

Health and Safety Executive OC 404/21

Field Operations Division

To

Agricultural, Factory and Quarries Inspectors

STRUCTURAL SAFETY: ACTION BY INSPECTORS INCLUDING

LIAISON WITH LOCAL AUTHORITIES

Introduction

1. This OC gives guidance on how to deal with risks posed by structural instability of buildings and related structures. The content has been agreed with the Department of the Environment and the Scottish Development Department. The information contained in this OC supplements the general guidance in HSEM 1990/3 on HSW Act s.3 and how this should be enforced where there is potential overlap of interest between 2 enforcing authorities. In this case HSE and Local authorities' (LAs) Building Control Departments (or local variant) are involved. Since the exact titles of LA staff responsible for building control vary, unless otherwise stated, reference to LAs means officers enforcing the Building Acts.

Background

2. Hazards caused by structural instability may range from falling tiles to complete collapse, and may include structural hazards to existing buildings created by construction work to demolish, alter or extend a building. In all such cases there may be some risk to health and safety, with the possibility of public concern.

Legal framework

3. Both HSE and LAs have an interest in structural safety; HSE under HSW Act ss.2, 3 and 4 and the Construction (General Provisions) Regulations 1961 reg.50(2), and LAs under building standards legislation designed, amongst other things, to protect persons in and around completed buildings and structures from collapse or other hazards. In England and Wales, LAs enforce the Building Act 1984, the Building Regulations 1985 and other local legislation (including, in Inner London, the London Building Acts 1930-1939). In Scotland, LAs enforce the Building (Scotland) Act 1959, as amended, and the Building Standards (Scotland) Regulations 1981-1987. Further information on LAs' powers under the Building Acts is given at Appendix 1 for England and Wales and Appendix 2 for Scotland.

4. The provisions of the Building Act 1984 and the Building Regulations 1985 do not at present apply to the Crown. There are also specific exemptions in the 1984 Act in respect of statutory undertakers and similar bodies specified in the Act, and educational buildings for which plans are approved by the Secretary of State for Education and Science. In addition certain buildings, notably agricultural buildings, temporary buildings and buildings into which people do not normally go (eg

UKAEA, BAA and CAA), are exempt from the regulations. However they are not exempt from the remedial action powers of LAs under the Building Act and Public Health Act. In Scotland, UKAEA are exempt from the regulations unless the buildings are dwelling houses or offices. Crown buildings generally, as in England and Wales, are exempt from the remedial action powers of LAs.

5. HSE and LA health and safety inspectors have responsibility for enforcement of HSW Act under the Health and Safety (Enforcing Authority) Regulations 1989, and similar guidance to that below will apply to such LA inspectors when they are enforcing HSW Act.

Demarcation between HSE and local authorities

6. Normal approval and inspection of new building work for assessing compliance with building regulations, together with the initiation of remedial action for structural instability is the role of the LA's Building Control Department (or local variant). HSE inspectors are more often concerned with safe systems of work than with the structural safety of existing buildings although HSW Act s.1(3) explains that risks to safety and health includes risks attributable to the condition of the work premises therefore inspectors have a role to play on which guidance is given below.

7. In the case of structural instability of buildings considered prejudicial to health and safety of people in or around them, LAs are best placed to act since they have specific powers under the Building Act 1984 ss.76-79 and the Public Health Acts 1936-1961. In Scotland, LAs have a duty under the Building (Scotland) Act 1959 s.13 to demand that an owner takes remedial action or to undertake it themselves. It is the policy of the Health and Safety Commission/Executive that the general provisions of HSW Act s.3 will not normally be enforced when more specific legislation covers the risk in question, and where there is an agreement to that effect between the enforcing authorities involved.

8. However if a problem is brought to the attention of an HSE inspector or a potentially dangerous defect is noticed during normal inspection the following guidance should be followed.

Action by HSE inspectors

9. Where a building or structure at HSE enforced premises is effectively inaccessible to the general public (including children) and its collapse or partial failure would not endanger them, it may well be appropriate for any structural danger to be handled by HSE inspectors, invoking HSE Act s.2, Construction (General Provisions) reg.50(2) or where visiting employees of other firms etc are involved, HSW Act ss.3 or 4. However, in Scotland, this does not prevent Building Control Officers from taking action in accordance with their duties under the Building (Scotland) Act s.13.

10. Where the stability of a building is put at risk by the work activity in that building then the inspector should enforce under HSW Act s.3 or more probably s.2 as appropriate. The LA should be informed of action taken in this respect.

11. In many cases there will be a choice of HSE enforcing s.3 or LAs enforcing under the more specific legislation described in para 7. The ultimate on-site sanction available under HSW Act may not be sufficient to remove all persons from danger. For example, enforcement of a prohibition notice closing down a construction site which had already destabilised a building, or prohibition of a process in a factory might not effectively remove from danger other workers in the building, or members of the public.

12. In s.3 cases, HSE inspectors should take action under HSW Act only in the circumstances where an enforcement notice would clearly prevent the potential hazard from developing and the inspector is satisfied that the offending firm is prepared to take prompt remedial action. Often the extent of the problem will not immediately be apparent and both the assessment of danger and the practical remedy will require specialist advice. For HSE inspectors this will normally mean consulting the Field Consultant Group (FCG).

13. In all other s.3 cases where use of the more specific legislation is appropriate or there is reason to doubt the effectiveness of HSW Act action, eg because the offending firm may well vacate the premises leaving others exposed to the hazard, the matter should be referred to the LA as early as possible.

14. The urgency with which inspectors deal with these matters will depend, of course, upon the degree of risk. Where there is possible imminent danger inspectors may need to make arrangements by telephone from or near the premises and in extreme cases remain there until assistance comes.

Liaison with local authorities

15. In handing over a case to the LA, inspectors should make clear their concern. This will usually be done at a joint visit. Telephone calls and discussions should be confirmed in writing. LA building control officers are qualified to determine the actual danger, but in any event inspectors should feel free to consult the FCG if they so wish, even in the circumstances of a particular case of this kind.

16. In s.3 cases dealt with by HSE the LA should still be informed in writing and the inspector's action explained.

Annotation of instructions

17.HSEM 1990/3 - Note "See OC 404/21 for action relating to risks posed by structural instability of buildings".

31 January 1991

(2212/FOD/1990)

Disc No: FOD1C/Editors/J109/DH/12.90/CP

New Disc Ref No: J:\Editors\CA1\j109De90.sam

ASI headings

Building Act: Building Regulations 1985: Building (Scotland) Act 1959: Building Standards (Scotland) Regulations 1981-1987: building operations: construction: dangerous conditions and practices: demolition: HSW Act 1974: liaison: local authorities: premises: structures/structural.

APPENDIX 1

(para 3)

THE POWERS OF LOCAL AUTHORITIES IN ENGLAND AND WALES IN RELATION TO

DANGEROUS BUILDINGS AND DEMOLITION UNDER THE BUILDING ACT 1984

INTRODUCTION

1 This Appendix gives additional information to inspectors on the legal powers available to LAs to deal with dangerous or structurally unstable buildings and related structures under the relevant sections of the Building Act 1984. These powers complement those available to inspectors enforcing HSW Act in line with the proposed demarcation agreement.

2 Before recommending the use of a particular section it may be wise to consult the actual clauses and definitions. For example under Schedule 3, Part 2, ss.71-75, 77-83, 85 and 90 do not apply to Inner London.

BUILDING ACT 1984

3 The Building Act 1984 consolidates certain enactments concerning buildings and related matters. Part I gives powers to the Secretary of State to make building regulations for "(a) securing the health, safety, welfare and convenience of persons in or about buildings and of others who may be affected by buildings or matters connected with buildings; (b) furthering the conservation of fuel and power; and (c) preventing waste, undue consumption, misuse or contamination of water." Part II deals with the "supervision of building work etc other than by local authorities". Part III covers "Other provisions about buildings" including the powers of LAs with regard to the control of defective premises, dangerous or dilapidated buildings in ss.76-79.

Defective premises

4 Section 76 deals with defective premises (ie premises in a state "prejudicial to health and a nuisance"). LAs have 2 courses of action. They can follow a procedure laid down in the Public Health Act 1936 for dealing with Statutory Nuisances involving the serving of notices upon the owner/occupier to rectify the matter. Alternatively they may invoke their powers under this section to remedy the problem themselves (after the expiration of a 9 day period of notice) and then recover expenses from the person upon whom the notice was served. However, if the recipient serves a counter notice, within the first 7 days of the 9 day period, of his/her intention to rectify the matter personally, then the LA must take no action unless the work fails to proceed quickly enough. Any proceedings to recover the monies spent must satisfy the courts that the premises were "defective" and the normal procedures under the Public Health Act 1936 would have caused unreasonable delay in rectifying the matter. The LA cannot serve a notice under this section or proceed with the execution of any works if this would contravene the Town and Country Planning Act 1947 s.29 (ie a building preservation order).

Dangerous building or structure (overloading)

5 Section 77 deals with dangerous buildings. If it is considered that a building or structure (or part thereof) is overloaded or in a dangerous condition, then the LA may apply to a Magistrates' Court for an order compelling the owner either to rectify the condition or demolish the building. If the order is not carried out within the time specified by the court, then the LA may execute the order (using any method they consider applicable) and recover any expenses they incur in doing so from the person in default. That person is also liable to a maximum penalty on summary conviction of a fine not exceeding level 1 (currently £50). If the condition arises purely from overloading then the court can issue an order which restricts the use of the building until it is satisfied that the danger has been removed.

Emergency measures

6 Section 78 deals with emergency measures which the LA can take in respect of dangerous buildings. If a building or structure (or part thereof) is so overloaded or in such a dangerous condition that immediate action is required to remove the danger, then the LA may implement whatever measures are necessary to remove that danger. If it is reasonably practicable to do so they should first notify the owner and occupiers of their intentions. They are able to recover the expenses reasonably incurred in carrying out the work, however, they cannot recover the cost of fencing off or the services of security personnel for any period after the danger has been removed. In order to recover their expenses they have to prove to the court that action under s.77 was inappropriate. It should be noted that the LA may be liable for compensation for any damage caused in carrying out the emergency measures and that the decision to implement the emergency measures can be taken by a "proper officer" of the LA. Powers under this section cannot be applied to any structure forming part of a mine or quarry within the meaning of the Mines and Quarries Act 1954.

Ruinous and dilapidated buildings

7 Section 79 deals with dilapidated buildings and neglected sites which are considered detrimental to the "amenities of the neighbourhood". This section gives the LA powers to require the owner either to execute works of repair or to demolish the building (or part of it) and remove the rubbish. This includes material resulting from or exposed by demolition. Similarly if such materials are left on site (or any adjoining land) giving an appearance which is considered to be "seriously detrimental to the amenities of the neighbourhood" the LA can require the owner to remove the offending materials. Should that person fail to carry out the work within a specified time then the LA can carry out the work and recover the expenses incurred. In addition, the person would be liable to a maximum penalty on summary conviction of a fine not exceeding level 4 (currently £1,000) plus a further fine not exceeding £2 per day for each day of default after conviction. Appeals can be made against a notice upon a restricted number of grounds which are listed in s.102 of the Act.

Control of demolition

8 The powers of LAs in relation to the control of demolition are contained in ss.80-83.

9 Section 80 requires anyone demolishing the whole or part of a building to notify the LA of their intention to carry out that demolition and wait until they have received LA approval before carrying out the work. The only exceptions are for demolition of:

- 1) the internal part of a building where the building is under continuous occupation;
- 2) a building if it has a cubic capacity not greater than 1750 cubic ft or is a greenhouse, conservatory, shed or prefabricated garage forming part of a larger building; or
- 3) a self contained agricultural building.

10 Failure to notify the LA carries a maximum penalty upon summary conviction of a fine not exceeding level 4 (currently £1,000). The person notifying the LA must also send copies of the notification to the occupiers of any adjacent buildings, British Gas, and the area electricity board. The LA gives its approval either by issuing a Notice under s.81 of the Act or failing to respond to the initial notification within the 6 week period. If the LA issues a Notice under s.81 copies of that Notice must also be sent to:

- 4) the owners and occupiers of adjoining buildings;
- 5) the statutory undertakers (if the Notice contains measures requiring the disconnection of their services);

6) HSE, if the premises required a fire certificate by virtue of regulations under HSW Act 1974.

Notice issued by local authority

11 The enforceable matters of the notice issued by the LA are detailed in s.82 and can require the person on whom the Notice is served to:

7) shore up adjacent buildings;

8) make good any damage to adjacent buildings caused by the method in which the demolition was carried out (including negligence and default on the part of the person engaged in demolition);

9) weatherproof the surfaces of the adjacent buildings exposed by the demolition;

10) remove demolition material from the site;

11) disconnect, seal or remove any sewers or drains contained on the site;

12) reinstate the ground surface to the satisfaction of the LA;

13) make arrangements with the statutory undertakers to disconnect their services; and

14) impose restrictions upon the manner in which the demolition is to be undertaken and arrangements concerning the burning of materials on site.

The notice issued should impose a time period within which the work is to be carried out.

Grounds of appeal

12 Section 83 deals with possible grounds for appeal against a Notice under s.81. In addition to the grounds specified in s.102 an appeal can be lodged where the owner of an adjacent building ought to pay or contribute towards the cost of the works.

Local authority discretion

13 Although it is their duty to implement the Act (by virtue of clause 91) ss.6-79 and 81-83 are discretionary by the inclusion of wording such as " if it appears to a LA.." and " a LA may by notice require..".

14 The demarcation agreement set out in paras 6-8 of the attached OC should avoid any problems over who is to exercise their powers. Inspectors should be aware that by invoking their powers LAs may incur expenses which may or may not be either budgeted for or recoverable.

DELEGATION OF LA POWERS TO OFFICERS

15 Authority to proceed with action under these sections is generally delegated to nominated officers within the Building Control Department. However it may be delegated to officers within other Departments eg Engineers, Technical Services or Architects Department.

APPENDIX 2

(para 3)

THE POWERS OF LOCAL AUTHORITIES IN SCOTLAND IN RELATION TO DANGEROUS BUILDINGS AND DEMOLITION UNDER VARIOUS ACTS

INTRODUCTION

1 This Appendix summarises the legal powers available to the LAs in Scotland to deal with dangerous buildings or buildings in need of repair. The powers are contained in the Building (Scotland) Act 1959, the Civic Government (Scotland) Act 1982 and the Housing (Scotland) Act 1987.

THE BUILDING (SCOTLAND) ACT 1959

2 Building control applies to the construction, alteration, extension or demolition of a building or part of a building and the statutory base is contained in the Building (Scotland) Act 1959 as amended, hereinafter referred to as the 1959 Act. The essential purpose of building control in Scotland is to safeguard people in and around buildings.

Dangerous buildings

3 Under the 1959 Act s.13, if the LA considers that a building is dangerous it has a duty to require immediate evacuation and require such remedial action as is necessary, including demolition, to protect the public and any adjacent property. The LA must serve on the owner a notice requiring remedial action or, indeed, the demolition of the building within a stated period to remove the danger. If no action is taken, the LA itself can serve an enforcement order and, if this is not complied with, the LA itself can carry out the necessary repair or demolition work and recover its expenses from the owner, see also ss.14 and 15 of the 1959 Act.

4 The procedures for the removal of occupants of a dangerous building are laid out in the Seventh Schedule to the 1959 Act.

Operations Regulations

5 The conduct of operations for the demolition of buildings is covered in the Building Operations (Scotland) Act 1975 made under s.5 of the 1959 Act.

Procedure Regulations

6 Under the Building Procedure (Scotland) Regulations 1981, as amended, the demolition of a building is subject to the granting of a warrant by the LA.

Appeals

7 Any person aggrieved by an order of the LA in relation to a dangerous building or by refusal by the LA to grant a warrant for the demolition of a building, may appeal to the sheriff. The procedure is laid down in the 1959 Act s.16.

CIVIC GOVERNMENT (SCOTLAND) ACT 1982

8 The LA has similar powers under the Civic Government (Scotland) Act 1982 (hereinafter referred to as the 1982 Act) s.87. Under s.87(1), the LA may require the owner of any building in their area to rectify defects in order to bring the building into a reasonable state of repair. Where it appears to the LA to be necessary in the interests of health and safety or to prevent damage to any property, they may enter the building and take whatever action is necessary to rectify any defects, see s.87(3) of the

1982 Act. If the LA itself carries out the necessary works s.87(4) enables it to recover its expenses.

Appeals

9 There is provision for appeals to the sheriff under the 1982 Act s.106.

HOUSING (SCOTLAND) ACT 1987

10 The Housing (Scotland) Act 1987, hereinafter referred to as the 1987 Act, enables the LA to serve notices requiring works of repair and gives them power to require that houses be demolished. Under s.108, the LA may serve a repair notice on a house which is in a serious state of disrepair and, if the person having control of the house declines to do so, may undertake the work themselves. Under s.109, the LA can recover the expenses involved in undertaking work.

11 The 1987 Act also makes provision for houses to be closed and subsequently demolished. Under s.114, the LA may serve a closing order. Under s.115, an authority may serve a demolition order, and under s.123 an authority may enter and demolish a building. Section 89 also gives LAs power to demolish groups of homes under the Housing Action Area procedure.

Appeals

12 There is provision for appeals to the sheriff against repair notices under the 1987 Act s.111, and against closing or demolition orders under s.129 of the Act. Section 94(7) enables representations to be made against a proposed Housing Action Area.