

## **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 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

### **Summary**

This Draft Enforcement Plan sets a framework for how the Council and its 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.

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- 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

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### 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.

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- 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

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- Appendix 3: Full response from Epsom Civic Society