

EAST HERTS COUNCIL

Planning Enforcement Plan

Procedure and Practice Statement

02/03/2021

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Planning Enforcement Plan 2021

Procedure and Practice Statement

1. What is planning enforcement?

- 1.1 Planning enforcement is the investigation of alleged breaches of planning control and, where a breach of planning control is identified, the aim is to resolve these using the most appropriate action.
- 1.2 Planning enforcement is an important service by which the Council seeks to ensure that the amenity and character of the district is maintained in the public interest.

2. What is a breach of planning control?

- 2.1 A breach of planning control is defined in the Town and Country Planning Act 1990 (the 1990 Act) 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”.
- 2.2 There are two main types of breaches of planning control:
 - Building work or engineering operations or changes in the use of land or buildings that are carried out without the necessary planning permission;
 - Where planning permission has been granted but the development or use is not being carried out in accordance with the plans or conditions attached to the approval.
- 2.3 The Act provides time limits for immunity from enforcement action as follows: these are:
- 2.4 **The Four year rule** – the change of use of any building to use as a dwelling house becomes immune from enforcement action after the expiry of four years from the date of the breach;

- 2.5 **The Ten year rule** - all other breaches of planning control become immune from enforcement action after the expiry of ten years from the date of the breach.
- 2.6 Notwithstanding the above immunity provisions, in cases where there has been deliberate concealment of a breach of planning control a local planning authority may apply for a Planning Enforcement Order permitting them to take enforcement action out of time, provided the application to the Magistrates' Court is made within six months of the discovery of the breach of control which has been deliberately concealed.
- 2.7 A breach of planning control occurring in either of the two main ways set out above does not constitute an offence in law. The development or use may be subject to enforcement action, but it would only constitute an offence if a valid enforcement notice requiring action to be taken is not complied with.
- 2.8 However, some breaches of planning control do constitute an offence in law. These include:
- The display of advertisements other than those permitted by the Town and Country Planning (Control of Advertisements) Regulations without obtaining Advertisement Consent;
 - The carrying out of works to a listed building;
 - The carrying out of works to trees protected by a Tree Preservation Order (TPO).

3. The Council's approach to planning enforcement

- 3.1 Planning law gives the local planning authority the power to pursue enforcement action. It does not place a statutory duty on the authority to do so. It is therefore a discretionary service and the Council will only take action where necessary in the public interest
- 3.2 The Council's approach to planning enforcement has regard to the National Planning Policy Framework (NPPF) which states that *'Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control'*.
- 3.3 Addressing breaches of planning control without formal enforcement action can often be the quickest and most cost effective way of achieving a satisfactory and lasting remedy. For example, a breach of control may be the

result of a genuine mistake where, once the breach is identified, the owner or occupier takes immediate action to remedy it. Furthermore in some instances formal enforcement action may not be appropriate.

3.4 In deciding whether or not to take action, the Council must consider whether enforcement action is a proportionate response to the breach of planning control and whether it is expedient to take formal action. It must consider whether the breach of planning control unacceptably affects public amenity or safety or the existing use of land or buildings meriting protection in the public interest. This means that a judgement has to be made in each case as to the seriousness of the breach and the level of any harm that it causes in planning terms.

3.5 In deciding, in each case, what is the most appropriate way forward, the Council will not usually take formal enforcement action where:

- There is a trivial or technical breach of control which causes no material harm or adverse impact on the amenity of the site or the surrounding area;
- The development is acceptable on its planning merits and planning permission would have been granted;
- The submission of a retrospective planning application is the appropriate way forward, for example, where planning conditions may need to be imposed to overcome any harm arising.

3.6 When making decisions as to whether or not to pursue enforcement action the Council must have regard to any relevant planning policies that are set out in the East Herts District Plan 2018, the National Planning Policy Framework and any other material considerations.

4. Reporting an alleged breach of planning control

4.1 Anybody may report an alleged breach of planning control by contacting us directly here: <https://www.eastherts.gov.uk/contactus>

4.2 For any report about an alleged breach of planning control the Council will ask for the following information to be provided:

- the precise location of the site or property to which the complaint relates;
- the exact nature of concern i.e. the alleged breach of planning control;

- the name, address and contact telephone number of the person making the complaint;
- the identity of the person / organisation responsible for the breach and the date and / or time the breach began (where known); and
- an indication of any harm caused/being caused.

4.3 The Council will not normally investigate anonymous reports, except where a significant degree of harm is likely to have arisen.

5. How are investigations carried out?

5.1 Reports are dealt with in strict confidence, such that any personal details are not made known to any other party.

5.2 Reports are firstly subject to a review to assess whether any further investigation action is appropriate and if so its priority.

Methodology and Priorities

5.3 The Council receives many reports about issues of a very minor nature and it may be determined at the outset that there is no harm arising or that the degree of harm likely to be caused is not of any significance. Reports are also received about development that is permitted by the Town and Country Planning (General Permitted Development) Order and about matters that fall outside the control of the Council. In such cases in accordance with the Council's enforcement priorities it may be determined that it would not be expedient to investigate the matter further.

5.4 In most circumstances it can be judged at the point of receipt of a planning enforcement report whether it is likely that a planning breach has occurred or if a breach has occurred it would not be "expedient" to take further action. In other words the breach is of a minor nature and does not result in a degree of harm wherein formal enforcement action would be "expedient" in the public interest having regard to government guidance.

5.5 Therefore on receipt of a report a desk top evaluation will be undertaken as to whether it is necessary to open an investigation file.

5.6 This evaluation will identify:

- Those reports which are judged to be not a breach of planning control; and
- Those that are trivial or minor or where it would not be expedient to investigate further.

5.7 In these cases the investigation will be by a desktop assessment only and the individual submitting the report will be advised that it is the Council's decision that the matter is either not a breach of planning control or that it would not be expedient to investigate the matter further. A record of these decisions will be kept but an enforcement investigation file will not be opened.

5.8 Where the initial desk top review indicates that further investigation is appropriate and justified it will be assessed initially according to the priorities below:

Priority 1 – cases where the breach is likely to lead to significant harm to public amenity and matters of wider public interest and are therefore likely to result in enforcement action being taken;

Priority 2 – cases where the breach is likely to result in a degree harm where the balance of considerations indicate that enforcement may be warranted by the service of a Notice or other informal enforcement action;

Priority 3 – cases where the breach is likely to result in some harm to issues of acknowledged importance and where further investigation to obtain the facts is justified.

5.9 Any investigation will usually involve a visit to the site as well as more desk based investigations such as looking into the planning history of the site. The investigating officer will also contact the individual who made the report and the person(s) against whom the report has been made, in order to gather evidence relating to the alleged breach.

6. Performance targets

6.1 The Council will aim to record a report and allocate an investigation reference number to it within 5 working days of receipt and the report will be acknowledged.

6.2 The Council will aim to determine whether it is expedient to investigate the matter and assess investigation priority within 10 working days of receipt.

6.3 In cases where the Council decides that it is not expedient to investigate further the Council will aim to advise the complainant within 14 working days of receipt.

- 6.4 Investigations of cases within Priority Level 1 will commence immediately.
- 6.5 It is not possible to set target timescales for the completion of investigations as all enforcement cases have different circumstances and require differing degrees of investigation. Some investigations are very complex and these will take a considerable time to complete. However, the Council will keep the individual who made the report advised in the case of any significant changes or progress.

7. Types of enforcement action

- 7.1 In many cases breaches of planning control may be resolved without the need to serve an Enforcement Notice through discussion with the owner and voluntary compliance with the requirements of the Council.
- 7.2 Formal enforcement action may take several forms as follows:

Breach Of Condition Notice - Where there is a breach of a condition on a planning permission. This will set out the steps required to be taken to comply with the condition and the time periods (not less than 28 days).

Enforcement Notice/Listed Building Enforcement Notice - An Enforcement Notice sets out the breach of planning control, the steps that must be taken to remedy the breach, the planning reasons for taking the action and the time period for compliance.

Stop Notice - Where an Enforcement Notice has been served a Stop Notice may also be issued at the same time to stop the use or the building works continuing. However, this power is only be used in extreme cases where the development is causing immediate, unacceptable and irreparable harm.

Section 215 Notice (the 1990 Act) – this may be used as a remedy where the untidy state or appearance of land is adversely affecting public amenity.

Temporary Stop Notice – This may be used to immediately stop works thought likely to be causing significant harm pending the consideration or preparation of other formal action. A Temporary Stop Notice remains in effect for 28 days following service.

Injunction – In extreme cases, for example where normal enforcement procedure has been ignored or where it can be demonstrated that it is likely

to be ignored the Council's may apply to the courts for an injunction to prevent further works or require some form of action.

8. Unauthorised advertisements

- 8.1 The posting of unauthorised advertisement is an offence which may be prosecuted through the courts.
- 8.2 The posting of advertisements within the public realm is an ongoing issue within the District.
- 8.3 Such advertising includes banners and fly posts advertising companies, services and events etc. and estate agents boards that are not related to the sale of properties but advertising events and sponsorship of events etc.
- 8.4 Such advertising is anti-social, harmful to amenity and in many cases prejudicial to highway safety and the Council operates a zero tolerance approach. Such signage is likely to be removed or be requested to be removed and the Council will consider the prosecution of persistent offenders.

9. Appeals

- 9.1 There is a right of appeal against the issue of an Enforcement Notice and a Stop Notice. Appeals are determined by a Planning Inspector appointed by the Secretary of State and they are processed by the Planning Inspectorate.
- 9.2 The Council has no control over the timescales for the determination of an appeal.
- 9.3 There is no right of appeal to a Breach of Condition Notice and non-compliance may be pursued through the courts.
- 9.4 As stated above planning enforcement is a discretionary function and the Council is not duty bound to take enforcement action. The Council will assess the harm arising from a breach of planning control and determine the action to be taken. Planning legislation does not grant a right of appeal to third parties (the complainant(s)) against these decisions and the decision taken by the Council is therefore final.

10. Expectations

Outcomes you can expect if you are the owner of a site under investigation

- 10.1 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. Officers will be able to advise on the purpose of their 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. 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.
- 10.2 Owners are advised that Planning Legislation provides that Council Officers have a right of access to land to investigate breaches of planning control.

Outcomes you can expect if you are making a report on an alleged breach

- 10.3 On receipt of your report the Council will review the information that you have provided and determine what action should be taken going forward in accordance with the methodology set out above. The Council will seek to ensure that all matters in relation to your report are dealt with professionally, politely and efficiently.
- 10.4 The Council will undertake to keep you updated and advise when any progress, actions or decisions are undertaken. The Council's preference is to be able to contact parties by email. This makes the contact process recordable. 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.

11. Confidentiality

- 11.1 Ongoing live enforcement investigations are carried out in confidence. The Council will not pass on the names or any other information relating to the parties involved.

- 11.2 The Council will not investigate anonymous reports unless the potential harm justifies further investigation. However, if you are concerned about confidentiality you may raise a potential planning enforcement issue with the Council via either your Ward Councillor or the Town/Parish Council.
- 11.3 Once an investigation has been completed and the case file has been closed legislation provides that it is public information, unless the content is exempt from Freedom of Information regulations.

12. Human Rights issues

- 12.1 The European Convention on Human Rights (ECHR) was brought into English law via the Human Rights Act 1998 (HRA) with effect from October 2000. The HRA introduces an obligation on the Council to act consistently with the ECHR. There are 3 Convention Rights likely to be most relevant to planning decisions:
- Article 1 of the First Protocol - Protection of Property
 - Article 6 - Right to a Fair Hearing
 - Article 8 - Right to respect for Private and Family Life
- 12.2 It is important to note that these types of right are not unlimited. Although in accordance with the concept of 'proportionality' any interference with these rights must be sanctioned by law, in this case the Town and Country Planning Act 1990 and must go no further than necessary.
- 12.3 Essentially, private interests must be balanced against the wider public interest and against competing private interests. However, human rights issues must be taken into account when reaching decisions on all planning applications and enforcement action.

13. What happens if you are not happy with the Council's service

- 13.1 The Council aims to provide an efficient and effective service for everyone it deals with and to maintain good relations with those who use its services.
- 13.2 If you feel that there has been a failure of service you may draw your concerns to the Council.

- 13.3 In the first instance you may wish to discuss your concerns with the service manager. Please telephone 01279 655261 and ask for the Planning Support Team who will advise you as to the contact details.
- 13.4 If you remain dissatisfied the Council provides a Corporate Complaints Procedure details of which are available on the Council's web site:
<https://www.eastherts.gov.uk/contactus/comments-compliments-and-complaints>
- 13.5 Please be advised that it is the purpose of the Council's Corporate Complaints procedure to investigate and respond to failures of process and customer service. It is not the purpose of the procedure to review properly taken planning decisions or re-visit enforcement investigations where the Council has determined its position.

14. Contact Details

- 14.1 If you want to inform us about a potential breach of planning control that you want the Council to investigate, please contact us:

Online: <https://www.eastherts.gov.uk/contactus>

By post:

Development Management - Planning Enforcement Team
East Herts Council
Wallfields
Pegs Lane
HERTFORD
SG13 8EQ

By phone: 01279 655261 (ask for the Planning Enforcement Team)

By e-mail: planning@eastherts.gov.uk