



**Ebbsfleet  
Development  
Corporation  
Planning  
Enforcement  
Plan**





# Contents

|  |    |
|--|----|
| Introduction .....   | 4  |
| Government advice and legislation .....                          | 5  |
| Key principles of our planning enforcement service .....         | 5  |
| What is a breach of planning control? .....                      | 5  |
| Matters that are not breaches of planning control.....           | 6  |
| Enforcement action is discretionary .....                        | 6  |
| How to report an alleged breach of planning control .....        | 7  |
| How do we prioritise your enquiry? .....                         | 7  |
| Examples of categories and the timescale for investigation ..... | 7  |
| Category A .....   | 7  |
| Category B .....   | 8  |
| Category C .....   | 8  |
| What are the possible outcomes of our investigation? .....       | 8  |
| Deciding not to take action .....                                | 8  |
| Taking formal enforcement action .....                           | 9  |
| Enforcement Notice .....   | 9  |
| Breach of Condition Notice .....                                 | 9  |
| Listed Building Enforcement Notice .....                         | 9  |
| Section 215 Notice .....   | 9  |
| Stop Notice .....  | 9  |
| Injunction .....   | 9  |
| Direct Action .....  | 10 |
| Prosecution .....  | 10 |
| Planning Contravention Notice .....                              | 10 |
| Section 330 Notice .....   | 10 |
| Enforcement powers that remain with the Local Authorities .....  | 10 |
| Proactive compliance .....                                       | 10 |
| Our commitment to residents .....                                | 10 |



## Introduction

**Ebbsfleet Development Corporation (EDC) oversees and facilitates the creation of a 21st century Garden City in North Kent. The Corporation is responsible for determining planning applications, giving pre application advice and carrying out planning enforcement in the urban development area.**

Through its planning powers the Corporation seeks to ensure that the character, amenity and the environment are not adversely affected by new development, improving the infrastructure and enabling development to be brought forward in a way that is both sustainable and for the benefit of the public.

Effective operation of the planning system depends on our ability to ensure that development is carried out in accordance with planning permissions and to enforce against development carried out without permission. Effective planning enforcement is vital to make sure residents continue to maintain confidence in the planning system.

Not all development needs planning permission. Planning legislation allows certain works and changes of use to take place without requiring planning permission. This is known as permitted development (PD). However, within the Ebbsfleet Urban Development Area, some permitted development rights have been removed by conditions imposed on existing planning permissions for the major development sites, such that planning permission is required for works that might otherwise be PD. These PD rights were removed in order to retain planning control to ensure incremental changes to new buildings do not cause harm to the character of the area or amenity of surrounding residents.

Ebbsfleet Development Corporation has prepared and published Resident Guides for the major development sites to provide useful information about those sites and to advise when planning permission is required for specific home improvements.

A free pre-planning application advice service is offered by the team to provide informal advice on proposed developments. This can reduce the likelihood of an application being refused and is intended to help make the planning application process easier.



## Government advice and legislation

This Plan responds to the government guidance on planning enforcement in the National Planning Policy Framework which states:



***Effective enforcement is important to maintain public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. They should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where appropriate.***

## Key principles of our planning enforcement service

Our approach to enforcement is based on the following key principles:

- Our enforcement action will be remedial rather than punitive
- We will investigate all reports about breaches of planning control\*, and aim to visit the site concerned within the timescales set out in this document
- We will give priority to the most serious enquiries based on the degree of harm caused by the development within the subject of the enquiry, based on the 3 categories set out in this document
- We will explore solutions to remove harm caused by unauthorised development
- We will keep the identity of enquirers confidential
- Breaches are considered on individual facts and circumstances, but all are considered in proportion, consistently

(\*we do not investigate anonymous enquiries)

## What types of breaches does this plan cover?

Examples include the unauthorised erection of a building, the unauthorised extension to a building, a material change of use of land or the display of unauthorised advertisements.

Other breaches of planning control may consist of the following:

- Unauthorised works to listed buildings
- Unauthorised works to trees subject to a Tree Preservation Order (TPO) or in a Conservation Area
- Unauthorised demolition within conservation areas
- Breaches of conditions attached to planning permissions

- Carrying out development not in accordance with the approved plans of planning permissions
- Untidy land where it affects the amenity of the area
- Unauthorised engineering operations (e.g. raising of land levels)
- Failure to comply with a legal planning agreement
- Deliberate concealment of unauthorised building works or changes of use
- Installation of advertisements without advertisement consent
- Carrying out changes to a home outside of permitted development

It is important to note that it is not always an offence to carry out works without consent. Some development may well be unauthorised but it will not be unlawful unless a formal enforcement notice has first been issued and the owner or occupier has failed to comply with the terms of that notice. Where certain development is unauthorised, we must consider the expediency of taking formal action.

## Matters that are not breaches of planning control

- Internal works to a non-listed building unless this results in additional dwellings being created
- Loss of value to a neighbouring property
- Obstruction of a highway or public right of way
- Parking of commercial vehicles on the highway, in visitor parking bays or on grass verges in the absence of restrictive planning conditions
- Parking caravans on residential driveways or within the curtilage of domestic properties (as long as they are incidental to the enjoyment of the property)
- Running a business from home where the residential use remains the primary use and there is no adverse impact on residential amenity

- Land ownership disputes or trespass issues which are civil matters
- Covenants imposed on property deeds which are civil matters
- Any works, including advertisements, that are deemed to be permitted development under planning law, regulations and orders
- Dangerous structures; these enquiries are directed to the Building Control department at the applicable local council

## Enforcement action is discretionary

We have a duty to investigate alleged breaches of planning control, however taking formal enforcement action is discretionary. This means that we assess each case based on its own facts and circumstances. Therefore, we only take formal enforcement action where it is expedient and proportionate in the public interest.

It is important to note that a breach of planning control in itself is not sufficient reason to take enforcement action. We therefore use the test of expediency to assess whether the unauthorised activities or development are causing unacceptable harm to the environment or amenity of the area having regard to the applicable Local Plan policies, the National Planning Policy Framework (NPPF) and all other material planning considerations.

We may take the view that it is not in the public interest or expedient to take formal action in relation to minor or technical breaches where the harm is not significant.

Government guidance advises that enforcement action should be a last resort. We are expected to give those responsible for a breach of planning control the opportunity to put matters right or to seek to regularise the breach before we serve a formal notice.

We must ensure that the serving of a formal notice is proportionate to the scale and impact of the breach of planning control. This means that we might not take formal enforcement action in all cases where there has been a breach of planning control identified.



## How to report an alleged breach of planning control

In order to effectively deal with these enquiries it is important that we are provided with as much information as possible. Below is a list of the type of information that would assist us:

- An accurate description of the location or address for the particular site
- A detailed description or photos of the activities taking place that are cause for concern
- Names, addresses and phone numbers of those persons responsible for the alleged breach or the owners of land (if known)
- Timescale of when the alleged breach took place
- Any other information or evidence that might assist
- The name and email address of the enquirer

Enquirers can be made about alleged breaches of planning control via:

- Email - [EDCplanning@ebbsfleetdc.org.uk](mailto:EDCplanning@ebbsfleetdc.org.uk)
- Telephone – 0303 444 8832
- A personal visit to our office is acceptable providing the enquirer is willing to provide their contact details and has made an appointment prior to arrival.

Complaints will be logged and investigated to ascertain if there has been a breach of planning control, however a complaint may not be considered if they are:

- Anonymous (however, anonymous complaints may be directed through your local councillor)
- Otherwise inappropriate

The source of any enquiries and the details of those who submit information is kept confidential in line with General Data Protection Regulations. Anonymous enquiries will not be investigated unless they relate to a matter of public safety.

## How do we prioritise your enquiry?

In order to make the best use of our resources it is important to prioritise the enquiries received in accordance with the seriousness of the alleged breach. We will do this initially when we receive the enquiry. We have set out examples of categories and the timescale for when we will begin our investigation.

In general we visit each enquiry site and the majority of our site visits are made without prior warning so that the sites can be seen in the condition described by the enquirer. In some cases, however it may be more appropriate to write to any parties involved in the first instance so as to gain further information.

We may use a variety of other methods to determine whether or not a breach of planning control has taken place, including obtaining information from witnesses to an alleged breach and consultation with Dartford Borough Council, Gravesham Borough Council, Kent County Council and the Environment Agency, for example. We may also seek clarification from case law or obtain legal advice where the subject of an investigation is complicated or contentious. Individual cases may be reprioritised as the investigation progresses and as new evidence comes to light.

## Examples of categories and the timescale for investigation

### Category A

- Unauthorised demolition or partial demolition of a building which it is essential to retain (e.g. a listed building or building within a conservation area)
- Development that potentially is a serious risk to public safety or severe harm to ecology
- Unauthorised works to trees covered by a Tree Preservation Order or in a conservation area

- **An investigation will begin within one working day of receiving the enquiry, with an initial site visit as soon as possible**

#### Category B

- Any unauthorised development or activity which causes clear, immediate and continuous harm to the locality or adjoining residents or is a source of significant public concern
- Breach of condition which results in serious harm to adjoining residents
- Unauthorised development in a Site of Special Scientific Interest, Green Belt, conservation area or where an Article 4 Direction has been issued
- **An investigation will begin within five working days of receiving the enquiry, including initial site visit**

#### Category C

- Unauthorised development which has reasonable prospects of receiving planning permission if an application were to be submitted
- Minor breaches (e.g. erection of fences, breaches of conditions, air-conditioning units, businesses operated from home)
- Unauthorised advertisements such as fly posting
- **An investigation will begin within 10 working days of receiving the enquiry, including initial site visit**

## What are the possible outcomes of our investigation?

### Deciding not to take action

Following a site inspection we may find that there is no breach of planning control. This may be because the unauthorised use has ceased, the development does not require planning permission or already has permission.

The development may be lawful and immune from enforcement action - This is when the unauthorised development or change of use has occurred over a long period of time without being brought to our attention. There are certain time limits involved in relation to operational development and changes of use. At the time of publishing this Plan these timescales are:

- 10 years where the breach consists of unauthorised building, mining, engineering or other operations
- 10 years for a change of use of any building to use as a single dwelling house
- 10 years in any other case including changes of use of land and breaches of planning conditions

There may be a breach of planning control which may not be necessary to pursue - just because a breach may exist does not automatically mean that formal action should be taken. Enforcement powers are discretionary and minor technical breaches may not be considered expedient to pursue as they may be too minor to warrant the time and expense to do so.

Negotiations may take place to find a solution - In accordance with government guidance the first priority is to try and resolve any breaches of planning control through negotiation. Only when these negotiations fail to secure a solution should formal action be considered. We will not allow negotiations to become drawn out where there is a need to make the development acceptable or where there is a requirement for a particular use to cease.





We may invite a retrospective planning application - where a planning application is received for development that has already taken place. We will assess the merits of the application on the same basis as if the development had not yet started. This includes the possibility of the application being determined by our Planning Committee.

## Taking formal enforcement action

We have a range of formal powers under planning legislation that we can use to remedy breaches of planning control. These are listed and described below:

### Enforcement Notice

An Enforcement Notice is the usual method that we use to require the removal of unauthorised development. We will specify in the notice the breach of planning control and what steps are required to remedy it together with a timescale for compliance.

There is a right of appeal to the Planning Inspectorate against such notices. As an enforcement notice can be overturned on appeal, on the grounds that planning permission should be granted for the development, we will not normally take enforcement action against a development where there is a reasonable prospect that we would unconditionally grant permission if an application had been made.

Failure to comply may result in prosecution and a fine.

### Breach of Condition Notice

A Breach of Condition Notice can be used where conditions imposed on a planning permission has not been complied with. They are not suitable for all planning conditions. There is no formal right of appeal. Failure to comply may result in prosecution and a fine.

### Listed Building Enforcement Notice

This form of action is very similar to Planning Enforcement Notices. The Notice will specify the unauthorised works to a listed building and the requirements necessary to remedy the harm. They can be served on their own, e.g. where unauthorised works to a listed building required only listed building consent

and not planning permission, or in conjunction with a Planning Enforcement Notice. Failure to comply may result in prosecution and a fine.

### Section 215 Notice

A Section 215 Notice is used in relation to land or buildings where their condition adversely affects the amenity of the area. We will set out the steps to be taken and the time period for compliance in the notice. Works that can be required include planting, clearance, tidying, enclosure, demolition, re-building, external repairs and repainting but cannot include works which would themselves require planning permission. Failure to comply may result in prosecution and a fine.

### Stop Notice

A Stop Notice requires development to stop by a specified date. There is no right of appeal. Stop Notices can only be used in conjunction with an Enforcement Notice. We only use these in the most serious cases where the breach of planning control is causing severe and immediate significant harm. Before serving a notice we will consider the likely consequences of requiring the activity to stop. We will review whether there are alternative actions that will achieve the desired outcome. Although there is no right of appeal there are circumstances where we may be liable to pay compensation, notably if the associated enforcement notice is quashed, varied or withdrawn or the stop notice itself is withdrawn. Failure to comply may result in prosecution and a fine.

### Injunction

Where a breach of planning control is causing, or is likely to cause, significant harm, we may apply to the Courts for an injunction compelling the breach to stop. In order to grant an injunction the Court needs to be satisfied that it is just and convenient as well as proportionate to do so in light of the Article 8 right to a private life contained within the European Convention on Human Rights. At the hearing, the Judge will invariably weigh up the public interest of granting an injunction in terms of upholding the integrity of the planning system and abating the material harm, as against the private interests of the landowner/occupier to use his land as he/she/they see fit.

### Direct Action

Where we have issued a statutory notice and those responsible for the breach have failed to comply, as a last resort, we have powers to carry out the works specified in the notice. This is referred to as direct action. Direct action is a useful tool that can resolve many different breaches of planning control, and is generally most effective when used to remove unauthorised building operations. We also have powers to recover any expenses incurred as a result of direct action. Unpaid expenses can be pursued either in the County Court or registered as a land charge payable when the land is sold.

### Prosecution

We will consider a prosecution in the Courts against any person who has failed to comply with the requirement(s) of the notices we serve where the date for compliance has passed and the requirements have not been complied with. Before commencing any legal proceedings, we need to be satisfied that there is sufficient evidence to offer a realistic prospect of conviction and that the legal proceedings are in the public interest.

We will also consider prosecution in respect of breaches of listing buildings, conservation area and offenses in respect of trees.

### Planning Contravention Notice

A planning contravention notice may be issued when it appears to the local planning authority that a breach of control may have occurred, and we want to find out more information before deciding what enforcement action to take. It allows us to require any information we want for enforcement purposes about any operations being carried out and can be used to invite its recipient to respond constructively to the local planning authority about how any suspected breach of planning control may be satisfactorily remedied.

A Planning Contravention Notice must be responded to within 21 days of service.

### Section 330 Notice

To enable other powers to be exercised, they may serve a notice under Section 330 of the Town and Country Planning Act requiring information as to interests in land, including ownership and occupation details.

There is no right of appeal against a section 330 notice and failure to respond is an offence.

## Enforcement powers that remain with the Local Authorities

Ebbsfleet Development Corporation is not the local authority for the area and so we do not have the full range of powers as a local council has. The following enforcement powers and processes remain at the time of publishing this plan with the applicable borough council (namely Dartford Borough Council or Gravesham Borough Council).

- Planning enforcement order
- Determine applications for certificates of lawfulness (existing or proposed use)
- Temporary stop notices

## Proactive compliance

As well as investigating breaches of planning control we also provide a proactive approach to ensure compliance with planning permissions and other consents. It is the responsibility of individual developers to comply with the conditions imposed on any planning permission or consent or with any terms identified in legal agreements or complying with Community Infrastructure Levy. The failure to comply can affect the quality of the environment and undermine the amenity of neighbours.



## Our commitment to residents

We will keep relevant parties informed at each stage of our investigation. If we believe a person or party is responsible for an alleged breach of planning control we will contact them. We will explain what the allegation is and give the customer opportunity to explain their side of the case.

Under the Freedom of Information Act 2000, we are not obliged to provide details of the source of any enquiry although any person or party will be entitled to know the name of the District or County Councillor who lodges an enquiry on his/her own behalf or on behalf of someone else.

Where the enquiry is found to be without substance we will advise the enquirer and our file on the matter will be closed.

If there is found to be a breach of planning control, we will advise the landowner/developer of the details of the breach and how it can be rectified. We will seek cooperation to correct the breach, either by removing or modifying the unauthorised development or by ceasing the unauthorised work. A reasonable time period will be allowed for this.

In some circumstances we may invite the person or party responsible to submit a planning application, although no assurance can be given as to a successful outcome to any planning application. However, if refused, there is a right of appeal to the Planning Inspectorate.

We will try to minimise possible impacts on any business which may be subject of enforcement action, but this does not necessarily mean that the enforcement action will be delayed or stopped.

Enforcement Notices will contain the precise details of the breach, the reasons for the action, the steps required to overcome the breach and the time period for compliance.





## Contact Us

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