

**Essential Reference Paper B**

# **East Herts Council**

## **Planning Enforcement Policy**

**Reviewed: Month** (to be inserted at conclusion of review) **2009**

## Introduction by Councillor Malcolm Alexander, portfolio holder for Community Safety and Protection:

*“The Council attaches significant importance to the planning enforcement function as a means to protect the built and natural environment in the district. It seeks to take appropriate and proportionate action when normal planning controls are breached. The Council understands that some transgressions are minor and inadvertent and, in line with national guidance, it will not undertake formal action where acceptable compromise solutions can be found. However, if transgressors are not willing to enter into a dialogue with the Council or the impact of the unauthorised development is significant and harmful, then the Council will proceed to take formal action without undue delay”*

### **1.0 Background to Planning Enforcement at East Herts**

- 1.1 Most people are familiar with the concept of planning control and will ask themselves the question ‘do I need planning permission?’ before they undertake development. The answer is not always a simple one – but asking the question usually leads to further advice and then the appropriate consents being sought.
- 1.2 In some cases development is undertaken without permission – the party that undertook it simply did not consider whether permission was required, or felt that the development was so minor that permission could not possibly be required. In other cases, there is a more deliberate decision to undertake development without applying for permission. When development does take place without consent, in other words, there is a ‘breach of planning control’, the Council’s planning enforcement function comes into play. Its purpose is to seek to ensure that the quality of the environment and amenity in the district is preserved and that development which has a harmful impact is controlled.
- 1.3 In some cases, undertaking work without the necessary permissions is a **criminal offence**. This occurs when unauthorised works are undertaken to Listed Buildings or unauthorised adverts are displayed. In other cases, whilst work is unauthorised, undertaking it does not constitute a criminal offence. It does become so, however, if no steps are taken to comply with formal action taken by the Council.
- 1.4 The ability of the Council to undertake enforcement action is set out in national legislation. The government has also produced a range of secondary legislation, guidance and good practice notes that back up the primary legislation. Planning enforcement action is discretionary – that is the Council does not have to undertake it. At East Herts however, it is

seen as an important tool for protecting the environment and amenity.

- 1.5 Whenever a potential breach of planning control comes to the attention of the Council, enforcement action will always commence with an investigation of the circumstances of the individual case. This will usually be followed by informal action which is likely to include contact being made with the alleged transgressor, to see if matters can be put right without recourse to more formal steps. If that approach is unsuccessful, the Council will consider whether it is appropriate or 'expedient' to take formal action. Formal action will not automatically be taken simply because development has been undertaken or a use has commenced in advance of obtaining the necessary consents. However, where harm is being caused by the development or use that the Council considers should be controlled, formal action will be taken. (Please note that in planning terms, the change in the use of land and buildings can also constitute development, even if no building work has taken place)
- 1.6 The planning enforcement service sits within the Council's Neighbourhood Services Directorate. Officers of the Council provide and manage the service. The decisions on the services which the Council provides and their scope are made by the elected Members of the Council. This policy has been the subject of review by a group of Members set up by the Council's Environment Scrutiny Committee. That review concluded in **date**. (to be inserted at conclusion)

## **2.0 Scope of the Policy**

- 2.1 The national policy documents include the Enforcement Concordat, produced by the government in 1998. East Herts Council, in common with many others, has signed up to the Enforcement Concordat. The Concordat sets out the principles of good enforcement. In turn, the Council has its own corporate Enforcement Policy, published in February 2004. This sets out the Council's commitment to carrying out all its enforcement functions in a fair, consistent and balanced manner.
- 2.2 The planning enforcement policy (this policy document) seeks to reflect and follow the principles set out in these other wider policy documents.
- 2.3 The District Council is one of the Local Planning Authorities responsible for the land use planning function within East Hertfordshire. It shares this function with Hertfordshire County Council. The District Council undertakes all enforcement action with the exception of that which relates to mineral and waste developments (the County Council is responsible for these elements).
- 2.4 The service and this policy covers the following elements:

- Breaches of planning control - these involve the following:-
  - i) the carrying out of development without the necessary planning permission
  - ii) the failure to adhere to conditions imposed on planning permissions.
- Unauthorised works to listed buildings
- Unauthorised advertisements, including fly posting
- Untidy land/buildings that are seriously detrimental to the amenity of an area.
- The preparation of Directions under Article 4 of the Town and Country Planning Act 1990 to prevent the use of “permitted development rights” that may result in an undesirable environmental impact.

The service also deals with complaints regarding High Hedges made under the Anti-Social Behaviour Act 2003. However, as these are subject to separate legislation the timescales set out in this policy are not applicable to these issues. The other elements of good enforcement practice are applicable however.

### **3.0 Good Enforcement Principles**

3.1 This policy follows the principles of good enforcement that are established by the Enforcement Concordat. These are that the service should:

- 1 Measure performance against agreed **standards**;
- 2 **Be Open** in dealing with businesses and others;
- 3 **Be Helpful**, courteous and efficient enforcement officers;
- 4 Have a publicised **complaints** procedures;
- 5 Take enforcement decisions in a **proportionate** manner;
- 6 Have high standards of **consistency** in enforcement action.

### **Standards**

3.2 The standards set out here fall into three categories. The first of these sets out the Council’s priority approach to dealing with potential breaches of planning control. The second relates to the timescales within which the service operates and thirdly there is a set of indicators against which the performance of the service is monitored.

### **Priority Approach**

3.3 The Council understands that, whenever a possible breach of control is reported to it, the impact it is having is important to those who are being affected by it. However, in order to ensure that resources are directed towards cases having the most serious impact, it has been decided that a priority approach should to be adopted. The identified priorities are:

**Urgent Priority**

- Unauthorised alterations to listed buildings;
- Unauthorised alteration to or demolition of buildings in Conservation Areas;
- Unauthorised developments having a severe and possibly irreversible impact on surroundings e.g. major unauthorised engineering works; unauthorised traveller sites; felling of protected trees\*.
- Development causing danger to highway users.
- Activities requiring the service of an urgent Article 4 Direction (a direction removing specified “permitted development” rights.)

\* Please note that enforcement action in relation to works to protected trees is undertaken by the Council’s Environmental Services team. Direct contact with that team can be made, however the planning enforcement team will ensure that that team are alerted when works of this nature are reported. Contact details for the Environmental Services team are set out at the end of this policy.

**Normal priority cases**

All other unauthorised developments or changes in use of land and buildings.

**Timescales**

3.4 Having assigned priorities the policy also establishes timescales within which action should be taken. These are related to the date that a potential breach of control has come to the attention of the Council. This date is identified as the ‘start date’ and is the first working day on which a request is received. In relation to the start date the timescales (all of which refer to working days) are set out as follows:

**For Urgent Priority cases**

Within 2 days of start date	Undertake site visit and confirm priority status (Note: where it appears that irreplaceable assets are potentially impacted on by the works/ activity being reported, the Council will endeavour to visit these sites within half a day of the matter being reported to it)
Within 3 days of	Acknowledge request to investigate <b><i>(and send a copy</i></b>

start date	<b>of procedure note)</b>
Within 5 days of start date	Undertake research and investigation and determine whether it is expedient to take formal action – inform parties

### For normal priority cases

Within 15 days of start date	Undertake site visit and confirm priority status
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### In all cases

Within 5 days of a committee decision	Inform all parties of a decision to undertake formal action
Within the government's statutory timescales	Inform parties, Parish and Town Council and Local Member(s) of an appeal against an enforcement notice
Within 5 days of the receipt of an appeal decision	Inform parties, Parish and Town Council and Local Member(s) of outcome
Within 5 days	Inform all parties who have been involved of the closure of a case

## Performance Monitoring

- 3.5 A set of indicators have been established to enable the performance of the service to be monitored. After data has been collected it is intended that benchmark figures will be identified against which performance will be monitored. It is anticipated that this may take up to a year to give reliable and good quality data.

Indicator	Explanation
Percentage of cases closed without the need for formal action.	The approach of the Council is not to take formal action unnecessarily but to seek a solution in all cases by way of a dialogue between all parties involved. The Council seeks to maximise the number of cases that can be resolved without the need for formal action.
Percentage of cases for which officers reach a first decision with regard to the	This indicator relates to the timescale standards set out above in relation to a first officer decision. This does not remove the requirement for Member consideration as per the Council's

need for formal action within the timescale set out above	constitution subsequently.
Percentage of notices served in accordance with the timescale set out above	
Percentage of customers satisfied with the service received	Further work will be required to form the basis on which this judgement will be reached. A post closure customer survey will be required.

- 3.6 The performance of the service is reported to members of the Council’s Development Control Committee three times per year. That reporting will include details of how many requests to investigate have been received, what category they fell into and the relevant outcome in relation to the performance monitoring information as set out above.

### Openness

- 3.7 The service aims to operate in an open and transparent way. This policy and the accompanying procedure guidance note are publicly available. Officers will always endeavour to give information and advice regarding enforcement matters in plain language; will be open about how the service operates, and will discuss general issues, specific compliance failures or problems with anyone experiencing difficulties with the process.
- 3.8 There are some issues however which impact on the degree to which all information can be available. These are:
- in some instances, those who have requested that a matter be investigated, are concerned that their name and address details should not be released. This is understandable. Whilst the party under investigation may sometimes reach their own conclusion as to the origin of the request to investigate, the policy of the Council not to release this information.
  - However, following the service of any formal notice, the party under investigation has the right to appeal. It is often of assistance to the Council, in dealing with such appeals, if those who have requested that a matter be investigated are willing to support the Council during the appeal process and possibly appear during any inquiry or hearing process. Clearly, doing so will require that their details are released. The Council would seek confirmation of the willingness of any parties to be involved in this way before any details are released.

- some cases, particularly those that involve changes in the use of land or buildings, can be particularly difficult to investigate. Publicising the investigation, for example by letting those other than the party that requested investigation know that it is being undertaken, can further jeopardise the case. This is because the party being investigated may take steps which seek to further disguise the use or development, cease it temporarily or relocate it.
- 3.9 Because of these possibilities, the Council has taken the view that its case files will not be routinely open to public inspection. *However, the Council is subject to the Freedom of Information (FOI) legislation and it must have regard to the requirements of the FOI legislation when it receives a request for the release of information.*
- 3.10 The Council has decided that it will accept requests to investigate where the party making the request wishes to remain anonymous. However, in order to provide some level of control and in order to avoid vexatious or malicious requests, anonymous requests must be supported by any one of the following:
- any Councillor (District, Town or Parish) who represents the ward in which the site is located;
  - the Town/Parish Clerk of the Town/Parish Council in which the site is located.
- 3.11 If an anonymous request is received by phone, the caller will be advised to seek the support of one of the parties as above. If the person making the request cannot be identified (ie, it is received by e-mail, post or some other form), the Council's officers will approach the relevant District Councillor(s) to establish any support for the request. The request will not be registered and no action will be taken in advance of independently provided support of the request as set out above. (For the avoidance of doubt and for the timescales referred to above, the start date will be the date on which that independent support is received).

### **Helpfulness**

- 3.12 As set out with the caveats above, the Council's officers will act in an open manner. They will endeavour to guide and assist in the understanding of the process and the powers which the Council has. Ultimately, they must act on behalf of the Council and cannot be requested to or relied upon to provide personal professional advice to any party which is subject to this service.
- 3.13 Ultimately, in order to ensure that the service operates effectively, there



are some elements of it that need to operate without reference to the parties that are subject to it. Primarily these are:

- site visits: these are generally carried out without prior announcement to ensure that the impact of a use or development can be fully appreciated;
- powers of entry: where the impact of a use or development cannot be appreciated from the public realm, and entry onto private land is denied, the Council does have powers of entry. These are exercised very sparingly and the Council will always seek cooperation from private land owners. However, where a cooperative approach is unsuccessful, the Council will exercise its powers of entry, where necessary;
- working with partners: there is a strong relationship between the planning enforcement service and other enforcement powers exercised by the Council (eg noise abatement, street scene, flytipping), the County Council (County planning matters, highways, trading standards) and others (police, Environment Agency etc). Where it seems appropriate, the service will pass details of the matter under investigation to one of our partners, if it appears that a joint approach or transfer of the case is appropriate.

#### **Further input on Data Protection issues here**

### **Proportionality**

- 3.14 Formal enforcement action will only be taken where it is expedient in the public interest and any action will always be proportionate to the breach of planning control to which it relates.
- 3.15 However, the Service is committed to firm and speedy action in cases where more serious breaches of control occur and may issue a Stop Notice, or apply to the courts for injunctive relief.
- 3.16 In carrying out enforcement action, the Development Control Service will have due regard to the provisions of the Regulation of Investigatory Powers Act (RIPA); the Police and Criminal Evidence Act (PACE) and the Human Rights Act.

### **Consistency**

- 3.17 The Council will carry out its duties in a fair, equitable and consistent

manner and will:

- a) be guided primarily by:
  - The Town & Country Planning Acts and related Orders
  - Planning Policy Guidance Note 18 (Enforcement)
  - Planning Policy Guidance Note 19 (Outdoor Advertising)
  - Other Planning Policy Guidance Notes or Planning Policy Statements relevant to the particular case.
  - ODPM Circular 10/97 (Enforcing Planning Control)
  - ODPM Enforcement Good Practice Guide
  - The East Herts Local Plan and draft Review policies
  - Adopted Supplementary Planning Guidance
  - Relevant case law
- b) take due account of guidance from other authoritative bodies such as the Royal Town Planning Institute and the Planning Advisory Service
- c) liaise with other departments of the Council and other enforcement agencies e.g., Herts County Council; Police, Trading Standards, the Environment Agency, and the Health and Safety Executive as necessary.
- d) operate an inter-agency approach where the local authority's powers are insufficient,
- e) be aware of any new legislation or guidance, which impacts on their duties.

3.18 The above measures will be supplemented by training for enforcement and planning officers and managerial checks on performance.

## **Complaints**

3.19 If any party is dissatisfied with the service that has been received they are asked to contact the Council and discuss it with officers first. The contact details are set out at the end of the policy. In that way we can seek to resolve the matter of concern.

3.20 If the concern cannot be resolved in this informal way and dissatisfaction remains, the Council has a formal complaints service. The details of this are set out in a separate customer note which is available from the Council's office receptions, on request by phone and letter or on the Council's website. Again all contact details are set out at the end of the policy.

3.21 The Council will be introducing a customer satisfaction survey, to be undertaken following the conclusion of a case, through which the operation of the policy and the service will be monitored.

## Contact Details

If you want to inform us about a potential breach of planning control that you want us to investigate, please contact us by:

Writing to: Planning Enforcement Service  
East Herts Council  
Wallfields  
Pegs Lane  
HERTFORD  
SG13 8EQ

Phone: 01279 655261 (ask for the Planning Enforcement service)

e-mail [planning@eastherts.gov.uk](mailto:planning@eastherts.gov.uk)

Via the reporting page on our website [www.eastherts.gov.uk](http://www.eastherts.gov.uk)

If you are unhappy with the service and want to discuss it informally or you want to lodge a complaint please use the number above and ask for the planning enforcement service.

If you want to see our formal complaints guidance, please use the same number. The telephone operator can send you a copy or guide you to the location on the Council's website

### Other contacts

Requests to investigate unauthorised works to protected trees: Call the Council on the same number as above and ask for the Environmental Services team