

# Public Document Pack

Legal and Democratic Services



## LICENSING AND PLANNING POLICY COMMITTEE

Thursday 21 October 2021 at 7.30 pm

Place: Council Chamber, Epsom Town Hall

Link for public online access to this meeting:

<https://attendee.gotowebinar.com/rt/2753185228674601999>

Webinar ID: 404-644-835

Telephone (listen-only): 020 3713 5022, Telephone Access code:784-710186

The members listed below are summoned to attend the Licensing and Planning Policy Committee meeting, on the day and at the time and place stated, to consider the business set out in this agenda.

Councillor David Reeve (Chair)  
Councillor Steven McCormick (Vice-Chair)  
Councillor Steve Bridger  
Councillor Monica Coleman  
Councillor Neil Dallen

Councillor Chris Frost  
Councillor Rob Geleit  
Councillor Julie Morris  
Councillor Phil Neale  
Councillor Clive Woodbridge

Yours sincerely

Chief Executive

For further information, please contact Democratic Services, email: [democraticservices@epsom-ewell.gov.uk](mailto:democraticservices@epsom-ewell.gov.uk) or tel: 01372 732000

### **EMERGENCY EVACUATION PROCEDURE**

No emergency drill is planned to take place during the meeting. If the fire alarm sounds continuously, or if you are instructed to do so, you must leave the building by the nearest available exit. You will be directed to the nearest exit by council staff. It is vital that you follow their instructions.

- You should proceed calmly; do not run and do not use the lifts;
- Do not stop to collect personal belongings;
- Once you are outside, please do not wait immediately next to the building, but move to the assembly point at Dullshot Green and await further instructions; and
- Do not re-enter the building until told that it is safe to do so.

## Public information

**Please note that this meeting will be held at the Town Hall, Epsom and will be available to observe live on the internet**

This meeting will be open to the press and public to attend as an observer using free GoToWebinar software, or by telephone.

A link to the online address for this meeting is provided on the first page of this agenda and on the Council's website. A telephone connection number is also provided on the front page of this agenda as a way to observe the meeting, and will relay the full audio from the meeting as an alternative to online connection. A limited number of seats will also be available in the public gallery at the Town Hall. For further information please contact Democratic Services, email: [democraticservices@epsom-ewell.gov.uk](mailto:democraticservices@epsom-ewell.gov.uk), telephone: 01372 732000.

Information about the terms of reference and membership of this Committee are available on the [Council's website](#). The website also provides copies of agendas, reports and minutes.

Agendas, reports and minutes for the Committee are also available on the free Modern.Gov app for iPad, Android and Windows devices. For further information on how to access information regarding this Committee, please email us at [Democraticservices@epsom-ewell.gov.uk](mailto:Democraticservices@epsom-ewell.gov.uk).

### Exclusion of the Press and the Public

There are no matters scheduled to be discussed at this meeting that would appear to disclose confidential or exempt information under the provisions Schedule 12A of the Local Government (Access to Information) Act 1985. Should any such matters arise during the course of discussion of the below items or should the Chairman agree to discuss any other such matters on the grounds of urgency, the Committee will wish to resolve to exclude the press and public by virtue of the private nature of the business to be transacted.

### Questions from the Public

Questions from the public are permitted at meetings of the Committee. Any person wishing to ask a question at a meeting of the Committee must register to do so, as set out below.

Up to 30 minutes will be set aside for written or oral questions from any member of the public who lives, works, attends an educational establishment or owns or leases land in the Borough on matters within the Terms of Reference of the Licensing and Planning Policy Committee which may not include matters listed on a Committee Agenda.

All questions whether written or oral must consist of one question only, they cannot consist of multi parts or of a statement.

The question or topic may not relate to a specific planning application or decision under the Planning Acts, a specific application for a licence or permit of any kind, the personal affairs of an individual, or a matter which is exempt from disclosure or confidential under the Local Government Act 1972. Questions which in the view of the Chairman are vexatious or frivolous will not be accepted.

To register to ask a question at a meeting of the Committee, please contact Democratic Services, email: [democraticservices@epsom-ewell.gov.uk](mailto:democraticservices@epsom-ewell.gov.uk), telephone: 01372 732000.

Written questions must be received by Democratic Services by noon on the tenth working day before the day of the meeting. For this meeting this is **Noon, Thursday 7 October 2021.**

Registration for oral questions is open until noon on the second working day before the day of the meeting. For this meeting this is **Noon, 19 October 2021.**

## **AGENDA**

### **1. QUESTION TIME**

To take any questions from members of the Public.

### **2. DECLARATIONS OF INTEREST**

Members are asked to declare the existence and nature of any Disclosable Pecuniary Interests in respect of any item of business to be considered at the meeting.

### **3. MINUTES OF PREVIOUS MEETING (Pages 5 - 8)**

The Committee is asked to confirm as a true record the Minutes of the Meeting of the Committee held on 9 September 2021 (attached) and to authorise the Chairman to sign them.

### **4. RESPONSE TO MOLE VALLEY DC REGULATION 19 CONSULTATION (Pages 9 - 30)**

Mole Valley District Council (\*MVDC\*) is seeking responses to its final draft local plan ("Regulation 19") version. It is proposed to respond to the consultation raising concern that MVDC does not intend to meet its Standard Method derived housing need in full.

### **5. PLANNING ENFORCEMENT PLAN (Pages 31 - 86)**

This Draft Enforcement Plan sets a framework for how the Council and it's Planning Service will handle complaints and any subsequent investigations into breaches of planning control. It sets out clearly the aims and background to planning enforcement, and the scope of enforcement powers.

This Draft Enforcement Plan sets out priorities for responses to complaints and clarifies the timescales for response by Planning Officers. This policy document will also seek to formalise how Councillors and the general public will be kept up to date in relation to the enforcement work being carried out by the Planning Officers.

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**Minutes of the Meeting of the LICENSING AND PLANNING POLICY COMMITTEE  
held on 9 September 2021**

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**PRESENT -**

Councillor David Reeve (Chair); Councillor Chris Frost (Vice-Chair) and Councillor Jan Mason (as nominated substitute for Councillor Steven McCormick); Councillors Steve Bridger, Monica Coleman, Neil Dallen, Rob Geleit, Julie Morris and Clive Woodbridge

Absent: Councillor Steven McCormick and Councillor Phil Neale

Officers present: Viv Evans (Interim Head of Planning), Harry Burchill (Senior Planning Policy Officer), John Cheston (Planning Policy Manager), Patrick Lyons (Principal Lawyer) (attending remotely) and Tim Richardson (Committee Administrator)

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**11 APPOINTMENT OF VICE-CHAIR**

In the absence of the Vice-Chair, Councillor Steven McCormick and with the agreement of the Committee, Councillor Chris Frost was appointed Vice-Chair for the meeting.

**12 QUESTION TIME**

The Committee received one verbal question from a member of the public with regard to the forthcoming Regulation 18 public consultation on the Local Plan and it was noted that the Chair of the Licensing and Planning Policy Committee would respond directly to the questioner.

**13 DECLARATIONS OF INTEREST**

The following declarations of interest were made in relation to Item 4 of the Agenda.

In the interests of openness and transparency, Councillor Chris Frost declared that he is a patron of the Friends of Horton Cemetery group.

In the interests of openness and transparency, Councillor Neil Dallen declared that he is a patron of the Friends of Horton Cemetery group.

In the interests of openness and transparency, Councillor Steve Bridger declared that he is a patron of the Friends of Horton Cemetery group.

#### 14 MINUTES OF PREVIOUS MEETING

The Minutes of the previous meeting of the Licensing and Planning Policy Committee held on 15 July were agreed as a true record and signed by the Chair.

#### 15 LOCAL LISTING OF HORTON CEMETERY

The Committee received a report recommending that the local listing of Horton Cemetery is confirmed, following the initial submission to Committee and subsequent consultation with interested parties.

The Committee received a verbal introduction from the Planning Policy Manager.

The following matters were raised by the Committee:

- a) **Maintenance by landowners:** Members raised concerns regarding the current condition of Horton Cemetery. It was noted that as this is a privately owned site, the Council does not have any legal control over the land. The Officer noted that it is a possibility for the Council to write an informal letter to the landowner and ask about the intended maintenance and could consider serving a notice under section 215 of the Town and Country Planning Act 1990 to require that it be tidied up.
- b) **Local Listings Officer:** Following a question from a Member, the Officer noted that a Local Listings Officer had recently been appointed by Surrey County Council, after retaining a sum of money from MHCLG. This Local Listings Officer had been employed to review the 72 Locally Listed buildings and structures in the Borough, and also to consider any new candidates for Local Listing as part of project covering much of Surrey.

Following consideration, it was resolved unanimously that the Committee:

- (1) **Agreed to the Local Listing of Horton Cemetery, including the boundary railings and a war memorial built in 2004 outside the railings and facing onto Horton Lane.**

#### 16 RESPONSE TO SOUTH WEST RAILWAYS TIMETABLE CONSULTATION

South Western Railway ("SWR") is consulting on plans to make changes to train service timetables across their network from December 2022, which will affect services running through Epsom and Ewell. Officers have drafted a response. The response objects in principle to the published plans. Officers intend to submit a final response having considered any new information or comments from the Committee.

The Committee received a verbal introduction from the Senior Planning Policy Officer.

The following matters were raised by the Committee:

- a) **Page 31, Question 3:** A Member suggested that the last paragraph be amended to better define the planned house growth in both South West and South East England. The Officer agreed to take these comments on board,
- b) **Climate Change:** In relation to page 33, sub-question 2, Members noted the potential for more detail to be added surrounding climate change. It was noted that the reduction of car usage and ownership is dependent on the improved services of public transport.
- c) **Pressure on Smaller Stations:** Members raised concerns regarding the possibility of Epsom Station being moved out of Zone 6. Due to the increased fares, commuters would be encouraged to drive out of their way to Stoneleigh and Ewell stations. This would put a considerable pressure on these smaller stations.

Following consideration, it was resolved unanimously that the Committee:

- (1) **Approve grounds of response to SWR consultation as set out in appendix 1.**
- (2) **Agreed to Delegate authority to the Head of Planning, in consultation with the Chair of the Committee, to submit a final consultation response.**

## 17 THANKS TO DEMOCRATIC SERVICES OFFICER

The Licensing and Planning Policy Committee wish to place on record its thanks to Sarah Keeble, former Democratic Services Officer, and wish her all the best in her next venture.

*The meeting began at 7.30 pm and ended at 8.15 pm*

COUNCILLOR DAVID REEVE (CHAIR)

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## **RESPONSE TO MOLE VALLEY DC REGULATION 19 PROPOSED SUBMISSION LOCAL PLAN CONSULTATION**

|   |   |
|---|---|
| <b>Head of Service:</b>                         | Viv Evans, Head of Place  |
| <b>Wards affected:</b>                          | (All Wards);  |
| <b>Urgent Decision?</b>                         | No  |
| <b>If yes, reason urgent decision required:</b> |   |
| <b>Appendices (attached):</b>                   | Appendix 1: Draft Response to MVDC Regulation 19 Local Plan consultation<br>Appendix 2: Statement of Common Ground<br>Appendix 3: EEBC response to Regulation 18 Local Plan consultation March 2020 |

### **Summary**

Mole Valley District Council (MVDC) is seeking responses to its final draft (Regulation 19) local plan. It is proposed to respond to the consultation raising concern that, because MVDC does not intend to meet its Local Housing Need figure in full, there is a risk that Epsom & Ewell might be asked to accommodate some of this unmet housing need, either in its emerging Local Plan or through speculative planning applications for new housing development.

### **Recommendation (s)**

#### **The Committee is asked to:**

- (1) Approve the draft response set out at Appendix 1.**
- (2) Delegate authority to the Head of Place, after consultation with the Chair of Licensing and Planning Policy Committee, to make any amendments to the response to the Mole Valley District Council Regulation 19 consultation following the receipt of privileged legal advice.**

## 1 Reason for Recommendation

Having considered the evidence put forward as part of its Regulation 19 Local Plan consultation, EEBC is concerned that MVDC does not intend to meet its Standard Method-derived housing need figure in full and that the reduced level of allocation in the MVDC plan proposed through the regulation 19 consultation will increase unmet housing need in East Surrey. This could place greater pressure on EEBC to meet MVDC's need through the local plan and reduce the ability of the council to resist inappropriate development through the planning application and appeals process. The possibility of MVDC assisting EEBC meet its unmet need was raised in its response to the Regulation 18 consultation in March 2020, and whilst a duty to cooperate statement of common ground was signed earlier this year, the evidence and justification for revising MVDC's housing figure was not available at the time. Having now considered the evidence in more detail, it is considered that the MVDC plan could be detrimental to the strategic planning in areas EEBC has responsibility for.

## 2 Background

- 2.1 MVDC published its Proposed Submission version Local Plan on 20 September 2021 and is inviting responses, as required by Regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations 2012. The deadline for responses is 7 November 2021. Epsom and Ewell Borough Council (EEBC) is intending to submit representations to MVDC as an adjoining planning authority, whose future plans for growth may be impacted by MVDC's plan.

### *Previous Comments from EEBC*

- 2.2 Prior to the publication of the current draft plan, MVDC undertook a consultation on a previous draft plan, under Regulation 18 of the Local Planning Regulations 2012 in March 2020. EEBC responded, stating that:
- EEBC had no specific comments in relation to the draft policies.
  - EEBC supported a "brownfield first" approach.
  - Further justification of the densities on the proposed allocated sites was needed.
  - Some smaller sites in the site allocations document may more appropriately be considered "windfall sites".
  - It may have been more useful for the housing trajectory to be more detailed.
  - EEBC would welcome the opportunity to discuss the potential for MVDC to help meet unmet needs from adjoining authorities based on a housing trajectory of 18% over MVDC's minimum need, and that the densities estimated in the site allocations document were low. Such conversations would allow EEBC to offer incentives for meeting needs e.g. in terms of infrastructure investment and economic development. Whilst no further detail was given in the

response, this could mean, for example, EEBC making contributions to road upgrades, green spaces, biodiversity enhancements etc. in Mole Valley, in order to help make development more acceptable. Or agreeing, through S106 agreements to give employment and training opportunities to the new residents of Mole Valley who otherwise would have been housed in Epsom and Ewell.

2.3 For the full response, see appendix 3.

*Amendments since MVDC Local Plan Regulation 18 draft*

2.4 In considering responses to the Regulation 18 consultation MVDC has published an amended plan, and provided the following summary of amendments made in response:

- The amount of Green Belt 'take' has been almost halved to 0.7% of the current Green Belt.
- The amount of allocated brownfield land is now in excess of the greenfield land.
- MVDC has reduced its housing target from 449 new homes per year to 353 new homes per year, to create a fair balance between meeting the housing need and protecting Mole Valley's landscape and character. MVDC revised its housing strategy following the Regulation 18 consultation and the proposed reduction in homes was the result of a revised site selection process. The consequence is that there will be an unmet need of 1700 homes over the plan period compared with the Government's housing need figure for the district.
- Climate change, design, heritage and biodiversity policies have been strengthened.
- Stronger infrastructure policies and more infrastructure allocations have been inserted.
- A number of the proposed development sites have been withdrawn, including:
  - Marsden Nurseries, Pleasure Pit Road, Ashted
  - Land South of Beare Green
  - Land North of Guildford Road, Bookham
  - Former Chalcraft Nurseries, Reigate Road, Dorking
  - Land at Fetcham Springs, Cobham Road, Fetcham
  - Land North and South of Barnett Wood Lane, Leatherhead

- 2.5 It is proposed to frame EEBC's response to the current (Regulation 19) consultation in the context of previous comments made in relation to the Regulation 18 consultation. In considering the response, the issues raised in the Regulation 18 consultation have been analysed in the MVDC plan and the following assessment has been made:

*Changes to policies*

- 2.6 Whilst a number of changes have been made to the MVDC policies, none are so significant that they would alter EEBC's position from its response to the Regulation 18 consultation or would lead it to make a negative assessment in relation to questions over legal compliance or soundness. However, it is noted that climate change, design, heritage and biodiversity policies have been strengthened. These may influence the development of the EEBC Local Plan particularly as strategic areas over which cooperation would be beneficial.

*Brownfield first*

- 2.7 EEBC supported this approach. The analysis of the Regulation 18 consultation responses shows that, understandably, this question attracted a wide range of comments. It is understood that the decision to undertake a revised site selection process was partly in response to these wider comments. Whilst the revised site selection process has led to a revised housing target, which EEBC has concerns with, broadly it appears that a "brownfield first" approach has still been followed. Therefore, in principle, EEBC maintains its support for this approach.

*Strategic Allocation (Development Site) Density*

- 2.8 Based on a rough calculation of densities undertaken by EEBC officers, in its response to the Regulation 18 draft, EEBC suggested that MVDC could aim for a higher number of homes on the sites identified in the draft site allocations document. A significant difference between the Regulation 18 and new Regulation 19 site allocations document is that the size of many of the sites have now been revised to show the estimated net "developable area" as opposed to the entire site area. The resulting effect is that density (number of dwellings/net developable area) for each site is now shown as generally higher across all sites in the new site allocations document. A table of indicative residential densities (p116 of Chapter 9 – Development Site Densities) shows densities ranging from 20dph in villages to 50dph in built-up areas, stating that sites in "inner" built-up areas will be considered on a case-by-case basis. Whilst this does show a higher density overall, it is considered that there may still be scope to achieve higher densities on some sites. However, further work would need to be done to prove this.

*More detailed housing trajectory*

- 2.9 The information shown relating to MVDC's housing trajectory in the Regulation 19 draft is significantly more detailed than shown in the Regulation 18 version insofar as whilst the Regulation 18 version displayed a simple table showing the total number of homes in each 5-year period, the Regulation 19 version shows a graph with projected annual completions. It is therefore considered that this is acceptable.

*EEBC's unmet housing need*

- 2.10 Following EEBC's request to discuss meeting adjoining authorities' unmet needs, a "stocktake" meeting in December 2020 took place, in which EEBC were informed that MVDC could not meet any of EEBC's unmet need or MVDC's own need, owing to a revised site selection methodology. The issue of unmet need was therefore considered "unresolved" by MVDC until a Statement of Common Ground was presented for EEBC to sign in which both parties agreed that:

- Due to constraints including the statutory Green Belt, and other primary constraints EEBC may not be able to meet its own housing need figure, let alone another authority's target.
- Due to the fact that 76% of the district is designated as Green Belt and 45% is designated as an Area of Outstanding Natural Beauty or Area of Great Landscape Value and both its principal towns are Conservation Areas, MVDC is unable to meet its own local housing need in full and so cannot meet any unmet housing need which may arise from Epsom & Ewell borough.
- Both authorities will seek to meet their own need for additional Gypsy and Traveller pitch provision.

- 2.11 However, the evidence upon which MVDC's revised site selection process was based was not available at the time the Statement of Common Ground was signed. Consequently, there is now concern that the reduced level of allocation in the MVDC plan proposed through the regulation 19 consultation will increase unmet need in East Surrey. This could place greater pressure on EEBC to meet need through the local plan and reduce the ability of the council to resist inappropriate development through the planning application and appeals process.

- 2.12 For the full Statement of Common Ground please see appendix 2.

*Allocated sites*

- 2.13 In response to the Regulation 18 consultation EEBC commented on two sites in particular in the draft site allocations document. This was due to concern that the scale of development on these two sites had the potential to have a significant impact on one of the key A roads (the A24) that serves the Borough. It was suggested that the traffic impact needed to be fully assessed which may involve further cross boundary engagement through the Duty to Cooperate.
- 2.14 One of the sites, Marsden Nurseries, has been removed from the draft plan following a revised selection process.
- 2.15 The other, Emryn House, Emryn Way remains in the draft plan. A further concern relating to this site was the potential loss of employment, including the jobs of Epsom & Ewell residents. The site appraisal in the Strategic Housing and Economic Land Availability Assessment (\*SHELAA\*) (January 2020) indicates that:

*“This site currently accommodates one of the District’s major large firms and is one of a number of business HQs located within the District. Accordingly, part of the site is currently safeguarded for industrial and commercial uses. In light of changing working patterns and office requirements, there is potential for a mixed-use development, which could enable the existing occupier to remain on site in a more fit for purpose building. Should it become clear that there is no reasonable prospect of employment use continuing, there is alternatively potential for a higher level of residential development. It is considered that in light of the size of the site, it could be repurposed and redesigned to include a more suitable offer.”*

- 2.16 Given that the potential cumulative highway impacts arising from development at these two sites have diminished (by virtue of one site having been removed), and that EEBC would be consulted as an adjoining authority were a planning application to be forthcoming, it is considered that no further objection should be raised to the plan in this regard. Similarly, the consideration given to the potential loss of employment in the SHELAA is sufficient to overcome concern.

*Additional sites*

- 2.17 The plan also proposes 21 new sites. These vary in terms of residential yield but the majority are small scale and not close to the borough boundary with Epsom and Ewell. Accordingly, it is considered that these are not of concern.

### **3 Risk Assessment**

#### **Legal or other duties**

##### **3.1 Impact Assessment**

- 3.1.1 There are no additional impacts arising from this report.

3.2 Crime & Disorder

3.2.1 There are no implications regarding crime and disorder arising from this report.

3.3 Safeguarding

3.3.1 There are no implications regarding safeguarding arising from this report.

3.4 Dependencies

3.4.1 There are no implications regarding dependencies arising from this report.

3.5 Other

3.5.1 There are no other impacts arising from this report.

**4 Financial Implications**

4.1 There are no direct financial implications for the purposes of this report.

4.2 **Section 151 Officer's comments:** None arising for the purposes of this report.

**5 Legal Implications**

5.1 **Legal Officer's comments:** None arising from the content of this report.

**6 Policies, Plans & Partnerships**

6.1 **Council's Key Priorities:** The MVDC Local Plan relates to a number of key objectives in the EEBC Four Year Plan and Annual Plan as development decisions based on the MVDC Local Plan will have strategic implications on matters which affect both authorities. The objectives are:

- Work with partners to reduce our impact on the environment and move closer to becoming carbon neutral.
- Address the housing needs of the Borough, including affordable housing needs, through the development of our Local Plan.
- Encourage and support business creation and growth.
- Work with partners to develop and improve transport and infrastructure with particular emphasis on sustainable travel options.

- 6.2 **Service Plans:** This matter relates to “Priority Area 1: Local Plan” of the Service Delivery Plan 2020-21. By agreeing with MVDC that the district is too constrained to meet its locally identified housing need, EEBC will not be able to ask MVDC to help meet any of EEBC’s unmet need.

6.3 **Climate & Environmental Impact of recommendations:**

The MVDC draft Local Plan includes measures for addressing impacts on the climate and environment.

6.4 **Sustainability Policy & Community Safety Implications:**

None arising from this report.

6.5 **Partnerships:**

None arising from this report.

**7 Background papers**

- 7.1 The documents referred to in compiling this report are as follows:

**Previous reports:**

- 7.2 The response to the MVDC Regulation 18 Local Plan consultation was approved at LPPC on 5 March 2020. The report can be accessed here:

<https://democracy.epsom-ewell.gov.uk/ieListDocuments.aspx?CId=131&MId=810&Ver=4>

**Other papers:**

- All documents relating to the MVDC Regulation 19 Local Plan consultation are available here:

<https://futuremolevalley.org/>



Date TBC

Dear Sir/Madam,

I am writing on behalf of Epsom and Ewell Borough Council (EEBC) in response to the draft local plan which is being consulted on from September to November 2021 in accordance with Regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations 2012.

EEBC have considered the draft plan in the context of the Town and Country Planning (Local Planning) (England) Regulations (SI2012/767), the statutory Duty to Cooperate set out in section 33A of the Planning and Compulsory Purchase Act 2004 as amended and paragraph 35 of the National Planning Policy Framework (NPPF).

On 19 March 2020 EEBC wrote to Mole Valley District Council (MVDC) in response to MVDC's Regulation 18 consultation. In that response EEBC stated that:

- EEBC had no specific comments in relation to the draft policies.
- EEBC supported a "brownfield first" approach.
- Further justification of density on proposed allocated sites was needed.
- Some smaller sites in the site allocation document may more appropriately be considered "windfall sites".
- It may have been more useful for the housing trajectory in Appendix 6 to be more detailed.
- An opportunity to discuss the potential for MVDC to help meet unmet need from adjoining authorities would be welcomed, based on a housing trajectory of 18% over the MVDC's minimum need, and that the densities estimated in the site allocations document were low. Such conversations would allow EEBC to offer incentives for meeting needs e.g. in terms of infrastructure investment and economic development. Whilst no further detail was given in the response, this could have meant, for example, EEBC making contributions to road upgrades, green spaces, biodiversity enhancements etc. in Mole Valley, in order to help make development more acceptable. Or, agreeing, through S106 agreements to give apprentice opportunities to the new residents of Mole Valley who otherwise would have been housed in Epsom and Ewell).

Having reviewed the Regulation 19 documents EEBC have considered how the original comments have been taken into consideration and can advise as follows:

*Brownfield First Approach*

EEBC supported this approach. The analysis of the Reg 18 consultation responses shows that, understandably, this question attracted a wide range of comments. It is understood that the decision to undertake a revised site selection process was partly in response to these wider comments. Whilst the revised site selection process has led to a revised housing target, which EEBC has concerns with, broadly it appears that a “brownfield first” approach has still been followed. Therefore, in principle, EEBC maintains its support for this approach.

#### *Strategic Allocation (Development Site) Density*

Based on a rough calculation of densities undertaken by EEBC officers, in its response to the Regulation 18 draft, EEBC suggested that MVDC could aim for a higher number of homes on the sites identified in the draft site allocations document. A significant difference between the Regulation 18 and new Regulation 19 site allocations document is that the sizes of many of the sites have now been revised to show the estimated net “developable area” as opposed to the entire site area. The resulting effect is that each site is now shown as generally accommodating higher densities across all sites in the new site allocations document. A table of indicative residential densities (p116 of Chapter 9 – Development Site Densities) shows densities ranging from 20dph in villages to 50dph in built-up areas, stating that sites in “inner” built-up areas will be considered on a case-by-case basis. Whilst this does show a higher density overall, it is considered that there may still be scope to achieve higher densities on some sites.

#### *More detailed housing trajectory*

The information shown relating to MVDC’s housing trajectory in the Regulation 19 draft is significantly more detailed than was shown in the Regulation 18 version insofar as whilst the Regulation 18 version displayed a simple table showing the total number of homes in each 5-year period, the Regulation 19 version shows a graph with projected annual completions. This is a significant improvement.

#### *EEBC’s unmet housing need*

Following EEBC’s request to discuss meeting adjoining authorities’ unmet needs, a “stocktake” meeting in December 2020 took place, in which EEBC were informed that MVDC could not meet any of EEBC’s unmet need or their own need, owing to a revised site selection methodology. The issue of unmet need was therefore considered “unresolved” by MVDC until a Statement of Common Ground was presented for EEBC to sign in which both parties agreed that:

- Due to constraints including the statutory Green Belt, and other primary constraints EEBC may not be able to meet its own housing need figure, let alone another authority’s target.

- Due to the fact that 76% of the district is designated as Green Belt and 45% is designated as an Area of Outstanding Natural Beauty or Area of Great Landscape Value and both its principal towns are Conservation Areas, MVDC is unable to meet its own local housing need in full and so cannot meet any unmet housing need which may arise from Epsom & Ewell borough.
- Both authorities will seek to meet their own need for additional Gypsy and Traveller pitch provision.

However, the evidence upon which MVDC's revised site selection process was based was not available at the time the Statement of Common Ground was signed.

Having considered the information that is now available, EEBC are concerned that MVDC is not proposing to meet its Standard Method-derived local housing need figure in full and any implications that this may have for the EEBC local plan and for planning applications in the borough where applicants may try and argue that housing need is greater due to unmet need in MVDC's area.

#### *Allocated sites*

In response to the Regulation 18 consultation EEBC commented on two sites in particular in the draft site allocations document. This was due to concern that the scale of development on these two sites had the potential to have a significant impact on one of the key A roads (the A24) that serves the Borough. It was suggested that the traffic impact needed to be fully assessed which may involve further cross boundary engagement through the Duty to Cooperate.

One of the sites, Marsden Nurseries, has been removed from the draft plan following a revised selection process.

The other, Emryn House, Emryn Way remains in the draft plan. A further concern relating to this site was the potential loss of employment, including the jobs of Epsom & Ewell residents. The site appraisal in the Strategic Housing and Economic Land Availability Assessment (\*SHELAA\*) (January 2020) indicates that:

*"This site currently accommodates one of the District's major large firms and is one of a number of business HQs located within the District. Accordingly, part of the site is currently safeguarded for industrial and commercial uses. In light of changing working patterns and office requirements, there is potential for a mixed use development, which could enable the existing occupier to remain on site in a more fit for purpose building. Should it become clear that there is no reasonable prospect of employment use continuing, there is alternatively potential for a higher level of residential development. It is considered that in light of the size of the site, it could be repurposed and redesigned to include a more suitable offer."*

Given that the potential cumulative highway impacts arising from development at these two sites have diminished (by virtue of one site having been removed), and that EEBC would be consulted as an adjoining authority were a planning application to be forthcoming, EEBC consider that no further objection should be raised to the plan in this regard. Similarly, the consideration given to the potential loss of employment in the SHELAA is sufficient to overcome concern.

*Additional sites*

The plan also proposes 21 new sites. These vary in terms of residential yield but the majority are small scale and not close to the borough boundary with Epsom and Ewell. Accordingly, it is considered that these are not of concern.

Having regard to EEBC's response to the Regulation 18 Consultation (dated 19 March 2020) and the Statement of Common Ground signed by Mole Valley District Council (\*MVDC\*) on 14 June 2021 and EEBC on the 28 July 2021, EEBC have further considered the evidence put forward as part of the Regulation 19 consultation, which has become available since the Statement of Common Ground was signed. Having now considered the evidence available, EEBC has significant concerns that MVDC does not intend to meet its housing needs in full.

Should the examining Inspector wish to revisit this issue when considering any Main Modifications to the plan, EEBC would welcome the opportunity to discuss this.

Should you have any further questions please do not hesitate to contact me.

Yours sincerely,

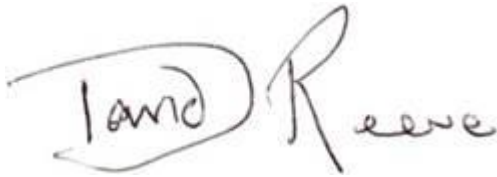
Viv Evans,  
Head of Place  
Epsom and Ewell Borough Council

## STATEMENT OF COMMON GROUND

### 1. List of Parties involved:

- Epsom & Ewell Borough Council (EEBC)
- Mole Valley District Council (MVDC)

### 2. Signatories:



28.07.21

*Epsom & Ewell Borough Council  
Councillor David Reeve, Chair of Licensing and Planning Policy Committee*



14.06.21

*Mole Valley District Council  
Councillor Margaret Cooksey, Cabinet Member for Planning*

### 3. Strategic Geography

The Statement of Common Ground (SOCG) is between the local authorities of Epsom & Ewell Borough Council (EBBC) and Mole Valley District Council (MVDC)

EBBC and MVDC share a common boundary within the Surrey County Council administrative area. The authorities have considerable economic and planning and physical linkages. Both authorities are in the Kingston and North East Surrey Housing Market Area and are similarly influenced by London in terms of the economy and overspill. In terms of planning, both authorities have extensive areas designated as Green Belt and both have areas of common land and heritage assets which constrain development. With regard to physical linkages, both authorities share Junction 9 of the M25 as their motorway access point, have the A24 as their spine roads, and share a principal railway line to London. There are cross-boundary natural environments as well as cross-boundary health and education functions. There is also significant out-migration from Epsom & Ewell borough to Mole Valley district.

Since the two local authorities are within the same Strategic Housing Market Area and share so many linkages and commonalities, it is beneficial to prepare a SOCG to deal with the strategic and locally specific cross-boundary issues identified.

Both authorities lie in separate Functional Economic Market Areas (FEMAs). However, both authorities are located within the Coast to Capital Local Enterprise Partnership (LEP) Area and are partners of the Gatwick Diamond Initiative. They also share a strategic objective in the Surrey County Council Place Ambition document for improved connectivity in the Epsom and Leatherhead area.

The map below shows the authorities in relation to each other (with the black lines indicating administrative boundaries).



#### 4. Strategic Matters

Both parties have identified the following as strategic matters of importance and agreements on positions are set out below:

##### Housing Need

###### Background

EEBC has yet to complete its housing capacity work but its local housing need is currently 577 new homes per year. MVDC has a local housing need figure of 456 new homes per year and has strived to meet its housing need figure in its Local Plan by (i) allocating town centre sites for housing-led redevelopment; (ii) adopting a policy of gentle densification on brownfield

sites; (iii) allocating outmoded office complexes for housing-led regeneration; (iv) de-designating Green Belt for housing; (v) allocating Green Belt sites in and around Hookwood for housing; and, (vi) amending village boundaries for housing development. MVDC has a local unmet need of c1,700 dwellings over its plan period 2020-2037.

The parties agree:

1. Due to constraints including the statutory Green Belt, and other primary constraints EEBC may not be able to meet its own housing need figure, let alone another authority's target.
2. Due to the fact that 76% of the district is designated as Green Belt and 45% is designated as an Area of Outstanding Natural Beauty or Area of Great Landscape Value and both its principal towns are Conservation Areas, MVDC is unable to meet its own local housing need in full and so cannot meet any unmet housing need which may arise from Epsom & Ewell borough.
3. Both authorities will seek to meet their own need for additional Gypsy and Traveller pitch provision.

### **Education**

#### **Background**

There are significant linkages between the two authorities with (i) the admissions policy at St Andrews School in Ashted favouring children attending feeder primary schools, several of which are outside Mole Valley; (ii) much of Ashted is within the catchment area of Rosebery Girls School in EEBC; (iii) the most logical college-based, post-16 education for many Mole Valley teenagers being North East Surrey College of Technology (FE college in Ewell); and, (iv) the nearest tertiary education for many Mole Valley residents being the University for the Creative Arts in Epsom.

The parties agree:

4. Planning for education will require discussions across the two local authority areas with the involvement of Surrey County Council's Pupil Place Unit but SCC are currently suggesting that the primary and secondary pupil place growth arising from the MVDC Local Plan can be accommodated within the existing school estate.

### **Health**

#### **Background**

There are significant linkages between both authorities with St Stephen's Practice having GP surgeries in both areas, Epsom residents using Leatherhead Community Hospital and Mole Valley residents using Epsom General Hospital.

The parties agree:

5. Planning for health provision will require discussions across the two authority areas, involving the Clinical Commissioning Groups and Surrey Downs Integrated Care Partnership and MVDC is allocating sites for enhanced healthcare provision in both Ashted and Leatherhead.

### **Transport**

#### **Background**

Junction 9 of the M25 suffers capacity issues at peak times and hampers connectivity across the Epsom-Leatherhead sub-region.

The parties agree:

6. They will work with Surrey County Council and Highways England to identify ways to invest in the road network and improve connectivity across the Surrey 2050 Place Ambition's Strategic Opportunity Area 6: the Epsom-Leatherhead corridor, particularly improving movement through the main centres and enhancing connectivity between the main centres and with the M25 (Junction 9).

### **The Horse Racing Industry**

#### **Background**

The horseracing industry is a significant employer in Epsom and north-eastern Mole Valley and racehorse training in and around Epsom is of national significance. Existing horseracing stables should be safeguarded from redevelopment to other uses unless it is proved conclusively that there is no prospect of them being used for racehorse training.

The parties agree:

7. They will work with the Jockey Club and Jockey Club Estates to ensure that racehorse training in Epsom and Ewell and Mole Valley has the conditions to thrive.
8. They will investigate extending MVDC's new Racehorse Training Zone, a designation within which horse racing stables and gallops are safeguarded, into Epsom and Ewell.

### **Non-Significant Matters in the Context of this Statement of Common Ground**

The parties agree:

9. The following matters are defined in the National Planning Policy Framework as strategic matters but which are not significant in the context of this Statement of Common Ground:
  - Affordable housing, employment, retail and leisure;
  - Infrastructure for telecommunications, security, waste management, water supply, wastewater, flood risk, coastal change and the provision of minerals and energy (including heat);
  - Conservation and enhancement of the natural, built and historic environment, including landscapes and green infrastructure, and planning measures to address climate change mitigation and adaptation.

## **5. Governance Arrangements**

The authorities are committed to working positively together, sharing information and best practice and continuing to procure evidence jointly, where appropriate, throughout the plan preparation phase and beyond. This co-operation and collaboration takes place at senior member, chief executive and senior officer as well as at technical officer level.

Joint working will include the following existing governance arrangements:

- The Surrey Place Ambition; and,
- The Surrey Planning Officers' Society; and



This Statement of Common Ground is signed at planning portfolio holder member/chair of Licensing and Planning Policy Committee level and will be reviewed at each key stage of plan-making. It will be updated to reflect progress made through effective cooperation.

In terms of governance, the authorities agree:

10. To continue to work with the other Gatwick Diamond authorities on housing, employment and other strategic issues affecting the Gatwick Diamond as a whole;
11. To continue to work collaboratively on plan preparation and evidence, whilst acknowledging others' timetables and timescales.
12. To respect each other's right to develop their own plans that fit the specific circumstances of the local authority's communities;
13. To meet at member and officer level to review the situation and respond to new issues and changing circumstances; and
14. To update this SoCG as progress continues through the preparation of the local plans and development plan documents for each of the authorities.

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Ruth Ormella  
Head of Planning

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DX 30713 Epsom

Date 19/03/2020

Contact Planning Policy  
Direct line  
Email [localplan@epsom-ewell.gov.uk](mailto:localplan@epsom-ewell.gov.uk)

Dear Piers Mason

### **Response to Mole Valley Consultation (Local Plan 2018-2033)**

Epsom & Ewell Borough Council (EEBC) thanks Mole Valley District Council (MVDC) for the opportunity to comment on your emerging Local Plan 'Future Mole Valley 2018-2033'. EEBC is an adjoining authority to MVDC and it is therefore a requirement that we positively engage and cooperate on cross boundary issues. EEBC have reviewed your draft Plan and have the following comments:

- i) We have no specific comments in relation to your draft policies. The overall structure and policy approaches appear to be logical and broadly consistent with national planning policy and the objectives of achieving sustainable development.
- ii) On the basis of your proposals under *S2 Strategy 2*, we understand that MVDC intends on meeting its objectively assessed housing need in full by taking a 'brownfield first' approach. EEBC supports this proposed approach and would emphasise the need to make effective use of land as required by national planning policy.
- iii) Upon reviewing your proposed sites allocation, it may be necessary to provide further justification for the development densities that are being proposed in the context of national policy and the limited land availability.
- iv) It is also noted that some of the proposed housing site allocations are very modest in scale and yield e.g. identifying potential development sites of one or two houses. It may be more practical to treat sites of such modest size as part of the windfall supply.
- v) We note that you have a summarised housing trajectory included under Appendix 6. It may be helpful, both for your own and for strategic purposes, to have a more detailed housing trajectory in the subsequent version of your plan.

- vi) It is also noted that the Housing Trajectory included under Appendix 6 projects the delivery of a total of 7,827 new additional houses during the plan period. We note that this could amount to an additional 16% above MVDC's identified minimum objectively assessed housing need. The Mole Valley SHELAA 2020 indicates that this total does not include windfalls. On that basis we suggest that the inclusion of windfall supply could increase the scale of projected delivery by a further 2% to 18% above the minimum housing need. Bearing this in mind and the comments made above regarding densities, there is a possibility that MVDC could help meet some of the unmet housing need generated from those adjoining authorities that have a genuine spatial relationship with the District. EEBC welcomes the opportunity to discuss this further with MVDC. There are potential incentives for such discussions – notably in respect of infrastructure investment and economic development.

With regards to proposed site allocations, the following comments are made:

**SA04 Marsden Nurseries, Pleasure Pit Road, Ashtead**

The site lies adjacent to the south-western edge of the EEBC's administrative boundary. It is an operating nursery site (Ashtead Garden Centre) located within the Green Belt and a sensitive location. It is within a Conservation Area and in the vicinity of statutory listed buildings. The loss of the existing garden centre would presumably be a further material planning consideration.

EEBC has previously objected to specific proposals on the site due to the harmful impact on the openness of the Green Belt. Although it is understood that MVDC intends to remove the site from the Green Belt boundary as part of the Local Plan process. We direct MVDC to the two Green Belt Studies prepared and produced in support of the emerging new Epsom & Ewell Local Plan. The Marsden Nurseries site is identified as being located immediately adjacent to Parcels 12 and 13 within the two Green Belt Studies. These parcels score a moderate to high score against the main purposes of the Green Belt. MVDC will be aware of National Planning Policy Paragraph 136, which states that Green Belt boundaries should only be altered in exceptional circumstances when updating plans. Furthermore Paragraphs 137-138 of the Framework emphasise that all reasonable options for meeting the identified objectively assessed need on brownfield land and through optimising density in locations well served by public transport must be explored before Green Belt is released. We take this opportunity to restate these points in relation to this proposed site allocation and suggest that there will be a harmful impact to the openness of wider Green Belt.

**SA01 Land South of Ermyn Way and SA02 Ermyn House, Ashtead**

These two sites lie adjacent to each other to the south of Ashtead.

SA01 falls within the Green Belt. The proposed site allocation seeks the development of the land for 250 dwellings, two gypsy and traveller pitches and open space. It is proposed that the land be removed from the Green Belt.

SA02 Ermyn House, Ashted is an existing industrial estate which lies on the edge of the settlement, outside of the Green Belt boundary. The site is currently safeguarded for industrial and commercial purposes. The proposed allocation is for mixed use development including 200 dwellings, two gypsy and traveller pitches and reduced office space.

It is noted that the site is no longer being safeguarded for employment uses and MVDC will need to ensure that their evidence supports reduced employment provision in this location.

In respect of possible harmful impacts on (the neighbouring) Epsom & Ewell Borough; the scale of development on these two sites has the potential to impact one of the key A roads (the A24) that serves the Borough. We suggest that the traffic impact needs to be fully assessed; both alone and in combination with Epsom & Ewell's growth strategy. Appropriate mitigation measures will need to be incorporated where necessary. This may involve further cross boundary engagement through the Duty to Cooperate.

Epsom & Ewell Borough Council (EEBC) will continue to positively engage and welcome future opportunities to work with Mole Valley District Council (MVDC) on strategic cross boundary issues. Please keep us informed on the progress being made on your Local Plan and any other consultations that are important for cross boundary working.

Yours sincerely

A handwritten signature in black ink, appearing to read 'David Reeve'. The signature is stylized, with a large 'D' and 'R'.

Cllr David Reeve  
Epsom & Ewell Borough Council

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## **PLANNING ENFORCEMENT PLAN**

|   |   |
|---|---|
| <b>Head of Service:</b>                         | Viv Evans, Head of Planning   |
| <b>Wards affected:</b>                          | (All Wards);  |
| <b>Urgent Decision?(yes/no)</b>                 | No  |
| <b>If yes, reason urgent decision required:</b> | N/A   |
| <b>Appendices (attached):</b>                   | Appendix 1 – Final Draft Enforcement Plan<br>October 2021<br>Appendix 2 - Summary of responses from the<br>public consultation on the first<br>draft Enforcement Plan<br>Appendix 3 - Full response from Epsom Civic<br>Society |

### **Summary**

This Draft Enforcement Plan sets a framework for how the Council and it's Planning Service will handle complaints and any subsequent investigations into breaches of planning control. It sets out clearly the aims and background to planning enforcement, and the scope of enforcement powers.

This Draft Enforcement Plan sets out priorities for responses to complaints and clarifies the timescales for response by Planning Officers. This policy document will also seek to formalise how Councillors and the general public will be kept up to date in relation to the enforcement work being carried out by the Planning Officers.

### **Recommendation (s)**

#### **The Committee is asked to:**

- (1) Note the 30 responses received during the public consultation on the previous Draft Enforcement Plan. A summary of these responses has been set out in Appendix 2, along with the influence these responses have made to this amended Draft Enforcement Plan. The full response from the Epsom Civic Society, as well as the influence this response has had on the amended Draft Enforcement Plan, has been set out in Appendix 3.**

**(2) That Members resolve to adopt the amended Draft Enforcement Plan attached at Appendix 1.**

## **1 Reason for Recommendation**

- 1.1 The delivery and implementation of the Planning Service its policies and development management functions contribute towards all of the Council's Key Priorities. The Draft Enforcement Plan sets out how the council will investigate potential breaches of planning control and use its discretionary planning enforcement powers when appropriate.

## **2 Background**

- 2.1 Members will recollect a report regarding adoption of the Council's Draft Planning Enforcement Plan was presented to the Licensing and Planning Policy Committee on 21 January 2021. In accordance with the recommendation, the Draft Planning Enforcement Plan was consulted on for six weeks between 28 May 2021 and 09 July 2021. This report responds to those responses received and recommend that the Licensing and Planning Policy Committee supports the adoption of the Planning Enforcement Plan as amended.
- 2.2 The Council's general approach to enforcement of breaches of planning control is set out in its Development Management Policies Document Section 8, adopted in September 2015. This Planning Enforcement Plan is brought forward as detailed explanation of how the Council will implement its approach to enforcement in accordance with up-to-date government guidance and best practice.
- 2.3 Under the Town and Country Planning Act 1990 (as amended), the Council has the power to take enforcement action where it assesses that a breach of planning control has resulted in material harm in planning terms.
- 2.4 Guidance as to how to apply this power and when a local planning authority may consider it expedient to take enforcement action is contained in National Planning Policy Framework (NPPF) paragraph 59, and National Planning Practice Guidance (NPPG). The government urges local planning authorities to use enforcement action as a last resort. Formal enforcement action will not be authorised unless it has been concluded that there is no other course of action available.



- 2.5 In addition to Government guidance, the Development Management Policies Document adopted in September 2015 contains at Section 8 a statement about planning enforcement and a series of general statements which constitute the Council's Enforcement Policy. This Draft Enforcement Plan, if adopted, will not form part of the Council's Statutory Development Plan, but will elaborate how the adopted Enforcement Policy will be applied and sets out service standards and clear communication with local communities, businesses and other interested groups as to how we will deal with complaints and when we will use our enforcement powers.
- 2.6 It may be updated from time to time as circumstances change.
- 2.7 When determining applications for planning permission, the authority is required to have regard to the development plan, so far as is material, and to any other material considerations. In addition, the determination must be made in accordance with the development plan unless material considerations indicate otherwise.
- 2.8 The Development Plan for the Borough comprises the Epsom & Ewell Core Strategy 2007, Plan E: Epsom Town Centre Area Action Plan (2011) and the Development Management Policies Document 2015.

### **3 Risk Assessment**

#### Legal or other duties

##### 3.1 Impact Assessment

###### 3.1.1 Not required

##### 3.2 Crime & Disorder

- 3.2.1 There are some breaches of planning control which amount to prima facie criminal acts, these include unauthorised works to statutorily Listed Buildings, unauthorised advertisements, and unauthorised works to Trees subject to a Tree Preservation Order.

##### 3.3 Safeguarding

- 3.3.1 There are no safeguarding implications arising from this report

##### 3.4 Dependencies

###### 3.4.1 None

##### 3.5 Other

###### 3.5.1 None

#### 4 Financial Implications

- 4.1 The preparation and production of the Draft Enforcement Plan and the subsequent public consultation has been undertaken using existing internal resources. This has had minor resource implications that have been contained and managed within the Planning Development Management Team.
- 4.2 All the costs associated with enforcement actions are met out of the existing Planning Development Management revenue budgets. These costs pertain to those set out in Section 186 of the Town and County Planning Act, which provides for the award of compensation for loss suffered as a result of a stop notice served pursuant to section 185 in the event that it shall transpire that the notice was wrongly served.
- 4.3 There are no additional financial implications arising from the recommendation to adopt the Draft Enforcement Plan.
- 4.4 **Section 151 Officer's comments:** None arising from the contents of this report.

#### 5 Legal Implications

- 5.1 The statutory basis for planning enforcement is contained in Part VII of the Town and Country Planning Act 1990, the Planning (Listed Buildings and Conservation Areas) Act 1990 and other legislation. Enforcement powers available to the Council include the service of enforcement, breach of condition and stop notices and the taking of legal proceedings by applying for an injunction. Depending on the type of notice and grounds of challenge, notices can be appealed before magistrates and judges or challenged in the High Court. A decision not to take enforcement action is potentially susceptible to judicial review.
- 5.2 The taking of enforcement action is discretionary and, as referred to in the body of the Draft Enforcement Plan, is a matter of expediency with government guidance published as to when enforcement action should be considered. Although government guidance is not legislation, it is advice that local authorities are obliged to have regard to.
- 5.3 Having a plan will help the Council in making the right enforcement decisions and reducing the likelihood of successful appeals or challenges. In exercising discretion the officers will need to consider whether other departments or external agencies have more effective powers e.g., environmental protection, building control and licensing.

- 5.4 A decision to prosecute following enforcement requires prior legal advice on the Code for Crown Prosecutors that applies to decisions taken by the Council to commence criminal proceedings.
- 5.5 It is considered that there are no adverse human rights implications arising from the Draft Enforcement Plan. There are no data protection implications and no negative impact under the public sector equality duty.
- 5.6 **Legal Officer's comments:** none arising from the content of this report.

## 6 Policies, Plans & Partnerships

- 6.1 **Council's Key Priorities:** The following Key Priorities are engaged:

Safe and Well  
Green and Vibrant

- 6.2 **Service Plans:** The matter is included within the current Service Delivery Plan.

- 6.3 **Climate & Environmental Impact of recommendations:**

There are no Sustainability or Community Safety implications arising from this report

- 6.4 **Sustainability Policy & Community Safety Implications:**

- 6.5 **Partnerships:**

There are no Partnerships implications arising from this report

## 7 Background papers

- 7.1 The documents referred to in compiling this report are as follows:

### **Previous reports:**

- [Planning Enforcement Plan Report presented to the Licensing and Planning Policy Committee on 21 January 2021](#)
- [Draft Planning Enforcement Plan presented to the Licensing and Planning Policy Committee on 21 January 2021](#)

### **Other papers:**

- Appendix 1: Final Draft Enforcement Plan October 2021
- Appendix 2: Summary of responses from the public consultation on the first draft Enforcement Plan

- Appendix 3: Full response from Epsom Civic Society



# Epsom & Ewell Borough Council

## Final Draft Enforcement Plan

Planning Service  
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Epsom  
Surrey  
KT18 5BY

Main Number (01372) 732000  
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Generic email to be generated  
DX 30713 Epsom

October 2021

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## **Planning Enforcement Plan**

This document sets out how the Council will deal with potential planning breaches.

It provides information and guidance for residents, developers and those with other interests, on how complaints about unauthorised development are handled. It seeks to balance the concerns of local residents with the rights of owners and sets out the priorities and timescales for responding to complaints, carrying out investigations and taking appropriate enforcement action where necessary.

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## **Introduction**

Epsom & Ewell Borough Council is responsible for dealing with planning enforcement in the Borough.

The statutory basis for planning enforcement is contained in Part VII of the Town and Country Planning Act 1990. Enforcement powers available to the Council include the service of enforcement notices, breach of condition notices and stop notices and the taking of legal proceedings by way of an injunction where appropriate.

The taking of enforcement action is discretionary and, as referred to in the body of the Report, is a matter of expediency with government guidance published as to when enforcement action should be considered.

The use of enforcement powers is guided by the National Planning Policy Framework (2021). Paragraph 59 of the Framework outlines that:

*“Effective enforcement is important to maintain public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control.”*

Development without planning consent may cause frustration, upset and or even distress for residents, businesses and visitors to the Borough. Breaches of planning control are covered by planning legislation. Most breaches are not criminal offences, but there are some notable exceptions, such as unauthorised works to listed buildings, unauthorised works to trees subject to a Tree Preservation Order and unlawful advertisements.

All complaints regarding potential breaches of planning regulations are investigated by a professionally qualified officer who, in conjunction with the Planning Development and Enforcement Manager and Head of Place, decide what action should be taken. Decisions are based on the merits of each individual case, and enforcement action is taken only when it is considered rational, reasonable, proportionate and expedient.

## **Expediency**

The Council's planning enforcement powers are discretionary, and we will not take action simply because there has been a breach in planning control.

Enforcement action should only be taken where the Council is satisfied that it is 'expedient' to do so, having regard to the provisions of the development plan and to any other material planning considerations.

In making this assessment the Council will gather evidence regarding the nature and scale of the breach, and whether it unacceptably affects public amenity and or the built or historic environment.

### **Planning enforcement – principles and definitions**

What is development? The meaning of development is defined within the Town and Country Planning Act 1990 Section 55 as: 'the carrying out of building, engineering, mining or other operations in, on, over, or under land, or the making of any material change in the use of any buildings or other land.'

What is a breach in planning control? A breach of planning control is defined under Section 171A of the Town and Country Planning Act 1990 as: (a) 'carrying out development without the required planning permission; or (b) failing to comply with any condition or limitation subject to which planning permission has been granted.'

Epsom & Ewell Borough Council undertake a firm but rational and reasoned approach to regulation based upon the following principles:

- Proportionality;
- Consistency;
- Transparency;
- Targeting of enforcement action and raising awareness;
- Accountability.

### **Proportionality**

Enforcement action will be appropriate to the scale of the alleged breach and the seriousness of the harm caused. We will minimise the costs of compliance by ensuring that any action we take is proportionate to the risks. When it is in public interest to do so, we will prosecute individuals or organisations who do not comply with any formal notice served on them. When it is appropriate, we will take direct action, having regard to degree of harm and public safety.

### **Consistency**

Taking a similar approach in similar circumstances, where possible to achieve similar results. We will also be consistent in how we treat customers.

## **Transparency**

We will ensure that everyone involved with cases understands our processes and procedures, including what rights of complaint and appeal may be open to them. We will seek feedback from service users in order to learn and improve.

## **Targeting enforcement action and raising awareness**

Planning enforcement is a high volume, demand based service and resource dependant. As a consequence, targeted enforcement action is very important. Raising awareness of planning management and enforcement will help to reduce unauthorised works and increase public confidence in our service.

## **Accountability**

This Local Enforcement Plan document, agreed by councillors sets our priorities for action. The success of the policy will be monitored and reviewed regularly. In addition, we will provide an annual performance report to the Council's Planning Committee and the Licensing and Planning Policy Committee.

## **Investigations**

The Council's Planning Enforcement Service can investigate the following:

- Development consisting of the change of use of land/buildings without planning consent;
- Internal and external works to listed buildings without consent;
- Unauthorised building works and/or engineering works;
- Non-compliance with conditions attached to planning permissions;
- Display of unlawful advertisements;
- Condition and appearance of buildings and/or land which is visually detrimental to the area
- Unauthorised development that causes detrimental environmental and biodiversity harm
- Listed buildings in serious disrepair; and
- Relevant demolition (requiring Planning Permission or Listed Building Consent).

The Council's Planning Enforcement Service cannot investigate the following where it does not relate to the non-compliance of a planning condition:

- Internal works to a non-listed building
- Boundary wall disputes and other land ownership issues as these are civil matters outside of the planning legislation;

- Legal covenants;
- Devaluation of property;
- Obstructions, parking, traffic enforcement and any other matters affecting the Public Highway \*
- Graffiti and anti-social behaviour\*
- Dangerous structures that are not listed buildings\*
- Noise nuisance\*
- Events/potential breaches that may occur in the future
- Odour issues\*
- Running a business from home where the residential use remains the primary use

\*The Council or Partner Agencies have other powers to deal with these issues where it does not relate to the non-compliance of a planning condition - please see Useful Contacts in Appendix A of this plan.

### **Limits on taking enforcement action**

#### **No Formal Action**

In some cases the enforcement team will not be able to take formal action against developments that are reported by members of the public. For example, when:

- The works or change of use fall within 'permitted development' tolerances under the terms of the Town and Country Planning (General Permitted Development Order) (England) 2015 or the Town and Country Planning (Use Classes) Order 1987 (as amended). Further information on the General Permitted Development Order can be found on the Government Planning Portal at [www.planningportal.co.uk](http://www.planningportal.co.uk)
- An advertisement benefits from 'deemed consent' under the Town and Country Planning (Control of Advertisements) (England) Regulations 2007. Further information on advertisement consent can be found on the Government Planning Portal at [www.planningportal.co.uk](http://www.planningportal.co.uk)
- Immunity from enforcement action has occurred (as outlined below)
- The works are considered 'de minimis' i.e. too minor to fall under the scope of planning control.

#### **Timescales**

Section 171B of the Town and Country Planning Act (as amended) sets out time limits for taking enforcement action. The Council can take enforcement action against unauthorised operational development up to four years from the date the development is substantially completed.

Operational development includes for example (this list is not intended to include all works):

- Erection of a front, side or rear extension;
- Alterations to the roof;
- Alterations to commercial buildings;
- Certain engineering works.

(This list does not include all works.)

The Council usually has four years to take enforcement action against developments where a building has been changed to a single dwelling house.

For any other development involving a change of use or breach of planning conditions the Council may take action up to ten years from the commencement of the breach.

After these periods the Council cannot take action and the development becomes lawful. The landowner can apply for a Certificate of Lawful Existing Use or Development (CLEUD) after this period to regularise the situation. This involves providing evidence that proves, on the balance of probability, that the breach of planning control has occurred for the relevant time period.

### **Listed buildings**

Carrying out works that affect the special interest of a listed building and the demolition of a building in a conservation area without consent are both criminal offences. Expert heritage advice should be sought if there is any doubt as to whether consent should be obtained and, if in doubt owners are encouraged to talk to their LPA before works are undertaken. For listed building there is no time limit to taking enforcement action. It is also a criminal offence to carry out unauthorised alterations to a listed building. Historic England will be consulted on damage or unauthorised works to Grade I and II\* Listed Buildings

### **Scheduled Monuments**

Although scheduled monument consent is a separate regime, unauthorised works are a criminal offence under the Ancient Monuments and Archaeological Areas Act 1979

### **Tree Preservation Orders**

It is a criminal offence to cut down, lop, wilfully destroy or damage a protected tree without the council's consent. The council can prosecute you for breaching a Tree Preservation Order. There is no time limit to taking enforcement action.

## **Adverts**

The display of advertisements is subject to a separate consent process within the planning system. Parties who display an advertisement in contravention of the planning regulations are committing a criminal offence. For example, by displaying an advert without the necessary consent or without complying with the conditions attached to that consent.

### **Making an enforcement complaint**

Complaints about potential breaches of planning control can be made using the form on the Council's website.

<https://www.epsom-ewell.gov.uk/residents/planning/planning-enforcement>

A copy of the form can be sent out to complainants if requested (contact 01372 732 000 for a copy of the form).

All of the questions/fields on the form should be completed and where possible photographs should be attached.

The Council will not investigate anonymous complaints. It is important that officers are able to understand the complaint, identify the harm and make a fair assessment. We also need to prevent malicious and vexatious complaints.

### **Confidentiality**

Any details submitted to the Council in relation to an enforcement complaint will be treated in the strictest confidence.

The Council will not reveal the identity of the complaints to an owner or responsible party(s). However, sometimes complainants may be asked provide evidence to assist the legal proceedings of the investigation.

In addition, enforcement complaints may be subject of a Freedom of Information request, where upon the matter and information will have to be considered for release.

### **Priorities for planning enforcement investigation**

The planning enforcement service is a high volume, demand-based service that is resource dependant. Therefore, it is important that different types of breach are prioritised in a clear and transparent way. The prioritisation set out below is based upon the significance, urgency and seriousness of a reported breach.

All investigations will be carried out thoroughly and accurately in accordance with the following priorities:

**Level 1 (highest category)**

Cases that fall within this category include:

- Unauthorised ongoing works to a Listed Building;
- Unauthorised change of use or development in the Green Belt
- Large scale development or change of use where a detrimental environmental impact is felt over a wide area;
- Development or changes of use with detrimental impacts upon the continued health and wellbeing of the public and the environment;
- Works not in accordance with planning permission for major development that falls within the above categories;
- Substantial works (including demolition) in a conservation area;
- Shop signage in conservation area; and
- Unauthorised Felling, topping or lopping of tree protected under a Tree Preservation Order, or in a Conservation Area.

**Level 2 (medium category)**

Cases that fall within this category are identified as development that is contrary to Development Plan Policy or Government Policy, and which causes some level of environmental/residential harm. This could include:

- completed but unauthorised works to a Listed Building
- residential and commercial extensions and shopfronts;
- breaches of condition where no serious implication/harm is caused;
- changes of use including HMOs;
- condition of buildings or land in poor condition;
- works not in accordance with planning permission for development considered not to be major development;
- Tree Replacement Notices
- Any work in a Conservation Area where no serious implication/harm is caused.
- unauthorised signage and advertisements.

**Level 3 (lowest category)**

Cases that fall within the category include:

- any breach of planning control which is of a temporary nature (unless public safety is compromised);

- unauthorised fences, walls and gates;
- satellite dishes;
- flues.

Please note: Officers may re-prioritise cases after receiving a complaint based upon the nature of the alleged breach and its impact.

### **Service standards and objectives**

We recognise the importance of keeping individuals up to date with our progress. Some investigations can take longer than others, but we will deal with all cases in a rational and transparent way.

Complainants can expect:

- A written acknowledgement within five working days of the complaint, detailing the prioritisation on the case and the details of the case officer. Although Officers will discuss the prioritisation of the case with the complainant where necessary, the final decision rests with the Head of Place.
- Site visits to be undertaken in accordance with the 'Timeline' section below.
- Complainants will be informed at each key stage of the process (or at least -every eight weeks). e.g. you will be advised if a planning application is invited; when a planning application is received; whether an enforcement notice has been served etc.
- To be informed of the final outcome of their complaint.
- In some cases, we may ask complainant for further details. If the complainant is unwilling to assist, this may result in the Council not being able to pursue the investigation due to insufficient evidence.
- There are no set timescales for the closure of an enforcement case. Investigations and action can take a long time. However, we will provide an update eight weeks after receiving the complaint. Complainants can also email the case officer who will respond within five working days.

Owners of the properties that are complained about can expect:

- Clear and open communication on the circumstances of the alleged breach including an explanation of what steps are required to resolve any breach and the possible consequences if those steps are not taken.
- A thorough investigation of the complaint before a decision is made.
- Notification at the appropriate time following an initial assessment as to whether planning control has been breached and the measures needed to achieve compliance.
- To be given an opportunity to put things right, along with information on how long they have to do this and the consequences of failing to do so



- Formal enforcement action to be taken, if necessary, if attempts to negotiate a remedy fail.
- To be informed in writing if the Council decides to proceed to formal enforcement action and what form that will take.
- Information on how to appeal against the notices, where applicable.

### **Timeline when making an enforcement complaint**

#### **Receipt of the complaint**

When a complaint is received by the Council it will be subject to initial screening and categorised as Level 1, Level 2 or Level 3.

The complainant will receive an acknowledgement detailing how the case has been prioritised and details of the case officer within five working days of receipt.

#### **Initial assessment**

An initial assessment will be carried out within:

- 3 working days for cases in Level 1
- 15 working days for cases in Level 2
- 30 working days for cases in Level 3

In most circumstances, this will include a site visit. Once the initial assessment has been carried out, we will notify the owner or occupier of the property that has been complained about as to whether or not the complaint falls into the category of a breach of planning control.

If no breach is discovered the case will be closed immediately and both the complainant and property owner will be informed and provided with an explanation as to why the case was closed.

#### **If there is a breach**

If a breach has occurred it is open to the Council to take formal action, where it is expedient to do so. The decision on what enforcement action should be taken will depend on the individual circumstances of the case.

The owner and/or relevant party will be advised by the Council of the action that they will be required to take to remedy the breach.

This could include:

- Requirement to cease the use or remove any unauthorised development; or
- Submit a planning application to regularise the breach or provide a revised scheme to address unauthorised works that are considered unacceptable.

The owner and/or relevant party will be given a reasonable timeframe (the timeline will depend on the circumstances of the case) to comply with these requirements and the complainant will also be kept informed.

Should this period expire without the breach being remedied, the case officer will carry out a second assessment, taking into account the current intentions and actions of the owner and/or relevant party to this point.

### **Formal notices**

Where the Council are unable to negotiate and acceptable solution within a reasonable timescale, formal action will be considered to prevent a protracted process. This could involve the Council considering serving a formal notice:

#### Breach of Condition Notice (BCN)

A breach of conditions notice under Section 187A of the Town and Country Planning Act 1990 requires its recipient to secure compliance with the terms of a planning condition or conditions, specified by the Local Planning Authority in the notice. There is no right to appeal against this notice and prosecution can be brought in the Magistrates' Court for the offence of contravening a breach of condition notice.

#### Discontinuance Notice

Where a person has displayed an advertisement with deemed consent that the authority is satisfied causes a substantial injury to the amenity of the area or is a danger to members of the public, a discontinuance notice can be served under Regulation 8 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 seeking the removal of the advert.

#### Listed Building Enforcement Notice

A Listed Building enforcement notice under Section 38 of the Planning (Listed Buildings and Conservation Areas) Act 1990 will require the recipient to secure compliance with the terms of the notice. Works to listed buildings without consent is a criminal offence and prosecution may occur alongside the enforcement notice, subject to severity/context. There is a right of appeal of this notice.

### Planning Contravention Notice (PCN)

This is a notice which allows the Council to collect evidence which will help to determine if a breach is taking place and the next steps. The owner and/or person responsible have 21 days to respond and failure to do this may result in prosecution.

### Section 172 Enforcement Notices

The enforcement notice allows the Council to formally require a breach of planning control to be remedied. Government guidance states that enforcement notices should only be served when expedient to do so. Failure to comply within the specified timeframe is a criminal offence which can lead to prosecution proceedings. Enforcement notices can be appealed, and the Planning Inspectorate can decide to uphold the notice, amend it or have it quashed.

### Section 215 Notices

Where the condition of land or a building is adversely affecting the amenity of a neighbourhood the Council may issue a Notice under Section 215 of the Town and Country Planning Act 1990, requiring the owner or occupier to remedy the condition of the land or building. Failure to comply with the Notice is a criminal offence. The council has powers, where a Notice has not been complied with, to enter the land and carry out the work itself and recover the cost from the owner.

### Stop Notice

This can be used in conjunction with an enforcement notice where the breach of planning control is causing serious harm and should only be used in extreme cases. In such cases where stop notices are issued the Council may be liable to pay compensation if it is later decided that the stop notice was not appropriate. For these reasons, serious consideration needs to be given to the appropriateness of serving a stop notice.

### Temporary Stop Notice

These are similar to stop notices but take effect immediately from the moment they are displayed on a site and last for up to 28 days. A temporary stop notice would be issued only where it is appropriate that the use or activity should cease immediately because of its effect on (for example) amenity, the environment or public safety.

It may be issued even when planning permission has been granted for development, for example, in a case where the developer is not complying with conditions attached to the permission.

### Urgent Works Notice

This is a notice under Section 54 of the Planning (Listed Buildings and Conservation Areas) Act 1990 that applies to unoccupied listed buildings in serious disrepair. It enables the Council to order urgent works to preserve the building, for example to make it weather tight and secure. If the notice is not complied with the Council may carry out the works in default and recover the costs from the owner.

### **Failure to comply with formal notices**

Where a notice has been served and has not been complied with, there are three main options available to the Council to attempt to resolve the breach:

#### Direct Action

Where the terms of an enforcement notice or section 215 notice have not been met within the compliance period (other than the discontinuance of the use of land), the Council will consider whether it is expedient to exercise our powers to enter the land and take the steps to remedy the harm. The Council would seek to recover from the person who is the current owner of the land any expenses the Council reasonably incurred by action taken to remedy the harm.

#### Prosecution

We will consider commencing a prosecution in the Courts against any person who has failed to comply with the requirement(s) of any enforcement notice, or Breach of Condition Notice where the date for compliance has passed and the requirements have not been complied with. However, prior to commencing with any legal proceedings, we will need to be satisfied that they are in the public interest and that there is enough evidence to offer a realistic prospect of conviction.

Unauthorised adverts and unauthorised works to any tree the subject of a tree preservation order are offences and we are able to initiate prosecution without the need to issue a notice.

#### Injunction

Where an enforcement notice has not been complied with, and the particular circumstances of the case suggest direct action or prosecution would not be an effective, we will consider applying to the Court for an injunction.

### Removal Notices

We will seek removal of any structure used to display an advertisement. Where the notice is not complied with we may undertake the works and recover the expenses for doing so

### Replacement Notices

It is open to the Council to issue tree replacement notices, requiring trees to be replanted.

### **Timescales**

The enforcement service aims to reach a decision on all cases whether or not to take action within eight weeks of receipt of the complaint and will provide an update to the property owner and complainant. The merits of each case would vary on a case by case basis which sometimes surpasses the eight week time frame. However, the Council would update all interested parties, should this be the case.

### **Involvement with Local Members**

Potential breaches are reviewed by relevant Officers; however Local Ward Members can sign up for live alerts from the Councils website which covers enforcement related matters, should they wish to discuss this with the relevant Officer.

### **Communication**

Investigating possible breaches of planning permission can be stressful for both the party(ies) making the complaint and for the person under investigation. This is partly due to the different ways in which an investigation can progress and the timescales involved.

To try and ease stress and assist with the uncertainty the enforcement officers will provide updates during the course of an investigation.

### **When should we take enforcement action?**

#### **Expedient**

Council officers consider a case to be expedient when:

- Further negotiation is needed to resolve the breach.
- Further evidence is required. This can be achieved through the service of a formal Planning Contravention Notice (PCN) or research of previous uses/permissions.

- A formal notice is served. The most common types of notices used include Section 172 Enforcement Notices and Section 215 Amenity Notices under the Town and Country Planning Act 1990 and Section 38 Listed Building Enforcement Notices under the Planning (Listed Buildings and Conservation Areas) Act 1990.

### **Not Expedient**

The Council will use its discretion when deciding whether to take formal enforcement action. Planning breaches may be unintentional or be considered technical or very minor. In line with government policy and guidance within the National Planning Policy Framework (NPPF) and Planning Practice Guidance, the Council will take action when it is considered fair and reasonable to do so and is proportionate to any harm caused. In some cases although there is a breach in planning control, the harm caused is minor, meaning action is not justified: i.e. it is not expedient to pursue the case.

Although 'harm' is not defined in the Planning Regulations, harm can include an unacceptable impact on:

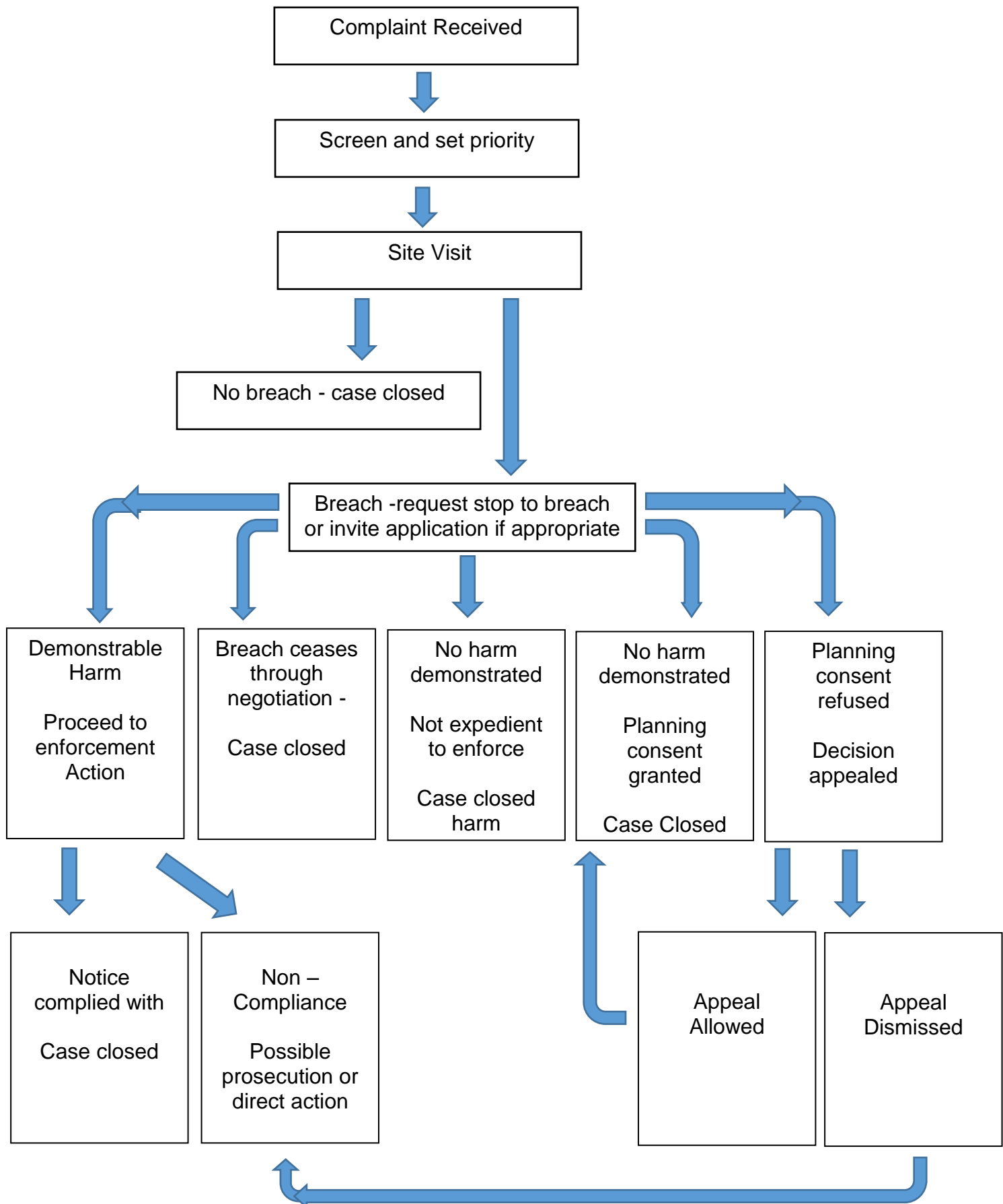
- Visual amenities and the character of the area
- Neighbouring amenities such as privacy/overbearing/daylight/sunlight
- Noise/odour/pollution, such as contamination
- Highway safety/access/traffic
- Health and safety
- Undesirable precedent
- Ecology, trees and landscape
- Amenity standards of users of the development

A tool to assist in assessing harm is set out in Appendix B.

### **Timescales**

Planning enforcement action can be a lengthy process and potentially frustrating for all involved. The enforcement team aims to resolve breaches as quickly as possible. However, due to the level of research sometimes required and the effects of external factors (such as the timescales involved in appeals to the planning inspectorate and prosecutions) some cases will take a long time to resolve.

### The Enforcement Process



### **Review of the Enforcement Plan**

Regular reviews of this enforcement plan will be necessary to ensure it remains current with the most up to date government legislation and guidance. Reviews will therefore be carried out when legislation and guidance changes or when we receive comments from the public can improve the plan. We welcome comments on this Planning Enforcement Plan and any other matter relating to the Enforcement Service.

Please contact:

Head of Place  
Town Hall  
The Parade  
Epsom  
Surrey  
KT18 5BY  
Main Number (01372) 732000  
**Generic email to be generated**

Specific enquiries relating to a particular case should be referred to the case officer or their immediate line-manager.



## **Appendix A**

### **Useful contacts**

#### **Inspector of Ancient Monuments**

The Inspector of Ancient Monuments is responsible for the protection and preservation of Ancient Monuments under the the Ancient Monuments and Areas Act 1979. The Inspector of Ancient Monuments can be contacted at [jane.sidell@HistoricEngland.org.uk](mailto:jane.sidell@HistoricEngland.org.uk)

#### **Building control**

The main purpose of Building Control is to ensure that all building work complies with the Building Regulations. Building Control also investigate buildings and other structures which may be dangerous. The team can be contacted on 01372 732 000 and email: [businessadminhub@epsom-ewell.gov.uk](mailto:businessadminhub@epsom-ewell.gov.uk).

#### **Empty Homes Team**

The main purpose of the empty properties team is to help homeowners, potential investors and neighbours to ensure empty properties are returned to use. The team can be contacted on 01372 732 000 and email: [EmptyHomes@epsom-ewell.gov.uk](mailto:EmptyHomes@epsom-ewell.gov.uk).

#### **Highways**

The Surrey highways team co-ordinates and monitors public highways in the county.

Visit <https://www.surreycc.gov.uk/roads-and-transport> for a list of all the areas the highways team cover. The team can be contacted on 0300 200 1003.

#### **Noise & odour nuisance**

The environmental health team is responsible for protecting and improving public health and the environment. Officers carry out various duties in the Borough including food hygiene, health & safety inspections, responding to complaints of noise nuisance, pollution control and licensing. The team can be contacted on 01372 732 000 and or visit <https://www.epsom-ewell.gov.uk/environment> for a list of services and ways to contact specific to your complaint.

#### **Housing**

The housing team covers all housing which is not owned by the Council. The team can be contacted on 01372 732 000 or visit <https://www.epsom-ewell.gov.uk/Housing> for a list of services and ways to contact specific to your complaint.

#### **Partnership for Action Against Wildlife Crime (PAW)**

If you witness a suspected wildlife crime in action call 999 immediately and ask for the police. For all other enquires call 101.

For further information on reporting, visit PAW

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/328652/paw-reportingcrime-leaflet.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/328652/paw-reportingcrime-leaflet.pdf)

### **Trees**

The arboricultural service deals with most tree-related issues. The team can be contacted on 01372 732 000 or visit <https://www.epsom-ewell.gov.uk/tree-information-and-preservation-orders> for further information.

## Appendix B

### Tool to assist with assessing harm\*

|    |  |   |                   | Score |
|----|--|---|-------------------|-------|
| 1  | Is the breach  | Deteriorating<br>Stable   | (1)<br>(0)        |       |
| 2  | Highway safety issue   | Yes<br>No   | (2)<br>(0)        |       |
| 3  | Other safety issue not covered by other legislation  | Yes<br>No   | (2)<br>(0)        |       |
| 4  | Causing detrimental or irreversible environmental harm   | Yes<br>No   | (1)<br>(0)        |       |
| 5  | Complainant  | Immediate neighbour<br>Parish Council/Other<br>Anonymous/malicious                        | (2)<br>(1)<br>(0) |       |
| 6  | Age of breach  | Within six months of immunity<br>Less than three months old<br>More than three months old | (2)<br>(1)<br>(0) |       |
| 7  | Is there harm  | Widespread<br>Local<br>None   | (2)<br>(1)<br>(0) |       |
| 8  | Major planning policy breach   | Yes<br>No   | (1)<br>(0)        |       |
| 9  | Flood risk   | Yes<br>No   | (1)<br>(0)        |       |
| 10 | Breach of planning condition or Article 4 Direction  | Yes<br>No   | (1)<br>(0)        |       |
| 11 | Conservation Area or adjacent to   | Yes<br>No   | (1)<br>(0)        |       |
| 12 | Listed Building or affecting the character or setting  | Yes<br>No   | (1)<br>(0)        |       |
| 13 | Particularly sensitive site, such as SSSI, AONB, Schedule Ancient Monument, Listed Garden, Archaeological Importance | Yes<br>No   | (1)<br>(0)        |       |
| 14 | Undesirable precedent (please provide details)   | Yes<br>No   | (1)<br>(0)        |       |

\* For formal enforcement action to be taken, it is likely that the harm score will need to be 6 or more. This is only one of the tools/tests that the Council will use to assess whether formal enforcement action should be taken.

## **Appendix C**

### **Enforcement Glossary**

This glossary provides the enforcement options available to the local planning authority.

#### **Default powers**

The Council may enter the land and take the necessary action to secure compliance when enforcement notices are in effect. This is only used in extreme cases and when resources allow. The Council will seek to recover all cost associated with carrying out the works in default.

#### **Injunction**

This involves seeking an order from the court preventing an activity or operation from taking place. Failure to comply with the requirements of an injunction amounts to a criminal offence.

#### **Negotiation**

Negotiation is encouraged in all but the most serious cases as the best way to resolve a breach and in some cases can be more expedient than issuing an enforcement notice.

#### **Planning enforcement order**

Where a person deliberately conceals unauthorised development, the deception may not come to light until after the time limits for taking enforcement action (Section 171B of the Town and Country Planning Act 1990) have expired. A planning enforcement order enables the Council to take action in relation to an apparent breach of planning control notwithstanding that the time limits may have expired.

#### **Prosecution**

It is a criminal offence not to comply with the requirements of a statutory notice, to display an advertisement without consent or undertake works to a listed building without consent. The Council can prosecute or formally caution.

## Planning Enforcement Plan Appendix 2

Summary of consultation responses to from public consultation (10/06/2021 – 09/07/2021) to previous draft enforcement plan

### No Issues Raised

- Waverley Borough Council
- Transport for London
- The Coal Authority
- Natural England
- Environment Agency
- Elmbridge Borough Council

### Email Responses

| Name                       | Issue   | Impact on Enforcement Plan   |
|----------------------------|---|--|
| Historic England           | Strengthen Page 8 with recommended paragraph  | Recommended paragraph added on page 9 under 'Listed Building' title.   |
| Historic England           | Add section re: Schedule Monuments  | Section added on page 9 under 'Schedule Monuments' title.  |
| SCC Historic Planning Team | In the section regarding issues that the Enforcement Service cannot investigate, it might be advantageous - for the benefit of providing clarity to the public - to include reference to damage to Scheduled Monuments. This would be investigated by Historic England so reference to the relevant Inspector of Ancient Monuments would need to be added to Appendix A also. Historic England should also be consulted on damage or unauthorised works to Grade I and II* Listed | Section added on page 9 under 'Schedule Monuments' title.<br><br>Inspector of Ancient Monuments added to Appendix 1<br><br>Recommended addition of Historic England added on page 9 under 'Listed Building' title. |

|                            |   |  |
|----------------------------|---|--|
|                            | Buildings which could usefully be added to the text of this document.   |  |
| SCC Historic Planning Team | In the section on “Priorities for Planning Enforcement Investigation” it is stated that “ongoing works to a Listed Building” will be assigned a “Level 1” category for investigation. I am satisfied that this is entirely appropriate. However, earlier in the document it is (correctly) stated that there is no time limit to taking enforcement action on unauthorised alterations. This means that previously completed but unauthorised works to a Listed Building could be reported for and be requiring of enforcement action, but there is as yet no priority category to which this matter could be assigned, as only “ongoing” works are covered in the wording. I would recommend therefore that either the word “ongoing” be replaced with “unauthorised” in this section, or that “notification of previously completed but unauthorised works to a Listed Building” be added as a separate item. This should perhaps be a Level 2 matter as there would likely be less immediacy required in dealing with these as stopping ongoing works would necessitate, although the matter would still be a potential criminal offence (so considerably more significant than a Level 3 breach). | <p>‘Unauthorised’ added to ‘ongoing works to a Listed Building’ added to Level 1 category on page 11</p> <p>‘Completed but unauthorised works to a Listed Building’ added to Level 2 category on page 11</p> |
| EBEC Enforcement Officer   | I would name enforcement complaints as reports of breaches of planning and complainants as being reporters  | Not implemented as ‘enforcement complaints’ and ‘complainants’ is terminology recognisable to members of the public.   |
| EBEC Enforcement Officer   | We have a statement that we will <u>only</u> take action when it is fair reasonable proportionate and expedient. My view is that fairness should not be given such a prominent emphasis as there will be times when the Council might take action when  | Given that enforcement cases can be raised by members of the public, it is considered reasonable to replace fairness with ‘rational’ in the introduction on page 5   |

|                          |  |   |
|--------------------------|--|---|
|                          | fairness may point to another neighbour experiencing a notice for the same issue first but it was that for whatever reason we got to a case first. I can develop this further if required  |   |
| EBEC Enforcement Officer | Conflicting statements of when we will take action against tree breaches   | Unauthorised works to trees subject to a tree preservation order has been added to the list of criminal offences on page 5 and page 9 |
| EBEC Enforcement Officer | expediency definition/explanation needs reworking  | The Epsom Civic Society recommended that this section is titled as just 'Expediency' on page 5, which has been implemented.           |
| EBEC Enforcement Officer | Confidentiality is not up to date possibly   | Confidentiality is up to date on page 10.   |
| EBEC Enforcement Officer | In the weighting categories<br><br>I would have unauthorised change of use or development in the Green Belt in Cat 1<br>I would have shop signage in conservation areas as cat 1<br>I would suggest that unauthorised felling of a tree in a CA is Cat 2 but it may be difficult now to change | These have been implemented in the prioritisation categories on pages 11 - 12   |
| EBEC Enforcement Officer | Under customer service standards I would state that reporters can expect responses by email.   | Responses may not always be given by email. It is reasonable to continue the expectation on page 12 to be a 'written acknowledgment'  |
| EBEC Enforcement Officer | Uniform is not set up to provide service standards demanded by the draft plan and there are no automated management tools in place   | This is a process issue outside of the Enforcement Plan   |
| EBEC Tree Officer        | Under the heading 'The Council's Planning Enforcement Service cannot investigate the following' the sentence 'activities giving rise to direct or indirect damage to protected   | This has been removed as it conflicted with a Level 1 priority case.  |

|   |   |  |
|---|---|--|
|   | trees or qualify trees in conservation Areas should be removed’.  |  |
| EBEC<br>Environmental<br>Health           | There is a need to clarify one particular aspect within the policy. Although the environmental health service has powers to control noise, where by condition the application is constrained to particular site working hours, it would be expected the Local Planning Authority take primacy on dealing with the matter on account of the fact that it is a planning breach and not necessarily a noise nuisance. It would be useful to highlight this distinction in the policy | This has been clarified on page 8  |
| Epsom and<br>Ewell Tree<br>Advisory Board | Nowhere in the draft enforcement plan wording is any reference made to enforcement action that may be required to ensure that Tree Replacement Notices (TRNs) issued by the Council (normally as a condition associated with planning approvals for the felling of TPOd trees) are adhered to.  | This has been added as a Level 2 priority on page 11   |
| Epsom and<br>Ewell Tree<br>Advisory Board | Increasing non-compliance by developers with regards to landscaping conditions applied by the Council is not recognised in any of the priority category levels for enforcement investigation  | This would fall under ‘breaches of condition where no serious implication/harm is caused’ in Level 2 priority on page 11 |
| Epsom and<br>Ewell Tree<br>Advisory Board | Concern about placing an absolute time limit of four years on any enforcement action against breaches that have occurred, except those involving listed buildings. TAB have been led to believe that Planning breaches involving the unauthorised felling of TPOd trees never run out.  | As this is a criminal action, it is not subject to a time limit  |
| Epsom Civic<br>Society                    | See Letter  | The impact of these comments on the Draft Enforcement Plan have been outlined in red.                                    |
| Cllr Eber<br>Kington                      | Concern in respect of the use of the word ‘expedient’ in introduction – could be open to interpretation   | Expedient is recognised terminology in matters of enforcement.   |



|                   |   |  |
|-------------------|---|--|
| Cllr Eber Kington | <p>The document provides a “Definition of Expediency”. Based on my first comment, my view is that this heading should be revised to how the Council will use its Discretionary Powers.</p> <p>The Council’s planning enforcement powers are discretionary, and we will not (rather than should not) take further action simply because there has been a breach in planning control.</p> <p>The council’s use of enforcement powers will be based on the provisions of the development plan and any other material planning considerations.</p> <p>In making this assessment the Council will gather evidence regarding the nature and scale of the breach, and whether it unacceptably affects public amenity and or the built or historic environment.</p> <p>.....all of the above then leading to the key points and definitions at the top of page 6.</p> | <p>It is considered that the use of the word expediency for this heading is appropriate.</p> <p>This paragraph on page 5 has been amended in accordance with this recommendation</p> <p>This is already captured by the relevant paragraph on page 5</p> <p>This is a repeat of the original paragraph</p> |
| Cllr Eber Kington | <p>Concerned about what the headings ‘Proportionality’ and ‘Targeting Enforcement Awareness’ means.</p> <p>We are a Residents’ Association led Council and if these words are used to avoid taking action because it only affects one resident or a group of residents, despite being a significant breach, I cannot support them. In the interests of openness and fairness therefore the document should</p>  | <p>This is a process issue outside of the Enforcement Plan. Any decision not to take enforcement action will be recorded on the file, along with the reason for not doing so.</p>  |

|                   |   |  |
|-------------------|---|--|
|                   | confirm that “decisions not to act will be recorded along with the reasons for that decision”.  |  |
| Cllr Eber Kington | <p>Under the heading Accountability it states:</p> <p>This local enforcement plan document, agreed by councillors sets our priorities for action. The success of the policy will be monitored and reviewed regularly.</p> <p>Is this an internal planning team monitoring role or a role for LPP or Audit Committee? The document should state by whom and how regularly, otherwise accountability is unlikely to happen, and the review may not be open.</p>                             | An annual performance report to the Council's Planning Team is considered to be the appropriate form of monitoring and reviewing the Enforcement Plan document. It is inferred in the paragraph on page 7 that the Officers will internally carry out this review. |
| Cllr Eber Kington | Under Confidentiality should the document also reference the Council's procedures for dealing with vexatious complainants?  | There is unlikely to be a uniform procedure on this matter, as it will depend on a number of factors, such as level and frequency of vexatious complaints.   |
| Cllr Eber Kington | <p>I note that within the Priorities for planning enforcement investigation level three lowest category for action are shop fronts. However:</p> <p>If our Build Back Better Plan includes under Rebuilding a strong local economy includes “Making sure our high streets and urban spaces are safe and attractive for people to come back to”.</p> <p>If our draft Local Plan is going to contain policies referencing beautiful buildings and reflecting the local character of....</p> | Shop fronts have been moved to Level 2 priority on page 11   |

|                   |  |   |
|-------------------|--|---|
|                   | <p>If our Future 40 Vision references, smart, green, great place to live work and do business</p> <p>.....why does our draft Planning Enforcement Policy place what our shop fronts look like within the lowest category for action?</p>   |   |
| Cllr Nigel Collin | <p>My comment relates to the absence of sanctions to be applied. For instance a developer does not put in the planting as agreed and ignores a request to do so. Surely this is a matter where the fine needs to be outlined with that doubling if not enacted in the agreed time frame. A court order appears to be overkill in this situation given cost and time</p>  | Sanctions have been set out on pages 14-15  |
| Simon Alford      | <p>Concerns that breaches in category three (advertisement hoardings, over height fence, unauthorised fence) should actually be in Category 1 as the actual damage to the local environment caused by these are actually quite major in their impact are never actually progressed simply because they happen to fall into a 'low level' categorisation that doesn't do them justice.</p>  | Officers will consider the impact of the breaches or unauthorised works on the environment when considering the level of prioritisation |
| Simon Alford      | <p>With regards to the draft 'Service standards and objectives' section of the draft enforcement plan, I strongly welcome the better communication that is being proposed with complainants with regards to what action is being taken by the Council, because in my experience such proactive communication is currently abjectly lacking. I particularly welcome the proposal that 'at least every three months' complainants will be proactively updated, because at the moment complainants can be left wondering whether their initial observations have entered a black hole....though, to</p> | Comment noted   |

|                 |   |   |
|-----------------|---|---|
|                 | be fair, I've always had extremely prompt replies from the enforcement officer when contacting him direct to ask for an update. This has not always been the case when reporting breaches prior to actual enforcement state to other officers – including senior ones – with the distinct impression being given that Epsom & Ewell BC is becoming far less likely to respond to resident's letters or emails than it has been in the past. |   |
| Alexander Duval | With respect to the criteria of what the Council's Enforcement Service cannot investigate, is there an exception when a condition attached to a planning permission relates to one of these criteria?   | Page 7 has been amended to identify the exception being non-compliance of a planning condition.   |
| Alexander Duval | More detail should be provided to explain what circumstances the 'strictest confidence' may be breached legitimately  | It is considered that the details set out on page 10 explain the relevant circumstances   |
| Alexander Duval | It would be helpful to have a definition of serious, major proposals, minor and substantial works.  | There is no set definition of this terminology in this context, as it will be dependent on the situation.   |
| Alexander Duval | Could a breach of condition ever be significant enough to make it a Level 1 issue?  | This is a process issue outside of the Enforcement Plan. However, where a breach of condition has serious implications felt over a wider area or has serious implications upon the continued health and wellbeing of the public environment, it may be considered appropriate to consider the breach as a Level 1 priority. |
| Alexander Duval | Do complainants have the opportunity to discuss a) the categorisation and b) the decision before it is issued (in case, for instance, there is further information which would be helpful)?   | This is a process issue outside of the Enforcement Plan. The Council will prioritise the breach on the basis of the information provided by the complainant. If further information is needed,  |

|                 |  |  |
|-----------------|--|--|
|                 |  | page 12 outlines that in some cases, we may ask complainant for further details. Page 12 also advises that we inform the complainant of the final outcome of their complaint |
| Alexander Duval | It would be helpful to list the key stages at which updates can be expected  | Examples of key stages has been added to page 13, under the heading 'Complaints can expect'  |
| Alexander Duval | Is there any indicative guidance as to the possible spread of timeframes (e.g. up to a maximum of 3 months)?         | This is covered under the heading 'Complaints can expect' on page 13 which advises that complainants will be updated at both key stages or at least every eight weeks.       |
| Alexander Duval | Is there a consequence if this timeframe slips? Other timeframes above use 'will' happen rather than 'aim to' happen | This is a performance issue that is not relevant to the Enforcement Plan.  |
| Alexander Duval | In what circumstances will Ward Members be consulted?  | This has been updated on page 15   |
| Alexander Duval | Consider whether to list glossary alphabetically   | The glossary has been updated alphabetically.  |

### Questionnaire Responses

No Issues

Alan Blackmore  
 Beata Seymour\*  
 Claire Van Der Zant  
 Maurice Bacon\*  
 Michael Arthur 1  
 Richard J Eagle

\* No issue comment to Question 4 (see below)

| Name             | Ques | Issue  |
|------------------|------|--|
| Kat Geek         | 1    | Substantial works in any area should be in category 1, not only if they are in a conservation area.                      |
| Kat Geek         | 2    | Substantial works in any area should be in category 1, not only if they are in a conservation area.                      |
| Joel Evans       | 1    | Clarify what constitutes a "major proposal". Does this mean "Major Development" per T&C 2010?                            |
| Joel Evans       | 2    | Clarify what constitutes a "non-major proposal"  |
| Joel Evans       | 4    | I see no provision for escalating consequences for serial breaches of condition  |
| Michael Arthur 2 | 1    | Sometimes what you consider case 2 particularly householder complaints may need to be in level 1                         |
| Michael Arthur 2 | 2    | Sometimes what you consider case 2 particularly householder complaints may need to be in level 1                         |
| Michael Arthur 2 | 4    | The process flow chart box at page 12 does not show a scenario for a breach and application refused                      |
| Mike Bear        | 1    | Add changes of use including HMOs; and residential and commercial extensions   |
| Natalie Rogers 1 | 1    | I think the categories covered are not extensive enough  |
| Natalie Rogers 2 | 1    | No mention of conservation areas or development resulting in significant harm to character                               |
| Natalie Rogers 2 | 2    | Unsightly buildings or untidy land, development not in accordance with the approved plans                                |
| Natalie Rogers 2 | 4    | Other LA's set out their vision and the importance of public confidence through this process.                            |
| Roy Gilbert      | 1    | Move from Level 2 to Level 1, residential & commercial extensions, breach of Planning Permission + breaches of condition |

|                |   |  |
|----------------|---|--|
| Roy Gilbert    | 3 | But this should not be a reason to shelve any action, breaches are breaches!                         |
| Roy Gilbert    | 4 | Page 13 Breach. 'No harm demonstrated', I'm sure 99% of cases could be labelled as such?             |
| Wendy Leverage | 1 | Local listed buildings & archaeological should also be included as well as local heritage assets.    |
| Wendy Leverage | 2 | Backyard developments should be included. Also tree replacement notices (TRN) should be enforced.    |
| Wendy Leverage | 3 | Gates into local parks should not be allowed from private residences. No parking on grass verges     |
| Wendy Leverage | 4 | Enforcement of TRN should be followed up. Blakely house estate wall & other sites in Cuddington Ward |

#### Question 4 - Additional Comments

| Name          | Additional Comments   |
|---------------|---|
| Beata Seymour | All seems clear enough. Violations must be severely dealt with if rules are not complied with |
| Maurice Bacon | One area remains unclear to me. Are small advertisements on my property legal?                |

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**Draft Planning Enforcement Plan    Epsom Civic Society's Comments    7th July 2021**

Thank you for the opportunity to review and comment on the Draft Planning Enforcement Plan. The Epsom Civic Society welcomes the opportunity to participate in this public consultation and hopefully to improve Planning Enforcement which we believe in recent years has diminished in its application.

We have tabled our comments to correspond with the contents of the draft enforcement plan, as listed on page 4 of the Plan.

**Front Cover (page 1)**

Please add the E Mail contact address to the listed contacts.

- This recommendation has been implemented and a generic address for the Enforcement Plan is currently in progress and will be added to the list of contacts prior to adoption.

**Introduction (page 5)**

Please note that this is an Enforcement Plan and not a Report.

We are mindful that this Enforcement Plan will be referred to by many of our local residents when they become party to a dispute over a Planning Development. It would be useful in 'layman's terms' to state the purpose and intention of this plan. Please see Appendix A.

The Planning Enforcement Plan should seek to support :-

- A thriving economy
  - A Clean, green and safe environment
  - Healthier people and communities
  - A smarter council
- 
- It is considered that Page 3 of the Enforcement Plan successfully outlines the purpose and intention of the Enforcement Plan in plain English terminology. No further action has been taken on this recommendation

**Definition of Expedient (page 5)**

This is a description rather than a definition. We suggest that 'expediency' be used as the heading.

Suggest that the word 'further' is superfluous and should be deleted.

- This recommendation has been implemented on page 5

### **Principles and Definitions (page 6)**

This section should start with the Principle of Planning Enforcement, then follow on with 'What is a Development, What is a breach in planning control, and E&E council's approach, based on the key principles'

- This recommendation has been implemented on page 6, although in a slightly different order that set out as above

Suggest that Awareness & Urgency could be added to the main list.

- This recommendation has been implemented on page 6 by adding 'Targeting of enforcement action and raising awareness'

Suggest that 'resources are limited' are stated once only in the main introduction. The ECS suggest that Enforcement is of high importance and must not be neglected on financial grounds.

- This recommendation has been implemented and this reference has been removed throughout the Plan

The **annual performance report** is an important issue which warrants a separate section. Please see suggestions later in our comments.

Within the Investigations section (Page 7) many of our ECS member's concerns relate to onsite building operations that may differ from that is shown on the approved drawings. Several of these changes may be due to onsite conditions, cost savings measures, material specification changes or skill shortages. These concerns would normally be addressed under 'unauthorised building works' but clarity is required on this point.

Within the section of what services the Planning Enforcement officers cannot investigate, we are concerned that 'obstructions, parking, traffic enforcement

etc' are not under your remit. Quite often these matters are addressed within a Site/Construction Management Plan which is an important part of the Planning Approval process, therefore the Planning Team should take overall control during the site construction phase.

- This recommendation has been implemented and page 7 has been updated to clarify that non-compliance of a planning condition is exempt from what the Council's Planning Enforcement Service cannot investigate.

We note that "dangerous structures" are omitted from the enforcer's investigations. Unfortunately, this topic is closely linked to 'Listed buildings in serious disrepair' and that several times over recent years the poor erection of site temporary support works have resulted in a serious state of disrepair and public safety concerns. **Please do not refer us to Partner Agencies but take responsibility.**

- This is a matter of process outside of the Enforcement Plan. The Council's Planning Enforcement Service can only take responsibility for investigations within their remit. Any issues raised by third parties that are not within the remit of Council's Planning Enforcement Service (as set out on pages 7 and 8 of the Enforcement Plan) will be passed to the relevant partner agency to investigate.

### **Targeting enforcement action and raising awareness (page 6)**

You state that 'raising awareness of planning management ...). How are do you propose to carry out this function? Further clarification is required.

### **Accountability (pages 6 & 7)**

Document Omission – The document does not appear to set out *how* planning enforcement actions taken in a council financial year are to be summarised and reported back to the public. Public reporting is necessary to ensure the council's planning enforcement function is seen and understood by residents and developers. This must be active and effective and act as a deterrent to those seeking to deliberately breach planning law and the terms of planning applications.

At present the EEBC website does not describe enforcement actions taken for the current year and as a comparative, the previous years.

Details should include:-

- Number of planning application enforcement investigations requested or raised
- Number of breaches identified (by type)
- Number of cases resulting in action (type of action specified)
- Results of actions taken - eg planning permission withdrawn or amended, compliance or non-compliance, prosecutions undertaken and outcomes of these.

Reporting could also cover :-

- Trends over time eg 5 to 10 years, of repeat offenders (including groups of connected companies) for planning permission breaches and types of breaches.
  - Feedback from enforcement actions to the setting and amending of future planning policy statements and local plans etc.
  - When enforcement activities change to reflect more urgent environmental planning goals.
- This comment relates to a matter of process outside of the Enforcement Plan

### Investigations (page 7)

Bullet Point 6 'can investigate' refers to 'condition and appearance of buildings and/or land which is detrimental to the area'.

It would be helpful if it is clarified that 'detrimental' includes 'detrimental to environmental sustainability and biodiversity of the area'. Greater focus should be given to environmental and biodiversity issues in the context of planning enforcement and how this should be reflected in the skills and approach of the enforcement team.

- This recommendation has been implemented on page 7

We request that greater focus is given to environmental and biodiversity issues in the context of planning enforcement and how this should be reflected in the skills and approach of the enforcement team.

- Many of the problems forwarded by our ECS members relate to every day construction issues eg mud on the road, smells, noise, operatives parking, site hoarding. These issues could be addressed by the Enforcement Officer visiting the site and requesting remediation measures rather than issuing 'official Notices'. On large developments these visits could be on a more regular basis and a positive guidance relationship could be developed.
- This comment relates to a matter of process outside of the Enforcement Plan

We note under Bullet point 10 regarding 'cannot investigate' is 'any activity giving rise to direct or indirect damage to protected trees or qualifying trees in Conservation areas' – BUT on page 9 this is stated as a Level 1 (highest category) enforcement. This is not consistent. Clearer signposting is needed for members of the public. Refer to Appendix B

- This recommendation has been implemented and conflict rectified on page 9

#### Limits on taking enforcement action (pages 7 & 8)

Some further clarity is required on several of these headings ie.

- What are the permitted development tolerances under the terms of Town and Country Planning Act
- It would not be feasible to outline all the permitted development tolerances under the terms of General Permitted Development Order within this high level Enforcement Plan. This recommendation has been implemented and page 8 has been amended to include a link to the Government Planning Portal relating to the General Permitted Development Order.
- What is deemed consent under the Town and Country Planning Regs
- This recommendation has been implemented and page 8 has been amended to include a link to the Government Planning Portal relating to deemed consent for advertisements.
- Immunity from enforcement not clearly 'outlined below'
- This is outlined below under the heading 'Timescales' on page 9
- What is too minor. Some of our members have been unreasonably affected by minor changes which considerably effected their well being.

Unfortunately, some perceived minor changes can cause major challenges.

- There is no set definition of this terminology in this context, as it will be dependent on the situation. This recommendation has not been implemented

We suggest that 'as amended' is added to the bullet point referring to the Town and Country Planning Order 1987.

- This recommendation has been implemented on page 9

### Timescales (page 8)

This should appear on the Contents page as a separate topic.

We are concerned that sometimes Urgent Action is required by the Planning Enforcement Team. Examples include Listed Building serious disrepair, demolition concerns (Inc Asbestos removals), environmental concerns.

We are also extremely concerned that Urgent enforcement action may be required on Environmental related breaches that are not recoverable eg the felling of a veteran tree or a major pollution incident.

Also, in this section for urgent enforcement, action is required when ongoing construction works are 'covered up' by later trades and could remove the opportunity for enforcement actions.

It must be recognised by the Enforcement Team that sometimes fast action is required and that this Plan should provide for this.

- Timescales in this context relate to the timescales for immunity from enforcement action.

### Adverts (page 8)

We suggest that the word 'undertaking' is substituted with 'committing'.

- This recommendation has been implemented on page 10

### **Making an enforcement complaint (page 8)**

The Council's complaints form is adequate, but a tracking reference number should be provided. Several of our members have noted that when the 'breach' is urgent a faster referral mechanism should be provided.

We understand that many of the complaints may be from 'disturbed' neighbours and could be vexatious. This will require a degree of calming and reasoning by the enforcement officer.

- This comment relates to a matter of process outside of the Enforcement Plan

### **Priorities for planning enforcement investigation (page 9)**

#### **Level 1 – highest category**

Several of the noted issues could be regarded as urgent ie Listed Building, serious impact, health & welfare, demolition activities. Whereas other activities may be of high concern but not urgent ie tree protection, tree root protection and non accordant works.

It may be required that a Temporary stop notice or a STOP NOTICE is issued. This is essential to safeguard an amenity or public safety in the neighbourhood or to prevent serious or irreversible harm to the environment in the surrounding area.

Several issues could be reviewed as 'preventative' and action is urgently required to avoid a breach. Eg asbestos protection during demolition works, temporary support works protection prior to demolition activities.

- This comment relates to a matter of process outside of the Enforcement Plan

Felling of Trees - As previously noted on page 7 (Planning Enforcement Service will not investigate). These statements conflict and need clarification. We suggest that this is a high level category point, which should be a planning enforcement function.

- This recommendation has been implemented on pages 8 (reference removed) and page 11 (added to Level 1)

### Level 2 – medium category

Medium priority cases should be defined where 'Development is contrary to Development Plan Policy or Government Policy and is unacceptable, cannot be justified or which causes some form of environmental or residential harm'.

We are concerned that there are cases in this category that could be reviewed as Level 1 depending on the type of breach ie 'any work in a Conservation Area' could require a high level priority status if a serious impact was apparent.

We suggest that each complaint regarding a breach and its impact should be suitably prioritised at the earliest date.

- This comment relates to a matter of process outside of the Enforcement Plan

### Service Standards and objectives (page 10)

Complainants should be able to expect urgent and robust action should their case be of critical concern. The suggested 5 working days for council action could cause major site problems. A more energetic approach is required by the Enforcement Officer fully supported by firm management decisions by the Planning Department.

- This comment relates to a matter of process outside of the Enforcement Plan

An improved tracking system is required that is transparent and available to all parties. Confidentiality can be maintained throughout. Set time scales are important and may need to be reviewed depending on the seriousness of the breach.

- This comment relates to a matter of process outside of the Enforcement Plan



**Timeline when making an enforcement complaint (page 11)**

Whilst understanding why the complaints are categorised, we are concerned some items may require urgent actions. This set format does not give the necessary opportunity.

Many of our members have complained about the construction process. Most relate to scaffolding encroaching onto their land or plant (crane) trespassing onto their premises. This is unacceptable and the builder must be taken to task. It is apparent that we look to the enforcement officer to perform the duty of a 'policeman' in such matters. Delays of between 5-30 working days actions are not acceptable.

- This comment relates to a matter of process outside of the Enforcement Plan

A frequent problem raised by our members relates to the setting out of a new building structure. In some cases, the setting out is in variation to the approved drawings, thus leading to ongoing conflict. This event would appear under Level 2, which shows a 15 working day response. Unfortunately, this delay would lead to excessive variations. A more expedient enforcement input could allay all concerns and stop the structure being incorrectly progressed.

- This comment relates to a matter of process outside of the Enforcement Plan

Stress can be eased by keeping all parties informed of the progress being made on any complaint.

- Expectations for communication on case progression are set out on pages 12 and 13

We welcome the suggestion that Ward Councillors could be consulted on specific complaints. This should benefit the enforcement process, should any revised Planning Application be appropriate.

- This comment is noted.

### **The Enforcement Process Chart (page 13)**

Within the Box 'No harm demonstrated' there is the note Planning Consent granted and case closed. But what is the outcome if Planning Consent is not granted? We suggest an additional box, under the granted one for a 'Planning Consent' not granted situation. The 'no harm category' is an officer decision and seemingly that approval will be automatic but that should not be assumed, as that decision may not be that of the Planning Committee.

- This recommendation has been implemented on page 17

### **When should we take enforcement action? (page 13)**

Section 172 Enforcement Notice clarification should be included in Appendix B.

We understand from our membership that many complaints relate to non-compliance with the Design & Access statement, Management Plans etc which often are included within conditions and are stated in the Planning Approvals. These complaints include hours of working, operative parking, environmental issues, unsafe working, lorry unloading. Whilst appreciating that these concerns may be covered by other council departments we suggest that the Enforcement Officer manages the overall complaint. It is not good enough to be told that the issue has been forwarded. Positive, timely and enthusiastic control is essential.

- This comment relates to a matter of process outside of the Enforcement Plan

### **General Notes and Observations**

1. Can we suggest that a list of reference documents be included. These should relate directly to our Local Plan and key objectives. They should be the latest versions of the documents and should include, Climate Action Plan, Biodiversity action plan, supplementary design guide, tree strategy.
2. Many enforcements relate to Surrey County Council directives. Suggest again that these be listed, especially those related to highway matters.
3. A section is suggested for Community Infrastructure Levy and Section 106 specific agreements enforcements. This would normally be outside

of the enforcement officer's remit but linked to other council departments. We suggest an overall ownership of the enforcement by an officer rather than 'off shoot' delegations.

4. More detailed enforcement strategies are required for particular areas eg. Conservation Areas, Green Belt, Green Spaces, Areas of Great Landscape Value (AGLV).
5. The ECS is concerned that when a specialist development is approved eg Passiv House based on the building efficiency value, that it is not subsequently downgraded to achieve cost savings.
6. A more direct link to Building Control is suggested to ensure greater conformity between Planning Permission approval drawings and conditions in relationship to Building Regulations.
7. The ECS would like to see specific guidance and wording to confirm local groups and community organisations potential role in providing support information to assist with planning enforcement. This should be encouraged, as often our members may feel that they are in a 'threatened' position when confronting building operatives.
8. We suggest better advice to householders on when Planning permissions are required. A current problem is the paving over of gardens for additional car parking. Greater public awareness is required along with the possible detrimental environmental effects that could be produced.
9. The Enforcement Plan should take note of the National Planning Policy Framework (2019) statement. 'The local enforcement plan should manage enforcement proactively, in a way that is appropriate to their area.' Epsom is unique in that we have a high percentage of green belt, trees, Areas of great landscape value and 21 Conservation Areas. Therefore, our enforcement plan should take due recognition of the local needs.
10. We suggest that in circumstances where the best reasonable action to deal with harm being caused is outside planning controls, the planning enforcement team will refer the matter to the relevant department or statutory body for action. More effective and efficient outcomes can sometimes be achieved by the powers outside the Town and Country Planning Legislation such as the environmental Protection Act, the Highway Act and the Anti-social behaviour Act.
11. A more detailed Enforcement Plan may be required for a specialist program of works eg within a CA.
12. We are concerned that the annual performance report (Pages 6/7) does not set out how planning enforcement actions taken in a council's

financial year are to be summarised and reported to the public. Public reporting is necessary to ensure the council's planning enforcement function is seen and understood by residents and developers to be active and effective and so act as a deterrent to those seeking to deliberately breach planning law and the terms of planning applications.

13. The EEBC website does not readily link to the summary of actions taken. The Annual Performance Report could include: - Number of enforcement actions requested or raised, investigations undertaken, breaches identified by type, cases resulting in actions, results of actions taken, prosecutions and outcomes. The annual performance report could show a comparative, the previous year findings.
  14. Reporting could also cover trends, repeat offenders (inc connected companies), feedback for future improvements and amendments of planning policy statements and local plans, enforcement actions changing to reflect more urgent environment planning goals. ie. Link the knowledge gained by enforcement to the function of the Planning Department.
  15. It is not clear how biodiversity net gain (re Environmental Bill ongoing) can be achieved without some kind of monitoring and enforcement plan. To make the EEBC Planning Enforcement Plan more 'future proof' it should recognise this issue and seek to develop processes and further actions.
  16. We understand that the EEBC Enforcement Plan may be finalised before the Environmental Bill has become law. The amendments proposed to the Bill via LGA should be reviewed and reflected where appropriate within the EEBC Plan. These amendments include Biodiversity Credits reinvestment in the locality, protection of sites where the natural environment is at risk and local nature recovery strategies.
- These recommendation are all noted. It must be recognised that the Enforcement Plan sets out how the Council will deal with potential planning breaches, providing high level information and guidance.

## **Appendices**

**Appendix A - Definition** The purpose of this Enforcement Plan is that all parties affected by a Planning Development can clearly understand their grounds for objection and the procedure for raising their concerns.

- It is considered that page 3 clearly sets out the purpose of the planning enforcement plan. This recommendation has not been implemented.

**Appendix B - Trees** - A clearer explanation is required with regard the relationship between the planning enforcement team and the arboriculture service.

- This comment relates to a matter of process outside of the Enforcement Plan

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