Court may order compliance with the Notice: the Local Authority may then act in default. The Building Control Service Manager, HoPS and Legal Services must be consulted to agree the process and resources required.

9.3 The Magistrates Court acts as arbitrator when an order is applied for or when proceedings are taken to recover expenses.

9.4 If the survey indicates a potential danger it is usual to serve an informal notice on the owner requesting that steps be taken to remove the danger. The name and address of the owner can usually be located from the Land Registry through Legal Services. The notice should specify: (a) the nature of the danger; (b) the works required to abate the danger; and should give the owner a reasonable time within which to remove the danger.

9.5 In some circumstances it may be appropriate to serve a stronger letter in which reference is made to action in the Magistrates Court. In this case a Section 77 Notice may be issued.

10.0 FORMAL PROCEEDINGS

10.1 Where the owner fails to comply with an informal notice, steps should be taken to apply to a Magistrates Court by way of a complaint for an Order. This must be served by Building Control Services on behalf the local authority. All notices should be delivered using recorded delivery.

10.2 Notice should be served under section 16 of the Local Government (Miscellaneous Provisions) Act, 1976 requiring information to be furnished as to the ownership of the building. This notice can be served by Building Control Services on behalf of the local authority.

11.0 ORDER MADE BY MAGISTRATES COURT

11.1 A Court may make an order: -

- i) where danger arises from the condition of the building or structure, requiring the owner to carry out such work as may be necessary to obviate the danger, or if he so elects to demolish the building or structure, or any part of it and remove any rubbish resulting from the demolition, or
- ii) where danger arises from overloading of the building or structure, restricting its use until a Magistrates Court is satisfied that any necessary works have been carried out and withdraws or modifies the restriction.

11.2 An order made under (i) above usually stipulates a time within which the work must be carried out and if the owner fails to carry out the work within the time specified, the local authority may carry out the work as they think fit and recover from the person in default expenses reasonably incurred by them in doing so.

11.3 Without prejudice to the right of the local authority to execute these powers, the person is liable on summary conviction to a fine not exceeding level 1 on the standard scale (currently £200).

12.0 SECTION 78

12.1 Where a building or structure is considered by the local authority to be in such a condition or is carrying such loads as to be dangerous and immediate action should be taken to obviate the danger, Building Control Services, under section 78 of the Building Act, 1984, may take such steps as are necessary for that purpose.

12.2 If it is reasonably practicable, however, before carrying out the work, the authority must notify the owner of the premises. Expenses incurred in carrying out the work may be recovered from the owner.

- 12.3 Where the expenses relate to fencing off the building or having it watched, these expenses are only recovered up to the time the danger has been removed or any order made under Section 77 has been complied with. In proceedings to recover expenses incurred under Section 78, if the Court decides that the local authority should not have used the emergency powers but should have proceeded under Section 77, the expenses are not recoverable.
- 12.4 The Court can also decide whether other persons should have to bear some of the expense incurred and also whether compensation should be awarded for damage caused by the local authority's actions.

13.0 CALL OUT IN NORMAL OFFICE HOURS

- 13.1 Building Control Services will take a proactive stance in discharging enforcement duties relating to Dangerous Structures and Demolition, they are the responsibility of the Head of Planning Services assisted by the Building Control Service Manager, Principal Building Control Officers and Building Control Officers.
- 13.2 Upon notification of a Dangerous Structure a Building Control Officer will record the relevant details on the appropriate Building Control software system and follow procedure in 7.4 above. If possible try to ascertain if the building is listed or falls within a conservation area.
- 13.4 The Building Control Officer should carry out a site inspection to determine if the structure is dangerous, document and take photographs as necessary. Make efforts to find who is the owner or occupier of the structure and inform them of their responsibilities to remove any danger.
- 14.5 Response times should be within 1 hour for urgent status, 4 hours for standard status and within 24 hours for non-urgent status. The status will be allocated by the responsible officer receiving the complaint based on the information given. In adverse weather conditions the officer will use their own judgement in determining if it is safe for them to respond to a call out and should never put their own safety at risk.

14.0 OUT OF HOURS

- 14.1 A duty rota is in operation to cover 24 hours a day, 365 days a year, for the Authority area, this will always be published in advance to cover at least twelve months ahead of schedule.
- 14.2 In the event of a duty officer being unavailable the responsibility for the function will fall on one of the remaining officers.
- 14.3 Out of hour calls are directed to the Duty Officer via the arranged Control Centre or the Emergency Services using home or mobile number, the officer will analyse and prioritise the situation before investigating and taking appropriate action.

- 14.4 Response time to any call out will depend on the urgency of the situation but should be as soon as practicably possible. In adverse weather conditions the officer will use their own judgement in determining if it is safe for them to respond to a call out and should never put their own safety at risk.
- 14.5 Officers should check mobiles frequently to ensure correct operation, this equipment should be kept with them and turned on at all times when on call, mobiles may be set to silent service if necessary.
- 14.6 Ultimately the responsibility for rectifying dangerous structures and organising the appropriate work required lies with the owner, however in the short term the duty officer may find it necessary to safeguard the general public from potential danger.
- 14.7 In the event of multiple Dangerous Structures occurring at once, then the duty officer should contact other Management Team members for assistance. If circumstances dictate that the size, number or frequency is becoming untenable then the Director or Business Manager should be contacted to co-ordinate response.

15.0 RECORDS

- 15.1 Computer records and digital photos are used to record each dangerous structure or demolition dealt with for the Authority. Records should be monitored and updated until a situation reaches a satisfactory conclusion.

16.0 RUINOUS AND DILAPIDATED BUILDINGS

- 16.1 After a building or structure has been made safe, it is possible that it may be ruinous or dilapidated state. If this is considered to be detrimental to the amenities of the neighbourhood, the local authority may consider instigating proceedings under Section 79 of the 1984 Act.
- 16.2 Enforcement of this section of the 1984 Act gives the option to the owner to either repair or restore the building or demolish the structure.
- 16.3 This latter course could evoke legislation appertaining to demolition procedures. (Sections 80-83 of the 1984 Act).

17.0 COST OF RECOVERY

- 17.1 Building Control Services may recover from the owner the expenses reasonably incurred by them under Section 78(i.e. removal of immediate danger), but the Act does not allow for the recovery of expenses for work done under Section 77 unless work is done in default.
- 17.2 The Act requires a Court, during proceedings for the recovery of expenses to question whether immediate action was indeed necessary (and, therefore, whether the costs can be recovered).

18.0 LEVEL OF SERVICE

18.1 The Level of Service provision must ensure that Building Control Services are, by exercising their powers, reducing the possibility of injury and loss of life. The amount of resources allocated to dealing with Dangerous Structures is a matter for Building Control Services to determine and will depend on many factors such as: -

- (a) Level of qualification and experience of staff;
- (b) Availability of specialist advice (e.g. Structural Engineers);
- (c) General condition of property in the area;
- (d) Historical information and statistics;
- (e) Availability of contractors to undertake necessary works;
- (f) Communication systems used by Building Control Services (e.g. mobile telephones);
- (g) Role of Building Control Services in emergency plans for dealing with dangerous structures and major disasters.

18.2 This objective can be achieved by providing the service (including the necessary Contractor) on a 24 hour call out, providing adequate cover to cope with a series of Dangerous Structures due to, for example, high winds and providing contingency plans for major emergencies.

18.3 It is necessary to keep accurate records, including photographs of all Dangerous Structures. These records should be drafted in a form that enables evidence for inquests and Court proceedings to be presented in a professional manner.

19.0 DEMOLITION PROCESS

19.1 This document describes what action is taken on receipt of information regarding a proposed demolition within the scope of statutory notification.

20.0 NOTIFICATION AND ACTION

20.1 On receipt of notice of demolition, the Technical Support Officer who receives the information shall record the details within the computer software system. The notice of demolition shall be passed to the responsible Building Control Officer for the area in which the building is located as soon as is practicable.

20.2 The Technical Support Officer will generate a computer application and a case file, enter the notice in the file and shall give it a reference number as generated by the

computer system. The responsible Building Control Officer will then carry out the following procedures:

- Check the notice/correspondence for completeness, validity and accuracy
- Check for exempt work
- Check with development Control to ascertain if further consent is required
- Carry out a site inspection
- Determine conditions for inclusion on counter notice
- Initiate any formal enforcement action
- Close the file on satisfactory completion

- 20.3 Where a notice of demolition is included as part of an application for Planning Permission or Building Regulation Approval, the responsible officer shall write to the applicant requesting that they give 14 days notice of demolition in the event that building consent is granted and demolition is to proceed.
- 20.4 The Building Control Officer shall carry out consultations with and consider observations from Statutory Bodies, the Local Authority Planning Department, applicant and others as necessary. The Building Control Officer shall record this information on the Demolition Site record on the computer software system including photographs and attach all correspondence to the Demolition File.
- 20.5 The Building Control Officer shall determine any appropriate conditions and list them on a Demolition Notice – Section 81/82 Counter Notice and shall send it to the applicant with a copy to other interested parties. This counter notice indicates the conditions/requirements for the demolition works.
- 20.6 During and after demolition, subject to notification, the Building Control Officer shall carry out inspections as necessary to confirm compliance with the conditions on the relevant Demolition Counter Notice. The Building Control Officer shall record all inspection details on the Demolition Site Record on the computer software system.
- 20.7 If the relevant action has not been taken in accordance with the appropriate conditions, the Building Control Officer shall process the matter in accordance with the current enforcement policy/procedure. The Officer shall record details of any further action on the computer software system. On satisfactory resolution, the application and file shall be completed.

If you would like this information in an alternative format:- large print or electronically, please do not hesitate to contact us on (01522) 873390 or email: building.control@lincoln.gov.uk