

# **Local Enforcement Plan**

## **Summary**

This revised Local Enforcement Plan updates the 2014 Local Enforcement Plan to provide a framework of local guidance for the investigation and assessment of breaches of planning control in line with current national policy.

## **Portfolio – Planning & People**

**Date Portfolio Holder signed off report:** 22 October 2020

## **Wards Affected**

ALL

## **Recommendation**

The Executive is advised to RESOLVE that the Surrey Heath Local Enforcement Plan, as attached at Annex B to this report, be agreed

### **1. Resource Implications**

- 1.1. The implementation of the Local Enforcement Plan will be undertaken within the agreed budget for 2020/21 and subsequent years for the Development Management and Corporate Enforcement Services. The Plan will assist in directing these resources by identifying the highest priority breaches of planning control.

### **2. Key Issues**

- 2.1 The Council's existing policy for the consideration of breaches of planning control was contained in a Local Enforcement Plan (LEP) produced in 2014. As national policy has been revised and delivery of the enforcement function has changed it was felt that the Plan needed reviewing.
- 2.2 In line with current national policy it is considered that the implementation of a Local Enforcement Plan will enable the Council to establish priorities and procedures for the investigation of alleged breaches of planning control. It will also enable the Council to effectively manage and prioritise its planning enforcement resources which is delivered through the Corporate Enforcement Team and is also now supported by a Senior Planning Enforcement Officer. The Plan will also provide clear and concise information to the public and developers about what they can expect from the Council's Planning Enforcement Service.
- 2.3 The Plan seeks to identify local priorities for enforcement action so that the Council's enforcement resources can be put to the best use in

dealing with breaches of planning control that threaten the quality of the local environment or the amenities of residents.

- 2.4 The Plan also gives advice to the public and developers as to the enforcement measures available to the Council and in what circumstances the Council will consider taking formal enforcement action.
- 2.5 By having a clear and transparent approach as to how enforcement matters are investigated this will give the public realistic expectations as to what action can or will be taken. Given that enforcement action is discretionary one of the key objectives is to filter out non-planning related, frivolous or vexatious complaints. Such complaints impact significantly on limited resources preventing or delaying investigation of the highest-priority and most damaging cases.
- 2.6 All Councillors were consulted on the draft LEP and comments have been incorporated. Comments received have been set out in Annex A.

### **3. Options**

- 3.1 The options available to the Executive are:
  - (i) To not agree Surrey Heath Local Enforcement Plan, or
  - (ii) To agree to the Surrey Heath Local Enforcement Plan.
- 3.2 The Executive is asked to agree the Local Enforcement Plan as revised.

### **4. Proposals**

- 4.1 It is proposed that the current Local Enforcement Plan 2014 be replaced as it no longer reflects updated government guidance or the delivery of planning enforcement in the Borough and that a new Local Enforcement Plan be agreed.
- 4.2 The key changes are:
  - Clarification of site visit response times to reflect resources within the service
  - Clear procedures for reporting breaches of planning control
  - To clarify the powers and approaches available to the Council
- 4.3 A copy of the revised Local Enforcement Plan will be circulated with the agenda.

### **5. Corporate Objectives and Key Priorities**

- 5.1 The Local Enforcement Plan will enable the Planning Enforcement Service to react quicker and more efficiently to breaches of planning control. This will therefore mean that we can deliver a better service in line with Objective 4 of the Corporate Plan. An improved enforcement

service, by association, will also result in improvements to peoples' amenities, livelihood and wellbeing in accordance with the other Corporate Objectives.

## **6. Policy Framework**

6.1 The main policy framework is contained within the National Planning Policy Framework and its associated Planning Practice Guidance.

6.2 Paragraph 58 of the NPPF states:

*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.*

6.3 Paragraph 006, of the NPPG states that the preparation and adoption of a local enforcement plan is important because it:

- *allows engagement in the process of defining objectives and priorities which are tailored to local circumstances;*
- *sets out the priorities for enforcement action, which will inform decisions about when to take enforcement action;*
- *provides greater transparency and accountability about how the local planning authority will decide if it is expedient to exercise its discretionary powers;*
- *provides greater certainty for all parties engaged in the development process.*

## **7. Legal Issues**

7.1 No matters arising.

## **8. Governance Issues**

8.1 No matters arising.

## **9. Sustainability**

9.1 The Council's existing policy for the consideration of breaches of planning control was contained in a Planning Enforcement Policy and Practice Statement. This statement contains out of date policy and is therefore no longer sustainable. In contrast, the proposed new Local Enforcement Plan is fully in line with current government policy and sets a clear framework and strategy for the future.

## **10. Risk Management**

- 10.1 A clear enforcement strategy minimises risks of challenge to the Council where action is or is not taken.

## **11. Equalities Impact**

- 12.1 See Human Rights below.

## **11 Human Rights**

- 11.1 Paragraph 003 of ID: 17b of the PPG states the following:

*'The provisions of the European Convention on Human Rights such as Article 1 of the First Protocol, Article 8 and Article 14 are relevant when considering enforcement action. There is a clear public interest in enforcing planning law and planning regulation in a proportionate way. In deciding whether enforcement action is taken, local planning authorities should, where relevant, have regard to the potential impact on the health, housing needs and welfare of those affected by the proposed action, and those who are affected by a breach of planning control.'*

- 11.2 The Local Enforcement Plan will therefore help to facilitate proportionate responses to breaches in accordance with Human Rights and impacts on Equalities.

## **12. Community Safety**

- 12.1 No issues identified but an effective enforcement strategy supports a safer community.

## **13. Environmental Impact**

- 13.1 No issues identified but an effective enforcement strategy supports environmental protection where relevant.

## **14. Consultation**

- 14.1 No matters arising

## **15. PR and Marketing**

- 15.1 No matters arising.

## **16. Officer Comments**

- 16.1 For the reasons outlined above it is important that an up to date Local Enforcement Plan is adopted so that officers can undertake the investigation of enforcement cases in the most efficient manner.

16.2 The Plan will be kept under review to ensure compliance with national policy. It is recommended that changes to the Plan are agreed with the Executive Head of Regulatory. However, any material changes to the Plan will be reported back to the Planning Applications Committee only.

<b>Annexes</b>	Annex A – Councillor Responses Annex B – Local Enforcement Plan
<b>Background Papers</b>	None
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#### Consultations, Implications and Issues Addressed

<b>Resources</b>	<b>Required</b>	<b>Consulted</b>
Revenue	✓	<u>16<sup>th</sup> October 2020</u>
Capital		
Human Resources		
Asset Management		
IT		
<b>Other Issues</b>	<b>Required</b>	<b>Consulted</b>
Corporate Objectives & Key Priorities	✓	<u>16<sup>th</sup> October 2020</u>
Policy Framework		
Legal	✓	<u>16<sup>th</sup> October 2020</u>
Governance		
Sustainability		
Risk Management		
Equalities Impact Assessment		
Community Safety		
Human Rights	✓	<u>16<sup>th</sup> October 2020</u>
Consultation		
P R & Marketing		

**Annex A - Surrey Heath Borough Council – Local Enforcement Plan  
Councillor Comments on draft LEP- October 2020**

<b>LEP - Paragraph</b>	<b>Councillor Comments</b>	<b>Councillor</b>	<b>Response</b>
Introduction			
1.1	Add in – ‘nothing within this document should be taken as condoning a wilful breach of planning control’	Alleway 1	Agreed- LEP to be amended.
1.2	Insert after Heath-To carry out the councils statutory responsibility	Alleway 2	Agreed
1.3	Ensure the Countryside, Greenbelt, Special Protection areas, Trees and Open Spaces are robust protected with enforcement to meet Climate Change,	Alleway 3	Agreed
1.4	To work with other teams in the Council to address problems in a holistic manner.	Alleway 4	Agreed
1.10	Refused permissions will be monitored to ensure compliance	Alleway 5	Not Agreed. We are unable to agree to this as there is no legal requirement to monitor- and we do not have the resources to do this.
Principles of Good Enforcement			
2.3	The Planning Enforcement team will consult with the Ward Councillor to ensure Local Knowledge and impact is fully accounted for in the agreed enforcement decision process	Alleway 6	Part Agreed. Already integral part of decision process i.e. officers can take into account local

			situation – although may be limited by Legislation as to how far we can go.
2.6	The Council will assert all reasonable powers to recover enforcement costs where wilful non-compliance occurs, and legal compliance has not been complied with. This is to protect the public funds.	Alleway 7	Not Agreed. Unable to recover costs of investigation and enforcement action – except in circumstances where an Enforcement Notice has been served and work is carried out in default of the notice recipient. Or where we successfully prosecuted and our costs may be recoverable.
2.20	It should be noted that Enforcement Officers have powers to enter land to assess whether there has been a breach of planning control under Section 196a of the Town and Country Planning Act (as amended)	Alleway 8	Agreed. This is covered under Breaches of Planning Control section – however we will provide more details of this – Powers of Entry.
	Once an EN has taken effect and the compliance period (stipulated on an	Alleway 9	Agreed. Covered in section 6 -

	<p>EN has expired a site visit will be undertaken by Officers to check compliance with the requirements of the Notice. Recipient. Recipients of a Notice should consider carefully the consequences of not complying with the requirements as it is a <b>criminal offence</b> for which they can be liable to prosecution proceedings being taken against them, resulting in heavy fines or even imprisonment. In circumstances where there is non-compliance with the requirements of a Notice, the Council will consider commencing prosecution proceedings where there is sufficient evidence and it is in the public interest to do so. There is also the possibility that the Council will take steps to remedy the breach of planning control by taking direct action.</p>		<p>taking Formal Enforcement Action.</p> <p>Section 6 Covers Prosecution and Direct Action etc.</p> <p>Visits are arranged as indicated in Appendix 1. To check compliance and progress where for example work has started as required by EN.</p>
	<p>In certain circumstances Development Management Officers may also make specific requests of the Planning Enforcement Team to check compliance with conditions.</p> <p>To check for example that obscure glazing, flood protection measures or renewable energy measures have been</p>	Alleway 10	<p>Agreed. This is addressed in section 5.28-working with other services and agencies.</p>

	installed where required or ensuring that s use granted for a temporary permission had ceased at the end of the relevant period. Another example would be to check that there had been the removal of buildings in the Green Belt where it was justified in order to grant planning permission for a development. In such circumstances Officers will undertake a site visit to check the development against the permission and approved drawings.		
Breaches of Planning Control 3.6	Neglecting land or buildings to an extent which causes harm to local amenity.	Alleway 11	Not Agreed. Not a Planning Breach – however covered by 6.18 (Sec 215 TCPAct 1990)
3.7	The Planning Enforcement Team also investigate requests into High Hedges which fall under Part 8 of the Anti-Social Behaviour Act 2003. A separate national remediation and enforcement procedure is in place to deal with this matter.		Agreed but not a Planning Breach- We will add this to section 7. Other Controls.
	To find out whether there is an existing planning histories can be viewed through the application search link on the	Alleway 13	Not agreed. Not relevant to LEP

	Council's website under the planning application register.		
3.8	Priorities will be established in consultation with ward councillors to ensure local knowledge impact is accounted for.	Alleway 14	<p>Not agreed. This could affect consistency of approach and compromise officer decision.</p> <p>Priorities are set out in the LEP as a standard that can be referred to if challenged at a later date.</p> <p>Cases can move between priorities based on the officer's findings during an inspection.</p>
	Visits will be arranged on receipt of report of breaches and reasonable evidence provided to substantiate. This is to facilitate immediate Stop Notice where appropriate.	Alleway 15	<p>Agreed. An initial assessment of each case is made by the Corporate Enforcement Team and responses prioritised accordingly.</p> <p>Visits will be made in accordance with the priority of the case.</p>
			Agreed.

Table of Priorities. Page 10	High Priority- <b>Or</b> to be inserted.	Alleway 16	And/or to be inserted.
	Medium priority- first example to be moved to High Priority.	Alleway 17	Agreed.
	Medium priority-second example to be moved to High Priority.	Alleway 18	Not Agreed  Each case will be considered on its merits.
3.9	Reviewed for categorisation and in respect to ward councillor consultation.	Alleway 19	Not Agreed  Established procedure involves completion of a questionnaire. This allows officers to treat each case fairly and transparently.  If challenged at a later date we would be in a position to defend our decisions.  In addition it allows us to sieve out cases where we are unable to assist – and can save time in process.
3.10	This is to be reworded because if video or photographic evidence is provided with initial report	Alleway 20	See notes above.

	there is no need to delay, immediate damage limitation intervention must be afforded where the initial fact finding verification visit.		
	But will give due regard to the evidence provided and act accordingly should the complainant feel at risk.	Alleway 21	<p>Part Agreed. Complainant details are confidential and therefore it should not prevent these details being given. In addition it is important that we do not become inadvertently involved in neighbour disputes or complaints of a malicious nature.</p> <p>In some cases we may respond if the case is considered high priority or in public interest.</p>
4.5	Councillors access to status register to monitor progress, not wait six months, or keep chasing officers.	Alleway 22	<p>Not Agreed. New procedure has been set up in line with GDPR. Quarterly reporting to Planning Applications Committee.</p>

Resolving Breaches of Planning Control.  5.6	Ignorance of the law is no defence. The case for the negligence must be reviewed on history, probability and circumstance. Retrospective applications are not supported in principle.	Alleway 23	No Agreed. This is enshrined in the legal process.  In some cases retrospective applications may be the appropriate way forward to regularise the situation and this is recognised in government guidance.
5.8	This must be subject to scrutiny and review if it is to be proposed.	Alleway 24	No Agreed. – it is a consideration and part of the legal process.
5.15	Compliance to drawing dimensions will be robustly applied and for avoidance of doubt the owner or developer is responsible to rectify at their costs.	Alleway 25	Not Agreed. Each case will be assessed on its merits. Costs always sit with the applicant for any redrawing required.
5.16	In consultation with the ward councillors.	Alleway 26	Not Agreed. This is an officer decision but officers will always discuss with Councillors

			where an explanation is required.
5.18	Where there has been deliberate or contrived concealment, or the development is not visible to interested parties the time limits shall not apply.	Alleway 27	Not Agreed. There is significant case law on this issue and the application of time limits must be applied on the evidence of each case.
5.19	Where the use is illegal or presents residential amenity issues or safety concerns the time limits shall not apply.	Alleway 28	Not Agreed. The Council has no discretion in this case – time limits are a matter of law. Safety concerns can be addressed under other legislation.
5.23	Or significant harm to environmental, green belt policy or future amenity is apparent.	Alleway 29	Not Agreed. Cannot be include as may not be lawful.
Appendix 1 Planning Investigation flow chart	Note: there have been a number of suggested amendments to this – the flow chart with suggested amendments is attached to the main document.		These largely relate to the involvement of ward councillors which has been covered in comments above