

Building Directions, Notices and Orders. Where Does the Responsibility Lie?

By Stephen Williams, Solicitor, Lovegrove Solicitors.

It is uncontroversial that both municipal building surveyors and private surveyors have the power to issue building notices and building orders pursuant to the ***Building Act 1993*** (“the Act”) and ***Building Regulations 2006*** (“the Regulations”). However, when building disputes arise, the question of who should be issued with a building order or notice is often misunderstood. The purpose of this article is clarify who building surveyors have the power to issue directions, notices and orders to, and in what circumstances.

Under the Act, it is clear that building surveyors have the following coercive powers, including but not limited to the issuing of:

- building directions (see section 37 of the Act)
- building notices (see section 106 of the Act);
- emergency orders (see section 102 of the Act);
- general building orders (see section 111 of the Act);
- stop work building orders (see section 112 of the Act); and
- minor work building orders (see section 113 of the Act) .

The nature of directions, notices and orders and to whom they may be issued is a somewhat complex question of statutory interpretation. In the experience of the author, the below table is an accurate description of these powers.

Power to issue	Who may exercise the power	Power directed to	Content of the power
Building direction	Municipal building surveyor, private building surveyor or agent thereof	Any person in charge of carrying out the building work	Carry out work so that the building work complies or substantially complies with the building permit. Should be confirmed in writing if given verbally.
Building notices	Municipal building surveyor or a private building surveyor	An owner	Show cause as to why occupation of a building should not be prohibited or otherwise evacuated or carry out building work, protection work or other work required.
Emergency order	Municipal building surveyor	An owner and the occupier	Evacuate the building, land or place, cease public entertainment or stop building work or carry out other work to make it safe.
General building orders	Municipal building surveyor or a private building surveyor	An owner	Prohibit the occupation, require evacuation or the carrying out building work, protection work or other work.
Stop work building order	Municipal building surveyor or a private building surveyor	An owner or other person	Stop all building work except building work carried out in compliance with general building order.
Minor work building order	Municipal building surveyor or a private building surveyor	An owner or other person	Require building work, protection work or other work if it is "minor" and does not require a building notice first.

In practice, the question of what order or notice is appropriate in the circumstances is not just dictated by the nature of the power and what it requires, but also upon whom it may be served.

It is clear from the summary above, that the power to issue a general building order is only exercisable in respect of owners, rather than those carrying out the works. However, there are many situations that will arise in building disputes, which require that the builder instead of an owner be served with a notice or order.

For example, consider a situation where the builder has failed to carry out building works in accordance with the building permit. A building surveyor may serve a building direction upon that builder, which directs that builder to carry out work so that the building work complies or substantially complies with the building permit.

If, however, the builder fails to comply with such a direction, the building surveyor may issue a building notice. Interestingly, under section 106 of the Act, such a notice is to be served upon the owner of the land. If that notice is not complied with, then a building order is likely to be issued upon the owner. The burden of legal compliance in this situation is now, perhaps unfairly placed upon the head of the owner rather than the builder.

It is acknowledged that in practice, notices and orders are often served on builders and owners alike, even where the Act does not empower a building surveyor to do so. Notwithstanding, issues of enforcement and the actual responsibility for compliance are often discovered at the Building Appeals Board, sometimes leaving owners in rather invidious positions.

Indeed, it is the view of this author that the powers of building surveyors to direct and compel action under the Act ought to be expanded so as to ensure the burden of compliance rests not only with owner but also with the person(s) carrying out the works. This recommendation is made in recognition of the fact that the only real way for the

owner to ensure compliance with a building order is through the builder or by engaging another builder to carry out the necessary works. These can be costly routes to undertake often necessitating the involvement of lawyers.

In recent times, enforcing owners' rights against builders has been significantly assisted by legislation, which is "consumer friendly". However, perhaps what this industry needs above all else is a front-end solution and not another liability provision.

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