

**EPPING FOREST DISTRICT COUNCIL  
NOTES OF A MEETING OF GOVERNANCE SELECT COMMITTEE  
HELD ON TUESDAY, 4 APRIL 2017  
IN COMMITTEE ROOM 1, CIVIC OFFICES, HIGH STREET, EPPING  
AT 7.15 - 8.50 PM**

<b>Members Present:</b>	Councillors N Avey (Chairman), , L Hughes, S Kane, H Kauffman, B Rolfe, D Stallan (Vice-Chairman of the Council), B Surtees, H Whitbread, D Wixleyn
<b>Other members present:</b>	Councillors K Chana, M Sartin
<b>Apologies for Absence:</b>	Councillors S Jones, M McEwen and L Mead
<b>Officers Present</b>	N Richardson (Assistant Director (Development Management)), M Crowe (Senior Corporate Fraud Investigator), J Godden (Principal Planning Officer (Heritage, Enforcement & Landscaping)), A Hall (Director of Communities), S Tautz (Democratic Services Manager)

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**45. APPOINTMENT OF VICE-CHAIRMAN**

In the absence of the Vice-Chairman, the Chairman sought nominations for the position of Vice-Chairman for the meeting.

**RESOLVED:**

That Councillor H. Whitbread be appointed as Vice-Chairman of the Select Committee for the duration of the meeting.

**46. SUBSTITUTE MEMBERS (COUNCIL MINUTE 39 - 23.7.02)**

The Director of Governance reported that Councillor M. Sartin was substituting for Councillor S. Jones at the meeting and that Councillor K. Chana was substituting for Councillor M. McEwen.

**47. NOTES OF PREVIOUS MEETING**

**RESOLVED:**

That the notes of the meeting of the Committee held on 31 January 2017 be agreed as a correct record, subject to the correction of the reference to 'Thursday 4 April 2017' in Minute 44 (Date of Next Meeting), to read 'Tuesday 4 April 2017'.

**48. DECLARATIONS OF INTEREST**

No declarations of interest were made by members of the Committee pursuant to the Council's Code of Conduct.

**49. TERMS OF REFERENCE & WORK PROGRAMME**

The Committee noted its terms of reference for the current year, which had been previously agreed by the Overview and Scrutiny Committee.

Members reviewed progress against the work programme for the Committee for 2016/17, the majority of actions from which had now been achieved. It was reported that, in a number of instances, work programme activities were unlikely to be completed in the current year and would be carried forward into 2017/18.

The Assistant Director of Governance (Development Management) reported that the work programme for 2017/18 was required to be considered and agreed by the Overview and Scrutiny Committee at its first meeting in the next municipal year and sought any suggestions from members for additional work programme priorities.

**RESOLVED:**

- (1) That the Terms of Reference of the Committee and progress against its work programme for 2016/17, be noted; and
- (2) That the Assistant Director of Governance (Development Management) finalise the draft work programme for 2017/18, for future consideration by the Overview and Scrutiny Committee, in consultation with the Chairman of the Select Committee.

**50. GOVERNANCE DIRECTORATE - REVIEW OF ENFORCEMENT ACTIVITIES**

The Committee considered a comprehensive report in regard to the scope of the enforcement activities undertaken as part of the current service portfolio of the Governance Directorate, which comprised corporate fraud and planning enforcement.

**Corporate Fraud**

It was reported that the main purpose of the Corporate Fraud Team was to provide independent and professional investigation of all aspects of fraud affecting the Council, in order to prevent fraud and abuse and take fair and consistent action against those committing fraudulent activities.

The Corporate Fraud Manager reported that, since its inception, the team had taken both proactive and reactive approaches to anti-fraud work and considered all fraud referrals with a view to risk assessment and, where appropriate, investigation. Members were advised that the team was robustly proactive in the prevention and investigation of fraud within a number of high-risk areas, particularly in relation to social housing, where fraud investigation activity had resulted in policy changes and revisions to internal processes.

The Committee noted that the Corporate Fraud Team was having significant effect in the area of Right to Buy (RTB) applications, where (working in conjunction with the Home Ownership Team) it now vetted all applications to provide assurance that tenancies were being operated correctly and that the RTB Scheme was not being used for money laundering purposes. The Corporate Fraud Manager reported that twenty RTB applications had been stopped and/or withdrawn since April 2016, a number of which had been identified as having significant funding concerns that had given rise to money laundering suspicions, saving approximately £1.5million of potential RTB discount. The Corporate Fraud Manager indicated that, as a result, the twenty properties involved had continued to remain available as public assets providing future revenue streams (in the form of rent continuing to be paid) to the

Council of approximately £1million. Members were advised that other investigations into suspected housing fraud had resulted in eleven Council properties being recovered in order that they could be re-let, resulting in a saving of approximately £200,000.

Members noted that the Corporate Fraud Team was also involved in a number of criminal prosecutions concerning fraud relating to the Local Council Tax Support Scheme, the illegal subletting of Council tenancies and various other offences. It was reported that some of these activities were subject to action under the Proceeds of Crime Act 2002 for issues such as money laundering and the Corporate Fraud Manager indicated that the Council routinely pursued claims for compensation/confiscation under the Act. In addition, the Corporate Fraud Team also undertook staff-related investigations and standards and proceeds of crime investigations on behalf of other local authorities on a 'paid-for' basis. The Corporate Fraud Team had also recently begun an informal joint working arrangement with Chelmsford City Council for the sharing of anti-fraud resources and similar arrangements were currently being explored with other authorities

The Committee was advised that, although the public were encouraged to report fraud, due to the often complex nature of both criminal investigations and subsequent court action, it was important for members to understand that cases generally took significant time and resources to investigate.

### **Planning Enforcement**

It was reported that the main purpose of the Planning Enforcement Team was to investigate alleged breaches of planning controls such as unauthorised buildings and uses and development that was not taking place in accordance with approved plans. Members were advised that the Planning Enforcement Team also assisted the Council's Tree and Landscape Section in prosecutions for destruction and damage to protected trees and the Heritage Section with unauthorised works to listed buildings.

The Principal Planning Officer (Enforcement) reported that the role and responsibilities of the Enforcement Team were set out in the Council's adopted Local Enforcement Plan, previously adopted by the former Planning Services Scrutiny Panel and that, since April 2016, almost seven-hundred complaints of alleged planning breaches at different sites had been investigated, resulting in the service of thirty-eight Enforcement Notices. Members were advised that during this period, nine Enforcement Notices appeals had been heard by the Planning Inspectorate, all of which had been dismissed and upheld in favour of the Council.

The Committee was advised that that prosecution for breaches of planning legislation was always a last resort, as the planning system required that the planning merits of a case always be considered retrospectively through the planning application process in the interest of fairness, unless the breach could not be resolved by conditions attached to the grant of planning permission. The Principal Planning Officer (Enforcement) indicated that if an enforcement case had been proved in the courts or in extreme cases before court action, the Council could take injunctive or direct action to ensure compliance and that, in the last year, the authority had mounted five prosecutions for the breach of an Enforcement Notice and three prosecutions for a breach of a Tree Preservation Order.

The Committee was advised that, due to the legislative background, enforcement cases could take considerable time to resolve and that, even in simple cases, a period of six to eight months from when a complaint was received was not

uncommon. The Principal Planning Officer (Enforcement) indicated that, in complex and/or contested cases, it might take some years to gather appropriate evidence and that it was important for members and the public to understand that such cases generally took significant time and resources to resolve.

Members noted that the resources available to the Planning Enforcement Team compared favourably with other similar local authorities, but that the addition of a Breach Of Condition Officer position to the establishment of the Team would enable officer time to be focused exclusively on enforcement matters. The Principal Planning Officer (Enforcement) reported that the Team worked collaboratively with other services of the Council, as well as with external agencies such as the Corporation of London and the Environment Agency and had recently pioneered the introduction of a remotely piloted air system (known as a 'drone') for overt deployment on appropriate enforcement cases.

The Principal Planning Officer (Enforcement) reminded the Committee of the annual planning enforcement training session provided as part of the Council's Member Development Programme, these next session of which was due to be held on 30 June 2017.

On behalf of the Committee, the Chairman thanked the Corporate Fraud Manager and the Principal Planning Officer (Enforcement) for their informative presentations.

**RESOLVED:**

- (1) That the scope of the enforcement activities of the Corporate Fraud and Planning Enforcement Teams, as part of the current service portfolio of the Governance Directorate, be noted;
- (2) That the content of the Council's adopted Local Enforcement Plan, attached as an annex to these notes, be noted;
- (3) That the current 'signposting' of the Local Enforcement Plan on the Council's website be reviewed, to ensure that it is easily accessible to visitors to the website; and
- (4) That investigation be made of the possible production and publication of an 'easy-read' version of the Local Enforcement Plan, for possible issue to local councils and members of the public in response to complaints concerning planning enforcement matters.

**51. PLANNING APPLICATION VALIDATION CHECKLIST & VIABILITY GUIDANCE FOR AFFORDABLE HOUSING**

The Committee was advised that a Local Validation Requirements List was required to be prepared by the Council, as the Local Planning Authority, to specify the information usually required to support planning applications of particular type, scale or location. It was reported that the local validation list was required to be reviewed every two years, in accordance with the provisions of the Town and Country Planning (Development Management Procedure) (England)(Order) 2015 and that failure to review the validation requirement list would mean that the Council could only require planning application submissions to contain basic detail in order make them valid.

Members noted that all planning applications were required to meet the relevant elements of the local validation list in order to be considered 'valid', otherwise they would not be registered and consulted upon and that it was only when an application had been deemed to be valid, that the start date of the planning application process

commenced. The current local validation requirement list had been agreed by the former Planning Services Scrutiny Panel in 2014 and was now due for review.

The Committee therefore considered a draft revised Local Validation Requirements List to provide guidance and certainty to applicants about the information required when submitting planning and related applications, to ensure that the Council had all the necessary information that it needed to determine applications within target times. Once agreed, it was intended that the revised local validation list would be used for registration purposes and be made available on the Council's website.

The Committee also considered draft proposed guidance on the submission of viability and financial appraisals for affordable housing, that had been produced by the Director of Communities for incorporation within the Local Validation Requirements List. The Director of Communities reported that, in view of the increasing relevance of viability in planning matters and because of its complexity and the absence of detailed formal planning guidance at national level, there was considered to be a need for appropriate local guidance to be adopted.

**RESOLVED:**

- (1) That the draft revised Planning Application Requirement Validation Checklist and draft 'Guidance Note to Planning Applicants on the Submission of Viability and Financial Appraisals for Affordable Housing' be agreed;
- (2) That the draft Validation Checklist and Guidance Note be published on the Council's website for a period of twenty-eight days, for consultation purposes;
- (3) That any comments submitted during the consultation period be considered by the Assistant Director of Governance (Development Management) and the Director of Communities and that the draft Validation Checklist and Guidance Note be amended as considered necessary and be adopted by way of a formal decision of the Governance and Development Management Portfolio Holder;
- (4) That the adopted Validation Checklist and Guidance Note be used for the purposes of registration of planning applications and be published on the Council's website as part of the necessary information required to submit a planning application; and
- (5) That the Validation Checklist be kept under regular review and the Director of Governance be authorised to make minor amendments necessary to reflect changes in Government guidance or Council policy and guidance, without undertaking further consultation or seeking further member approval.

**52. KEY PERFORMANCE INDICATORS 2017/18 - REVIEW & TARGETS**

The Assistant Director of Governance (Development Management) introduced a report on proposed targets for the Key Performance Indicators (KPI) for 2017/18 that were the responsibility of the Committee. Members noted that the adoption of challenging but achievable indicators for each year was an important element of the Council's Performance Management Framework and that the KPI set was reviewed by Management Board on an annual basis to ensure that indicators and targets presented appropriate challenge to performance in the areas of the Council's key objectives and priorities.

The Committee was advised that the provisional target for each indicator had been identified by service directors and relevant Portfolio Holder(s), based on third-quarter performance and the estimated outturn position for the current year. The Assistant Director of Governance (Development Management) reported that Management Board would review the provisional targets against outturn data for 2016/17 when this became available and that any proposed revisions would be reported to the Committee in the next cycle of meetings.

**RESOLVED:**

That the proposed Key Performance Indicators and targets for 2017/18 for services within the areas of responsibility of the Committee, be agreed.

**53. OVERVIEW & SCRUTINY COMMITTEE**

The Committee did not identify any reports to be made to the next meeting of the Overview and Scrutiny Committee.

**54. DATE OF NEXT MEETING**

Members noted that the next meeting of the Committee would be held at 7.15pm on 4 July 2017.

**Epping Forest District Council**  
**Planning & Economic Development**  
**Local Enforcement Plan**  
**December 2013**



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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 control 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 development.
- 1.2 The Council has a duty to investigate alleged breaches of planning control and has powers to remedy proven 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 control process.
- 1.3 However, the planning enforcement system does not exist to simply punish those responsible for a breach of planning control. 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 control process depends on the Council's readiness to take effective enforcement action when it is justifiable. The community's confidence of the planning process is quickly undermined if unauthorised development is allowed to proceed without any apparent attempt by the Council to intervene.
- 1.5 The purpose of this document is to set out the Council's specific plan for the enforcement of planning control. This policy will ensure that Councillors and Officers, external agencies and the community are aware of our general approach to planning enforcement.

## **Principles of Good Enforcement**

- 1.6 Proportionality – Officers will consider the full range of powers when conducting investigations (this includes appropriate negotiations and retrospective planning applications) and where appropriate take immediate action.
- 1.7 We will minimise the costs 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 taking action.
- 1.8 Where practicable we will take particular 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 with rigour, 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.
- 1.13 The enforcement plan will be subject to review at least every three 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 with our service, subject to it not being covered by 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 co-ordinated to minimise unnecessary overlaps and time delays.
- 1.19 Officers will not tolerate abusive language or behaviour either in person or in correspondence.
- 1.20 Complaints about the service – We will provide well publicised, effective and timely complaints procedures easily accessible to business, the public, employees and consumer groups. In cases where disputes cannot be resolved, any right of complaint or appeal will be explained, with details of the process and the likely time-scales involved.

## 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, 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 (as amended).
- 2.2 The Town and Country Planning Act (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 “the carrying out of a 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 The majority of 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 control are:
- demolition taking place in conservation areas, without conservation consent, when it is required
  - works carried out to a listed building which affect the 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 consent under the advertisement regulations, which are 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 and Trees). 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. 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 that the Council can not get involved in. 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
- 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

### **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 A** - implies a severe and/or urgent case requiring immediate attention. This would include harmful works to a listed building or new physical development which would present a serious danger to members of the public; a Gypsy, Roma or Traveler incursion; works to a tree subject to legal protection; and works to a protected hedgerow . A site visit should be carried out within 7 working hours.

**Category B** - covers all other cases that are a less severe and/or less urgent case requiring prompt attention, and a site visit should be carried out within 14 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 from the community should normally be made in the following ways:
- by email at [contactdcenf@eppingforestdc.gov.uk](mailto:contactdcenf@eppingforestdc.gov.uk)
  - filling out the standard form on our web site
  - over the phone on 01992 564527
  - by letter to the Planning Enforcement Section, Epping Forest District Council, High Street, Epping, Essex CM16 4BZ
  - or in person at the planning reception area at the Council Offices, opening hours are 0900 – 1300 Monday to Friday
- 3.2 When a complaint is received it is recorded on our database so it is important that we have 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
- 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 updated on progress.
- 3.4 To avoid the unnecessary use of resources, hampering of investigations and dealing with malicious complaints, anonymous reports of suspected breaches of planning control will not be taken.
- 3.5 Confidentiality is vital; a complaint's identity will not be revealed to any third party.

#### **Time frame for site visit**

- 3.6 A site visit will be required in most cases to establish whether or not 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 would 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 within the following timescales.
- Category A – within 7 working hours
  - Category B – within 14 days

We will aim to meet these timescales in all cases investigated to ensure cases progress without undue delay from the outset.

- 3.8 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 problematic 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.

### **If no breach of planning control is established**

- 3.10 A significant number of investigations are closed as there is no breach of planning control established. This can occur for a number of reasons, for example:

- there is no evidence of 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) Order 1995 (as amended)
- the development already benefits from planning permission granted by the Council

- 3.11 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 domestic television aerial. Such a breach would be considered de-minimus in planning terms and no formal action could be taken in this respect.

- 3.12 Where this is the case the person reporting the suspected breach of control will be notified either verbally or in writing within 10 working days of the initial site visit that no further action will be taken. The complainant will be provided with an explanation of our reason(s).

- 3.13 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 take action. 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 for example:

- the complainant believes there is breach of planning, 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 permission or a certificate of lawfulness is likely to be granted. Should applications be made and approved, enforcement action will not be taken.
- where a fence is, for example, 2.1 metres 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 considered to 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 saying that a note will be placed on the land charge record
- when there has been a change of use for a building or a breach of condition has taken place over 10 years ago the Council is unable to take action as there are time limits set out in planning legislation (either four or 10 years)

- 3.14 Criteria that would be used to determine a course of action include:

- whether planning permission required?
- what impact would the breach have on the visual amenity and character of the area affected, for example would it be minimal or significant?
- 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?

### **Where further investigation is required**

3.15 There are cases where the initial site visit does not provide sufficient evidence to prove 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

3.16 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, or the owner or other persons responsible for the land or building.

3.17 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.

3.18 We will also consider serving a Planning Contravention Notice 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**

3.19 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 unauthorised activities are causing serious harm 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 principal planning enforcement officer. 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**

- 3.20 Where officers consider that planning permission is likely to be granted for an unauthorised 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 (as amended) sets out the provisions for dealing with retrospective applications.
- 3.21 In determining retrospective planning applications the Council can not refuse an application simply because the development has already been carried out. Many breaches of planning control occur because the applicant simply did not realise 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 2500 applications. This demonstrates the important role retrospective applications play in resolving breaches.
- 3.22 Generally we will not seek a retrospective planning application if we feel 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 these cases an application may be necessary to obtain full details of the intended development. 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 felt that there is no merit in such an application, unless it falls within the conditions laid out in para 3.23 below.
- 3.23 The recent 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.’
- 3.24 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**

- 3.25 While it is clearly unsatisfactory for anyone to carry out development without first obtaining the required planning permission, an enforcement notice should not 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 3.13 and 3.14 above and paragraphs 3.27 below for further information.



- 3.26 Where this is considered to be the case the officer will produce an expediency report to 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 take action the case will be closed in accordance with the scheme of delegated powers as set out in the Council's Constitution.
- 3.27 Another criteria 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 out building in a residential curtilage slightly higher than allowed under permitted development regulations. In these cases it would clearly 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 taking action would not be met. We will work with owners to regularise or remedy the works but ultimately it is highly unlikely that formal action could be warranted in the case of a technical breach of planning control.

### **Negotiation**

- 3.28 Where it is considered that the breach of planning control is unacceptable, officers will initially attempt to negotiate a solution without recourse to formal enforcement action, unless the breach is causing irreparable harm to amenity. Negotiations may involve the reduction or cessation of an unauthorised use or activity, or the modification or removal of unauthorised operational development.
- 3.29 In carrying out negotiations 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.
- 3.30 Where initial attempts at negotiation fail, formal action will be considered to prevent a protracted process. We will also consider using temporary stop notices to prevent the breach becoming more severe.
- 3.31 Where we are unable to negotiate an acceptable solution within a reasonable timescale, or it is clear at the outset that the breach is not capable of being remedied through negotiation, we will proceed with formal enforcement action where it is expedient to do so.

## 4. Taking formal enforcement action

- 4.1 Once the decision to take formal action has been made we will tell the complainant either verbally or in writing/email within 10 working days from the date on which the decision to take action was made. 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.
- 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, in order 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 all 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, as the case may be, 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, as the case may be, 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 taken into account 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. An enforcement report will be produced by officers specifically to consider these issues. As with an appeal against a planning application costs can be applied for in cases where the other party has acted unreasonably.

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 a conservation area 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 period for compliance.

4.9 All enforcement notices are placed on the Council's enforcement register which is available to view on the Council's website at <http://planpub.eppingforestdc.gov.uk/AnitelM.websearch/Home.aspx>

#### 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 will be served in most cases as a precursor to an enforcement notice to ensure all 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 £5,000.

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 miss statement is an offence punishable by a fine up to £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 recently 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 period 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. The maximum fine on summary conviction is £20,000.
- 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 take action and the use becomes lawful. The landowner can apply for a Certificate of Lawful Existing Use or Development (CLEUD) after this period and if the evidence is clear regularise the situation.
- 4.24 Serving an enforcement notice in respect of a particular 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 take action 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).

- 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.

## 5. Special Controls

### Advertisements

- 5.1 Unlike most spheres 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 an advertisement. Where the notice is not complied with we may undertake the works in default 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 can not 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 Tree and Hedgerow investigations is the Landscape Section who can be contacted on 01992 564452. Enforcement 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. However, such action would not remedy the harm caused.

- 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 period within which the steps must be taken and the date that it takes effect.
- 5.11 A section 215 notice takes effect after 28 days service during which time an appeal can be made in the Magistrates Court.



## 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 as a result 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.
- 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 in connection with;
- 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.

## 7. Legislation/guidance

- Town and Country Planning Act 1990 – This forms the current primary legislation
- The Planning and Compensation Act 1991 and the Planning and Compulsory Purchase Act 2004 – these two Acts are secondary legislations 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
- Localism Act 2011
- National Planning Policy Framework (NPPF)
- Circular 3/09 – Cost awards in appeals and other planning proceedings
- Circular 1/95 - Use of conditions in planning permission
- Circular 10/97 - Enforcing Planning Control
- The Town and Country Planning (Development Management Procedure) (England) Order 2010
- The Town and Country Planning (General Permitted Development) Order 1995 (as amended)
- The Town and Country Planning (Use Classes) Order 1995 (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