REPORT FOR INFORMATION BULLETIN

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<td>Lead Officer:</td>
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<td>Portfolio Holder:</td>
<td>Councillor Simon Dodsworth</td>
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EXECUTIVE SUMMARY:

TO UPDATE MEMBERS REGARDING THE PLANNING ENFORCEMENT SERVICE, AND TO INFORM MEMBERS OF:
- THE IMPLEMENTATION OF THE PLANNING ENFORCEMENT CHARTER
- NEW REPORTING PROCEDURES FOR INVESTIGATION REQUESTS

REPORT:

Update on Planning Enforcement Service

1. Following the Planning Value for Money Reviews undertaken during 2008, the Planning Enforcement function within the Town Planning Division has been restructured and resources. Service Delivery has also significantly improved.

2. The Team now has a dedicated Enforcement Manager, who was appointed in December 2008 and comprises two Investigation Officers, one Compliance Officer and one Infrastructure Provision Monitoring Officer. Specialist training has been provided to all the officers within the team to ensure their ability to fully undertake their respective roles. Backlogs that had previously been built up as a result of reduced staffing level, limited resources and indirect staff management have now been cleared with a reduction in outstanding cases by more than 50%. Communication with customers has also significantly improved as a result of increased officer resources. Working procedures have been streamlined together with the introduction of regular staff and workload management. Joint working and liaison with other Divisions and external bodies (such as the Environment Agency and Surrey County Council) have improved. Proactive work and monitoring of development has increased and improved leading to a more effective and credible service.

3. There is always room for further improvement particularly since the numbers of investigation requests have increased over the years with 838 being received during 2010, compared to 459 in 2004. Although individual officer’s caseloads have reduced from 2009 workload remains heavy and therefore it is essential that the service continues to improve in order to provide the service efficiently and effectively for all customers. Furthermore, like many Local Planning Authorities, Elmbridge Borough Council has tended towards a reactive service on the basis that if an unauthorised development is causing harm then it will undoubtedly be brought to the attention of the Council.
However, in order to provide a credible and effective planning service in line with the Council’s goal of Building on Excellence, the Council should aspire to being both reactive and proactive: reactive in responding to investigation requests, and proactive in monitoring in an attempt to pre-empt potential harmful breaches of planning control. Confidence in the planning process may be undermined if it is perceived that an unauthorised development is allowed to proceed or be retained with absolutely no intervention by the Council.

4. Frustrations with the planning enforcement service in the past have related to confusion over planning legislation, the Council’s powers of enforcement, the planning enforcement process and how this is translated into an Elmbridge planning enforcement service (taking into account local policies and resources). Further frustrations arise regarding unrealistic expectations over timescales for investigations and actions and finally the level and frequency of communication with Council officers.

5. Best practice and procedures for planning enforcement is outlined in Circular 10/97: Enforcing Planning Control and Planning Policy Guidance Note 18: Enforcing Planning Control. The investigation process is regulated by the Regulation of Investigatory Powers Act 2000 (RIPA) and the Police and Criminal Evidence Act 1984 (PACE). The Council is also regulated by the Local Government Ombudsman. It is recommended within the Enforcement Concordat that Regulators produce and publish clear service standards incorporating policies of openness, helpfulness, proportionality, consistency and an effective complaints procedure within their services. The previous Enforcement Policy, which was adopted in 2004 was out of date and is now inadequate for the above purposes.

Planning Enforcement Charter

6. The Planning Enforcement Charter was adopted by the Council on 15 February 2011 for implementation by the Planning Enforcement Team. The Planning Enforcement Charter, together with a shorter leaflet version, will be published on-line. Both versions will also be available at the Planning Reception at the Civic Centre or upon request. Subsequently, new systems, including investigation request forms, updated web pages, revised acknowledgement letters and new monitoring mechanisms have been developed to facilitate the launch and implementation of the Charter in August 2011.

7. The purpose of the Charter is to actively respond to customer frustrations regarding the Planning Enforcement Service (as outlined above in paragraph 4 of this Information Bulletin) and to provide a comprehensive guide to the Planning Enforcement Service at Elmbridge Borough Council. It fully explains the procedures that Elmbridge Borough Council will follow within the context of Government best practice and legislative powers. This will overcome common misunderstandings regarding the powers available to the Council and create a better understanding of what the Council can and cannot do to assist. Delay and public frustration occurs as a result of a
complainant contacting the Council regarding matters that do not fall within the Planning remit. A list is provided of issues that cannot be dealt with through planning enforcement. For your information, this information has been extracted and attached to this Bulletin for ease of access to enable Members to assist in re-directing the public when they are approached. The Charter also provides a consistent and transparent approach to the planning enforcement process. This will overcome common misunderstandings and perceptions of the investigative process. However, more importantly, the Charter provides details of the service standards that Elmbridge Borough Council is committed to providing the local community with an efficient and effective service. This will reduce frustrations regarding limited communication and a common misconception that this equates to no action being undertaken by officers. It will provide more certainty as to when officers will provide updates on cases at each stage in the process.

8. In summary, the key changes to the Planning Enforcement service as a result of the Planning Enforcement Charter relate to the following two issues:

- Communication
- Priorities

Introducing service standards relating to communication and priorities will significantly improve the management of the expectations of and reduce the frustrations of customers. It also introduces a transparent and fair policy for dealing with investigation requests. It provides officers with a comprehensive framework for workload management and, finally, it provides the Council with adopted policy support when dealing with any future complaints from the Local Government Ombudsman.

Communication

9. Officers are committed to treating both the complainant and the person who has allegedly carried out development without planning permission fairly within reasonable timescales. It is a common misconception that enforcement work merely involves a quick site visit and then either a Notice being served or direct action by officers to remove a breach, all within days of it being reported. However, often delays are experienced due to difficulties in gaining access to the site, securing sufficient and defensible evidence in accordance with legal requirement sometimes over an extensive period of time and, more frequently, the lack of co-operation or communication with the person allegedly carrying out a planning breach. It is therefore difficult to gauge how long it will take for officers to conclude their investigations. The process of gaining authority to take action is necessarily lengthy and there are appeal rights available to the malfeasant. Often there is little to report in the early stages of an investigation, during the decision-making process or appeal process and this leads to frustration of perceived inaction by the Council. Through the Charter, it has been agreed that all parties will be updated using a combination of events-based and time-based deadlines. For example, but not conclusively, parties will be updated after a successful site inspection and when a conclusion has been made regarding a breach, and in
10. Officers recognise that when a request for investigation is made that there is a high expectation for the matter to be resolved quickly and any delays can be frustrating. Previously, all cases were logged, allocated and processed in chronological order, although those received by Councillors and by persistent, vociferous complainants were prioritised. Resources did not allow for this and it was not a fair service. Clearly it was unacceptable for the Council to allow a breach of planning control to remain for a prolonged period causing significant harm as a result of officer resources being diverted to less harmful or non-harmful breaches. A new harm-based priority system has been introduced, which concentrates on harm rather than the source of the investigation request. The following priorities have been implemented:

**Priority A** – Potentially irreversible breaches of planning control, e.g. alterations to a listed building

**Priority B** – Works that have no planning permission and are not likely to gain such permission. Development not been carried out in accordance with the appropriate planning permission that cannot be easily rectified

**Priority C** – Development likely to cause general harm to public amenity

**Priority D** – Development likely to cause limited or no harm to public amenity

For example, the following alleged breaches will be of a low priority unless they are within the setting of or on a listed building, in a conservation area, in the Green Belt, or involve protected trees: advertisements, satellite dishes, loss of unprotected trees and landscaping, hardstanding, fences and untidy land.

11. It must be emphasised that the priority system will not result in unnecessary delays to cases categorised with lower priorities. All cases will be investigated as soon as resources allow, regardless of the formal prioritisation system and often in advance of the deadlines set out.

**New Reporting Procedures**

12. Previously, complaints were received from various sources: by email, telephone, letter, using a paper form and using various on-line forms (corporate contact us form, corporate complaints form, or Planning Investigation Form). The quality of information received was generally poor and often this has led to difficulties for the Planning Enforcement Team in processing the investigation since incorrect or inadequate information has been supplied. Unfortunately, staff resources have been wasted in the past due to carrying out site inspections only to find the site address is incorrect and having to then carry out a further site inspection having returned to the office to request further information from the complainant. Diverting limited
resources in this way does not lead to an efficient service and consequently reduces time being available for other requests for investigation. Detailed evidence is also essential to the success of an investigation since ultimately without strong evidence of a breach of planning control the Council is unable to take formal action. It is essential therefore that where evidence is available that this is provided at the same time as reporting the alleged breach. Late receipt of information can result in aborted work being carried out by the case officer. The Council must be in a position to defend its case in either a planning appeal or in Court. Costs can be awarded where the Council has acted unreasonably by taking formal action without sufficient or defendable evidence to support their case.

13. The minimum information required to process an investigation is:

- full address of the alleged breach of planning control
- full details of the alleged breach of planning control, providing evidence of what has been observed and what lead the complainant to the view that a breach has taken place
- full details of how long the alleged breach of planning control has taken place, when it started, when it was completed and what evidence is available to back up the claims
- if the alleged breach involves non-compliance with a condition or a drawing, full details of which permission, which condition and in what way the development does not comply.
- details of the harm the alleged breach of planning control is causing and how it directly affects the complainant
- full contact details, including name, address and email address (if available).
- confirmation that the complainant is willing for their details to be passed onto another section of the Council or appropriate public body, where relevant.

14. A new on-line Planning Investigation Form has therefore been created to capture the above information to allow the investigation to be commenced without delay. This form should be used by everyone, including Members. Those who make their request in person, by email, by telephone, will be directed to complete the form on-line, which can also be downloaded and submitted in person, by email or by post. Officer assistance will of course be given to complete the form. Members are therefore requested to familiarise themselves with the form and the information required. The form is attached for reference, for completion if they wish to make a request for an investigation, or for directing members of the public who make contact.

15. The Planning Enforcement Service will be monitored for compliance with the service standards set out in the Enforcement Charter. The Enforcement Charter will be reviewed and updated as necessary to take into account legislative changes, feedback received and with reference to resources available.
**Financial implications:** There are no financial implications arising from this report

**Environmental/Sustainability Implications:** There are no environmental or sustainability implications arising from this report

**Legal implications:** There are no legal implications arising from this report

**Equality Implications:** There are no equality implications arising from this report

**Risk Implications:** There are no risk implications arising from this report

**Community Safety Implications:** There are no community safety implications arising from this report

**Principal Consultees:** None

**Background papers:** Planning Enforcement Charter

**Enclosures/Appendices:** Appendix A - Planning Enforcement Charter, Appendix B - Planning Enforcement Charter (leaflet version), Appendix C - Issues Not Dealt With By Planning Enforcement Team, Appendix D - Planning Investigation Request Form (downloaded version)

All the above are also available on-line on Planning Enforcement webpage.

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Town Planning Division

Planning Enforcement Charter

February 2011
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1.0 What is Planning Enforcement?

Planning permission is required for most development that takes place in England and Wales. The responsibility for planning rests with the Local Planning Authority, whether that is at County level regarding minerals and waste development, or at District level for all other development. Elmbridge Borough Council is responsible, where necessary and appropriate in the publics’ interest, for taking enforcement action when breaches in planning law have taken place. The carrying out of development without planning permission or the failure to comply with the conditions attached to a planning permission are breaches in planning law.

Elmbridge Borough Council is committed to providing an efficient and effective planning service in the interests of the local community. Allegations of a planning breach being received by the Council per annum are reaching unprecedented levels, with 937 being received during 2009, compared to just 459 in 2004. In the past, the Council has tended towards a reactive service on the basis that if an unauthorised development is causing harm then it will undoubtedly be brought to the attention of the Council. In order to provide a more credible and effective planning service the Council must be both reactive and proactive: reactive in responding to complaints and proactive in monitoring breaches of planning control. The Council relies heavily upon the public to be their eyes and ears and to alert the Council to any breaches in the Elmbridge area. Confidence in the planning process is undermined if an unauthorised development is allowed to proceed or be retained with no intervention by the Council.

The Government have provided Local Planning Authorities with a legislative toolkit to resolve breaches in planning law. Full details of these can be found in the Town and Country Planning Act 1990. The Planning Enforcement process is also regulated by Circular 10/97: Enforcing Planning Control and Planning Policy Guidance note 18: Enforcing Planning Control, which outlines best practice in undertaking investigations and taking action. The Council is also required to ensure that their investigative work complies with the Human Rights Act 1998 the Regulation of Investigatory Powers Act 2000 (RIPA) and the Police and Criminal Evidence Act 1984 (PACE), and rights of access laid down in the Town and Country Planning Act 1990. The Council is regulated by the Local Government Ombudsman, who will investigate the Council’s actions upon receipt of a complaints regarding maladministration, with reference to the Good Administrative Practice, Guidance on Good Practice, May 2001.

The Services Directorate, including the Town Planning Division, signed up to the Government’s Enforcement Concordat, which outlines six principles of enforcement policy: clear standards, openness, helpfulness, effective complaints procedures, proportionality and consistency. Full details of this commitment and these principles are outlined in a leaflet entitled Enforcement Concordat, which is available at http://www.elmbridge.gov.uk/documents/detail.htm?pk_document=2091

The procedures and standards outlined in this Planning Enforcement Charter adhere to these six principles.

It should be borne in mind that not all development requires permission or it may be time limited and therefore the Council do not have the powers to act in such circumstances. Also, enforcement is a discretionary power and the Council is not bound to act. In this respect consideration on action will be influenced by whether taking action is in the public’s interest.
and whether had a planning application have been received it would have received planning permission.

The purpose of planning enforcement is not punitive but to enforce and resolve breaches in planning control and unauthorised development which cause harm to public amenity.

Harm is not loss of monetary value, competition from another business, or loss of an individual’s view. If an Enforcement Notice is served this can have a significant effect upon a property because it remains a charge on that building and/or land in perpetuity. Also, failure to comply with an Enforcement Notice can result in a criminal record. As such, taking formal action is a last resort when the breach is serious and cannot or has not been resolved by voluntary action by the person who has carried out development without planning permission.

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

This Charter will be reviewed and updated as necessary to take into account legislative changes and any feedback received. The service commitments within this Charter will be monitored and reviewed with particular reference to resources and the need for effectiveness and efficiency and will be updated accordingly.

2.0 What is a Breach in Planning Law?

Planning legislation is set out in the Town and Country Planning Act 1990 (the Act). Development is defined as:

‘The undertaking of any building, engineering, mining or other operations in, on, over or under land, or the making of any material change in use of land or buildings’

Under The Town and Country Planning (General Permitted Development) Order 1995 and the Town and Country Planning (Use Classes) Order 1997, certain types of development are permitted without the need for planning permission or consent. Additionally, professional judgements have to be made as to whether by fact or degree planning permission or related consents, such as listed building consent is required for development.

Development is not:

- Works to the interior of a non-listed building
- Works that do not materially affect the external appearance of a building
- Uses incidental to the enjoyment of a dwelling house or uses ancillary to the principle use of a property
- Changes of use within the Use Classes
- Works excluded by permitted development rights
Often planning permission or consents are granted with conditions or subject to legal agreements, imposing limitations on the development.

Certain developments can become immune to enforcement action after timescales are exceeded: the erection of buildings and other building works – 4 years; changes of use to a single dwelling house – 4 years; material changes of use of other buildings or land – 10 years; and non-compliance with planning conditions – 10 years. After this time development is immune from enforcement action. There is no time limit for taking enforcement action against unauthorised works to a listed building, advertisements, or for the offence of destruction of a protected tree. However there is a six month time limit for taking enforcement action for the offence of damaging a protected tree.

For the purposes of this Charter, a breach in planning law is therefore:

- Development without planning permission
- Development not in accordance with approved plans
- Carrying out works (internal and external) to a listed building without listed building consent
- The display of an advertisement without advertisement consent
- The unauthorised felling 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

Unfortunately, permission or consent is not always sought or conditions and legal agreements attached to planning permissions are not adhered to. It is in these instances that Elmbridge Borough Council will undertake investigations and where necessary and/or appropriate will take action using the Planning Enforcement Toolkit. (see below)

Generally, there is no direct criminal liability for the carrying out unauthorised development except in certain instances where the breach relates to a listed buildings or advertisements. A criminal offence occurs when the requirements of an enforcement notice are contravened.

Finally, it is useful to point out what is not a breach in planning law and therefore the matters that will not be investigated by the Planning Enforcement Team. Contact details, where possible and appropriate are provided to enable the complainant to direct their complaint to the appropriate body:

- **Flytipping, abandoned vehicles and graffiti** – These are investigated and dealt with by the Council’s Environmental Care Team. To make a complaint contact envcare@elmbridge.gov.uk or phone 01372 474775. More details are available on-line at: www.elmbridge.gov.uk/envcare/streets

- **Dangerous structures, structural problems and damage to property** – These are generally matters that have to be resolved between landowners. Dangerous structures can be investigated by the Council’s Building Control Team who can be contacted on bcon@elmbridge.gov.uk or 01372474779 or reported using the on-line form at: www.elmbridge.gov.uk/buildcon/bcforms.htm
Highway obstructions, parking and traffic – including commercial vehicles parking in residential areas, signs on public footpaths, mud on the road, vehicles on grass verges or causing an obstruction. These matters are investigated by Surrey County Council Highway Department, who can be contacted on 0300 200 1003.

Boundary and party wall disputes - between neighbouring properties are a private matter between landowners, which the Council cannot provide assistance.

Running a business from home where the residential use remains the main use and there is no negative impact upon the local area. Such cases are dealt with on the basis of factor and degree, the nature of the use and the property being used.

For example, a tradesperson who parks their work vehicle on their driveway at home or other business vehicles on the public highway would not require planning permission. Likewise the use of one room in a house by the occupier to carry out a business with no employees or visitors to the property in relation to that business use is unlikely to result in a change of use from residential. However, an occupier employing several staff, and receiving a number of customers in relation to that business use within a number of rooms in a house is likely to require planning permission.

Activities incidental to the residential use of a dwelling – carrying out hobbies or activities within the curtilage of a dwelling is likely to be incidental to the enjoyment of the dwelling and therefore would not require planning permission. Again such cases are dealt with on the basis of factor and degree, the nature of the activity and the property being used.

For example, a householder repairing their car on their property or would not require planning permission but a householder running a car repair business would require planning permission. An householder undertaking craft or art work, for example, woodturning, in an outbuilding/studio would not require planning permission but a joiners workshop employing staff would require planning permission.

Stationing a caravan within the grounds of a dwelling

Clearing of un-protected trees or landscaping and gardening works

Land ownership or private legal agreements/covenants - are a private matter between landowners, which the Council cannot provide assistance.

Matters not controlled by planning conditions – such as opening hours of business premises

Non-compliance with an informative – Informatives on planning decisions have the purpose of being advisory notes for the developer and are not therefore enforceable.

Out of hour’s construction and related disturbances – the law relating to noise does not specify permitted hours of working for building operations. If a
noise nuisance occurs then this may be able to be investigated and dealt with by the Council’s Environmental Health Team (see below under General pollution for further details) who can be contacted on envhealth@elmbridge.gov.uk

➢ **General pollution** – smell and noise nuisances. Such matters may be able to be investigated by the Council’s Environmental Health Team.

More advice regarding smell nuisance can be found at: www.elmbridge.gov.uk/atoz/detail.htm?pk_services=1064

More advice about noise nuisance and details of which the Council can assist on can be found at: www.elmbridge.gov.uk/envhealth/noise

For further advice on both smell and noise nuisance contact envhealth@elmbridge.gov.uk

➢ **Sewers, soakaways, flooding or other drainage matters** (other than those relating to the formation of hardstanding, when planning permission may be required)

Foul water drains are the responsibility of Thames Water, details of which are available on www.thameswater.co.uk.

Clearing the surface water drains and gullies on the public highway is the responsibility of Surrey County Council Highways Department, who can be contacted on 08456 009009.

Road sweeping (leaves etc) is the responsibility of the Council’s Environmental Care Team, who can be contacted on envcare@elmbridge.gov.uk.

Localised drainage/flooding issues between neighbouring properties are a private matter between landowners, which the Council cannot provide assistance.

➢ **High hedges** - The Council has powers under Part 8 of the Anti-Social Behaviour Act 2003 to deal with complaints about high hedges. The legislation enables the owner or occupier of a domestic property affected by a high hedge to make a complaint to the Council, subject to certain criteria. Complaints forms, guidance notes and an explanatory leaflet may be obtained from the Town Planning Reception at the Civic Centre or downloaded. More details are available on-line using the following link:

www.elmbridge.gov.uk/planning/trees/highhedge.htm

Misdirected complaints will result in a delay in the complaint being investigated. Before making a complaint to the Council’s Planning Enforcement Team, therefore it is advised that complainants check first whether the matter should be dealt with by another team in the Council or indeed another body outside the Council.

For further information on all planning and planning related legislation and advice this can be found at www.opsi.gov.uk

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3.0 What’s in the Planning Enforcement Toolkit?

The most effective tools to resolve potential enforcement matters are negotiation and mediation. In many cases the breach is trivial and minor not requiring formal action but can be resolved by the use of mediation between the parties or negotiation to remedy the breach.

Mediation is not a formal tool since Planning Enforcement is a regulatory function of the Council and officers cannot therefore be involved in matters outside the remit of enforcing breaches in planning control. Where the Council has resolved not to take action, either because there is no planning breach or where it is not expedient to do so, the parties involved can be referred to Mediation North Surrey should they wish to resolve outstanding grievance. Mediation will only occur where both parties are willing to take part in the process.

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

Formal action is a last resort if informal action has not resulted in a resolution and when significant harm is being caused and involves serving an appropriate Notice.

There are a number of legislative tools currently available to Elmbridge Borough 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 to it:

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

The tools or powers outlined below range from the less formal to taking legal action.

Certificate of Lawful Development

A Certificate of Lawful Development can be used in two ways: for existing or proposed development. A Certificate can be submitted to the Council for assessment to prove that planning permission is not required for the development already undertaken, either because the development is time-barred or because it did not constitute development under the terms of the Act or Orders. A Certificate can also be obtained for future proposals that do not require the benefit of planning permission to safeguard against future enforcement as long as the development undertaken is in accordance with the details submitted for assessment.

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 give 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 having assessed it in detail and taken into account the views of consultees grant permission subject to a condition restricting hours of use. The application is processed in the normal way. This process also
allows third parties to be formally consulted and influence the decision-making process. The fact that the development has already been carried out in part or full has no bearing on the determination of the application.

If the development is unlikely to receive permission, Councils should not encourage the submission of a retrospective application, although there remains a right to make an application for consideration by the Council. Therefore if an application is submitted, the Council is duty bound to determine it. Other than in the most seriously harmful breaches, it is best practice to await the outcome of a retrospective planning application before considering taking formal enforcement action.

Planning Contravention Notices (PCN) & Section 330 Notice

A PCN can be used by the Council to gain further information about the situation and to ascertain whether there has been a breach of planning law. This can assist in the decision as to whether 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 represents an offence, which is 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 regarding ownership and the breach within 21 days of service. There is no appeal against this notice and failure to comply is an offence, which is liable to a fine and a criminal record.

Section 215 Notice

A 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. There is a right of appeal to the Magistrates Court and Crown Court and failure to comply is an offence. Such Notices will only be used in extreme cases, which 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. Where the nuisance of the condition of the land is a health hazard, the case would be more effectively dealt with by the Council’s Environmental Health Team. Furthermore, many complaints of poorly maintained land are more effectively dealt with by the Council’s Environmental Care Team under their powers and with their ability to take direct action and to this end, the powers to serve a Section 215 Notice are also held and used by this Team.

Stop Notice (SN)

These Notices are served and used by Council's in extreme cases where there is a severe detrimental impact upon public amenity and immediate action is justified. It can only be used at the same time or after the service of an Enforcement Notice and before all appeals against such a notice are resolved. It can take immediate effect. There is no appeal and fines can be imposed for non-compliance. There is no right of appeal against a SN. However if an SN is served without due course 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 used by Councils in extreme cases where there is a severe detrimental impact upon public amenity and immediate action is justified. It does not need to
be used in conjunction with an Enforcement Notice and can only stop development for a period of up to 28 days.

**Enforcement Notice (EN)**

The most commonly Notice served is an EN, which can be served on the owner, occupier or any other person with an interest in the land. The notice is required to set out the steps necessary to secure compliance and a timescale for compliance must be given which is not less than 28 days from the date at which the notice takes effect. There is a right of appeal and as such is not ideal since the appeal process can slow down eventual compliance. Failure to comply is a criminal offence. An EN remains on the land or property indefinitely to secure compliance in perpetuity.

**Breach of Condition Notice (BCN)**

The Council has the powers to serve a BCN on to secure compliance with any conditions or limitations on a relevant permission for the development. Similar to the EN, the notice must outline the steps required to comply and set out a timescale for compliance, which is 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 is taken when any steps required by an EN have not been carried out within the timescales specified. The Council may enter the land/building and carry out the steps independently and attempt to recover the costs incurred from the owner through the courts if necessary. This tool is not generally used given the initial outlay for Councils and the risks of not being able to secure the money either in the short or long term.

**Completion Notice (CN)**

A Completion Notice is served when it is found that a site has only been partially developed and is causing serious harm to amenities by remaining incomplete. The Notice must give the owner 12 months to complete the development for which planning permission has been granted. However, since non-compliance with the Notice results in permission being granted for the works not yet completed this is not an effective enforcement tool.

**Injunction**

Injunctions are used to prevent or stop a breach before it has occurred or in cases of extreme urgency or importance. This is likely to be sanctioned in the most serious of potential breaches, for example, retrievable works to a listed building. It can also be used as an alternative to EN or BCNs and does not require these to have been served either simultaneously or previously. Like SNs, injunctions are generally only used as a last resort by Councils when all other action has failed since the granting of an Injunction is at the Court’s discretion and a failure to secure one is likely to carry a heavy cost for the Council.

**Prosecution**

The Council has the powers to prosecute against:

- Illegal display of advertisements

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Unauthorised works or demolition of listed buildings
Unauthorised works or felling of protected trees

In such cases the Council must be in a position to present a water-tight case including witness statements that an offence listed above has taken place. 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 and costs based on public harm. Fines are retained by the Court. Either party can be awarded costs.

However, prosecution does not secure compliance. Generally a prosecution with the possibility of a fine and a criminal record does act as an incentive for future compliance since the Council can repeat prosecution proceedings for continued offences.

Some breaches in planning law are subject to separate legislation; namely listed buildings, conservation areas, advertisements and trees. There are also a number of specific notices available to use, for example, Listed Building Enforcement Notices, Repairs Notices, Conservation Area Enforcement Notices, and Tree Replacement Notices.

**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 this is threatening its architectural or historical character, for example, if the roof is leaking and damage is being caused to the interior, a Repairs Notice can be served requiring works to be carried out either by the owner or direct action can be taken by the Council to undertake the works. Such works would not involve the restoration of a building but the minimal works required to preserve the building. In serious cases where the building is at risk, this can be used as a pre-cursor to compulsory purchasing the building. Taking such action is with high financial risks.

**Conservation Area**

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 against these notices.

**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. Without notice having been given or formal consent received any tree
works carried out are an offence against which the Council can pursue prosecution proceedings.

Full details of Tree Enforcement powers and procedures are provided in Appendix B: Tree Enforcement

Advertisements

The control of display of advertisements is regulated by the Town and Country Planning (Control of Advertisements) Regulations 2007. Many advertisements can be displayed with 'deemed consent', which means that they do not need formal consent from the Council providing certain criteria are met.

The display of an unauthorised advertisement is an offence.

The Council has the powers to remove/destroy placards and posters that are displayed without consent. If the owner/person who has displayed the advertisement can be identified, 48 hours notice is required to be given to advise that the Council will be removing it. If they cannot be identified the advertisement can be removed immediately.

The Council is required to keep available for inspection an up to date Enforcement Register of Enforcement Notices, including Listed Building Enforcement Notices and Section 215 Notices. This is available on line at:

www.elmbridge.gov.uk/planning/control/enforcement.htm

4.0 When will Elmbridge Borough Council take action?

In the first instance a breach of planning control has to have occurred for the Council to consider action. The power to take enforcement action is discretionary. It is a decision of proportionality, balance and reasonableness. The purpose of planning enforcement is to resolve the breach in the interests of the local community, particularly when the breach causes unacceptable harm to public amenity. The planning system does not exist to protect the interests of one person or business against the activities of another, although in some cases private interests may coincide with the public interest.

It should be used to:

- Remove any detrimental effects of unauthorised development
- Bring unauthorised development under control

It is not intended to be a punitive process. A number of considerations have to be taken into account before the Council will decide what course of action it will take.

Councils are discouraged from using its powers of enforcement to regularise development that would have received the relevant permission should an application have been received.

Elmbridge Borough Council will prioritise its resources appropriately to the level of harm being caused by the unauthorised development upon the local community and the number of complaints being received.
The following will be taken into account when deciding whether to pursue enforcement action:

- Government and Elmbridge Borough Council planning policy and guidance – whether the breach is contrary to policy and whether planning permission would have been granted had the Council been in a position to consider its merits.
- The nature of the breach – whether it is a technical or trivial breach
- The degree and extent of harm being caused to public amenity

However, no regard will be given to non-planning considerations nor to the fact that development has already taken place.

The decision whether to pursue action will normally be taken by officers within the Town Planning Division, although in some cases the decision is de-delegated to the Area Planning Sub-committee for consideration. A full record of each investigation will be kept giving the reasons why action was or was not pursued by the Council.

5.0 How does the Planning Enforcement Process work at Elmbridge?

In terms of a reactive planning enforcement process, requests for investigation will be generated from either an external or internal source. External sources will include complaints from the community, either personally or via a local councillor. The public plays a crucial role in reporting breaches in planning law since it is not possible for the Council to police the extensive development that is taking place in the Borough. Internal sources will include concerns generated from monitoring and observation by officers within the Planning or other related services, for example Building Control, Environmental Health, Environmental Care, and Private Sector Housing. Regardless of the source, the process will be identical in terms of the investigation, consideration and ultimately deciding what action to be taken. Elmbridge Borough Council is committed to providing a fair and reasonable enforcement service and therefore each complainant will be treated in the same manner using high customer care standards at all times.

How to make a complaint

All complaints of potential breaches of planning law must be made to the Council in writing or by email. The Investigation Request Form is available on-line or at the planning reception at the Civic Centre for completion and can also be supplied to complainants by email or by post if necessary. Telephone complainants will therefore be referred to the Council’s website for the completion of the form. However, Officer assistance will be given to those unable to complete the form personally. Information will always be treated confidentially where possible. However the Council is subject to the requirements of the Freedom of Information Act 2000, which require the Council to supply copies of information upon request, including letters and other correspondence. The most recent rulings on the Data Protection Act indicate that information received in confidence in respect to enforcement is exempt from these requirements of the Data Protection Act. If the breach is pursued to court then total confidentiality may limit the ability of the Council to take formal action resulting in the potential failure to remedy any alleged breach.

Anonymous complaints will not be processed unless they are considered to be such that they require immediate action by the Council in terms of public amenity and are

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irreversible actions that involve serious breaches resulting in significant harm e.g. demolition of a listed building or removal of a protected tree.

Planning Enforcement will not under any circumstances become involved in any complaints relating to a civil matter or neighbour disputes where there is no breach. For example boundary disputes or complaints regarding vandalism or nuisance will not be investigated. Complaints regarding noise nuisance will only be investigated where they are associated with unauthorised development or where noise levels are limited by condition on a planning permission.

Complainants are requested to use the form provided since this will enable Elmbridge Borough Council to record all complaints in a consistent manner and will ensure that all the necessary information is received allowing the investigation to be commenced without delay. Officers are unable to carry out investigations without basic address and contact details and there will therefore be a resultant delay in Officers visiting the site and carrying out the investigation requested. In such circumstances, Officers will not be able to meet the Council’s planning enforcement service standards and targets outlined in this Charter. In many cases, officers are unable to gain the evidence needed to pursue a breach in planning control. Without evidence of a breach no action can be taken. The evidence supplied by the complainant is therefore vital to the Council’s investigation and potentially the success of any formal action.

In any case complaints will need to include the following minimum information:

- The address of the alleged breach planning control
- The location of the site including a full postal address. A map of the site would also be useful, particularly if the site is remote e.g. a field or a piece of land
- Details of the alleged breach of planning law including any photographic, statistical or diary evidence to substantiate any claims made, e.g. if the alleged breach is of a business operation in a residential property, details of what has been observed to lead the complainant to that view are required.
- How long has the alleged breach of planning law been taking place or when did the unauthorised works commence or were completed
- Details of the harm the alleged breach of planning law is causing and how it directly affects the complainant
- Full contact details of the complainant, including name, address and email address (if possible). This enables us to register the complaint and make future contact with updates regarding the investigation and what action, if any, will be taken. It also enables us to establish any harm being caused and to collect evidence, where necessary.
- Confirmation that the complainant is willing for their details to be passed onto another section of the Council or appropriate body (e.g. Environment Agency, Surrey County Council)

Elmbridge Borough Council will not tolerate any inappropriate or defamatory statements within any accompanying letters of complaints, either regarding the person who has allegedly carried out development without planning permission or any Council Officer. The content of any letters should focus on factual information.

Elmbridge Borough Council acknowledges that complainants can be very concerned or angry about an alleged breach, but under no circumstances will anger against or abuse against Council officers be tolerated. Officers of the Council are not directly responsible for
the breach and are there to assist complainants. However, they are only able to work within the parameters of the legislation, over which Officers have no control. Officers have the right to terminate abusive telephone calls or conversations and are encouraged to do so by the Council. Ongoing communication is then likely to proceed in writing.

**What will we do with complaints?**

Once the complaint has been duly received in accordance with the above, it will be acknowledged in writing within one day of receipt by the Planning Administration Team and the file will be allocated to the appropriate Investigations Officer by the Enforcement Manager (or the Development Control Manager in their absence) and prioritised in accordance with the Prioritisation Scheme included in this Charter. The complainant will be advised of the contact details of the Investigation Officer dealing with the case, the priority allocation and details of this Enforcement Charter. The document will downloadable available on-line in both a full version and a handy leaflet format. They will also be available in hard copy in the Planning Reception or by post upon request.

Complaints that do not fall within the jurisdiction of the Town Planning Division will not be investigated further. Reference should therefore be made to the list of matters that will not be investigated before making a request to avoid disappointment and a delay in the matter being dealt with another appropriate body. However, should a complaint be made that cannot be investigated, within 10 days of receipt of any such complaint, the complainant will be advised of this and, where possible, the appropriate body to direct the complaint to. If the complaint is one that another Council service can assist with, the details will be passed on, subject to the complainant accepting their information being passed on, and the complainant informed within 10 days of receipt which service will be dealing with their complaint.

**The Investigation**

Every investigation involves two stages of assessment:

- Whether there is a breach in planning control
- Whether it is expedient to take formal action

As part of the first assessment, the Investigations Officer will investigate those complaints that can be processed within the Town Planning Division. Prior to visiting the site, an initial check of the Council’s planning and enforcement records will be undertaken. Additionally, the officer will call the complainant to ensure the correct details have been collected and to discuss further the areas of concern. This will ensure, in most cases that all the information required for the investigation is collected during one site inspection.

**What will happen during the site investigation?**

The following process will be followed during a site inspection where contact with either the complainant or the person who has carried out development without planning permission is necessary and access is required:

- Proof of identity will be shown on request
- The purpose of the visit and the alleged breach of planning law will be explained
- Access to the land/buildings will only be made if necessary to complete the investigation

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Information will be collected to establish whether a breach of planning law has occurred, to check compliance with a notice or check whether a breach has been resolved.

Notes and photographs will be taken

Under Section 324, 196A and 214B of the Act, Officers can enter land at any reasonable time for the purposes thereby defined. With regard to houses 24 hours notice can be given and in all other properties, including external areas, gardens and outbuildings, no notice is required.

What will happen after the site investigation?

Following the site inspection further research may be undertaken into the planning history or other relevant sources, for example ownership details, aerial photography and records from other Council services such as Building Control and Taxation. If adequate information is unavailable, Officers are able to request information from the person who has carried out development without planning permission by using a Planning Contravention Notice or a Section 330 Notice. (See Planning Enforcement Toolkit for details). Further site visits may be necessary to gain further information and/or evidence.

Keeping the person who has carried out development without planning permission and complainant informed

Elmbridge Borough Council is committed to treating both the complainant and the person who has allegedly carried out development without planning permission fairly. In many cases due to protracted negotiations, failure to access property or make contact with the parties involved, often there is nothing to report and therefore parties often believe no work is being undertaken. This is not the case. The complainant will be kept informed as regularly as resources allow regarding progress on the investigation, and in any case at least every 28 days. Potential stages of notification, which will vary dependent upon the nature and outcome of the investigation, will be as follows:

- Within 10 days of receipt of the complaint
- After the site inspection advising of the Officer’s findings and what the next actions will be
- Updates if new information is received or deadlines are issued e.g. the service of a Planning Contravention Notice, and what actions will be upon receipt or non-receipt
- That the investigation stage is complete and the case has been closed. A detailed reason behind the closing of the case will be given
- That formal action is being considered and a report is being prepared. Advice is given as to the decision-making process and the timescales involved
- That no action has been agreed by the Council and the case has been closed. A detailed reason behind the closing of the case will be given
- That action has been agreed by the Council. Advice is given as the next stages and timescales involved and the potential variations in the process and outcomes
- That a Notice has been served, the content of the notice and compliance period.
- If an appeal is lodged. Details will be passed to the Appeals Co-ordinator to provide notification of the appeal process and timescales and the outcome.
- The outcome of any compliance site inspections following the Notice taking effect, either with or without appeal.
All communication will be carried out in writing preferably by email. However, where contact is made by phone by the complainant a verbal response will be given and recorded on the file.

It is not always possible to gauge how long it will take for the Council to resolve alleged breaches. This is due to their often complex and sensitive nature and the need to collect detailed and accurate information before being in a position to consider taking action. This is particularly important should the Council serve a notice or end up in an appeal or court situation since an appeal can be lost if correct procedures are not followed and the Council can be fined in some instances.

Many investigations can be carried out without the knowledge of the person who has allegedly carried out development without planning permission. Where this is the case, it is not always appropriate to provide any notification of the Council’s involvement since it may result in poor neighbour relations. Persons who have allegedly carried out development without planning permissions will therefore also be kept informed, where it is appropriate, as regularly as resources allow regarding the progress of the investigation, and in any case at least every 28 days. All letters requiring action and/or further information will give reasonable timescales commensurate with the nature of what is required. The person who has allegedly carried out development without planning permission will be notified on each occasion of the alleged breach, the outcome of the investigation, and the Council’s powers should the person who has carried out development without planning permission not take remedial action to remedy the breach. In all cases where formal action is agreed by the Council, the person who has carried out development without planning permission will be sent a final letter prior to the issue of the Notice. All correspondence will be in writing or preferably by email. Where the person who has carried out development without planning permission makes contact by telephone this will be recorded on the file.

What will happen if a breach is found?

Elmbridge Borough Council must first assess whether the breach is such that action is necessary in the interests of the community and public amenity. Cases of lower priority, as identified in the Prioritisation Scheme may be closed with no further action. These will be cases where the breach is trivial and has, in the Council’s view, no harmful effect upon public amenity or where the breach is likely to receive planning permission or consent upon receipt of an application. It would not be expedient to take action against a development that was acceptable when assessed against policy and guidance and did not cause any harmful impact upon public amenity.

Where a breach is found and it is considered to be a priority due to its harmful effect upon public amenity, it is the Council’s aim to try to remedy the situation through informal action, where possible and appropriate. It is not in the Council’s or the community’s interests to proceed to formal action without first exploring and using other tools to remedy the situation. Action will always be taken that is commensurate and proportionate with the breach of planning law to which it relates.

Negotiation is the best tool to remedy breaches against planning law. This is therefore the favoured course of action by Councils. A letter will be sent to the person who has allegedly carried out development without planning permission advising whether a breach of planning law has been found, and if so what is the likely course of action to be taken by the Council. The letter may outline any steps that are required to remedy the breach and an opportunity to discuss the matters and any possible options available will be given. In all cases the person
who has allegedly carried out development without planning permission will be given the opportunity to remedy the breach rather than take formal action.

In accordance with Government guidance, the Council will not seek a retrospective application solely to certify an unauthorised development. Without prejudice to the proper consideration of any such planning application, a retrospective application will only be sought where the development is possibly acceptable in planning terms but could be limited by condition to remedy the breach. For example a change of use may be acceptable upon control of its hours of opening, or a development may be acceptable upon a detailed planting scheme being implemented and maintained. Retrospective planning applications are treated in the same way as planning applications submitted prior to development. The application will be assessed against central and local government policy and guidance together with other material considerations, including third party representations and consultation responses. Formal enforcement action will not be pursued during the consideration of the retrospective application since to do so could prejudice the decision making process.

Alternatively removal of the development in whole or part may be sought through negotiation with the Investigation Officer.

Reasonable timescales, within the view of the Council, will be imposed for responses from the person who has carried out development without planning permission either for the submission of a valid retrospective planning application or for remedial works or amendments to be undertaken. It is expected that deadlines will be adhered to or the Council will have no option but to consider formal action. This is necessary since in many cases where a serious breach is found there is consequential significant harm being caused to public amenity that further delay would not be acceptable. On a case by case basis, a balance will be sought between the need to overcome the harm and the likely lengthy timescales that are involved in pursuing formal action.

Most enforcement cases are resolved through these two courses of action. However, if the remedy is not resolved through informal action, the Council will consider whether the most appropriate way forward is using formal action. This decision is made by the Strategic Director – Services, in consultation with Ward Councillors. Regardless of which formal notice is served, they will include the following information:

- A description of the breach of planning law that has taken place
- The steps that need to be undertaken to remedy the breach and the timescale by which they must be carried out
- The consequences of failure to comply with the notice
- Rights of appeal, where applicable

The Enforcement Notice becomes a charge on the property. Elmbridge Borough Council are required to keep an Enforcement Register, which is a public document, which lists details of all the enforcement notices, breach of condition notices and stop notices. This Register is available on the Council’s website at:

www.elmbridge.gov.uk/planning/control/enforcement.htm

It is also available for viewing at the Civic Centre. Upon service of a Notice to take action the complainant will be advised within 10 days.
Where the breach is resolved, by whichever tool, the person who has carried out development without planning permission and the complainant will be notified, giving the reasons behind the Council’s action and decision, and the case closed. If however the situation is not resolved by the service of a Notice it is open to the Council to report the matter to the Magistrates Court or to take Direct Action (as detailed in the Planning Enforcement Toolkit). If Direct Action is the chosen way forward, Elmbridge Borough Council have the right to enter the land/building and carry out the works required to ensure compliance with any Notice served. Any expense incurred can and will be recovered from the landowner or lessee through legal and court procedures where necessary.

**What is the appeal process?**

As detailed above in the Planning Enforcement Toolkit, there is a right of appeal by the person who has carried out development without planning permission against some of the specific notices. The Council must therefore be satisfied regarding the soundness of any enforcement notice served since there is a risk of costs being awarded against the Council if it is found to have acted unreasonably. An person who has carried out development without planning permission can appeal to the Planning Inspectorate. Most appeals are dealt with by what is called the written representations process whereby written statements are submitted and exchanged. However, some can be determined by a hearing of public local inquiry. Appeals are required to be submitted prior to the notice taking effect and therefore normally within 28 days of notice. As required by the Government, complainants will be notified if an appeal is lodged.

**Grounds of appeal against an Enforcement Notice**

There are seven grounds of appeal:

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

**Appeal outcomes**

There are three outcomes of an appeal:

- 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 Inspector, thereby remedying the breach. It is then the Council’s responsibility to monitor and enforce the terms of the notice, and where necessary if the notice is not complied with refer the case to the Magistrates Court for possible prosecution.
- The appeal is allowed on ground (a), which in effect grants retrospective permission for the development. The Planning Inspector has the power to impose conditions and limitations upon any such permission and it is for the Council to monitor these.
- The Notice is quashed. In these cases, dependent upon the reason for the Notice being quashed, i.e. If it is on a technicality, for example, the Notice was not correctly
served, and the judgments of the Planning Inspector, the Council may consider reserving a new Notice.

Grounds of Appeal against a Section 215 Notice

(a) No adverse impact upon amenity  
(b) The condition of the land is attributable to its lawful use  
(c) The requirements of the Notice are excessive  
(d) The Compliance period is too short

Outcomes of Appeal

The Court can:

- Correct immaterial defects and errors in the Notice and require compliance
- Uphold the Notice and require compliance
- Vary the Notice and require compliance
- Quash the Notice

6.0 How will Elmbridge Borough Council carry out pro-active enforcement?

Elmbridge Borough Council is committed to providing an effective and efficient enforcement service. A reactive service dealing with complaints alone is neither efficient nor effective. A strong pro-active service can act as a deterrent and therefore potentially reducing breaches in planning law.

There are a number of actions that Elmbridge Borough Council takes to be pro-active in Planning Enforcement:

Monitoring

A robust monitoring process ensures that planning permissions are implemented in accordance with the approved drawings and adhere to any conditions, legal agreements or limitations imposed on those permissions.

Monitoring will be carried out as resources allow since it is not appropriate, practical or proportionate to ‘police’ all planning decisions made by Elmbridge Borough Council, which number on average 2000 per annum. Developers are not required to notify the Council when they are implementing development and since permissions are given a 5 year period to commence and thereafter a lifetime to complete, it is therefore not practicable to monitor all decisions made. However, many planning permissions are unlikely to generate public amenity issues warranting monitoring or investigation. Planning permissions for sensitive major development will automatically be monitored given the potential for impact upon public amenity. Other permissions in accordance with the Prioritisation Scheme may be also be monitored where there is a known public amenity issue. All applications made for retrospective planning permission will be monitored for compliance. Additionally, where resources allow, the Council’s Building Control records and the NHBC records will be monitored. This monitoring also generates investigations where submissions are made for
building work, which may need planning permission but there are no corresponding planning records for the work.

**Compliance Work**

The Planning Enforcement Team at Elmbridge Borough Council includes a designated Compliance Officer. This Officer specifically deals with all breaches of planning control relating to non-compliance with conditions and non-compliance with the approved plans. Examples of common breaches of condition relate to the installing non-obscurely glazed windows and the use of appropriate building materials and landscaping. Additionally it is not uncommon for developers to make amendments to their development during the construction works to take account of previously unknown site specific circumstances e.g. level changes and siting of buildings. This area of enforcement is important since the Council acknowledges that in granting planning permissions for sites the decision has been based after careful assessment of the submitted drawings and supporting information supplied by the developer. Also conditions are generally attached to control the development to ensure that specific harm is not caused. Often changes made are minor and would not result in any significant harm. However, it is important that they are considered by the Council to ensure that the development remains acceptable and does not cause harm to amenities. Whilst it is frustrating that developers may carry out works which do not comply with the permission granted and the Council would never condone such unauthorised works, action cannot be taken solely on the basis that the breach has taken place; harm must be found for formal action to be taken by the Council.

In carrying out compliance work, following a site inspection to check the development against the approved plans and conditions, the Compliance Officer will in the first instance make contact with the developer to obtain either drawings of any changes made to enable an assessment for the need for planning permission and to assess any amenity impact. If permission is required retrospective applications are invited to enable the formal scrutiny of the Council. The Officer will also remind the developer of the need to comply with the approved drawings and the conditions. Where details have not been submitted, as required by some conditions e.g. details of landscaping or materials to be used, a request is made for the formal submission.

Compliance work generally involves informal action through negotiation and can therefore take time. It is only if a retrospective application is refused, or drawings are not submitted for amendments made on site and harm has been established, or where a condition has not been complied with following warning, that formal action will be taken.

**Working with other Council services and public bodies**

Some complaints can involve a number of Council services or public bodies. In such cases, the Council will seek to remedy the harm being caused by using the most efficient and effective tool, whilst avoiding duplication of work. An example of this would be where an activity needs planning permission and is causing a statutory noise nuisance, it may be more effective in some cases to pursue the matter through planning enforcement rather than by Environment Health and vice versa. A further example would be in dealing with untidy land and the display of advertisements.
Publicity

Elmbridge Borough Council considers that successful enforcement, when achieved through appeal or through the courts should be used as a deterrent to future similar breaches of planning law. The Council therefore reserves the right to publicise such cases.

Implementation of policy and guidance

Where relevant upon the adoption of any new policies or guidance, Elmbridge Borough Council will publicise this to re-enforce the implementation of such policies and/or guidance.

Targeted action

Where Elmbridge Borough Council is receiving a number of similar complaints, which relates to unauthorised development which have a detrimental impact upon public amenity, targeted action through publicity and direct correspondence will be used to state the Council’s position. Publicity will be used to re-enforce the Council’s position.

An example of this is targeted action against unlawful estate agents boards. Officers regularly write to estate agents reminding them of the Advertisement Regulations and the need to comply. Additionally, where resources allow, the Planning Enforcement Team will undertake a removal exercise, followed by charges being made for removal and storage, and potential prosecution action. In March 2010, a targeted exercise was carried out and secured the removal of 187 unlawful estate agents boards.

Engaging the local community

It is not possible for the Planning Enforcement Team Council to ‘police’ the Council area for breaches of planning law. For access to be gained to land/buildings, there has to have been a complaint about or likelihood of a breach.

The local community play an essential role in ‘policing’ their own areas and alerting the Council to alleged breaches in planning law for investigation.

Planning decisions are available on the Council’s website at www.elmbridge.gov.uk. If the Council is notified of any deviation from approved plans, works going ahead following a refused application, or non-compliance with any of the conditions attached to a permission, an investigation will be carried out by the Planning Enforcement Team.

Following publication of this Charter, publicity will be used to advertise Elmbridge Borough Council’s pro-active stance on breaches of planning control actively inviting the local community to be the Council’s eyes and ears. Details will also be posted on the Council’s website.

7.0 What are Elmbridge Borough Council’s priorities?

It is not always possible to anticipate the length of time required for a decision or for action on a case, nor for a case to be resolved. Progress can be delayed for a number of reasons, for example where evidence must be collected and verified over a period of time, where negotiations take place, or where formal procedures have to be used. Where an application is submitted to regularise the breach of control or where an appeal is made to the Planning
Inspectorate against a decision of the planning authority this will affect the timescale for
resolution of the case. The Council recognises that delays can be a source of considerable
frustration to those who consider that their amenity is being affected.

Elmbridge Borough Council therefore recognises that when a complaint is made that there is
a high expectation for the matter to be resolved quickly and any delays can be frustrating.
Due to the large number of enforcement complaints received by the Town Planning Division
it is necessary for them to prioritised and available resources to be assigned appropriately
and proportionately. This Prioritisation Scheme has been adopted to take into account the
level of harm being caused to the local community and public amenity. Nevertheless, the
Council is committed to investigate every alleged breach and, as stated both the person who
has allegedly carried out development without planning permission and the complainants will
be regularly kept informed. Regardless of the source of the complaint it will be allocated to
one of the priorities listed below. This will prevent unnecessary allegations of bias from
complainants. The timescales placed against the priorities is that which is considered to be
reasonable but there will be instances when they are not met due to unforeseen
circumstances, such as inaccessibility to the land/building, difficulties in tracing the
landowner(s), protracted negotiations and incremental compliance. In all cases it will be for
the Council to have the final word in deciding whether and to what level any harm to public
amenity results from an alleged breach and whether the breach falls within Priority A, B, C or
D. Upon receipt of all complaints, which are of a planning nature, the Enforcement Manager
(or the Development Control Manager in their absence) will allocate the priority to the case.
The complainant will be notified of this within the acknowledgement letter, which is sent out
within one day of receipt of the complaint. Where necessary, as a result of the site
investigation or ongoing investigation process, the case may be re-prioritised by the
Enforcement Manager (or the Development Control Manager in their absence). The
prioritisation of cases is particularly necessary to manage expectations of complainants and
will aid effective work during periods of high workload and during holiday periods. It should
be emphasised that the prioritisation system will not result in significant delays to those
cases in lower priorities. All cases will be investigated as soon as possible, regardless of the
formal prioritisation system and the differing timetable represent a system of informing
complainants and ensuring the most important cases are dealt with as quickly as possible.

Priority A

These alleged breaches will be visited by an Officer the day the complaint is received:

- Potentially irreversible breaches of planning control e.g. Demolition or alterations to a
  listed building or a building in a conservation area, or works to a protected tree

Priority B

These alleged breaches will be visited by an Officer as soon as possible and not later than 7
days from receipt of a complaint:

- Works that have no planning permission and are not likely to gain such permission, for
  example unauthorised development within the Green Belt, or changes of use
  inappropriate to their location causing direct and serious nuisance or harm, such as
  car repairs in a residential area.
- Development not being carried out in accordance with the appropriate planning
  permission that can not be easily rectified, for example, re-siting a whole building
- Works that have only just been identified but may soon be immune from action e.g. nearly four years old for building operations, or nearly 10 years old for a material change of use without permission.

**Priority C**

These alleged breaches will be visited by an Officer as soon as possible and not later than 14 days from receipt of a complaint:

- Development likely to cause general harm to public amenity, in particular residential amenity, the setting of a listed building or character and appearance of a conservation area. For example the erection of buildings close to neighbouring properties.
- Breaches of condition attached to a planning permission where there is likely to be general harm to public amenity, in particular residential amenity, e.g. windows and materials
- Changes of use causing general harm to the amenity of an area, for example commercial uses in residential properties such as child minding or working from home.

**Priority D**

These alleged breaches will be visited to an Officer as soon as possible and not later than 21 days from receipt a complaint:

- Development likely to cause limited or no harm to public amenity
- Developments likely to gain planning permission
- Minor breaches of conditions not likely to cause serious harm

For example the following alleged breaches will be of a low priority unless they are within the setting of or on a listed building, in a conservation area, in the Green Belt, or involve protected trees:

- Advertisements
- Satellite dishes
- Loss of unprotected trees and landscaping
- Hardstanding
- Fences
- Untidy land

**8.0 What are Elmbridge Borough Council’s planning enforcement service standards and targets?**

Elmbridge Borough Council is committed to providing an efficient and effective planning enforcement service with continuous improvements introduced through monitoring and reviewing processes. The Council is aware how planning issues can evoke frustration and it is everybody’s interest for the matter to be resolved as quickly as possible. However, every case is potentially different and a timescale target for resolving cases is not an appropriate tool for monitoring progress. The Council understands that the main frustration of customers is not being kept informed of what officers are doing or how the case is progressing towards a resolution. Since this Charter is also intended to set targets, it is considered appropriate to
base these on a customer care basis and focusing on improving communication as well as resolution of cases.

The following service standards are summarised from the body of this Charter as:

- This Enforcement Charter will be monitored and reviewed and updated accordingly and taking into account any legislative or Government policy and guidance changes and any feedback received.
- Elmbridge Borough Council will operate a re-active and pro-active enforcement service.
- All written (by letter or email) complaints that relate to a planning matter will be investigated in accordance with the Prioritisation Scheme and regardless of the source, as follows:
  - All complaints will be acknowledged within one day of receipt.
  - A site visit will be carried out the day of receipt of a request for investigation for Priority A complaints.
  - A site visit will be carried out within 7 days of receipt of a request for investigation Priority B complaints.
  - A site visit will be carried out within 14 days of receipt of a request for investigation Priority C complaints.
  - A site visit will be carried out within 21 days of receipt of a request for investigation Priority D complaints.
  - The site visit will be carried out in a professional manner with identification shown and access only to be gained where necessary.
  - With reference to the section Keeping The Person who has carried out development without planning permission and Complainant Informed, all interested parties (complainants and person who has allegedly carried out development without planning permissions) will be advised of the progress and outcome of the investigations within 28 days of their conclusion, regardless of whether action is to be pursued or the case to be closed, and in any case they will be kept informed on a regular 28 day basis.
  - If formal action is to be taken the complainant will be notified within 10 days of any notice being served.
  - The Council will endeavour to either close an investigation case or serve a notice within three months of that acknowledgement letter for all complaints.

- Elmbridge Borough Council will endeavour to resolve alleged breaches of planning law by means of negotiation and informal action. Formal action by the Council will be as a last resort or used in situations where an immediate solution is necessary in the interests of public amenity. The most appropriate Notice will be used to remedy the harm being caused.

9.0 Who will be investigating alleged planning breaches?

Within Elmbridge Borough Council, the planning enforcement function is an integral part of Town Planning Division. All the relevant officers are based at the Civic Centre, High Street, Esher, KT10 9SD. The investigation and enforcement of breaches of planning law is generally undertaken by Investigation or Compliance Officers within the Planning Enforcement Team. The Team
comprises an Enforcement Manager, two Investigation Officers, one Compliance Officer and one Infrastructure Provision Monitoring Officer, who also undertakes planning investigation work.

Investigations relating to listed buildings and heritage assets will be undertaken by the appropriate specialist officers within the Town Planning Division due to their potential seriousness and complexity, with assistance from the Planning Enforcement Team. The procedures, timescales and services standards used are those described in this Charter.

Investigations relating to trees protected by a Tree Preservation Order, within Conservation Areas and tree protection during development will be undertaken by officers within the Tree Service due to their specialist nature and requirements. These investigations will be carried out using separate procedures, timescales and service standards to those described within this Charter. Details of this are to be included within Appendix B: Tree Enforcement.

10.0 What happens to complaints and suggestions about the planning enforcement service?

Enforcement complaints are not made against Elmbridge Borough Council but it is the Council’s duty to investigate them and take any necessary action at their discretion.

Elmbridge Borough Council is committed to providing an efficient and effective enforcement service. However if any party involved in the enforcement process is aggrieved by the service being provided the Council will investigate such complaints separately. It should be noted that the outcome of an enforcement investigation cannot be the subject of a complaint but only the way that the case was handled by Council officers.

Suggestions for improvements to service provision are always welcomed by the Council. This helps the Council continually improve.

Any complaints should be explored in the first instance with the Investigation or Compliance Officer or the Enforcement Manager and if there remains dissatisfaction with the service these should be put in writing to the Head of Town Planning at the following address: Town Planning Division, Civic Centre, High Street, Esher, Surrey KT10 9SD

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

If a complainant remains unsatisfied 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 and the complainant remains unhappy then they can take their 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.
Appendices

Appendix A – Joint Working Protocol – Planning and Environmental Health and Licensing-available upon request
Appendix B – Tree Enforcement (to follow)

Should you require further information on this Charter please contact Town Planning.

Telephone: 01372 474787
Email: tplan@elmbridge.gov.uk
Website: www.elmbridge.gov.uk/planning
Planning Enforcement Charter

Introduction

Elmbridge Borough Council is committed to the protection of the character of Elmbridge and the amenity of its residents and therefore places a high priority on planning control. This leaflet has been prepared to outline the basics of planning enforcement in Elmbridge. For more detail regarding the procedures, powers and service standards reference should be made to the Planning Enforcement Charter available on-line at www.elmbridge.gov.uk/planning

The Charter can be viewed in the planning reception or is available on request.

What is Planning Enforcement?

Planning enforcement is a discretionary power and its purpose is not to be punitive but to enforce and resolve breaches in planning control that cause harm to public amenities. It will only be used as a last resort when informal action has not remedied the harm caused by the breach.

What is a Breach in Planning Law?

Development without planning permission; development not in accordance with approved plans; carrying out works to a listed building without listed building consent; the display of an advertisement without advertisement consent; the unauthorised felling or carrying out of 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 and poorly maintained land

What is not a Breach in Planning Law?

Flytipping, abandoned vehicles and graffiti; dangerous structures, structural problems and damage to property; highway obstructions, parking and traffic Boundary and party wall disputes; running a business from home, where the residential use remains the main use and there is no negative impact upon the local area; activities incidental to the residential use of a dwelling; stationing of a caravan within the grounds of a dwelling; clearing of un-protected trees or landscaping and gardening works; landownership or private legal agreements/covenants; matters not controlled by planning conditions; non-compliance with an informative; out of hours construction and related disturbances; general pollution; sewers, soakaways, flooding and other drainage matters; and high hedges.

How to make an Investigation Request?

All investigation requests into potential breaches of planning law should be made to the Council in writing or by email using the Council’s Investigation Request Form.
The Investigation Request Form is available on-line or at the planning reception at the Civic Centre and can also be supplied to complainants by email or by post if necessary. Personal information will always be treated confidentially. Anonymous complaints will not be processed.

What happens next?

The investigation request will be acknowledged. Details of the investigation case officer will be provided. The case will be prioritised, in accordance with the Prioritisation Scheme outlined in this leaflet.

What are the Council’s priorities?

**Priority A:** Potentially irreversible breaches of planning control e.g. alterations to a listed building  
**Priority B:** Works that have no planning permission and are not likely to gain such permission. Development not being carried out in accordance with the appropriate planning permission that cannot be easily rectified.  
**Priority C:** Development likely to cause general harm to public amenity  
**Priority D:** Development likely to cause limited or no harm to public amenity

For example, the following alleged breaches will be of a low priority unless they are within the setting of or on a listed building, in a conservation area, in the Green Belt, or involve protected trees: advertisements, satellite dishes, loss of unprotected trees and landscaping, hardstanding, fences and untidy land.

What are the Council’s planning enforcement service standards and targets?

All complaints relating to a planning matter will be investigated in accordance with the Prioritisation Scheme, regardless of source. Site visits will be carried out in a professional manner with identification shown and access only to be gained where necessary. Communication will be carried out in writing, preferably by email, with all parties involved and will be regular, and in any case as a minimum every 28 days. The Council will endeavour to either close an investigation case or serve a notice within three months of the initial acknowledgement letter for all complaints.

Contacts?

The investigation and enforcement of breaches of planning law is generally undertaken by Investigation or Compliance Officers within the Planning Enforcement Team. Investigations relating to listed buildings and heritage assets will be undertaken by the appropriate specialist officers within the Town Planning Division with assistance from the Planning Enforcement Team. Investigations relating to trees protected by a Tree Preservation Order, within conservation areas and tree protection during development will be undertaken by officers within the Planning Tree Team.

Should you require any further information relating to planning enforcement please contact the Town Planning Division:

Telephone: 01372 474787  
Email: tplan@elmbridge.gov.uk  
Website: www.elmbridge.gov.uk/planning
ISSUES NOT DEALT WITH BY PLANNING ENFORCEMENT TEAM

- **Land ownership or private legal agreements/covenants** - are a private matter between landowners, which the Council cannot provide assistance.

- **Flytipping, abandoned vehicles and graffiti** – These are investigated and dealt with by the Council’s Environmental Care Team. To make a complaint contact envcare@elmbridge.gov.uk or phone 01372 474775. More details are available on-line at: www.elmbridge.gov.uk/envcare/streets

- **Dangerous structures, structural problems and damage to property** – These are generally matters that have to be resolved between landowners. Dangerous structures can be investigated by the Council’s Building Control Team who can be contacted on bcon@elmbridge.gov.uk or 01372474779 or reported using the on-line form at: www.elmbridge.gov.uk/buildcon/bcforms.htm

- **Highway obstructions, parking and traffic (whether or not it is related to a planning development)** – including commercial vehicles parking in residential areas, signs on public footpaths, mud on the road, vehicles on grass verges or causing an obstruction. These matters are investigated by Surrey County Council Highway Department, who can be contacted on 0300 200 1003. If on private road - this is a civil matter and neither Council can provide assistance.

- **Estate agents boards attached to street signs or sited on leisure land (commons, recreation grounds etc)** – estate agents boards attached to street signs are dealt with by Jennifer Bailey on x4152. Estate agents boards on leisure land are dealt with by Leisure and Cultural Services.

- **Boundary and party wall disputes** - between neighbouring properties are a private matter between landowners, which the Council cannot provide assistance.

- **Matters not covered by a planning condition and matters listed in a planning informative**

- **Stationing a caravan within the grounds of a dwelling** - for use by the occupier

- **Internal works to a non-listed building**

- **Clearing of un-protected trees or landscaping and gardening works**

- **Works to and/or removal of TPO trees or in trees in conservation areas and non-compliance with tree protection on site** – are dealt with by the Tree team
- **Non-compliance with an informative on a planning decision** – Informatives on planning decisions have the purpose of being advisory notes for the developer and are not therefore enforceable.

- **Out of hour's construction and related disturbances** – the law relating to noise does not specify permitted hours of working for building operations. If a noise nuisance occurs then this may be able to be investigated and dealt with by the Council’s Environmental Health Team (see below under General pollution for further details) who can be contacted on envhealth@elmbridge.gov.uk

- **General pollution** – smell and noise nuisances. Such matters may be able to be investigated by the Council’s Environmental Health Team.

  More advice regarding smell nuisance can be found at: www.elmbridge.gov.uk/atoz/detail.htm?pk_services=1064

  More advice about noise nuisance and details of which the Council can assist on can be found at: www.elmbridge.gov.uk/envhealth/noise

  For further advice on both smell and noise nuisance contact envhealth@elmbridge.gov.uk

- **Sewers, soakaways, flooding or other drainage matters** (other than those relating to the formation of hardstanding, when planning permission may be required)

  Foul water drains are the responsibility of Thames Water, details of which are available on www.thameswater.co.uk.

  Clearing the surfac water drains and gullies on the public highway is the responsibility of Surrey County Council Highways Department, who can be contacted on 08456 009009.

  Road sweeping (leaves etc) is the responsibility of the Council’s Environmental Care Team, who can be contacted on envcare@elmbridge.gov.uk.

  Localised drainage/flooding issues between neighbouring properties are a private matter between landowners, which the Council cannot provide assistance.

- **High hedges** – The Council has powers under Part 8 of the Anti-Social Behaviour Act 2003 to deal with complaints about high hedges. The legislation enables the owner or occupier of a domestic property affected by a high hedge to make a complaint to the Council, subject to certain criteria. This is dealt with by Planning and Trees and not Planning Enforcement team. Complaints forms, guidance notes and an explanatory leaflet may be obtained from the Town Planning Reception at the Civic Centre or downloaded. More details are available on-line using the following link:

  www.elmbridge.gov.uk/planning/trees/highhedge.htm
PLANNING INVESTIGATION REQUEST FORM

Please complete all the details below. We need all these details to ensure that we can carry out a full investigation, contact you for more information, if necessary, and keep you informed. Before completing and submitting the form, please refer to the Planning Enforcement Charter for a list of matters that cannot be investigated by the Planning Enforcement Team.

Your Name:

Title:
First name:
Surname:

Your Address:

Street number/Name of property:
Street:
Town/village:
Postcode:

Your Contact details:

Email address:
Daytime phone number:

Exact location of alleged breach:

Street number/Name of property:
Street:
Town/village:
Postcode (if known):

Type of alleged breach:

Please tick appropriate box, which best describes alleged breach:
☐ Erection of a structure/building(s)
☐ Change of use of building/land
☐ Installation of a paved front driveway/garden
☐ Works to a listed building
☐ Display of advertisement(s)
☐ Non-compliance with approved drawings on planning permission
☐ Non-compliance with condition(s) on planning permission
☐ Non-compliance with tree protection conditions on planning permission
☐ Works to protected trees
☐ Untidy land
☐ Other development
Full description and details of the alleged breach:

Please provide photographic, diary or other relevant evidence to substantiate claims being made and complete the following detailed questions:

What? (describe and provide details of the alleged breach)

Where? (which part of the building/which part of the land)

When? (when the breach first started/when it took place and if relevant, how often did/does it take place)
Which condition(s) on what planning permission are not being complied with? In what way are the conditions not being complied with?

Exactly how does the development deviate from which planning permission (e.g. higher than approved plans)

Harm? (details of how this breach affects your amenities)
(NB – value of property/damage to property and landownership are not planning issues)

This form requires you to submit personal information. This information will be kept securely and will only be used for the purposes of investigation and keeping you informed. Your details will not be passed to third parties and will remain confidential. However, sharing your information with other divisions of this Council or Surrey County Council could help us to resolve your investigation request. Please tick below, where agreed, and sign/date:

☐ I give consent for the information on this form to be shared with other divisions of the Council
☐ I give consent for the information on this form to be shared with Surrey County Council

signed..........................................................dated.................................