

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 accordance 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