

Epsom & Ewell Borough Council
Draft Enforcement Plan

December 2020

Rear cover Intentionally blank

Planning enforcement policy

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.

Introduction	5
Principles and definitions	6
Limits on taking enforcement action	8
Making an enforcement complaint	9
Priorities	10
Service standards and objectives	11
Timeline when making an enforcement complaint	12
When should we take enforcement action?	15
Appendix A: Useful contacts	16
Appendix B: Enforcement Glossary	17

Introduction:

Epsom and 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, breach of condition and stop notices and the taking of legal proceedings by way of an injunction.

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.

Enforcement Powers are guided by the National Planning Policy Framework (2019) paragraph 58, 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, business 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 and unlawful advertisements.

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

Definition of Expedient: The Council’s planning enforcement powers are discretionary and we should not take further 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 fair 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.

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 resources are limited. 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, after public consultation and being 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.

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 detrimental to the area;
- Listed buildings in serious disrepair; and
- Relevant demolition.

The Council's Planning Enforcement Service cannot investigate the following:

- 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*
- Noise nuisance*
- Events/potential breaches that may occur in the future
- Odour issues*

*The Council or Partner Agencies have other powers to deal with these breaches – 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.
- An advertisement benefits from 'deemed consent' under the Town and Country Planning (Control of Advertisements) (England) Regulations 2007.
- 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

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 exhaustive and 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

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.

Listed buildings

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.

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 undertaking an 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 be considered for release.

Priorities for planning enforcement investigation

The planning enforcement service is a high volume, demand-based service with limited resources. 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:

- Ongoing works to a Listed Building;
- Large scale development where a serious impact is felt over a wide area;
- Development/changes of use with serious implications upon the continued health and wellbeing of the public and the environment;
- Works not in accordance with planning permission for major proposals;
- Substantial works (including demolition) in a conservation area;
- Felling of tree protected under a Tree Preservation Order or within a conservation area

Level 2 (medium category):

Cases that fall within this category include:

- residential and commercial extensions;
- breaches of condition;
- changes of use including HMOs';
- condition of buildings or land in poor condition;
- works not in accordance with planning permission for non-major proposals

Level 3 (lowest category):

Cases that fall within the category include:

- unauthorised signage and advertisements;
- any breach of planning control which is of a temporary nature (unless public safety is compromised);
- unauthorised fences, walls and gates;
- shopfronts;
- 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 will deal with all cases in a fair and transparent way.

Complainants can expect

- Written acknowledgement, within five working days, detailing how the case has been prioritised and the name of the case officer
- Site visits to be undertaken in accordance with the 'Timeline' section below
- Regular updates about what action has been taken. Complainants will be informed and at each key stage of the process - for example, whether an enforcement notice has been served
- To be informed of the final outcome of their complaint within Five working days of the decision to close the case
- 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 within 10 working days of the site visit, including 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
- 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
- Level 3

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

Initial assessment

An initial assessment will be carried out within¹:

- Five 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/site visit has been carried out, we will notify the owner or occupier of the property that has been complained about within 10 working days (in some circumstances this may take longer) as to whether or not it 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 explained why the case was closed.

If there is a breach

If a breach has occurred 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.

¹ During national or local emergencies these timescales may be varied

After the expiry of this period, the case officer will carry out a second assessment to decide how to progress. This will take into account the current intentions and actions of the owner and/or relevant party to this point.

Timescales:

The enforcement team aims to reach a decision on whether or not to take action within eight weeks of receipt² of the complaint and will provide an update to the property owner and complainant.

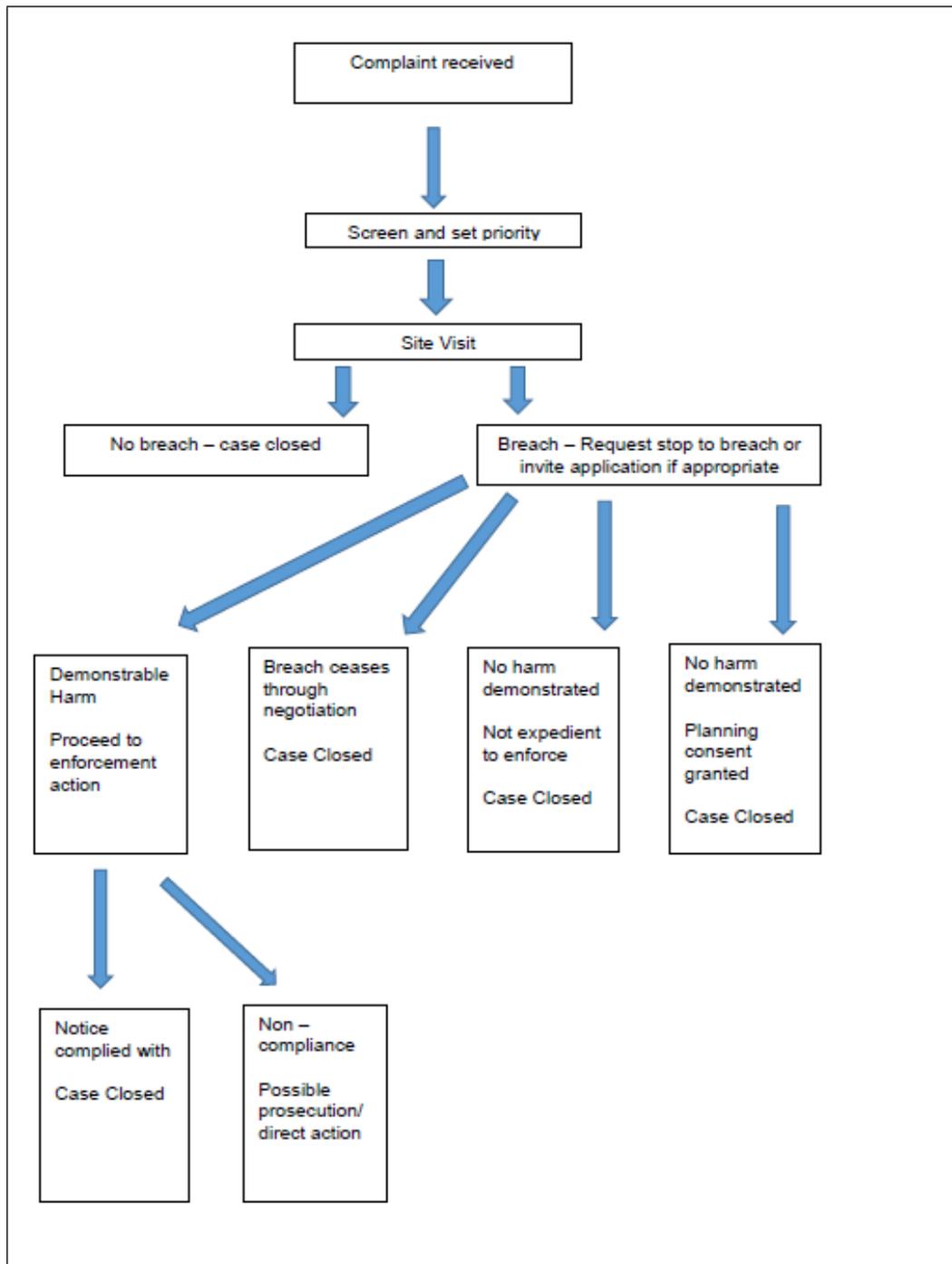
² During national or local emergencies these timescales may be varied

Communication timeline

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

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

The Enforcement process



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.

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.

Appendix A

Useful contacts

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: contactus@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

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 01372732000 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 732000 or visit <https://www.epsom-ewell.gov.uk/Housing> for a list of services and ways to contact specific to your complaint.

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

Enforcement Glossary

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

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 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.

Enforcement notice

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.

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.

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.

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.

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.

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.

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.

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.

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.

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