

# Surrey Heath Borough Council



## Local Enforcement Plan PLANNING

February 2021



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# 1. Introduction

- 1.1 As a public authority, the Council has a responsibility to deliver services with fairness, openness and proportionality when considering interventions such as planning enforcement. Nothing in this document should be taken as condoning a wilful breach of planning control.
- 1.2 This document, Surrey Heath Borough Council's Local Enforcement Plan (The Plan), sets out the approach we will take in relation to breaches of planning rules in Surrey Heath, this is to ensure we carry out the Council's statutory duties. When considering enforcement we must take into account the Council's Corporate Priorities, where appropriate.
- 1.3 Relevant Council priorities are:
  - Deliver an improved Camberley Town Centre for the benefit of all residents of the Borough
  - Encourage sustainable living and construction by promoting high quality building and design standards
  - Work with key partners to keep the Borough a very safe place to live.
  - Ensure the Countryside, Green Belt, Special Protection Areas, Trees and Open Spaces are robustly protected with enforcement to meet Climate Change reduction.
- 1.4 Against this The Plan identifies local priorities for enforcement so that the Council's planning enforcement resources are put to the best use in dealing with breaches of planning control that threaten the quality of the local environment or the amenities of the residents. Working with other teams in the Council to address problems in a holistic manner.
- 1.5 The Plan has been formulated in accordance with the advice contained in the National Planning Policy Framework (NPPF) issued by the Department for Communities and Local Government.
- 1.6 Paragraph 58 of the NPPF states that:

*“Effective enforcement is important to maintain public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. They should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where appropriate.”*
- 1.7 The publication of a Local Enforcement Plan is supported by the Planning Guidance note on enforcement and post permission matters.
- 1.8 The Plan recognises the importance of:
  - Defining objectives and priorities which are tailored to local circumstances
  - Setting priorities for enforcement action which in turn inform decisions about when to take enforcement action
  - Ensuring transparency and accountability of how we will decide if it's expedient to exercise our discretionary powers
  - Providing greater certainty for all parties engaged in the development process.
- 1.9 Nationally, the planning enforcement system is based on two important principles:

1. A breach of planning control is NOT a criminal offence, except for:

- Unauthorised works to listed buildings
- Illegal advertisements (such as illuminated poster hoardings) and
- Felling of protected trees.

1.10 A criminal offence only arises when an Enforcement Notice has been served and has not been complied with.

It is at the Council's discretion whether action will be taken, any action must be proportionate to the harm caused by the breach.

1.11 The aim and objectives of this Plan are therefore as follows:

- To identify the enforcement priorities for the Council
- To provide a framework for the investigation of alleged breaches of planning control
- To set out the range of action that can be taken where it is considered appropriate to do so.

1.12 This plan will be kept under review and will be amended as and when it is required to take into account changes in legislation, resources or priorities.

*This Plan replaces the 2014 version which was agreed by the Executive on the 9<sup>th</sup> September 2014. Although there have been no substantial changes since then this version provides our current approach to enforcement and reflects the establishment of our dedicated Corporate Enforcement team.*

## 2. Principles of Good Enforcement

2.1 The Council takes breaches of planning control extremely seriously. However there is often a misconception that all breaches of planning control will result in the Local Planning Authority taking formal enforcement. In practice the Council must carefully consider the relative merits of taking enforcement action and in many cases will seek to resolve breaches without taking formal enforcement action. In making any decision as to an appropriate course of action the Council will adhere to the following principles.

### Expediency

2.2 Enforcement action is only taken when it is proportionate to the breach of planning control to which it relates and when it is considered **expedient** to do so. Formal enforcement action will not be instigated solely to regularise breaches in planning control. In taking formal enforcement action the Council will consider the use of enforcement powers commensurate with the seriousness of the breach.

2.3 In considering whether it is expedient to take enforcement action the decisive issue will be whether the breach of planning control unacceptably affects public amenity, existing land uses and buildings which merit protection in the public interest, or the natural environment. The Council will also have regard to the Development Plan and to any other material considerations including the national policies set out in the National Planning Policy Framework.

2.4 We will **not** take formal action where:

- There is a trivial or technical breach which causes no material harm or adverse impact on the amenity of the site or surrounding area
- Development is acceptable on its planning merits and formal action would solely be to regularise the development
- Where we consider an application is the appropriate way forward to regularise the situation for example, where planning conditions may need to be imposed.

### Proportionality

2.5 The Council will use powers that are appropriate and proportionate to the issue when conducting investigations (this includes appropriate negotiations and the options of seeking retrospective planning permission) and where appropriate take immediate action.

2.6 The Council will seek to minimise the costs of compliance by ensuring that any action it requires are proportionate to the harm arising from the breach of planning control, although the cost of undertaking action will not in itself be a reason not to remedy a breach of planning control.

2.7 The Council 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, where practicable.

### Consistency

2.8 The Council will carry out its duties in a fair, equitable and consistent manner. While Officers

are expected to exercise judgement in individual cases, the Council will undertake internal reviews of cases to ensure that decisions are consistent. This will also include liaison with other local authorities and enforcement bodies.

- 2.9 While the Council will consider each individual matter on its merits, there will be a consistent approach to enforcement action against breaches of similar nature and circumstance.

#### Standards

- 2.10 The Council will draw up clear standards, setting out the level of service and performance that customers can expect to receive. 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.

#### Openness

- 2.11 Information and advice will be provided in plain language on the rules that the Council applies and will publish this as widely as possible. The policy and procedures will be available to view on the Council's website and at the Council offices.
- 2.12 We will maintain a Public Register of enforcement and stop notices. Details of the following action is recorded on the register:

- Planning enforcement notices
- Stop notices
- Breach of condition notices.

#### Helpfulness

- 2.13 The Council will discuss general issues, specific compliance failures or other problems with anyone with an interest with our service if it is appropriate to do so, in accordance with Data Protection legislation.
- 2.14 Officers will provide a courteous, prompt and efficient service and letters will provide a contact point and telephone number for customers to contact when seeking advice and information.
- 2.15 Officers will not tolerate abusive language or behaviour either in person or in correspondence.

#### Human Rights

- 2.16 We recognise that the provisions of the European Convention on Human Rights including Article I of the First Protocol and Article 8 and Article 14 may be relevant. In some instances there is a clear public interest in taking action to address breaches of planning control when considering. This is particularly relevant when considering the use of Stop Notices.

#### Complaints about the service

- 2.17 The Council has a complaints procedure and any complaints about the service will be investigated in a fair and balanced nature. Details of our complaint procedures can be found on our website.

### Other Considerations

2.18 We will have regard to other relevant Council policies including the Corporate Enforcement Policy.

<https://www.surreyheath.gov.uk/sites/default/files/documents/residents/environmental-services/Corporate%20Enforcement%20Policy%20%20-%20April%202019.pdf>

2.19 This reinforces our commitment to the following when considering enforcement action. The requirement to be-

- Transparent
- Accountable
- Proportionate
- Consistent
- Targeted at cases where action is needed.

2.20 This Plan will be supported by procedures which provide details of how we will undertake planning enforcement in accordance with this Plan. Officers will have regard to both policies and procedures when undertaking their role. The procedures will set standards for the service we provide.

### 3. Breaches of Planning Control

- 3.1 The basic principle of planning law is that it is not an offence to carry out works without planning permission. 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 although 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.

#### Legislative background

- 3.2 The primary legislation for planning enforcement is set out in Part VII of the Town and Country Planning Act 1990, which has been subsequently amended by the Planning and Compensation Act 1991, the Planning and Compulsory Purchase Act 2004 and the Localism Act 2011.
- 3.3 The Town and Country Planning Act 1990 (as amended) sets out that planning permission is required for development. Section 55 of the Act 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.”*

#### What is a breach of planning control?

- 3.4 A breach of planning control defined in section 171A of the Town and Country Planning Act 1990 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.
- 3.5 The majority of planning enforcement investigations involve one of the following alleged breaches:
- Development (either operational or a material change in use of land) that has taken place without planning permission and is not permitted development
  - Development has not been carried out in accordance with an approved planning permission
  - Failure to comply with a condition, limitation or legal agreement attached to a planning permission.
- 3.6 Other matters which also fall under the scope of planning control are:
- Demolition taking place in conservation areas, without conservation area 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.

What is not a breach of planning control?

3.7 The Council often receives 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 complaints not covered by the planning enforcement service:

- Neighbour nuisance/boundary and land ownership disputes
- Parking restrictions, obstruction of the highway and highway works
- Dangerous structures
- Fly tipping or the disposal of waste
- Felling of trees under Forestry Commission licence
- Any matter covered by other legislation such as noise and smell.

We will ensure that complaints which we are unable to consider are referred on to the appropriate service or agency. We will also ensure that complainants are advised that we are unable to consider their complaint under the planning regime at the earliest opportunity and that we have referred their concern to the appropriate service or Agency.

Priorities

3.8 To make the most effective use of resources, all allegations of breaches of planning control will be investigated and progressed in accordance with the priority rating below. This is not an exhaustive list. Visits where necessary will be made having regards to the targets outlined in the following table.

**High priority:**

- Any unauthorised development which is causing immediate and/or irreparable harm to the environment or public safety. This includes work to especially sensitive sites such as Sites of Special Scientific Interest.
- Demolition or alterations to a listed building
- Demolition in a conservation area
- Works that are currently in progress to trees subject to a Tree Preservation Order or within a conservation area.
- Breaches that are contrary to well established planning policies such as Green Belt

**OUR TARGET IS TO VISIT WITHIN 2 WORKING DAYS**

**Medium priority:**

- Development that causes serious harm to the amenities of neighbours or that is contrary to policies in the Development Plan
- Unsightly buildings or untidy land that is causing serious harm to amenity
- Development not in accordance with the plans during the build process.

**OUR TARGET IS TO VISIT WITHIN 10 WORKING DAYS**

**Low priority:**

- Advertisements causing harm to amenity
- Businesses being operated from home
- Any alleged breaches causing a limited degree of harm to local residents or the environment
- Untidy land

**OUR TARGET IS TO VISIT WITHIN 21 WORKING DAYS**

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3.9 Cases will be categorised on receipt of a Planning Enforcement Investigation Questionnaire and categorisation will be at the discretion of the Corporate Enforcement Manager. Cases may be re-prioritised as the investigation progresses and as new evidence comes to light.

3.10 We will be unable to give consideration to complaints until the receipt of a completed questionnaire. We are unable to respond to anonymous complaints.

## 4. Reporting a Suspected Breach of Planning Control

- 4.1 In order to ensure that allegations of breaches of planning control can be investigated efficiently the Council will require complainants to complete a Planning Enforcement Investigation Questionnaire. Only in exceptional circumstances will a complaint be considered without the completion of a questionnaire and this discretion lies with the Council. The questionnaire can be found on the planning enforcement pages of the Councils website. You can also obtain a questionnaire by contacting us in the following ways:
- 4.2
- By email to [corporate.enforcement@surreyheath.gov.uk](mailto:corporate.enforcement@surreyheath.gov.uk)
  - By calling on (01276) 707702
  - By writing to Corporate Enforcement, Surrey Heath Borough Council
  - By visiting the Contact Centre at the Council Offices.
- 4.3 When a complaint is received it will be logged on our enforcement database, so it is important that the following information is provided:
- Full name and contact details (address, phone number or email) of the complainant
  - Full address of the alleged breach of planning control
  - Nature of the alleged breach and the harm it may be causing.

The complainant's identity will be treated confidentially and will not be disclosed outside of the Council unless the Council is required to do so for court or appeal proceedings. To avoid the unnecessary use of resources, anonymous reports of suspected breaches of planning control will not normally be pursued unless there is other evidence to suggest that the breach is causing serious harm to the environment or the amenities of residents.

- 4.4 When an enforcement case is generated it will be given a unique case number which will enable details and the progress of the case to be logged. The Council will send an acknowledgement to the complainant giving the unique case number which should then be used in all future communication in respect of that investigation.
- 4.5 It is our policy to monitor the progress of planning enforcement cases and provide reports on our activity to the Council's Planning Application Committee on a quarterly basis. This may include ward based reports. Ward Councillors will be kept informed of any enforcement activity within their Ward in accordance with GPDR

### Powers to investigate breaches of planning control

- 4.6 In addition to traditional investigation, there are three principle statutory provisions by which the Council can require information to be provided. These are:
- Section 171C of the Town and County Planning Act (as amended):  
This enables the service of a Planning Contravention Notice (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 an unlimited fine.

- Section 330 of the Town and Country Planning Act (as amended):  
This power enables information to be obtained by serving a notice on either the occupier of the premises or the person receiving rent for the premises.
- Section 16 of the Local Government (Miscellaneous Provisions) Act 1976:  
These provisions are primarily intended to enable an authority to establish the facts about the ownership of land.

4.7 In addition to the investigative powers outlined above, Section 196A of the Town and Country Planning Act (as amended) grants officers the right of entry on to land and buildings when pursuing effective planning control however twenty-four hours' notice must be given for access to a residential property. If access is 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.

#### Time frame for site visit

4.8 A site visit will normally be required to establish whether or not a breach of planning control has occurred however there is likely to be some research around the case undertaken prior to a site visit.

4.9 The initial site visit (where necessary) will be conducted within the following timescales after receipt of a completed Planning Enforcement Investigation Questionnaire. There may be exceptions to this, particularly in respect of very urgent matters.

- High priority cases – within 2 working days
- Medium priority cases – within 10 working days
- Low priority cases – within 21 working days.

4.10 The Council will aim to meet these timescales in all cases investigated to ensure cases progress without undue delay from the outset. 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 not possible on a specific case the officer will notify the complainant.

4.11 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 require taking legal advice about the case or liaising with other departments or statutory bodies.

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

4.12 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
- The matters are not development and/or do not fall within the scope of planning control
- Development has taken place but planning permission is not required
- The development already benefits from planning permission granted by the Council.

4.13 Where this is the case the person who reported the suspected breach of control will usually be notified either verbally or in writing **within 10 working days** of the initial site visit that there is no breach of planning control and that no further action will be taken.

#### Where further investigation is required

4.14 There are often 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 could 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 and the operator denies the activity
- Operations or uses of land which are permitted for a temporary period but may exceed what is permitted
- The works may have gained immunity from Enforcement Action.

4.15 In these cases the person reporting the suspected breach of control will usually be notified **within 10 working days** of the initial site visit that further investigation is required. Officers will also advise what further investigation may involve, such as additional site visits, documentary research, seeking advice from other services or agencies, seeking information from the person carrying out the work.

4.16 In some cases, the Council 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.

4.17 The Council will consider serving a Planning Contravention Notice to obtain information relating to the suspected breach. In certain circumstances the Council may also determine that Covert Surveillance is required. However this will only be undertaken in accordance with the Regulation of Investigatory Powers Act 2000 and where such action has been duly authorised.

#### Where there is a breach of planning control

4.18 Where a breach of planning control is established at the initial site visit the person who reported the initial complaint will usually be notified **within 10 working days** of the site visit that a breach of planning control has been detected. Normally further consideration of an appropriate course of action will be required and the likely options will be explained to the complainant.

#### Powers of Entry

4.19 Where there is reasonable grounds for entering land officers are authorised to enter the land. In addition Justices of the Peace may authorise named officers to enter land specifically for enforcement purposes. (sections 196A, 196B and 196C of the Town and Country Planning Act 1990.

- 4.20 The Act specifies the purposes for which land may be authorised (section 196C) namely
- To ascertain whether there is or has been any breach of planning control on the land, or any other land
  - To determine whether any of the local authority's enforcement powers should be exercised in relation to the land, or any other land
  - To determine how any such power should be exercised and
  - To ascertain whether there has been compliance with any requirement arising from earlier enforcement action in relation to the land, or any other land.

We will use these powers where necessary to ascertain the facts of a case.

## 5. Resolving Breaches of Planning Control

5.1 There are a number of options to be considered where a breach of planning control has been detected and most breaches will not involve taking formal enforcement action. The decision to take enforcement action is discretionary and the appropriate course of action will be determined by the investigating officer in consultation with the Corporate Enforcement Manager.

5.2 The options available to us are:

- No formal action
- Retrospective planning application
- Negotiation
- Planning Contravention Notice
- Enforcement Notice
- Planning Enforcement Order
- Stop Notice
- Temporary Stop Notice
- Breach of Condition Notice
- Injunction
- Rights of Entry
- Enforcement on Crown Land
- Listed Building Enforcement
- Enforcement of hazardous substances control
- Unauthorised advertisements
- Enforcement and protected trees
- Completion Notices
- Discontinuance notice
- Revocation of planning permission

*(Details of the most commonly used measures is provided)*

5.3 We will wherever possible contact the owner or occupier of the site in question as early as possible to establish the facts of the case. The timing of our initial visit will be in accordance with the priority category assigned to the case.

### No formal action

5.4 We will keep records of informal action, including a decision not to take formal action, in line with the Council's retention policy.

### Retrospective planning applications

5.5 Where officers consider that planning permission is likely to be granted for an unauthorised development, or that the imposition of conditions could sufficiently reduce the harm to amenity so as to make a development acceptable in planning terms, a retrospective planning application will be requested for the development.



- 5.6 In determining retrospective planning applications the Council cannot refuse an application simply because the development has already been carried out. A retrospective planning application enables the Council to regularise acceptable development without arbitrarily penalising the applicant. Applicants are highly recommended to seek planning advice when contemplating development.
- 5.7 Generally the Council will not invite a retrospective planning application if it feels the development is unacceptable. However, there are cases where it is initially unclear as to whether a development is acceptable in planning terms. Once an application is received it will be considered on its merits against the policies of the National Planning Policy Framework and Development Plan. An invitation of a planning application is therefore not a guarantee that a development is acceptable in planning terms.
- 5.8 Section 70C of the Town and Country Planning Act 1990 (as amended) enables a Local Planning Authority to decline to accept a retrospective planning application where the application is for planning permission for a development which is the subject of a pre-existing Enforcement Notice. The Council will use these powers where appropriate to prevent delays in cases where enforcement action is being taken. However it will also have regard to each specific case and consider whether granting permission for part of the development would result in an acceptable resolution.

#### Negotiation

- 5.9 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.
- 5.10 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.
- 5.11 Where initial attempts at negotiation fail, formal action will be considered to prevent a protracted process. The Council will also consider using Temporary Stop Notices to prevent the breach becoming more severe or to allow a period of time for further assessment or negotiation.
- 5.12 Where the Council is 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, the Council will proceed with formal enforcement action where it is expedient to do so.

#### Not expedient to pursue formal action

- 5.13 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 National Planning Policy Framework and Development Plan policies and other material planning considerations.

- 5.14 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. However, it is generally regarded 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.
- 5.15 Another criterion of expediency is to ensure that any action is proportionate to the breach. The Council investigates many technical breaches of planning control, for example where a development is very marginally larger than would have been 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. The Council 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.
- 5.16 Where officers conclude that it is not expedient to take action the case will be closed and no further action will be taken. In these circumstances the investigating officer will contact the complainant prior to closing the case to explain the decision and to advise that no further action will be taken. The officer will engage with the Ward Councillor to convey their conclusions when the complainant have chosen this avenue for representation.
- 5.17 In all cases where it is not expedient to take action officers are required to complete an Enforcement Case Closure Report setting out the reasons for their decision. These reports will be kept on file to allow us to respond to any challenge of our decision.

#### Time limits for taking formal action

- 5.18 Section 171B of the Town and Country Planning Act 1990 (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.
- 5.19 Other unauthorised changes of use and breaches of conditions are subject to a 10 year time limit. After these periods the Council cannot take action and the use becomes lawful.
- 5.20 The landowner can apply for a Lawful Development Certificate (LDC) after this period and if the evidence is clear this would regularise the use of the development of the land. Where a landowner alleges that the development is immune from enforcement action the Council will encourage them to submit a LDC application so that the matter can be formally determined. The Council will not cease the investigation of a breach of planning control in the absence of a LDC unless the evidence submitted as part of the investigation is robust.
- 5.21 Serving an enforcement notice in respect of a particular development stops the clock in relation to these time limits. Where the Council feels a breach may be close to the relevant time limit it may seek to take urgent enforcement action to prevent a lawful development situation.

### Planning Enforcement Order

- 5.22 We would consider the use of a Planning Enforcement Order if the circumstances and evidence supports this.
- 5.23 The Localism Act 2011 has introduced a new enforcement power in relation to time limits. This allows Councils the possibility to take action against breaches of planning control even after the usual time limit for enforcement has expired where there has been concealment of the unauthorised development.
- 5.24 The Council can, within six months of a breach coming to their attention, apply to the magistrate's court for a Planning Enforcement Order. This gives the Council one year to then take enforcement action. To agree an 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.
- 5.25 In the event that the time limit for taking enforcement action has passed, and there has been no concealment, it will not be possible to take enforcement action and the case will be closed.

### Dispute Resolution

- 5.26 Only the Council can instigate planning enforcement action and there is no right of appeal for a complainant in the event that they are dissatisfied with the actions or the lack of formal action taken by the Council.
- 5.27 In the event that a complainant is dissatisfied with the outcome of a planning enforcement investigation they may have the case reviewed by writing to the Corporate Enforcement Manager. If the complainant remains dissatisfied with the outcome of the investigation then they will need to escalate their complaint using the Council's complaints procedure.

### Liaison with other Regulatory Bodies and Enforcement Agencies

- 5.28 Where there are breaches of wider regulations (e.g. noise nuisance), enforcement will be coordinated with other services and agencies to maximise the effectiveness of our interventions.
- 5.29 Where an enforcement matter has impacts beyond the Borough boundaries, or involves enforcement by one or more local authorities or organisations, where appropriate all relevant organisations will be informed of the matter as soon as possible and all enforcement activity coordinated with them.

### Why is effective enforcement important?

- 5.30 We recognise that effective enforcement is important to:
- Tackle breaches of planning control which would otherwise have unacceptable impact on the amenity of the area
  - Maintain the integrity of the decision making process
  - Help ensure that public acceptance of the decision-making process is maintained.

5.31 And will have regard to this when making our decisions including where a decision is made that no further action will be taken.

## 6. Taking Formal Enforcement Action

- 6.1 Once the decision to take formal action has been made the Council will usually tell the complainant verbally or in writing **within 10 working days** from the date on which the decision to take action was made. The Council will seek a balance to achieve the most proportionate and expedient resolution through the use of powers available.
- 6.2 A varied planning enforcement toolkit is available to officers taking formal action if required. The use of these can vary depending on the nature of the breach and the level of harm caused. The most common measures are set out below.

### Enforcement Notice

- 6.3 Section 172 of The Town and Country Planning Act 1990 (as amended) allows the Council to serve an enforcement notice where unauthorised operational development or a change of use has taken place and it is considered expedient to do so. The Council is required to serve enforcement notices on the owner, occupier and any other person with a legal interest in the land which is materially affected by the notice.
- 6.4 An enforcement notice will enable every person who receives a copy to know:
- Exactly what in the view of the planning authority constitutes the breach of planning control; and
  - What steps the local planning authority require to be taken, or what activities are required to cease to remedy the breach
- 6.5 An enforcement notice shall specify the steps which are required to be taken, or the activities which are required 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
  - The notice will also include information on how the recipient can appeal.
- [www.gov.uk/government/publications/enforcement-appeal-information-sheet-for-local-planning-authorities](http://www.gov.uk/government/publications/enforcement-appeal-information-sheet-for-local-planning-authorities)
- 6.6 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.
- 6.7 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.

6.8 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.

6.9 If the breach of planning control relates to a listed building, or unauthorised demolition within a conservation area, the Council will consider the expediency of serving a listed building 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.

#### Breach of condition notice (BCN)

6.10 Section 187A of the Town and Country Planning Act 1990 (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 this 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.

6.11 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, the Council will consider the expediency of serving a BCN. The BCN 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

6.12 Section 183 of the Town and Country Planning Act 1990 (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. The Council 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.

6.13 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.

- 6.14 There is no right of appeal to the Secretary of State against the prohibitions in a stop notice. The validity of a stop notice, and the propriety of the decision to issue a stop notice may be challenged by application to the High Court for judicial review.
- 6.15 The Council must consider the use of stop notices carefully as they carry with them significant statutory compensation provisions.

#### Temporary stop notice (TSN)

- 6.16 Section 171E of the Town and Country Planning Act 1990 (as amended) provides councils with the power to serve a temporary stop notice (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.
- 6.17 Restrictions on the use of TSNs mean that they cannot be considered where for example positive action is required. The 'immediate' cessation of activities should allow for the shutting down and making safe an activity. We cannot use it to prohibit the use of a building as a dwelling house.

#### Section 215 notice (S215)

- 6.18 Section 215 of the Town and Country Planning Act 1990 (as amended) provides councils with the power to serve a Section 215 Notice (S215) where the amenity of an area is adversely affected by the condition of land or buildings. 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. A S215 notice takes effect after 28 days service during which time an appeal can be made in the Magistrates Court.
- 6.19 In deciding whether it is appropriate to consider a 215 notice we will have regard to the Best Practice Guidance issued by the Office of the Deputy Prime Minister.

#### Failure to comply with formal notices

- 6.20 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**

- 6.21 The Council will consider commencing a prosecution in the Courts against any person who has failed to comply with the requirement(s) of any formal notice having been issued where the date for compliance has passed and the requirements have not been complied with.
- 6.22 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. The Council will consider whether it would be expedient to prosecute for these works rather than issuing a notice on a case by case basis.
- 6.23 Before commencing any legal proceedings the Council will 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.

### **Direct action**

- 6.24 Where any steps required by an enforcement notice or section 215 notice have not been taken within the specified compliance period, the Council will consider whether it is expedient to exercise its powers under Section 178 of the Town and Country Planning Act 1990 (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.
- 6.25 In most cases the Council will seek to prosecute the failure to comply with a notice before seeking to initiate direct action however there may be circumstances when it is considered that direct action is a more appropriate course of action. Such decision will be made on a case by case basis.
- 6.26 When considering whether to prosecute we will have regards to the Attorney General's Code for Crown Prosecution which means that the following criteria will be considered:
- Whether the standard of evidence is sufficient for there to be a realistic prospect of conviction
  - Whether the prosecution is in the public interest
  - Whether the imposition of a fine (up to £20K in the Magistrate's Court, limitless in the Crown Court) will act as a deterrent to other possible offenders.
- 6.27 Proceeds of Crime Act (POCA) - we will where appropriate use the provisions of POCA as part of our approach to dealing with failure to comply with enforcement action.

### **Injunction**

- 6.28 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, the Council will consider applying to the Court for an Injunction under Section 187B of the Town and Country Planning Act (as amended).
- 6.29 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



## 7. Other Controls

7.1 There are other matters which are investigated by the Planning Enforcement service and these will be investigated in accordance with the procedures set out in this Plan.

### Advertisements

7.2 The display of advertisements without consent is an offence liable to prosecution. However in most cases the Council will not initiate prosecutions without first giving the person responsible the opportunity to remove the offending advert. In order to effectively control unauthorised advertisements the Council will consider the following courses of action when an offence is detected:

- Voluntary Compliance – In most cases of a first offence the Council will write to the offender giving a period of **not less than 48 hours** to remove the offending advert.
- Direct Action – If the advert is not removed in the required period the Council may use its powers under Section 225 of the Town and Country Planning Act 1990 (as amended) to remove or obliterate posters and placards and may seek to recover its costs in taking such action from the person responsible for the display or benefiting from the advert.
- Issuing a formal Caution – Where there is evidence of persistent offending the Council will consider issuing a formal Caution as an alternative to prosecution. The offender will be made aware that the Caution will be made available at any subsequent prosecution of further offences.
- Prosecution – In the most serious cases or where there is evidence of persistence offending the Council will seek to prosecute the display of illegal advertisements where it is in the public interest to do so.

7.3 The Localism Act 2011 (as amended) introduced provisions in respect of dealing with structures used for the unauthorised display of advertisements. These are Removal Notices and the powers to remedy the defacement of property. Each provision includes rights of appeal to the Magistrates Court. The Council will seek to use these powers if it is considered appropriate to do so and will have regard to the harm caused by the advert, the proportionality of the action and the likelihood of securing a satisfactory outcome.

7.4 The Council will not use its power to control advertisements to investigate allegations of breaches from other competing business where the aim of the complaint is to limit the operation of a commercial rival or for the complaint to gain a complete advantage.

### Trees

7.5 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 from the Local Planning Authority. Such works are an offence and therefore prosecution can be sought without the requirement to issue a notice.

7.6 Where there is evidence that works to protected trees have been undertaken without consent the Council will consider the following courses of action:

- Informal warning – For very minor works, such as pruning, which would have been acceptable had consent been sought and where the offence is a genuine error the

Council will consider giving an informal warning. This may be verbal or in writing.

- Replacement Notice – 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.
- Issuing a Caution – For works which would otherwise result in a prosecution, the Council may decide it is not in the public interest to seek to prosecute where the offender is willing to accept a formal Caution. The offender will be made aware that the Caution will be made available at any subsequent prosecution of further offences.
- Prosecution – For the more serious offences, or where an offender is unwilling to accept a formal Caution, the Council will seek prosecution where it is in the public interest to do so.

- 7.7 In considering the appropriate course of action the Council will have regard to quality and the amenity value of the tree concerned as well as the intention or commercial benefit of the person who instigated the works.

#### Hazardous Substances Control

- 7.8 The storage or use of controlled quantities of hazardous substance on land requires Hazardous Substances Consent by virtue of The Planning (Hazardous Substances) Act 1990. These are substances which are generally used in industrial or commercial processes and this control does not extend to include smaller quantities of petrol, diesel or other chemicals which would be associated with domestic use.

- 7.9 Due to the nature of the land uses in Surrey Heath there are very few sites which have the benefit of Hazardous Substances Consent and allegations of breaches are rare. However provisions for enforcing against breaches of control generally follow the planning enforcement provisions and a contravention of hazardous substances control is an offence liable to prosecution.

#### High Hedges.

- 7.10 Party 8 of the Anti-social Behaviour Act 2003 allows local councils to deal with complaints about high hedges whose area contains the land on which the hedge is situated.

#### **Data Protection**

- 7.11 Any personal or confidential information provided and held by the Council as part of Planning Complaints and Enforcement will be kept secure and managed in accordance with Data Protection legislation, no personal identifiable information will be shared outside of the Council unless there is a lawful basis and the Council is required to. For more information on how and where the Council uses your information visit the SBHC website at <https://surreyheath.gov.uk/council/information-governance/how-we-use-your-data>

**References:**

**Appendices:**

APPENDIX 1: Planning enforcement investigation flow chart

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# APPENDIX 1: Planning Enforcement Investigation Flow

