

	<h1>Building Control</h1> <h2>Householder Guidance Leaflet No. 12</h2> <h3>Determinations, Relaxations Contraventions & Notices</h3>	<p>This leaflet is one of a series produced by the Hertfordshire Building Control Technical Forum</p>
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Introduction:

This leaflet has been drawn up to give a concise overview of the procedures for determinations, relaxations and notices. For a more comprehensive overview, we would direct you to the following document:

Communities And Local Government – ‘Guide To Determinations and Appeals Under The Building Act 1984 – April 2011 Edition

Further information and guidance is also available online at:

<http://www.communities.gov.uk/planningandbuilding/buildingregulations/determinationsandappeals/>
OR
<http://www.planningportal.gov.uk/buildingregulations/determinationsandappeals/guide>

Information:

Determination of Questions - by the Secretary of State Section 16 (10) of the Building Act.

Building Control is required to assess building regulation applications and works on site to ensure compliance with the functional requirements of the regulations i.e. the 13 parts (A – P) listed under schedule 1 of the regulations.

The regulations are supported by ‘approved documents’ which identify ways of complying with the requirements discussed in the schedule.

These are not definitive –the documents are designed and allow for innovative design as well as for new/developing products and building methods - which may or may not be covered by the approved documents.

In such cases reference to other documentation e.g. British or European Standards, Agreement Certificates etc. may be sufficient to support the use of the product/method, thereby satisfying the requirement.

Occasionally when checking a ‘Full Plans’ application the building control officer may consider that a detail or method of construction is not satisfactory and will not meet the requirement, resulting in a disagreement with the designer and subsequent rejection of the application or imposing a condition on an approval.

If the designer (or owner) is of the opinion that the detail or method is appropriate, they may seek a ‘determination’ by raising the question of compliance with the office of the Secretary of State for Communities and Local Government.

This process (which can only be applied to a full plans applications and not a building notice) allows for a second opinion by an impartial professional person who will provide a determination of the matter in question. It is important that any such questions are raised early – since they relate to proposed work and should in theory be resolved ‘before work has substantially commenced’.

If works proceed prior to a determination being made, and subsequently the determination rules that the works do not comply with the Building Regulations, the local authority has powers under the Building Act to enforce either modifications to, or the removal of, the non-compliant works.

Fees for Determinations

(Regulation 14 –The Building (Local Authority Charges) Regulations 2010)

A fee is payable to Communities and Local Government when applying for determinations and should be included with your application. It is calculated on the basis of half of the local authority's plan charge, excluding VAT, subject to a minimum limit of £100 and an upper limit of £1000 (with the exception of building works solely related for disabled persons).

Full details of the method of application and associated information can be found on the 'communities' website (www.communities.gov.uk).

Relaxation or dispensation of building regulation requirements, appeals against refusals Sections 8, 9 and 39 of the Building Act (regulation 11 of the building regulations)

In certain circumstances it may be considered that it is inappropriate or is too onerous to comply, either in part or fully with a building regulation requirement.

In such circumstances an application may be made to the local authority requesting them to either relax or dispense with the requirement. Such applications can be made irrespective of whether the application has or is being made under full plans, a building notice or a regularisation application and can be made at any time – before, during or after the work is complete.

Prior to submitting an application it would be prudent to discuss the situation with Building Control to gauge the Council's likely response and also to obtain advice. Where possible alternative solutions would be examined, that could result in compliance with the requirement.

If an application is submitted, the Council may consult with adjoining property owners who could be affected by the outcome of the application.

The decision whether to relax or dispense with a requirement rests with the Council. In the event of the application being refused however, the applicant has a right of appeal to the Secretary of State for Communities and Local Government.

Because of the time involved in processing such an application and as the outcome is unpredictable, work should not proceed to a point where it may have to be removed or rectified if the outcome is not favourable.

There are no charges connected with an application for relaxations or dispensation nor for an appeal against refusal.

Full details of the method of application can be found on the 'communities' website (www.communities.gov.uk).

Contravention of the building regulations (Sections 35, 36, 37 & 40 to 42, of the Building Act.)

In order to avoid the risk of contravening the requirements of the regulations, submission of a full plans application, rather than a building notice, ensures that once the application is approved, work carried out in accordance with the plans will, in substance, be in compliance with the regulations.

When a building notice is submitted the onus is on the builder to achieve compliance. The builder should therefore have an awareness of the general requirements of the regulations – and when not sure, should discuss the work with Building Control.

However problems can arise on site even with the benefit of approved plans, particularly in relation to existing buildings where certain assumption may be made prior to commencement, e.g. quality of sub soil, location of drains, direction of floor joists etc.

If the builder carries out work that is subsequently considered defective or unsatisfactory, then the building control officer would, in the first instance discuss and agree ways of correcting the situation - within a time frame.

If the matter is not dealt with as agreed the Council would have no alternative but to formalise the situation and write to both the builder and owner (who is ultimately responsible for the work), advising that the matter will be referred to the Council's legal service with a view of pursuing enforcement action.

Most Council's have introduced a procedure giving guidance on enforcement called the enforcement concordat. This clarifies the Authorities intention to avoid legal action where possible but provides for ultimately using legislative powers in respect of court action and fines as necessary. The appropriate sections contained in the Building Act are:-

- **Section 35**, this indicates the level of fines that would apply following summary conviction in a Magistrate Court.
- **Section 36** discusses the giving of a notice to the owner of a property to either remove or correct defective work.
- **Section 37** discusses the obtaining of a report from a 'suitably qualified person' – which on consideration may influence the Council to withdraw a Section 36 notice.
- **Section 40** discusses appealing against a Section 36 notice.