

## PLANNING ENFORCEMENT PLAN 2024

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<b>Wards affected:</b>	All Wards
<b>Urgent Decision</b>	No
<b>If yes, reason urgent decision required</b>	N/A
<b>Appendices (attached):</b>	Appendix 1 - Draft Enforcement Plan 2024 Appendix 2 – Enforcement Plan 2021

### Summary

The Council's Planning Enforcement Plan outlines and explains how the enforcement service is delivered. It includes such matters as the definition of development, the principles of the enforcement service, how to report a breach, processing and prioritisation of cases, how it deals with breaches and the service standards it intends to meet.

The current Planning Enforcement Plan was approved by LPPC November 2021 and published in 2022. It includes a statement that it will be reviewed regularly, but review has been delayed to take into account additional enforcement measures which have been adopted in the Levelling Up and Regeneration Act 2023, an external audit of the Council's enforcement service which was undertaken in November 2023 and identified various recommendations for improvements, and the creation of a permanent Planning Enforcement Officer post to deal with planning enforcement following removal of the post in 2021.

The draft Planning Enforcement Plan is attached at Appendix 1. It is intended as a wholesale review of the current Enforcement Plan, including to incorporate legislative changes and audit recommendations and simplify the flow of the plan and better articulate how the council will deliver the service.

### Recommendation

The Committee is asked to:

- (1) Adopt the Planning Enforcement Plan at Appendix 1.**

### 1 Reason for Recommendation

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- 1.1 The council is obliged to regularly update their Planning Enforcement Plan. This has been carried out to adopt recent legislative changes and the findings of a recent audit of the service.

## 2 Background

- 2.1 Development is defined within Section 55 of the Town and Country Planning Act 1990 and “means 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”.
- 2.2 Paragraph 171A of the Town and Country Planning Act refers to carrying out development without the required planning permission; or failing to comply with any condition or limitation subject to which planning permission has been granted as constituting a breach of planning control.
- 2.3 Paragraph 59 of the NPPF states 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. They should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development, and take action where appropriate.”
- 2.4 Epsom and Ewell Borough Council receives, on average, 250 enforcement queries per year. The Council is committed to providing an efficient and effective planning enforcement service.
- 2.5 The purpose of this Enforcement Plan is to outline and explain:
  - 1) The definition of development and the purpose of enforcement of development
  - 2) What the planning enforcement service comprises and how it is delivered
  - 3) How it intends to address deficiencies identified in the audit of the enforcement service
  - 4) How the Council will deliver the enforcement service
  - 5) The principles of planning enforcement
  - 6) The role of the customer and ward Councillors
  - 7) What constitutes a breach of planning control
  - 8) How and when to report a breach
  - 9) Prioritisation of cases for investigation
  - 10) Rights of access onto sites to investigate alleged breaches
  - 11) How the Council undertakes its investigation of a potential breach of planning control
  - 12) When the Council will take appropriate enforcement action
  - 13) The process for closing a potential breach of planning control

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- 14) What the council's options are when a breach continues
- 15) Timescales for delivering an effective enforcement service
- 16) How and how often the Council will communicate with complainants and owners
- 17) Monitoring of compliance
- 18) The procedure for the handling of complaints
- 19) How the Enforcement Plan will be reviewed
- 20) Human Rights obligations

2.6 The council's Planning Enforcement Service was subject to audit in 2023-24, which highlighted a number of actions required, including in relation to the recording and prioritising of cases, and communication with complainants, which have been incorporated into this version of the Planning Enforcement Plan as part of the council's desire to continually improve the Service.

2.7 The Planning Act 2008 (Commencement No. 8) and Levelling-up and Regeneration Act 2023 (Commencement No. 4 and Transitional Provisions) Regulations 2024 were also made on 2 April 2024. These are the regulations that came into force on 25 April 2024.

2.8 The current Planning Enforcement Plan is dated November 2021 (published 2022) and includes a statement that it will be reviewed regularly. The review has been delayed to take into account additional enforcement measures which have been adopted in the Levelling Up and Regeneration Act 2023, an external audit of the council's enforcement service was undertaken in November 2023 which identified various deficiencies and shortfalls, and the creation of a Planning Enforcement Officer post to deal with planning enforcement.

2.9 The draft Enforcement Plan 2024 incorporates the following changes:

- Including actions identified by the Audit
- Adopting changes introduced in the Levelling-up and Regeneration Act 2023
- Wholesale restructuring to reflect the enforcement process
- Expanding the purposes of the Plan
- Clarifying when a breach may not exist (to minimise unnecessary cases)
- Updating the process for reporting a breach to reflect recent changes
- Simplifying and clarifying the prioritisation process
- Outlining the Council's rights of entry
- Including scenarios when breaches will not exist
- Outlining the options that Council has for when a breach may exist
- Expanding the detail of what happens when a case is reviewed and closed
- Incorporating details relating to Enforcement Warning Notices, the public register, withdrawing notices and Human Rights and Equality requirements

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- Consolidation and clarification of all service standards with the intention being to ensure a more transparent and consistent service
- Including monitoring obligations, including reporting to Committee
- Clarifying when the Plan will be reviewed
- Including details of how to complain
- Updating the flow chart process and contact details

### 3 Risk Assessment

Legal or other duties

#### 3.1 Equality Impact Assessment

3.1.1 None.

#### 3.2 Crime & Disorder

3.2.1 None.

#### 3.3 Safeguarding

3.3.1 None.

#### 3.4 Dependencies

3.4.1 None.

#### 3.5 Other

3.5.1 None.

### 4 Financial Implications

- 4.1 **Section 151 Officer's comments:** The Planning Enforcement Plan will need to be deliverable within the resources available to the place development service.

### 5 Legal Implications

- 5.1 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 but must operate within the realms of the relevant Acts and policy guidance. Although government guidance is not legislation, it is advice that local authorities are obliged to have regard to.

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- 5.2 Having a plan will help the Council in making the right enforcement decision 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.
- 5.3 A decision to prosecute following enforcement requires prior legal advice on the Code for Crown prosecution that applies to decisions taken by the Council to commence criminal proceedings.
- 5.4 **Legal Officer's comments:** None arising from the contents of this report.

## 6 Policies, Plans & Partnerships

- 6.1 **Council's Key Priorities:** The following Key Priorities are engaged:
- 6.2 **Service Plans:** The matter is not included within the current Service Delivery Plan.
- 6.3 **Climate & Environmental Impact of recommendations:** None for the purposes of this report.
- 6.4 **Sustainability Policy & Community Safety Implications:**
- 6.5 **Partnerships:**

## 7 Background papers

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

### **Previous reports:**

- Enforcement Plan 2021 (Appendix 2)

### **Other papers:**

- Draft Enforcement Plan 2024 (Appendix 1)