

Epping Forest District Council

Planning Services

Local Enforcement Plan

February 2021
Final Draft

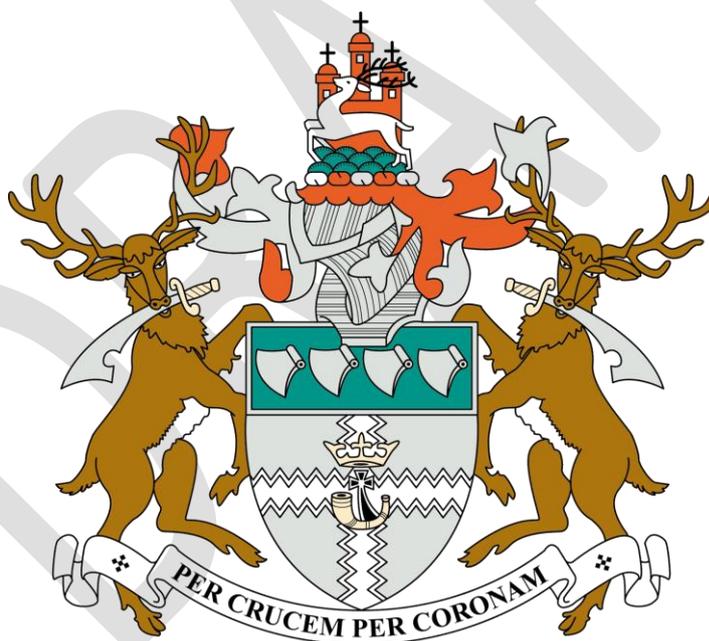


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1. Introduction

Our vision for Planning Enforcement

- 1.1 The planning system operates to regulate development and the use of land in the community's interest having regard to the development plan and other material planning considerations. The effective and proper enforcement of planning controls is essential to community confidence in the planning system. It is important that the local environment is protected, as are the interests of residents, visitors and businesses of the District from the harmful effects of unauthorised and unacceptable development.
- 1.2 The Council has a duty to investigate alleged breaches of planning control and has discretionary powers to remedy breaches. We view breaches of planning control very seriously. It is our policy to exercise powers appropriately, proportionately and rigorously so that development takes place in accordance with the appropriate legislation or the planning conditions and limitations imposed on any planning permission through the development management process.
- 1.3 The planning enforcement system does not exist purely as a punishment for those responsible for a breach of planning controls. It is an important principle of the planning system that the use of formal planning enforcement action is a **discretionary** power of the Council.
- 1.4 The integrity of the development management process depends on the Council's readiness to take effective enforcement action when it is justifiable. The community's confidence in the planning process is quickly undermined if unauthorised development is allowed to proceed without any apparent attempt by the Council to resolve the issue.
- 1.5 The purpose of this document is to set out the Council's strategy for investigating alleged breaches of planning controls and taking appropriate action where expedient. This policy will ensure that interested parties such as Councillors Officers, citizens and their advisers, external agencies and complainants are aware of our general approach to enforcing planning controls.

Principles of Good Enforcement

- 1.6 **Proportionality** – Officers will consider the full range of investigative and enforcement tools when conducting investigations (including appropriate negotiations and retrospective planning applications) and where appropriate take decisive action in accordance with good practice guidance from central government and the Royal Town Planning Institute (RTPI).
- 1.7 We will endeavor to minimise the cost of compliance by ensuring that any action we require is proportionate to the breach. As far as the law allows, we will take account of the circumstances of the case and the attitude of the operator when considering the expediency of the various actions open to us.

- 1.8 Where practicable we will take care to work with small businesses and voluntary and community organisations so that they can meet their legal obligations without unnecessary expense.
- 1.9 Normally we will prosecute individuals or organisations who do not comply with any formal notice served on them, and when appropriate will take direct action, having regard to degree of harm and public safety.
- 1.10 **Consistency** – We will carry out our duties in a fair, equitable and consistent manner. While staff are expected to exercise judgement in individual cases, we have arrangements in place to promote consistency including effective arrangements for liaison with other authorities and enforcement bodies.
- 1.11 We will consider each individual matter on its merits. There will be a consistent approach to enforcement action against breaches of similar nature and circumstance.
- 1.12 **Standards** – We will draw up clear standards, setting out the level of service and performance that customers can expect to receive in this plan. We will review performance regularly. The Team Manager will regularly monitor Team and individual performance against the Departmental performance indicators.
- 1.13 The enforcement plan will be subject to review at least every five years, but the plan may be reviewed on a more regular basis if circumstances dictate. The plan will be available on our web site.
- 1.14 **Openness** – Information and advice will be provided in plain language on the rules that we apply, and we will publish this as widely as possible.
- 1.15 We will discuss general issues, specific compliance failures or other problems with anyone with an interest in our service, **subject** to it not being covered by GDPR, privacy and data protection policies.
- 1.16 **Helpfulness** – We believe that prevention is better than cure and that we should work with customers to advise and assist with compliance.
- 1.17 Officers will provide a courteous, prompt and efficient service and emails/letters will provide a contact point and telephone number for customers to contact when seeking advice and information.
- 1.18 We will ensure that services are effectively coordinated to minimize unnecessary overlaps and time delays.
- 1.19 Officers will not tolerate abusive language or behaviour either in person or in correspondence from 3rd parties.
- 1.20 **Complaints about the service** – we will adhere to the Councils corporate complaints service.

2 Breaches of planning control

Legislative background

2.1 The primary legislation for planning enforcement is set out in Part VII of the **Town and Country Planning Act 1990 (As Amended)**, which includes amendments set out in the Planning and Compensation Act 1991 and the Planning and Compulsory Purchase Act 2004. Hereafter these are collectively referred to as the Town and Country Planning Act 1990 (As Amended).

2.2 The Town and Country Planning Act 1990 (As Amended) sets out that planning permission is required for development. Section 55 defines development 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.”

2.3 A breach of planning control is defined at Section 171A as “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”.

What is a breach of planning control?

2.4 Most planning enforcement investigations therefore involve one of the following alleged breaches:

- Development (either operational or a material change in use of land) has taken place without planning permission;
- Development has not been carried out in accordance with an approved planning permission;
- Failure to comply with a condition or legal agreement attached to a planning permission.

2.5 Other matters which also fall under the scope of planning controls are:

- Demolition taking place in Conservation Areas, without planning permission, when it is required;
- Works carried out to a Listed Building which affects the special architectural and historic character or setting, without listed building consent being granted;
- Removal of, or works carried out to, protected trees and hedgerows without consent being granted or proper notification given;
- Advertisements which require express consent under the Advertisement Regulations, displayed without express consent;
- Failure to comply with the requirements of a planning notice, e.g. enforcement, discontinuance, stop notice, breach of condition notice, or other statutory notice.

2.6 The basic principle of planning law is that it is **not an offence to carry out works without planning permission** (with certain exceptions for Listed Buildings, Trees and display of advertisements). Whilst such development is unauthorised, councils

must consider the expediency of taking formal action. This is important to remember as members of the public often refer to illegal development or works. This is incorrect as development may well be unauthorised, but it will not be illegal unless a statutory notice has first been issued and the owner or occupier has failed to comply.

What is not a breach of planning control?

2.7 We often receive complaints regarding matters that are not breaches of planning control. Often this is where other legislation covers and controls the matter. The following are examples of what we cannot become involved in through our planning enforcement service:

- Neighbour nuisance/boundary and land ownership disputes – these are civil matters in which the Council may not intervene. Further advice on these matters should be obtained from a solicitor or the Citizens Advice Bureau;
- Use of/or development on the highway, footway or verge that is covered by highway legislation – please contact Essex County Council on 0845 6037631; <https://www.essexhighways.org/tell-us/report-all-issues>
- Dangerous structures – please contact our Building Control section on 01992 564141;
- Any matter covered by other substantive legislation such as fly tipping, noise and smell – Please contact our Environmental Health Section on 01992 564497; <https://www.eppingforestdc.gov.uk/report/>

Priorities

2.8 To make the most effective use of resources, all reports of suspected breaches of planning control will be investigated and progressed in accordance with the priority rating below. **This is not an exhaustive list.**

Category 1 – an allegation of a case that requires **immediate** attention. This would include ongoing harmful works to a Listed Building; a Gypsy, Roma or Traveler incursion onto land; new physical development which would present a danger to members of the public; ongoing works to a tree subject to legal protection; and ongoing works to a protected hedgerow. We will endeavor to carry out a site inspection within 7 working hours or at the earliest possible opportunity taking resource requirements into consideration.

Category 1A -allegations of ongoing works or uses which are causing significant harm to residential amenity by way of noise and disturbance. We will endeavor to undertake a site inspection within 3 working days.

Category 2 – allegations of ongoing significant works to buildings that are not yet complete, new uses of land which harm amenity, breaches of conditions affecting an individual's amenity. We will endeavor to undertake a site inspection within 10 working days.

Category 3 – allegations covering all other cases that do not cause significant harm to amenity. This would include unauthorised advertisements, changes of use of shops, minor departures from approved plans, works which may fall under permitted development allowances and neighbour disputes. A site visit should normally be carried out within 15 working days.

- 2.9 Individual cases may be re-prioritised as the investigation progresses and as new evidence comes to light.

3 Investigation of suspected breaches of planning control

Receipt of complaint

- 3.1 To start a planning enforcement investigation, complaints should be made in the following way:

completing an Allegation of a Breach of Planning Form on our website at:

<https://www.eppingforestdc.gov.uk/planning-and-building/report-a-planning-breach/>

A complaint will be assessed to determine whether it is a valid planning matter within **5 working days** of receipt and the case will be assigned to an Enforcement Officer. The complainant will then receive an email providing the officer details on the **next working day**. Full details are provided in our **Service Charter** available on the website as above. <https://www.eppingforestdc.gov.uk/planning-and-building/planning-enforcement-service-charter/>

Should we find that the complaint is not a valid planning enforcement matter, a response explaining the reasons will be sent to the complainant within **1 working day of our assessment of the complaint**.

- 3.2 When a complaint is received it is recorded on our database, so we require the following information:

- Name and contact details of complainant, including email address;
- Full address of the alleged breach of planning control;
- Nature of the breach and the harm it may be causing;
- Any photographic evidence where possible.

- 3.3 All enforcement complaints are logged onto our computer system with a unique reference number so that each complaint can be monitored, and the complainant kept informed of key actions and outcome of the investigation. We aim to completely digitalize our service by the next review of the plan.

- 3.4 To avoid the unnecessary use of resources, hampering of investigations and dealing with malicious complaints, anonymous reports of suspect breaches of planning control will not be registers. Provision of a name and email address (without a physical address) will not be sufficient to allow for registration of a new investigation.

- 3.5 Confidentiality is vital; a complaint's identity will not be revealed to any third party without the complainant's written consent.

Time frame for site visit and initial investigation

- 3.6 A site visit will be required in most cases to establish if a breach of planning control has occurred. Most initial site visits will be unannounced so as not to alert persons on site that a complaint has been made, which may give them an opportunity to hide or cease breaches of planning control.
- 3.7 Although there will need to be some research around the case prior to a site visit the initial site visit (where necessary) will be conducted as per para 2.8 above.
- 3.8 We will aim to meet these timescales in all cases investigated to ensure cases progress without undue delay from the outset. These targets allow officers to carry out the required level of research before visiting a site. If carrying out the initial site visit within these time frames is unachievable on a specific case the officer will notify the complainant.
- 3.9 On completion of the initial site visit, the findings will be assessed, and a view taken as to how the investigation will proceed. This may include taking legal advice about the case.
- 3.10 We will aim to complete initial phase of an investigation (site inspection, site planning history research, initial information gathering, preliminary conclusion on whether a breach has taken place) within 1 calendar month of registering the complaint. However, in some instances initial stages may take longer, but we will keep complainants updated on any key decisions and actions.

If no breach of planning control is established

- 3.11 A significant number of investigations are closed as there is no breach of planning control established. This can occur for many reasons, for example:
- there is no evidence to corroborate the allegation
 - development has taken place but planning permission is not required, usually as it benefits from planning permission granted under the Town and Country Planning (General Permitted Development) (England) Order 2015 (As Amended), or because it does not require permission pursuant to the Town and Country Planning (Use Classes) Order 1987 (As Amended)
 - the development already benefits from planning permission granted by the Council.
- 3.12 It may also be the case that whilst a technical breach of planning control has been found the breach is so minor that it has no or very little impact on amenity, for example a unauthorised satellite dish, or instances where a fence or wall may be slightly over the permitted development heights. Such a breach would be considered de-minimis in planning terms and no formal action could be taken in this respect.
- 3.13 Where this is the case the person reporting the suspected breach of control will be notified that no further action will be taken. The complainant will be provided with an explanation of our reason(s).
- 3.14 When we receive a complaint, the case officer will check to see if the issue

constitutes a breach of planning control and that legislation allows us to act. Each case is judged on its individual merits. There are some cases where it would not be expedient for the Council to take enforcement action (the below is not exhaustive but indicative):

- the complainant believes there is breach of planning controls, but in fact is covered under permitted development legislation, therefore no action is required
- there may be cases where development has taken place, but it is clear following an assessment, that retrospective planning application or a certificate of lawfulness may be successful. A retrospective planning application will be invited to regularise the breach. Should such applications subsequently be made and approved, enforcement action cannot be taken. If an application is not made the breach will be assessed to see what action would be justified.
- where a fence is, for example, 2.1 meters high, not adjacent to the highway and the visual amenity and the character of the area is unaffected – the Council would need to decide if this could be de minimis and not be expedient to pursue enforcement action. In these cases, we will advise the owner/occupier of the land/building of this, informing them of the breach.
- when there has been a change of use for a building or a breach of condition has taken place over 10 years ago (and there has been a continuous breach) the Council may be unable to act as there are time limits set out in planning legislation (either four or 10 years).
- Should the property subject of the complaint be owned by Epping Forest DC or Essex County Council, we will conduct an investigation in the usual manner, and if a breach of planning controls is found we will send out appropriate warning letters explaining the situation and expected course of action. Should the breach in planning controls not be rectified we will refer the matter to the relevant Council department to deal with to secure compliance with planning controls under landlord's powers. Once we have referred the matter our file will be closed.

3.15 Criteria that would be used to determine a course of action may include:

- whether planning permission is required
- impact of the breach on the visual amenity and character of the area affected, for example would it be minimal or significant?
- Impact on amenity due to noise, smells, smoke, fumes, vehicle movements or any other disturbance impacting on amenity
- are the works permitted by planning legislation for example permitted development?
- is the breach contrary to any established planning policies?
- has there been a material change of use?
- Whether a planning condition is enforceable

Where further investigation is required

- 3.16 There are cases where the initial site visit and associated investigations do not provide sufficient evidence to conclude whether a breach of planning control has taken place. Examples of these can include:
- business operated from home and whether this constitutes a material change of use. This will often depend on the level of intensity and this may not be immediately apparent from the initial site visit
 - alleged breaches of working hours conditions. If the operator denies the activity further investigations will be required
 - building works are taking place but the owner claims it is to repair a previously existing structure. The officer will need to establish what, if anything, previously existed
 - Works are on-going and it is not possible to fully assess the position at the time of the visit or initial investigation
- 3.17 Further investigation may involve additional site visits, documentary research, seeking advice from other services or agencies, seeking information from the person reporting the suspected breach of control by way of a diary sheet, or the owner or other persons responsible for the land or building.
- 3.18 In some cases, we may ask the person reporting the suspected breach for further details. If the person reporting the suspected breach of planning control is unwilling to assist, this may result in the Council not being able to pursue the investigation due to insufficient evidence.
- 3.19 We will also consider serving a Planning Contravention Notice, S330 Notice or any other notice we consider necessary to progress the investigation and to obtain information relating to the suspected breach. Drafting such a notice correctly can take time. Equally a person on whom it is served has 21 days to respond. Therefore, it may be several weeks until the appropriate evidence can be collected.

Where there is a breach of planning control

- 3.20 Where a breach of planning control is established, the first step is to consider whether it would be expedient to take formal enforcement action. Expediency is a test of whether the breach is harmful and having regard to the Development Plan policies and other material planning considerations. The planning enforcement officer investigating the case will consider this in conjunction with the Team Manager. The outcome of this consideration will generally inform the course of the investigation. Taking formal enforcement action is only one option with other courses open to the Council. Most planning enforcement investigations will involve one of the following courses of action:

Retrospective planning applications

- 3.21 Where officers consider that planning permission is likely to be granted for an unauthorised development (or an amended version of the development), or that the imposition of conditions could reduce the harm to amenity, a retrospective planning application will be requested for the development. Section 73A of the Town and Country Planning Act 1990 (As Amended) sets out the provisions for dealing with

retrospective applications.

- 3.22 In determining retrospective planning applications, the Council cannot refuse an application simply because the development has already been carried out. Similarly, the fact that development has already taken place cannot be considered as a reason for granting planning permission. Some breaches of planning control occur because the applicant may not have realised permission was required. A retrospective planning application enables the Council to regularise acceptable development without arbitrarily penalising the applicant. We receive between 130 and 160 retrospective applications per year out of approximately 3000 applications. This demonstrates the important role retrospective applications play in resolving breaches.
- 3.23 Should a retrospective application be made and refused at the relevant Area Plans Sub Committee it is expected that enforcement action will then be taken. If it is considered by the professional officers that this is not expedient to do for planning reasons, then a report will be submitted to the relevant planning committee as to why it is not expedient. If committee do not agree then enforcement action will be undertaken. In instances where retrospective applications are to be refused under delegated authority the relevant report shall usually authorise enforcement action.
- 3.24 Generally, we will not invite a retrospective planning application if we consider the development is unacceptable. However, there are cases where it is initially unclear as to whether a development is acceptable in planning terms. An example is where a development is in the early stages of construction. In such cases we are likely to request provision of details of intended development to us, and in some instances an application may be submitted with full details of the intended development. We may allow a short period of time for preparation of drawings and/or submission of an application, but we are unlikely to suspend the enforcement process to allow time for submission of an application where a breach has been identified and the planning merits are considered unacceptable. Once this information is received it would allow for a full assessment of the planning merits. We cannot refuse to deal with a retrospective planning application, even if it is considered that there is no merit in such an application, unless it falls within the conditions laid out in para 3.25 below.
- 3.25 The Localism Act 2011 has introduced an additional power to the Council in respect of retrospective planning applications **where an enforcement notice has already been issued** after 06 April 2012. Section 70C to the Town and Country Planning Act (as amended) now specifies:
- ‘a local planning authority in England may decline to determine an application for planning permission for the development of any land if granting planning permission for the development would involve granting, whether in relation to the whole or any part of the land to which a pre-existing enforcement notice relates, planning permission in respect of the whole or any part of the matters specified in the enforcement notice as constituting a breach of planning control.’
- 3.26 We will use these powers where appropriate to prevent delays in cases where enforcement action is being taken. However, we will also have regard to each specific case and consider whether granting permission for part of the development would result in an acceptable resolution.

Not expedient to pursue formal action

- 3.27 While it is clearly unsatisfactory for anyone to carry out development without first obtaining the required planning permission, an enforcement notice cannot be issued solely to regularise development which is acceptable on its planning merits, but for which permission has not been sought. In such circumstances the Council will seek to persuade an owner or occupier to seek permission. This could include using a planning contravention notice. However, it is generally regarded by the Courts as unreasonable for a council to issue an enforcement notice solely to remedy the absence of a valid planning permission if there is no significant planning objection to the breach of planning control. See paragraphs 3.14 and 3.15 above and paragraphs 3.28 below for further information.
- 3.28 Where this is the case the officer will produce an expediency report clearly setting out that no planning harm is caused by the development. As part of this process a planning contravention notice may be served to ensure we have all relevant information. Where officers conclude that it is not expedient to act the case will be closed in accordance with the scheme of delegated powers as set out in the Council's Constitution.
- 3.29 Another criterion of expediency is to ensure that any action is proportionate to the breach. We investigate many technical breaches of planning control. Common examples of these include the construction of a fence or the construction of an outbuilding in a residential curtilage slightly higher than allowed under permitted development regulations. In these cases, it may not be proportionate to require the removal of an entire building or fence where a slightly lower structure could be constructed without permission. As such the expediency test for acting would not be met. We will work with owners to regularise or remedy the works, but it may be that formal action could not be warranted in the case of some technical breaches of planning control.

Negotiation

- 3.30 Where it is considered that the breach of planning control is unacceptable, officers will initially explain the situation clearly to the transgressor, attempting to secure voluntary compliance with planning controls without recourse to formal enforcement action, usually allowing a reasonable period of time for compliance. Should a breach be causing immediate harm to amenity (noise nuisance for instance), we are likely to require quick remedial action in the short term to prevent further harm, whilst alternative solutions may be investigated by the transgressor.
- 3.31 In carrying out enforcement and investigation activities officers will have regard to the specific circumstances of the individual case. For example, where there is an unauthorised business activity officers will consider whether relocation is possible and if so will seek to put a reasonable timescale in place.
- 3.32 Where initial attempts at securing voluntary compliance or negotiating an acceptable outcome fail, formal action will usually be considered without undue delay to prevent a protracted process. We will also consider using temporary stop notices to prevent the breach becoming more severe or to curb harm to amenity or serious breaches that warrant immediate action.

4. Taking formal enforcement action

- 4.1 We will consider the full range of powers available to ensure the most proportionate and expedient resolution. We will also consider whether any other public authority is better able to take remedial action, for example Essex County Council or the Environment Agency. Where appropriate we will take enforcement action in association with other regulatory regimes (such as environmental health controls on noise and nuisance).
- 4.2 A full planning enforcement toolkit is available to officers when taking formal action, the use of these can vary depending on the nature of the breach and the level of harm caused.

Powers available

Enforcement Notice

- 4.3 Section 172 of The Town and Country Planning Act (as amended) allows the service of an enforcement notice where unauthorised operational development or a change of use has taken place and it is considered expedient to do so. We are required to serve enforcement notices on the owner, occupier and any other person with an interest in the land which is materially affected by the notice.
- 4.4 An enforcement notice shall specify the steps which we require to be taken, or the activities which we require to cease, to achieve, wholly or partly, any of the following purposes:
- remedying the breach by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land, by discontinuing any use of the land or by restoring the land to its condition before the breach took place; or
 - remedying any injury to amenity which has been caused by the breach.
- 4.5 The notice will specify time periods for compliance for each of the steps from the date on which the notice comes into effect. A notice comes into effect after a minimum period of 28 days following service. There is a statutory right of appeal against the notice during this period to the Planning Inspectorate. Once the Planning Inspectorate has received a valid appeal, the enforcement notice has no effect until the appeal has been determined.
- 4.6 There are seven grounds of appeal against an enforcement notice. Any appeal may include one or more of these grounds:
- (a) that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted or the condition or limitation concerned ought to be discharged
 - (b) that those matters have not occurred
 - (c) that those matters (if they occurred) do not constitute a breach of planning control
 - (d) that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters

- (e) that copies of the enforcement notice were not served as required by section 172
- (f) that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or to remedy any injury to amenity which has been caused by any such breach
- (g) that any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed.

- 4.7 Given these rights of appeal it is important that all relevant matters are considered before serving an enforcement notice. This includes being clear in respect of the specific breach of planning control; the steps required to remedy the breach; and the time required for compliance. A delegated enforcement action report will be produced by officers specifically to consider these issues.
- 4.8 If the breach of planning control relates to a listed building, or unauthorised demolition within a conservation area, we will consider the expediency of serving a listed building enforcement notice or an appropriate enforcement notice and where appropriate, commence a prosecution in the Courts. The enforcement notice will specify the reason(s) for its service, the steps required to remedy the breach, the date that it takes effect and the time for compliance.
- 4.9 All enforcement notices are placed on the Council's enforcement register which is available on request at contactdcenf@eppingforestdc.gov.uk. This will eventually be available on the EFDC website.

Planning Contravention Notice (PCN)

- 4.10 Section 171C of the Town and Country Planning Act (as amended) provides the power to issue a PCN. This can be served on the owner or occupier of the land in question or a person who is carrying out operations in, on, over or under the land or is using it for any purpose and where a suspected breach of planning is believed to exist. The PCN will require the recipient to provide the information requested within 21 days relating to the breach of planning control alleged. Failure to comply with any aspect of the PCN is an offence for which the recipient can be prosecuted with the maximum fine of £1,000. To knowingly provide false information on a PCN can result in a fine of up to £5,000.
- 4.11 A PCN may be served in some instances as a precursor to an enforcement notice if the investigation is not progressing due to lack of information of co-operation or any other issue that may require more relevant information has been obtained.

Other requisition for information notices

- 4.12 Under Section 16 of the Local Government (Miscellaneous Provisions) Act 1976 the Council can require the recipient of a requisition for information notice to supply in writing details of their interest in a property and provide details of anyone else having an interest in the property. A reply must be supplied within 14 days. A person who fails to comply with the requirements of a notice or makes a false statement in a reply is guilty of an offence punishable by a fine of up to Level 5 (unlimited).
- 4.13 Under Section 330 of the Town and Country Planning Act 1990 the Council can require the recipient to state in writing the nature of their interest in a property and to

state in writing the name and address of any other person known to them as having an interest in the property, as a freeholder, mortgagee, lessee or otherwise. Failure to return the form or to provide a false statement is an offence punishable by a fine up to Level 3 (£1,000).

Breach of Condition Notice (BCN)

- 4.14 Section 187A of the Town and Country Planning Act (as amended) provides the power to serve a Breach of Condition Notice (BCN) where a planning condition has not been complied with. Consideration should be given to the type of condition and the steps required to secure compliance with the condition. Once issued the notice does not take effect for 28 days. There is no appeal against a BCN and therefore can offer a more expedient course of action than issuing an enforcement notice. The failure to comply with the notice is dealt with by a prosecution in the Magistrates Court. The maximum fine has been increased to a Level 4 fine (£2,500). The BCN is ideal for matters where the steps to be taken are relatively simple and can be readily achieved.
- 4.15 Where the breach of planning control relates to non-compliance with a condition on a planning permission or a limitation on a deemed planning permission has been exceeded, we will consider the expediency of serving a BCN. The breach of condition notice will specify the steps required to comply with the condition(s) or limitation(s), the date that it takes effect and the time for compliance.

Stop Notice

- 4.16 Section 183 of the Town and Country Planning Act (as amended) provides for the service of a stop notice. A stop notice must be served at the same time or after the service of an enforcement notice. We will consider serving a stop notice where urgent action is necessary to bring about a cessation of a relevant activity before the expiry of the period of compliance of the related enforcement notice.
- 4.17 The stop notice must refer to the enforcement notice, specify the activity or activities that are required to cease and the date that it takes effect. Failure to comply with the notice is an offence which carried an unlimited fine.
- 4.18 The Council must consider the use of stop notices carefully as they carry with them significant statutory compensation provisions.

Temporary Stop Notice (TSN)

- 4.19 Section 171E of the Town and Country Planning Act (as amended) provides councils with the power to serve a TSN. A TSN which can be issued without the need to issue an enforcement notice and is designed to halt breaches of planning control for a period of up to 28 days.
- 4.20 Whilst TSNs also carry some compensation provisions these are significantly lower than with a stop notice and therefore the risk to the Council is reduced.
- 4.21 All stop notices are placed on the Council's enforcement register.

Time limits for taking formal action

- 4.22 Section 171B of the Town and Country Planning Act (as amended) sets out time limits for taking enforcement action. The Council cannot serve a notice after four years where the breach of planning control involves building operations, for example extensions to dwellings, new buildings and laying hard standings; or the change of use of any building to a single dwelling house, from the commencement of the breach. Other unauthorised changes of use and breaches of conditions are subject to a 10-year time limit.
- 4.23 After these periods the Council cannot act, and the use becomes lawful. The landowner can apply for a Certificate of Lawful Development after this period and if the evidence is clear to regularise the situation.
- 4.24 Serving an enforcement notice in respect of a development stops the clock in relation to these time limits. Therefore, where the Council feel a breach may be close to the relevant time limit it may seek to take urgent enforcement action to prevent a lawful development situation.
- 4.25 The Localism Act has introduced a new enforcement power in relation to time limits. This allows councils the possibility to act against concealed breaches of planning control even after the usual time limit for enforcement has expired (see below).
- 4.26 The Council can, within six months of a breach coming to their attention, apply to the magistrate's court for a planning enforcement order. A planning enforcement order would give us one year to then take enforcement action. In agreeing to a planning enforcement order, the court need only be satisfied, on the balance of probabilities, that the apparent breach, or any of the matters constituting the apparent breach, has (to any extent) been deliberately concealed by any person or persons. In other words:
- concealment of only part of the breach is sufficient to render it all open to enforcement
 - the deliberate concealment could be to an almost negligible extent
 - the concealment may be by anyone – it could have been by a past owner, it could even have been by a third party.

Failure to comply with formal notices

- 4.27 Where a notice has been served and has not been complied with there are three main options available to the Council to pursue to attempt to resolve the breach.

Prosecution

- 4.28 We will consider commencing a prosecution in the Courts against any person who has failed to comply with the requirement(s) of any of the following notices where the date for compliance has passed and the requirements have not been complied with:
- enforcement notice
 - listed building enforcement notice, conservation area enforcement notice
 - planning contravention notice

- breach of condition notice
- section 215 notice
- stop notice

4.29 Cases involving unauthorised works carried out to a Listed Building and unauthorised demolition in a Conservation Area also constitutes an offence in their own rights. We will consider whether it would be expedient to prosecute for these works rather than issuing a notice on a case by case basis.

4.30 Before commencing any legal proceedings, we need to be satisfied that there is sufficient evidence to offer a realistic prospect of conviction and that the legal proceedings are in the public interest. We will take advice from the Councils Legal Section and from Independent Counsel where required to ensure that we act correctly.

Direct Action

4.31 Where any steps required by an enforcement notice or section 215 notice have not been taken within the compliance period (other than the discontinuance of the use of land), we will consider whether it is expedient to exercise our powers under section 178 of the Town and Country Planning Act (as amended) to:

- enter the land and take the steps to remedy the harm; and
- recover from the person who is then the owner of the land any expenses reasonably incurred by them in doing so.

4.32 In most cases the Council will seek to prosecute the failure to comply with a notice before seeking to initiate direct action.

Injunction

4.33 Where an enforcement notice has not been complied with and, because of the special circumstances of the case, either direct action or prosecution would not be an effective remedy, we will consider applying to the Court for an Injunction under section 187B of the Town and Country Planning Act (as amended). An injunction can also be applied for if the breach of planning is so serious as to cause immediate harm to the amenities of the area or neighbours beyond which it would be reasonable to use the enforcement notice procedure to deal with.

4.34 An injunction can also be applied for where there is clear evidence that a breach of planning control is anticipated but has not actually occurred. Such action will only be considered if the breach, actual or anticipated, is particularly serious and is causing or likely to cause exceptional harm.

Proceeds of Crime Act 2002

4.35 The Council will consider the use of the powers available in the POCA 2002 when prosecuting transgressors.

5. Special Controls

Advertisements

- 5.1 Unlike most breaches of planning control, the display of advertisements without consent is a criminal offence. Therefore, we have the power to initiate prosecutions without the need to issue a notice. Where it has been considered that an advertisement should be removed an offender will normally be given one written opportunity to remove the advertisement voluntarily. Failure to do so will normally result in further action being taken without further correspondence.
- 5.2 Section 225 of the Town and Country Planning Act (as amended) provides powers to remove or obliterate posters and placards. We will consider using these powers as appropriate as an alternative or in conjunction with prosecution action.
- 5.3 The recent Localism Act has introduced several new provisions in respect of dealing with advertisements. These are Removal Notices, Action Notices and the powers to remedy the defacement of property. Each provision includes rights of appeal to the Magistrates Court.

Removal notices

- 5.4 This provides the power to seek removal of any structure used to display and advertisement. Where the notice is not complied with, we may undertake the works in default by direct action and recover the expenses for doing so.

Action notices

- 5.5 Where there is a persistent problem with unauthorised advertisements an action notice can be issued specifying measures to prevent or reduce the frequency of the display of advertisements on the surface. Again, where the notice is not complied with, we may undertake the works in default and recover the expenses for doing so.

Power to remedy defacement of premises

- 5.6 Where a sign has been placed on a surface that is readily visible from somewhere the public have access and is considered by us to be detrimental to the amenity of the area or offensive, a notice may be issued requiring the removal or obliteration of the sign. As with the above provisions failure to comply with the notice will allow us to undertake the works in default and recover costs (costs cannot be recovered where the sign is on a flat or house or within the curtilage of a house)

Trees and Hedgerows

- 5.7 The lead section for all private (i.e. not Council owned land) Tree and Hedgerow investigations is the Landscape Section who can be contacted on Contacttrees@eppingforestdc.gov.uk. The Enforcement Team provides investigative support to their investigations where appropriate.
- 5.8 Legislation protects trees which are the subject of Tree Preservation Orders (TPOs) or are within a Conservation Area from felling or other works unless appropriate consent is first obtained. As with advertisements such works are an offence and therefore prosecution can be sought without the requirement to issue a notice.

- 5.9 Section 207 of the Town and Country Planning Act (as amended) provides for a replacement notice to be issued. This will require an appropriate replacement tree to be planted where a tree covered by a TPO has been removed.

Section 215 Notice

- 5.10 In cases where the amenity of an area is adversely affected by the condition of land or buildings, we will consider serving a notice under Section 215 of the Town and Country Planning Act (as amended). The notice will specify the steps required to be taken to remedy the condition of the land or buildings, the time within which the steps must be taken and the date that it takes effect. We endeavor to follow the Good Practice Guidance on S215 published by government https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/11491/319798.pdf
- 5.11 A section 215 notice takes effect after 28 days service during which time an appeal can be made in the Magistrates Court.

Regeneration Projects

- 5.12 The Enforcement Team will undertake directed project work to assist with regeneration or town and landscape enhancement schemes where resources and funding allow.

6. Other powers

Entry onto land

- 6.1 Under the provisions of Section 196A, B and C of the Town and Country Planning Act (as amended) officers have the right of entry onto land and buildings land when pursuing effective planning control for the following purposes:
- (a) to ascertain whether there is or has been any breach of planning control on the land or any other land;
 - (b) to determine whether any of the powers conferred on a local planning authority should be exercised in relation to the land or any other land;
 - (c) to determine how any such power should be exercised in relation to the land or any other land;
 - (d) to ascertain whether there has been compliance with any requirement imposed because of any such power having been exercised in relation to the land or any other land;

and to determine whether an enforcement notice should be served on that or any other land.

- 6.2 Twenty-four hours' notice in writing must be given for the need to access to a residential building if entry is refused. If access is still denied, or the matter is urgent, a warrant can be applied for from the Magistrates Court. Officers will

exercise these powers where appropriate particularly where their use is essential to the collection of evidence relating to an alleged breach of planning control. An obstruction of these powers is an offence which is subject to prosecution. A warrant can be gained in a few hours for serious cases, but it is more normal to do so over a week. This is a rarely used power due to its seriousness and the need for Police attendance to prevent a breach of the peace.

- 6.3 Section 324 of the of the Town and Country Planning Act (as amended) gives officers general powers of entry to sites to:

To undertake surveys about;

- a) Statutory plans;
- b) Applications for planning permission;
- c) Applications for consents under Tree Preservation Orders; and
- d) Applications under Advertisement Regulations.

- 6.4 Similar Powers of entry exist for Listed Buildings, hedgerows, trees and advertisements.

- 6.5 The Council will use Remotely Piloted Air Systems (aka Drones) for aerial survey work where required. Persons whose site are to be overflown will be notified in advance of this activity.

7. Legislation/guidance

- Town and Country Planning Act 1990 – This form the current primary legislation
- The Planning and Compensation Act 1991 and the Planning and Compulsory Purchase Act 2004 – these two Acts are secondary legislation which amend and add to the provisions of the Town and Country Planning Act 1990. Where specific sections from these Acts are referenced in the enforcement plan, they are collectively referred to as the Town and Country Planning Act (as amended)
- Planning (Listed Buildings and Conservation Areas) Act 1990
- National Planning Policy Framework (NPPF) 2018
- Planning Policy Guidance - Ensuring Effective Enforcement
- Planning Policy Guidance – Advertisements
- Planning Policy Guidance – Conserving and enhancing the historic environment
- The Town and Country Planning (General Permitted Development) Order 1995 (as amended)
- The Town and Country Planning (Use Classes) Order 1987 (as amended)
- The Town and Country Planning (Control of Advertisements) (England) Regulations 2007
- Regulation of Investigatory Powers Act 2000
- Police and Criminal Evidence Act 1984
- Proceeds of Crime Act 2002