

RE: Tomintoul - former secondary school site

Dear Oliver,

This is a matter which you or the occupiers will require to seek your own legal guidance on.

A completion certificate for the properties was submitted on 16.02.2023 and accepted by Moray Council on 02.03.2023 (Building Warrant Reference - 21/00226/BW).

The purpose of the Building Standards service in Scotland is primarily to protect the public interest and is not intended to provide protection to a client who has entered into a legal contract with a builder. The system therefore does not so much control the building work but sets out the essential standards that need to be met when work is carried out, and only to the extent necessary to comply with building regulations. The system is pre-emptive and designed to check that what is being proposed prior to the issue of a building warrant. Inspections during construction and on completion are to protect the public interest in terms of compliance with the building regulations and to discourage avoidance of the legislation.

The inspections do not provide a system to control the work on site, that is a matter for any contracts and arrangements put in place between the client and builder. A completion certificate is needed to confirm that the building has been constructed in accordance with the relevant building warrant and meets building regulations. It is the responsibility of the ‘relevant person’ (usually the owner and in this case Tomintoul & Glenlivet Development Group) to ensure building work is done correctly as the Council, as verifiers, cannot regularly or sufficiently monitor all construction work to check that the regulation requirements are being met. Consequently, the relevant person (owner) should ensure that adequate procedures are in place to allow the completion certificate to be properly submitted. It is an offence to submit a completion certificate that is known to be false. On receipt of the completion certificate the verifier (Council) must accept the completion certificate if, after reasonable inquiry, they are satisfied that the work certified complies with the relevant warrant and building regulations. We had no reason to question the completion certificate submission or documents at the time the completion certificate was issued.

The offence to which I refer to above relates to Section 20 of the Building (Scotland) Act 2003. The Act states:

Section 20 - Completion certificates: offences

(1) Any person who, under this Act—

(a) submits to a verifier a completion certificate containing a statement which that person knows to be false or misleading in a material particular, or

(b) recklessly submits to a verifier a completion certificate containing a statement which is false or misleading in a material particular,

is guilty of an offence.

To date I have no knowledge of any aspect of this case which would require the authority to take action which utilises the powers held in this section of the legislation. The building standards system relies on the building warrant applicant, normally the building owner, to control the work on site. They are also normally the ones certifying the work complies with the building warrant and building regulations at the completion stage. We have accepted a completion certificate based upon the information we held at the time and reasonable enquiry.

Should concerns relate to a particular certificate submitted which accompanied the completion certificate then this should be raised with the certifier or certifying body.

I have received a similar enquiry from a representative of an owner within the development and the above is the same guidance provided to them.

Regards

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