



Essential Reference Paper "B"

East Herts Council

Planning Enforcement Plan

Reviewed: Feb 2016

Introduction by Councillor Suzanne Rutland-Barsby, Executive member for development management and Council Support:

“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 acknowledges that some breaches 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 those in breach 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”

Glossary

Breach of planning control	Any development or use of buildings and/or land which have taken place without a planning (or related) consent
Councillors	Members of the District Council who represent individual wards within East Herts
Delegated/ delegation	The process whereby Councillors set out which tasks Officers are able to undertake on their behalf. The details are set out in the Councils Constitution (which can be viewed on the Councils website)
NPPF	National Planning Policy Framework
NPPG	National Planning Practice Guidance
Officers	Employees of the Council who undertake the majority of the day to day tasks in relation to the services it provides – including planning enforcement
Owner	Owner of land, or, in this Plan, a person who has control over it sufficient to rectify breaches in relation to the land, or who otherwise has a legal interest in the land
PD Rights	Permitted Development rights – these are a range of forms of development that can be undertaken without the need for planning permission. The most commonly undertaken are household PD rights which, subject to a range of restrictions, allow for extensions and other alterations to residential properties to be undertaken.

1.0 What is Planning Enforcement

- 1.1 Planning Enforcement is concerned with works which have taken place in breach of normal planning controls. This Plan sets out the approach that East Herts Council (the Council) will take when this situation occurs.
- 1.2 Generally, a breach of planning control happens when;
 - building or engineering works are carried out without the grant of a relevant planning permission
 - a material change of the use of land or buildings occurs without planning permission;
 - there is a failure to comply with the conditions imposed on a planning permission or works which have been undertaken are not those for which permission has been granted
- 1.3 In some cases, undertaking work without the necessary permissions is a **criminal offence**. This is only the case when unauthorised works are undertaken to Listed Buildings or unauthorised adverts are displayed. In other cases, where work is unauthorised, undertaking it does not initially constitute a criminal offence. It does become one though if the Council requires action to be taken (in relation to the work) and this requirement is not complied with.
- 1.4 The legal basis for planning enforcement is set out in the Town and Country Planning Act 1990 (as amended). Further guidance and advice is set out in the National Planning Policy Framework (NPPF) and the National Planning Practice Guidance (NPPG). These set out the discretionary basis of the provision of the service and provide further background and guidance in relation to the delivery of the service. The guidance in the NPPG sets out that a Planning Enforcement Plan, rather than a Policy, as previously, should be produced by the Council.
- 1.5 The planning enforcement service can only deal with matters which are covered by planning legislation. There are a range of other matters which can have an impact in relation to visual and environmental amenity but which the planning enforcement service cannot deal with. These include, for example, the impact of construction works on adjacent buildings, matters which are controlled by private covenants, land ownership and any alleged transgressions or violations in relation to that ownership.

2.0 East Herts Planning Enforcement Service

- 2.1 **The service is discretionary** – as indicated, the operation of the Planning Enforcement service discretionary – that is, the Council can decide if it

- wants to undertake planning enforcement action or not.
- 2.2 At East Herts, planning enforcement is seen as an important service to ensure that the amenity and character of the district is maintained. Every potential planning enforcement case that is reported to it will be subject to initial inspection and consideration. Information can be shared between the Planning Enforcement and Building Control services to assist this initial consideration. A decision will then be made as to whether further action should be taken. Officers are delegated to make these decisions on behalf of Councillors.
 - 2.3 **Action to be taken is proportionate** - the action that can be taken as part of the service must be proportionate to the harm that is being caused by the breach of planning control. In some cases, whilst uses or works may be in breach of planning control, the impact of them may be very minor. In such cases, after investigation, the Council may decide to take no further action.
 - 2.4 In all other cases, where some further action is warranted, this will be implemented taking into account the degree of harm caused by the unauthorised works or uses.
 - 2.5 **How cases can be logged with the Council** - potential cases where planning enforcement action may be required can be reported to the Council in person, by phone, by e-mail or by using our on line reporting form. Contacts with the Council to investigate potential planning breaches are referred to in this Plan as 'requests to investigate'.
 - 2.6 Contact details are set out at the end of this document
 - 2.7 **Anonymous matters** - the Council does not release the identity of those who have requested it to investigate a matter to those who are under investigation. Only in very advanced stages of an investigation, for example where court action is being pursued, would it potentially be of assistance if the person who had raised the matter with the Council be identified, for example to submit evidence on behalf of the Council. However, the Council will not make any persons identity known without their prior agreement.
 - 2.8 As a result, any party who wishes to submit a request to investigate is encouraged to provide their name and contact details so that feedback can be provided, or further information sought.
 - 2.9 If the party who wants to submit a request to investigate still wishes to remain anonymous, they will be asked to approach their local Ward Councillor or Parish/Town Council, to submit the matter on their behalf. If

- requests to investigate are received anonymously (for example and unnamed/ unaddressed letter), Officers will refer the request to the local Ward Councillor and, if necessary, the Parish/ Town Council for their support as above.
- 2.10 In the absence of that support the matter will receive no further attention.
- 2.11 **Investigation Process.** All requests will be registered on the Council's recording system and the party who has raised it with us will receive an acknowledgement setting out the name of the Officer who is dealing with the matter and a reference to quote in future communication. That Officer may seek further information from the party who submitted the request in relation to the matter.
- 2.12 Officers will visit the location of the potential breach within the timescales set out below in relation to the priority of the case. The initial assessment of the priority to be assigned to a case will be made using the information supplied by the party requesting investigation.
- 2.13 At the same time, research into the planning history of the site will be undertaken. If it is determined that planning permission is in place, further checks will be undertaken to establish whether there is any reason to believe that work is not being undertaken in accordance with the permission.
- 2.14 Where no planning permission is in place, checks will be undertaken to establish whether permitted development (PD) rights are being exercised.
- 2.15 The site visit will seek to establish the nature and extent of the works or the use which may be taking place. Often, it may be that works are still in progress, so information will be sought as to the anticipated scale of the works when complete. Whilst action will be taken to ensure that an initial site visit takes place within the timescales set out below, it may be necessary to undertake further visits where access to the site or building cannot be achieved.
- 2.16 **Next Steps.** It is necessary for the Council to determine what action should be taken next – and whether formal action is expedient. The possible courses of action are as follows:
- 2.17 **Take no action.** If the works or use being undertaken are within the scope of a planning permission that has been granted, or fall within the scope of permitted development, then no further action will be taken.
- 2.18 It is likely that no further action would also be the outcome where the works or use fall outside the scope of a planning permission or permitted

development rights, but the impact of them is very modest. Examples of this could be:

- Fences, gates or boundary walls being erected which exceed the heights allowed under a planning permission of PD rights by a modest amount
- Very minor changes to the works that have been granted planning permission – which are likely to have very little impact beyond the application site.

- 2.19 **Seek regularisation through a planning application.** Where works have taken place or a use has been commenced which does have an impact, but which, provisionally are felt to be an acceptable one within the planning policies that are applicable, then a planning application to regularise these would be invited.
- 2.20 This should not be taken as indicating that the Council will simply approve any application without due scrutiny. The application process allows the works and/or use to be considered fully against relevant planning policies. The owner of the site will be permitted a limited amount of time to make such a submission and any person who has contacted the council in relation to the matter and has left appropriate contact details, will be consulted on the submission.
- 2.21 It can take 8 weeks to deal with a planning application. If an application is approved, Officers will continue to monitor the site to ensure that the works and/or use implemented are in accordance with the permission granted. If permission is refused, the land owner has a right of appeal against this decision. If, after the expiry of the timescale within which an appeal should be made has expired and none has been submitted, the Council will then make a decision about further action which would be appropriate.
- 2.22 The Council will continue to monitor the site during this time period. It may be that, if work continues to be undertaken, the appropriate course of action will change from seeking regularisation to other steps, set out below.
- 2.23 **Undertake formal action.** Where it appears to the Council that the impact of unauthorised works and/or use of a site is unacceptably harmful and it is not appropriate to seek a planning application, formal action will be taken. The range of formal steps available to the Council, the processes relevant to each, outcomes and timescales are set out in the Appendix to this document.

- 2.24 **Outcomes you can expect if you are the owner of a site under investigation.** The Council will seek to ensure that all matters in relation to the enquiry are dealt with professionally, politely and efficiently. It will be necessary for Council Officers to attend the site. At all times Officer approach should be polite and respectful. It is often the case that Council Officers will visit without a pre-arrangement, however, they will make themselves known on arrival at a site if it possible to do so. If the time of the visit is not convenient to you, they will seek to arrange a mutually acceptable time to visit.
- 2.25 Officers will be able to advise on the purpose of the visit and what action the Council can take and what options are available to you as Owner. They can provide advice about the planning and enforcement process, but if you require specific planning advice, this should be sought independently.
- 2.26 The Council will endeavour to deal with your case quickly, ensuring that uncertainty is removed. However, we will need your co-operation and ask that, in all circumstances, you provide any information Officers request and answer questions they put to you.

3.0 Priorities and timescales

- 3.1 The Council adopts a prioritised approach to the consideration of potential enforcement matters. The identified priorities are:

Urgent Cases

- 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.)
- Unauthorised developments which have the potential to become immune from enforcement action within a period of six months or less.

All Other Cases

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

Timescales

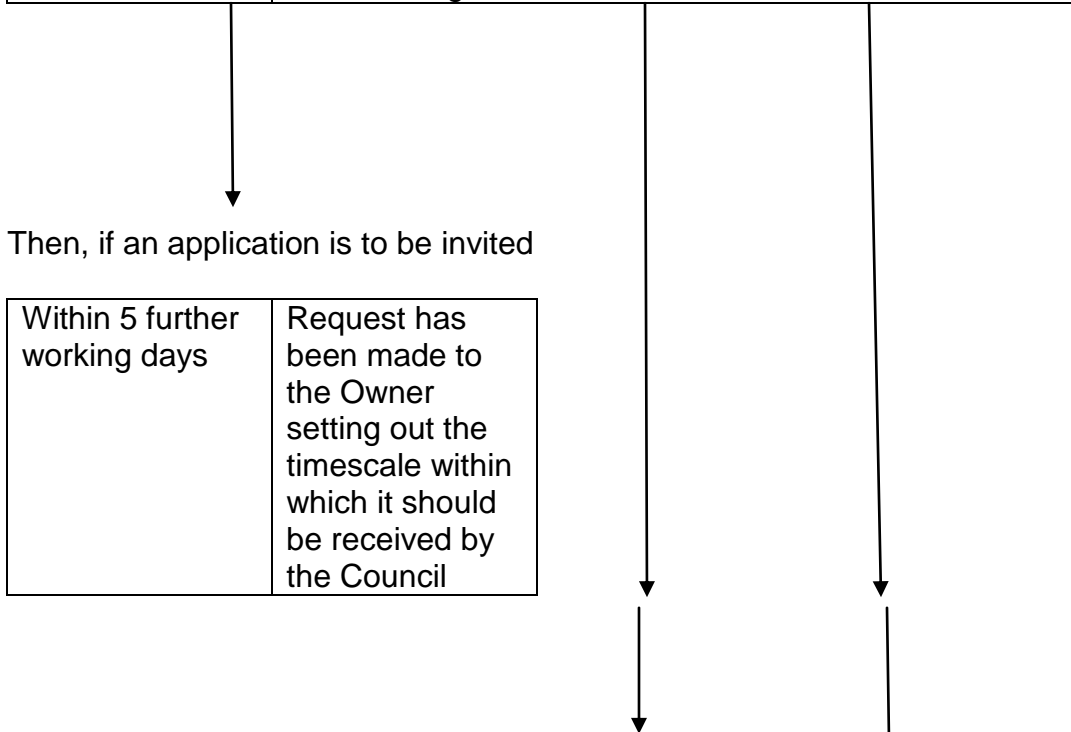
3.3 The following table sets out the timescale within which the Council endeavours to undertake the actions set out in this Plan. These are related to the date that the Council has received a request to Investigate. This date is identified as the 'start date' and is the first working day on which a request is received. In relation to the start date the timescales (**all of which refer to working days**) are set out as follows:

3.4 For **Urgent Cases**

Within the same or next working day	Undertake site visit in all cases. Acknowledge receipt of request to investigate.
Within 2 working days of start date	Reach a decision in relation to whether it is expedient to take action and, where necessary, commence formal action

3.5 For **All Other Cases**

Within 3 working days of start date	Acknowledge receipt of the request to investigate
Within 15 working days of start date	Undertake site visit in at least 90% of cases
Within 10 further working days	Reach a decision on the expediency of further action, or, if a decision cannot be reached, confirm the reason for not being able to.



Or, if the impact is harmful and it is expedient to serve a Notice

Within 15 further working days	Enforcement Notice served
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Or, if a decision in relation to expediency has not been reached

Every four weeks	Reconsideration of whether it is expedient to take further action at a period of no less than every further four weeks.
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4.0 Maintaining contact with the Council

- 4.1 The Council undertakes to advise those who have requested an investigation at each stage in the timescales above where decisions are to be made. The Council's preference is to be able to contact parties by email. This makes the contact process traceable.
- 4.2 Resources are not available to maintain contact and provide updates in other circumstances. However, calls can be made to Officers at any time during normal office hours to enquire about progress in any particular case. If any party is unable to provide an email contact address, please contact the Enforcement service five weeks after the matter was first raised. It should be possible at that time to provide information on any action to be taken, if none is to be taken or if it has not been possible to reach a decision.

5.0 Performance Monitoring and reporting

- 5.1 The following targets are monitored with regard to the provision of the service. Performance in relation to these targets is reported to the Council's Environment Scrutiny committee.

Site visit undertaken in relation to urgent cases	100% within 2 working days
Site visit undertaken in relation to all other cases	90% within 15 working days

Decision made on whether it is expedient to either undertake or not undertake formal action or it is determined that it is not possible to make a decision at this stage	100% within five weeks
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5.2 Oversight of the planning enforcement service also takes place by the Council's Development Management (DM) committee. This committee does not scrutinise the above performance indicators, but considers the general operation of the service with regard to the progression of cases and can seek further information in relation to any particular case.

5.3 Reports are submitted regularly to the DM committee and provide information in relation to the following issues:

- Number of cases received since last report
- Priority status of cases (urgent or other)
- Number of cases awaiting a site visit
- Current status of cases (awaiting site visit, awaiting decision on expediency of action, etc)
- Number of cases closed since the last report
- Number of cases on hand
- Age analysis - cases over 18 months

6.0 Complaints

6.1 If any party is dissatisfied with the service that has been received they should contact the Council and discuss it with officers first to attempt a resolution to the matter. The contact details are set out below. In that way we can seek to resolve the matter of concern.

6.2 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 below.

6.3 From time to time the Council may approach users of the service with a post-closure customer survey, following the conclusion of a case, through which the operation of the Policy and the quality of the service provided 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:

Post: 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

Via the reporting page on our website 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.

Appendix

This appendix sets out further background to the planning enforcement service, the actions that can be undertaken and the procedures that the Council will follow, where appropriate.

Legal Framework

Paragraph 207 of the National Planning Policy Framework states that *“Effective enforcement is important as a means of maintaining 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. Local planning authorities 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 it is appropriate to do so.”*

The ability of the Council to undertake planning enforcement action is set out in primary legislation. The government has also produced a wide range of secondary legislation, policy, guidance and good practice notes that support that primary legislation and the Council are also guided by case law.

This plan follows the principles of good enforcement that are established by the Government Enforcement Concordat 1998. These are that the service should:

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

In considering planning enforcement action the Council will take into account all primary and secondary legislation as well as national planning policy and guidance including:-

Town and Country Planning Act 1990 (as amended);
Planning (Listed Buildings & Conservation Areas) Act 1991;
Planning & Compensation Act 1991;
Planning & Compulsory Purchase Act 2004;
Police and Criminal Evidence Act 1984 ('P.A.C.E.');

Criminal Procedure and Investigations Act 1996 ('C.P.I.A.');

Protection of Freedoms Act 2012

Human Rights Act 1998;
Localism Act 2011;
Caravan Sites and Control of Development Act, 1960;
Town and Country Planning (General Permitted Development) Orders;
Town and Country Planning (Control of Advertisements) Regulations;
The Town and Country Planning (Use Classes) Orders;
The National Planning Policy Framework;
Department of the Environment, Transport and the Regions Circular 10/97
(Enforcing Planning Control);
Department of the Environment, Transport and the Regions Enforcement
Good Practice Guide

Enforcement Tools Available

In relation to planning, the Council has a number of planning enforcement “tools” available; examples include:

- notices to require the provision of information;
- planning enforcement notices;
- listed building notices;
- repairs notices;
- urgent works notices;
- stop and temporary stop notices;
- discontinuance notices;
- S106 planning obligations;
- injunctions;
- prosecution;
- direct action;
- planning enforcement orders.

RIPA/PACE

All work of the Council including investigations will be subject to prioritisation. Once started, investigations will be conducted in a timely manner, in accordance with the requirements of relevant legislation, including the Police

and Criminal Evidence Act 1984 (PACE), Regulation of Investigatory Powers Act 2000 (RIPA), Criminal Procedure and Investigation Act 1996, Human Rights Act 1998 and Protection of Freedoms Act 2012. Regard will also be had to the requirements of associated Codes of Practice and Guidance. Investigations will be brought to a timely conclusion where possible.

It may be necessary to undertake surveillance to assist with an investigation. Any surveillance covered by the definitions contained in RIPA will be conducted in accordance with that Act as amended by the Protection of Freedoms Act 2012, appropriate guidance, corporate policy and Codes of Practice. Covert Surveillance will only be undertaken:

- if it is in the interests of preventing crime
- if the use of covert surveillance is necessary and proportionate to the potential offence being investigated
- if it has been authorised by a Council authorising officer and the authorisation has been brought into effect by a magistrate.

It is sometime necessary to conduct an interview with a person (or duly authorised representative of a corporate body) suspected of committing an offence. These interviews will be conducted in accordance with the PACE Codes of Practice. Wherever possible, recorded interviews with persons will generally take place at the Council Offices. So called “interviews by letter may be undertaken”, but each case will be judged on its own merits.

Officer Identification

All officers wear a picture identification card at all times and authorised Officers have been provided with a Council Employee Identification Card, a warrant style card summarising the powers they are able to exercise with regards to the entry to land and buildings granted through the Planning Acts. These contain a picture of the officer. Upon request, or where statute demands, officers will produce appropriate and necessary identification.

Photography

As part of any investigation it may be necessary to take digital photographs to assist with the case. The authority will provide the equipment for this purpose and procedures are in place to ensure the evidential continuity of any images made.

Immunity

Breaches of planning control become immune from enforcement action, and lawful, if they have been in existence for a given length of time. The relevant time limits are:

- 4 years for operational development (physical development of the land such as buildings, extensions and fences);
- 4 years for changes of use of an existing building to a single dwellinghouse; and
- 10 years for any other breaches of planning control. These are mainly material changes of use of land and breaches of planning conditions.

However, Section 124 of the Localism Act 2011 has introduced a new power for local planning authorities which overrides the above time limits in certain circumstances. If the apparent breach of planning control, has (to any extent) been deliberately concealed by any person or persons the Council may apply to the local Magistrates for a planning enforcement order. Such an order gives the Council a further year (known as a 'the enforcement year') to issue and serve a planning enforcement notice irrespective of the time limits referred to above.

Freedom of Information

The personal details of any party who has requested an investigation and the files relating to each case are confidential. This situation has not been altered by publication of the Freedom of Information Act 2000 or the Environmental Information Regulations 2004. However, depending upon individual circumstances, the Council or the Information Commissioner may decide that access to a file is appropriate.

Retrospective Applications

When it is considered that a breach of planning control may be acceptable or lawful, a planning application or an application for a certificate of lawful use or development may be invited to allow the local planning authority to fully consider the full detail of the case leading to a formal decision. However, this does not imply that planning permission will be granted as with any other application.

Permitted Development

The government has granted 'deemed' planning permission for many developments, generally referred to as 'permitted development rights'. These range from building a small scale shed to the rear of the property to extending the main house. Advice on what may be permitted development is available on the government planning portal website located at <http://www.planningportal.gov.uk/permission/>. The council will not be able to take any action against such authorised developments.

Prosecution/Direct Action

Following the service of an enforcement notice that requires works to be carried out to remedy or remove the breach and those works/actions have not been undertaken within the timeframe given via the notice, it is open to the authority to pursue a prosecution in the courts for the non-compliance of the notice.

If it is considered that prosecution would not satisfactorily resolve the breach of planning control, it is open to the authority to take direct action by way of employing contractors to carry out the works required by the notice and seek payment for those works from the owner of the land/property or by placing a legal charge on the land/property.

Level of Delegation

This section to be completed once the full delegated powers are known.