



**Elmbridge**

**Borough Council**

*... bridging the communities ...*

# **Enforcement Plan December 2016**

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## 1. Introduction

This Plan relates to the Planning Enforcement service of Elmbridge Borough Council (the Council) and replaces the Elmbridge Enforcement Charter 2011.

The purpose of this Plan is to explain the procedures that the Council will follow within the context of Government best practice and legislative powers. It describes a consistent and transparent approach to the planning enforcement process, together with details of the service standards that the Council is committed to in providing the local community with an efficient and effective enforcement service.

The Enforcement Plan acts to support Elmbridge's Local Plan in the delivery of the Council's development management function and will assist in the delivery of its long-term vision. The Enforcement Plan sets out the investigation process adopted by the Council, expected timescales and the circumstances under which the Council will consider taking formal action.

To meet the requirements of the National Planning Policy Framework, the Plan sets out how the Council will:

- Carry out proactive enforcement
- Monitor the implementation of planning permissions
- Investigate alleged cases of unauthorised development and
- Take appropriate action where an acceptable solution to the breach cannot be secured.

## 2. What is Planning Enforcement?

The purpose of planning enforcement is to investigate:

- Breaches of planning control
- Breaches of the conditions attached to planning permissions
- Allegations of unauthorised development

which cause harm to public amenity

and

take formal action where a satisfactory outcome to the breach cannot be achieved by negotiation.

Enforcement is discretionary, and the Council is not bound to act. For example, where it is reasonable to assume that an application submitted retrospectively is likely to be granted permission, action will be suspended pending the outcome of the decision process. Accordingly, the Council will always seek to negotiate a satisfactory resolution to any breach of planning control rather than take costly or protracted legal action. Each breach will be assessed on its own merits. However,

retrospective planning applications will only be invited where it is considered that the changes may be acceptable and, any such opportunity to resolve breaches will not delay effective action, where this is clearly needed.

It is important to note that just because there may be a breach of planning control this in itself is not sufficient reason to take enforcement action. The purpose of planning enforcement is to underpin the development management for an area by supporting the policies and decisions of the Council. Accordingly, the Council must decide, having given regard to policies contained within the Local Plan and the National Planning Policy Framework, whether or not it is “expedient” to take formal action.

A breach of planning control is not a criminal offence, the intention of enforcement action being to resolve the case. Planning enforcement is not punitive, and any action taken has to be appropriate to the scale of the breach.

Formal action will be taken where a satisfactory outcome cannot be achieved by negotiation and the demonstrable harm caused by the breach is deemed to be substantial enough to warrant such action. Harm, in planning terms, can best be described as an act which constitutes development, as described by s55 of the Town and Country Planning Act 1990 as amended, and which has a detrimental effect on the amenities of the area in which it is located or the neighbouring properties or land uses. All planning investigations are required to follow the Council’s standard procedures set out in the Enforcement Plan. A planning application that arises as a consequence of a planning investigation will not be prejudged and will be determined on its own merits in accordance with relevant policy.

### **3. What is a Breach of Planning Control?**

Local Planning Authorities have the power to take action where a breach of planning control has occurred. A breach of planning control is defined in section 171A of the Town and Country Planning Act 1990, as amended, as:

- The carrying out of development without the required planning permission; or
- Failing to comply with any condition or limitation subject to which planning permission has been granted.

Any contravention of the limitations on, or conditions pertaining to, permitted development rights, under the Town and Country Planning (General Permitted Development) (England) Order 2015, constitutes a breach of planning control against which enforcement action may be taken.

#### **The following are breaches of planning control:**

- Development without planning permission
- Development not in accordance with approved plans and planning conditions

- Carrying out works (internal and external) to a listed building without listed building consent
- The display of an advertisement without advertisement consent
- Unauthorised felling of, or carrying out works to a tree protected by a Tree Preservation Order or in a conservation area
- The unauthorised demolition of a building in a conservation area
- Untidy land where it affects the amenity of the area
- Unauthorised engineering operations, such as raising of ground level.

#### **4. What is not a Breach of Planning Control?**

- Matters relating to roads, footpaths, bridleways (refer to Surrey County Council)
- Parking of commercial vehicles in residential areas or on grass verges
- Operating a business from home where the residential use remains the primary use and there is no adverse impact on residential amenity
- Clearing land of undergrowth, bushes and trees provided they are not subject to planning protection
- Parking of a caravan within the curtilage of a residential property provided that it is stored, or used as an extra bedroom, and not used as a separate self-contained residential unit
- Boundary disputes (civil matter - refer to mediation or solicitors)
- Deeds and covenants (civil matter – refer to solicitors)
- Informative placed on planning decisions
- Grievances with the planning system or the fact a planning permission has been granted
- Failure to consult during the planning application process
- Dangerous structures
- Poor build quality and workmanship

- Noise related issues (refer to Environmental Health via Council website)

## 5. Time Limits for Enforcement

**A four year limit** - this applies to 'unauthorised operational development' (the carrying out of building, engineering, mining or other operations in, on, over or under land) and to a change of use to a single dwelling house. After four years following the breach of planning control, the development becomes lawful and no enforcement action can be taken.

**A ten year limit** - this applies to all other development including changes of use (other than to a single dwelling house) and breaches of condition. After ten years, the development becomes lawful and no enforcement action can be taken.

The time-limits set out above do not prevent enforcement action after the relevant dates in certain circumstances. The Town and Country Planning Act 1990 provides for the taking of 'further' enforcement action in respect of any breach of planning control within four years of previous enforcement action (or purported action) in respect of the same breach. This mainly deals with the situation where earlier enforcement action has been taken, within the relevant time limit, but has later proved to be defective, so that a further notice may be issued or served, as the case may be, even though the normal time limit for such action has since expired. This is known as the 'second bite' provision.

Additionally, where a person deliberately conceals unauthorised development, the deception may not come to light until after the time limits for taking enforcement action have expired. In such cases a planning enforcement order may be sought from the Magistrates Court. Enforcement orders enable an authority to take action in relation to an apparent breach of planning control notwithstanding that the time limits may have expired, subject to certain requirements.

## 6. The Investigation Process

To raise a planning investigation request, refer to the Council's Website at:

[www.elmbridge.gov.uk/planning/report-planning-breach/](http://www.elmbridge.gov.uk/planning/report-planning-breach/)

Where breaches of pre-commencement planning conditions relating to tree protection occur, a Temporary Stop Notice (TSN) will be issued if the harm being caused to the trees in question is likely to have a detrimental effect on the health of the tree(s). Additionally, where significant irreversible harm is caused by other breaches of planning control TSNs may be used to prevent further harm.

The process below sets out what can usually be expected to occur once an investigation request is received and registered by the Council.

- Within 2 working days of the receipt of a request: Write to or email the complainant with an investigation case number, the case name, officer name and details of how to make contact directly.
- Keep all personal details of the complainant confidential.
- Carry out an initial site visit in accordance with the priority given to the investigation (see point 7).
- Carry out an investigation and implement the steps necessary to resolve any planning harm being caused. This will involve contacting the property/land owner or developer advising them of the breach or breaches identified and specifying what should be done to rectify the matter. Typically, responses to communications are required within 14 days of the Council contacting a property/land owner/developer. Depending on the type of breach, a formal written timetable of proposed works may be requested to allow the Council to monitor the matter. During this period complainants are welcome to contact the case officer for updates on the progress of the investigation.
- Where there is a technical breach of planning control but the harm caused is insufficient to warrant formal action the Council will notify the complainant of the reason for not taking formal action and close the case. The Council will use its best endeavours to complete these investigations within six weeks of the date of registration.
- For more complex investigations, the Council will use its best endeavours to work with those responsible for the breach of planning control, allowing them the opportunity to resolve the matters of concern. If no satisfactory resolution can be reached, a formal notice may be served. In such cases the Council will advise the complainant of this course of action within six weeks of the date of registration.
- Where formal action is necessary the Legal department will prepare a notice for service.

## 7. Enforcement Priorities

### **Priority Category - 1**

- Irreversible damage to the historic or natural environments and breaches likely to cause danger to the public
- Permanent damage to Listed Building or Trees subject to Tree Preservation Orders
- Advertisements posing a danger to the public

Reason: To protect the historic and natural environment and the public

**Initial site visit will be undertaken on the working day the breach is reported**

### **Priority Category -2**

- Breaches of planning conditions
- Refusals of retrospective planning applications
- Unauthorised development or uses in the Green Belt
- Unauthorised development which causes clear and immediate harm to the living conditions of adjacent residents

Reason: To underpin the Elmbridge Development Management Plan

**Initial site visit will be undertaken within seven working days of the breach being reported**

### **Priority Category - 3**

- All other breaches of planning control
- Untidy land/property
- Development where the time limit for enforcement action will expire within six months of the reported breach

Reason: To underpin the Elmbridge Development Management Plan

**Initial site visit will be undertaken within 14 working days of the breach being reported**

### **Priority Category - 4**

- Advertisements not considered 'urgent'
- Any other planning related matters including telecoms equipment, satellite dishes, solar panels

Reason: To underpin the Elmbridge Development Management Plan whilst allowing breaches deemed as locally significant to be given a higher priority

**Initial site visit will be undertaken within 21 working days of the breach being reported**

## **8. Following an Investigation**

There are a number of possible outcomes, ranging from “no action” to a formal notice requiring the demolition of a building. Complainants will be advised either that “no action” is to be taken, together with the Council’s reason for this within six weeks of the registration of their investigation request, or they will be advised how the Council intends to proceed. In many cases preparation and submission of a retrospective planning application will be requested to enable the Council to regularise a matter. In the period during which such applications, or subsequent appeals are determined, enforcement investigations will be put on hold.

If the case has not been resolved after 6 weeks, those with an interest in the case, and the Councillors representing the relevant Ward, will be appraised of the options and advised of the actions officers consider appropriate. Ward Members will retain the opportunity to promote a case to the appropriate Area Planning Sub-committee.

Attached as appendix A are the details of the procedures and types of notices comprising the Council’s Planning Enforcement Toolkit.

## **9. Appeals against Enforcement Notices**

If an Enforcement Notice (EN) is issued there is a right of appeal. Appeals are dealt with by the Planning Inspectorate and must be submitted within the period before the EN takes effect (28 days). ENs can take several months to resolve, and may be overturned by the Planning Inspectorate. If this happens the Council is unable to take the matter further. If the EN is upheld a new period of compliance begins from the date of the Inspectorate’s decision. If the EN is not complied with, the matter will be referred to the Council’s Legal Services Team for prosecution in the relevant Court, a process that can prove protracted.

As required by statute, complainants will be notified if an appeal is lodged.

There are seven grounds of appeal against an Enforcement Notice, namely that:

- (a) Planning permission should be granted for the alleged breach
- (b) The breach alleged in the notice has not occurred
- (c) There has not been a breach
- (d) At the time of serving the notice, the alleged breaches were time barred
- (e) The notice was incorrectly served on everyone with an interest in the land
- (f) The steps outlined in the notice to remedy the breach are excessive and there are lesser steps which would achieve the same outcome
- (g) The time given in the notice to remedy the breach is too short

There are three possible outcomes of an appeal:

1. The appeal is dismissed and the person who has carried out development without planning permission is required to comply with the notice as drafted by the Council or amended by the Planning Inspectorate, thereby remedying the breach. It is then the Council's responsibility to monitor and enforce the terms of the notice, and where the notice is not complied with, refer the case to the Magistrates Court for possible prosecution.
2. The appeal is allowed which in effect grants retrospective permission for the development. The Planning Inspectorate has the power to impose conditions and limitations upon any such permission and it is for the Council to monitor these.
3. The Notice is quashed. Depending on the decision of the Planning Inspectorate, the Council may consider serving a new Notice.

If a Breach of Condition Notice (BCN) is issued there is no right of appeal. In the event of a failure to comply with a BCN the matter will be referred to the Magistrates Court for prosecution.

When cases are closed, complainants will be advised in writing of the result of the investigation and the Council's reason for closure.

## **10. Complaints and Suggestions about the Planning Enforcement Service**

Any complaints should be explored in the first instance with the Planning Enforcement Team Leader and if dissatisfaction with the service remains, details should be sent in writing to: Planning Services, Elmbridge Borough Council, Civic Centre, High Street, Esher, Surrey KT10 9SD.

or by email to: [tplan@elmbridge.gov.uk](mailto:tplan@elmbridge.gov.uk)

A written response will be provided to any complaint within 10 days of receipt.

If a complainant remains dissatisfied, then the complaint will be registered as a formal complaint and processed accordingly under the Council's complaints procedures.

If, having pursued all the options with Elmbridge Borough Council, the matter remains unresolved, the complainant has the option to refer the complaint to the Local Government Ombudsman and ask for the matter to be investigated. The contact details are: Local Government Ombudsman, PO Box 4771, Coventry, CV4 0EH, Telephone 0845 602 1983 or 024 7682 1960.

## **11. Proactive Enforcement**

In furtherance of proactive enforcement, the Council will aim to:

- Inform Ward Councillors and Area Planning Sub Committee Chairs of investigation cases arising in their Wards/Area
- Actively monitor pre-commencement and other conditions relating to major planning applications
- Continue to review and improve delivery of Planning Enforcement Service
- Continue to work to ensure breaches of advertising Control are reduced
- Increase publicity and interaction with the public and business community to raise awareness of planning enforcement and compliance

### **Service Standard**

**By publishing our standards and targets in this Plan, we aim to improve our enforcement service and make it responsive to the needs of our customers. We will monitor the contents of this plan to ensure that standards and targets are being met.**

## Appendix A – The Enforcement Toolkit

The most effective tools to resolve potential enforcement matters are negotiation and mediation.

Informal action involves negotiation, requests for evidence/ information, warning letters, and requests for retrospective applications or applications for lawful development certificates.

If informal action has not resulted in a resolution of the breach, formal action will be considered.

There are a number of legislative tools available to the Council to pursue action. In terms of formal action, the Council has the power to take enforcement action under Section 172 of the Act where it appears that:

- there has been a breach of planning control; and
- it is expedient to issue the notice, having regard to the provisions of the development plan and to any other material considerations

The Council is required to keep available for inspection an up-to-date Register of Enforcement Notices. This is available online at:

[www.elmbridge.gov.uk/planning/report-planning-breach/](http://www.elmbridge.gov.uk/planning/report-planning-breach/)

The tools or powers available to the Council are outlined below and range from seeking to regularise the breach, to taking legal action.

- Certificate of Lawful Development (LDC)

A Certificate of Lawful Development confirms that planning permission is not required for a proposed development. For an existing development, the issue of a LDC occurs either because:

- the development is time-barred or
  - it did not constitute development under the terms of the Act or Orders or
  - it was Permitted Development.
- Retrospective Planning Applications

In some cases, unauthorised development may be made acceptable by the imposition of conditions on a planning permission or consent. For example, a change of use to a restaurant may be acceptable in principle but gives rise to concerns about late opening hours. In such a case, rather than take formal action against the use, it would be more appropriate to request a retrospective application and, if it is found to be acceptable, grant permission subject to condition(s). The application is processed in the normal way, the advantage being that third parties may be consulted formally and influence the decision-making process. The fact that

the development has already been carried out in full or in part has no bearing on the determination of the application.

If a development is unlikely to succeed, Councils should not encourage the submission of a retrospective application, although the right to make an application for consideration by the Council remains, and the Council is duty bound to determine it. Other than in the most seriously harmful breaches, the Council will await the outcome of a retrospective planning application before proceeding further, to avoid commencing inappropriate action.

- Planning Contravention Notices (PCN) & Section 330 Notice

A PCN can be used to gain further information about a case, assist in ascertaining whether there has been a breach of planning law, and in deciding whether or not to take action. The notice can be served on the owner, occupier or any other person with an interest in the land. Failure to comply with the terms of the notice within 21 days of its service is an offence, liable to a fine and a criminal record. Similarly under Section 330 of the Town and Country Planning Act 1990, a notice can be served to secure information (within 21 days of service) regarding ownership and the breach. There is no appeal against this notice and failure to comply is a criminal offence, and liable to a fine.

- Section 215 Notice

This notice can be served on the owner, lessee or occupier of land and/or buildings where the amenity of an area is adversely affected by the condition of that land and/or buildings. The notice must set out the steps required to make improvements and failure to comply is an offence. There is a right of appeal to the Magistrates Court and Crown Court. Such notices will only be used in extreme cases that are causing a significant, in the view of the Council, impact upon public amenity in an area of sensitivity, rather than for buildings/land with a general maintenance problem. Many complaints of poorly maintained land are dealt with more effectively by the Council's Environmental Care Team with their ability to take direct action.

- Stop Notice (SN)

These notices are served in extreme cases where the detrimental impact upon public amenity is severe and immediate action is justified. They can only be used in conjunction with, or following, the service of an Enforcement Notice and take immediate effect. There is no right of appeal and fines can be imposed for non-compliance. Where an SN is served without due cause, or an appeal against an accompanying Enforcement Notice is successful, the Council may be liable for compensation claims.

- Temporary Stop Notice (TSN)

Temporary Stop Notices are served in extreme cases where the detrimental impact upon public amenity is severe and immediate action is justified. The effect is to halt

development for a period of up to 28 days. An accompanying Enforcement Notice is not required. Where an SN is served without due cause, or an appeal against an accompanying Enforcement Notice is successful, the Council may be liable for compensation claims.

- Enforcement Notice (EN)

The tool used most often is an EN, which can be served on the owner, occupier or any other person with an interest in the land. The notice must set out the steps necessary to secure compliance and a timescale (not less than 28 days from the date at which the notice takes effect). Failure to comply is a criminal offence. An EN remains as a charge on the land or property indefinitely to secure compliance in perpetuity. There is a right of appeal which may delay eventual compliance.

- Breach of Condition Notice (BCN)

A BCN is used to secure compliance with any conditions or limitations on a permission relating to a development. The notice can be served on anyone causing the breach. It must outline the steps required to comply and set out a timescale for compliance, (not less than 28 days from the date at which the notice takes effect). The notice takes effect upon service. There is no right of appeal. Failure to comply is a criminal offence.

- Direct Action (DA)

Direct Action may be taken when the steps required by an EN or BCN have not been completed within the timescales specified. The Council may enter the land/building and carry out the remaining works independently as well as attempt to recover the costs incurred from the owner, through the courts if necessary.

- Completion Notice (CN)

A Completion Notice is served when it is found that a site's partial development is causing serious harm to amenities by reason of its remaining incomplete. The notice must give the owner a minimum of 12 months to complete the development.

- Injunction

Injunctions are used in cases of extreme urgency to prevent or stop breaches of planning control and are likely to be sanctioned only in the most serious instances. For example, irreversible works to a listed building. An injunction is an alternative to ENs or BCNs and works independently of them. Like SNs, injunctions tend to be used as a last resort.

- Prosecution

The Council has powers to prosecute:

- Illegal display of advertisements
- Unauthorised works or demolition of listed buildings
- Unauthorised works or felling of protected trees
- Non-compliance with an Enforcement Notice, Section 215 Notice, Section 330 Notice, Planning Contravention Notice, Breach of Condition Notice and Listed Buildings Enforcement Notice

To increase its chances of success, the Council must present a watertight case, including witness statements. The Court will not consider the merits of the offence but the facts of the case. The Court decides on the level of any fine based on the degree of public harm. Fines are retained by the Court. Either party can be awarded costs.

Although prosecution does not secure compliance, the prospect of a fine, costs and a criminal record is an incentive, particularly as the Council can continue to prosecute offenders.

- Specialist tools
  - Listed Buildings

It is a criminal offence to execute or cause to be executed any works for the demolition or internal or external alteration of a listed building which would affect its character as a building of special architectural or historic interest, unless the works are authorised. A **Listed Building Enforcement Notice** can be served on the owners and anyone with an interest in the property. The procedures are similar to the service of an EN and there is a right of appeal.

Where a listed building falls into disrepair and its architectural or historical character is under threat, a **Repairs Notice** can be served requiring works to be carried out, either by the owner or by way of Direct Action. For example, if the roof is leaking and the interior is damaged as a result. Such works would not involve the restoration of the building but the minimal works required to preserve it.

- Conservation Areas

Conservation Area Enforcement Notices can be used in cases where an unlisted building in a conservation area has been demolished without conservation area consent. There is a right of appeal.

- Trees

Tree Replacement Notices can be served where it appears to a Council that a duty to replace trees or woodlands following their removal, in contravention of a Tree Preservation Order, has not been complied with.

Works to trees in Conservation Areas require 6 weeks' notice to be given to the Council. Works to trees protected by a Tree Preservation Order require a formal

application to be made to the Council. Any tree works carried out without due notice or formal consent constitute an offence.

- Advertisements

Advertisements are regulated by the Town and Country Planning (Control of Advertisements) Regulations 2007. The display of an unauthorised advertisement is an offence and the Council has powers to remove/ destroy placards and posters that are displayed without consent. If the owner/ person responsible for displaying the advertisement cannot be identified, the advertisement can be removed immediately. Otherwise, 48 hours' notice of removal is required. Advertisements meeting certain criteria benefit from 'deemed consent'.