



Mayor and Cabinet

Authority to consult on a Local Enforcement Plan

Date: 8 May 2024

Key decision: No

Class: Part 1

Ward(s) affected: All

Contributors: Head of Development Management

Outline and recommendations

The purpose of this report is to seek approval to consult on a Local Enforcement Plan .

Mayor and Cabinet are recommended to:

- a) Approve the content of the draft Local Enforcement Plan.
- b) Delegate authority to the Director of Planning to make any corrections or clarifications to the draft Local Enforcement Plan prior to Public Consultation

Timeline of engagement and decision-making

To date:

June 2022 – Community Group Meeting where discussions began on the preparation of a new Local Enforcement Plan.

July 2023 – All Member Planning Enforcement briefing, covering the legal framework and which matters the Council can investigate and how formal action is taken.

September 2023 – Adoption of Statement of Community Involvement which commits to the preparation of a Local Enforcement Plan.

May 2024 - Mayor and Cabinet to agree the draft report for consultation purposes.

Going forward (actual dates to be confirmed):

May – June 2024, 6-week consultation period.

July 2024 – analysis of responses

September 2024 - Update draft plan as necessary and seek approval from Mayor and Cabinet

September 2024 – All member briefing prior to launch

October 2024 – Formal launch of the Local Enforcement plan

Purpose

- 1.1. The purpose of this report is to seek approval to consult on a Local Enforcement Plan.

Summary

- 1.2. Planning Enforcement deals with breaches of planning control, including where building works which require planning permission are undertaken without permission from the Local Planning authority. Further breaches include works which do not comply with planning conditions attached to a planning permission or obligations in legal agreements.
- 1.3. The role of the Local Enforcement Plan is to set out how the Planning Service will define its priorities for enforcement action, provide transparency and accountability for decision making and use of our discretionary powers and provide certainty for all parties involved in the development process.
- 1.4. The Local Enforcement Plan builds on the commitments given in the

Is this report easy to understand?

Please give us feedback so we can improve.

Go to <https://lewisham.gov.uk/contact-us/send-us-feedback-on-our-reports>

Statement of Community Involvement which was adopted in September 2023.

- 1.5. This report outlines the consultation carried out to date and proposed on the project and provides detail on the nature of the proposed consultation version of a Local Enforcement Plan.

Recommendations

- 1.6. It is recommended that Mayor and Cabinet:
 - a) Approve the content of the draft Local Enforcement Plan.
 - b) Delegate authority to the Director of Planning to make any corrections or clarifications to the draft Local Enforcement Plan prior to Public Consultation

Policy Context

- 1.7. Breaches of planning control are defined in Section 171A of the Town and Country Planning Act 1990 as:

Carrying out of development without required planning permission, or Failing to comply with any condition or limitation to which planning permission has been granted.
- 1.8. Breaches of any conditions in relation to Permitted Development rights under the Town and Country (General Permitted Development) (England) (Order) 2015 also constitute a breach of planning control.
- 1.9. Although taking planning enforcement action is a discretionary measure for Local Planning Authorities (LPAs) , the National Planning Policy Framework at paragraph 59 states that LPAs should ‘consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area’.
- 1.10. The National Planning Practice Guidance states that local enforcement plans are important because:
 - Allows engagement in the process of defining objectives and priorities which are tailored to local circumstances.
 - Sets out the priorities for enforcement action, which will inform decisions about when to take enforcement action.
 - Provides greater transparency and accountability about how the local planning authority will decide if it is expedient to exercise its discretionary powers;
 - Provides greater certainty for all parties engaged in the development process.
- 1.11. Local Enforcement Plans are not a statutory plan (unlike the Statement of Community Involvement or the Local Plan) and do not form part of the development plan. However, as a local policy document the Planning Service is proposing to undertake consultation with the public and other stakeholders which is considered to be good practice.
- 1.12. The content of this report is consistent with the Council’s policy framework.

Is this report easy to understand?

Please give us feedback so we can improve.

Go to <https://lewisham.gov.uk/contact-us/send-us-feedback-on-our-reports>

Background and pre-production consultation

- 1.13. The Council adopted a new Statement of Community Involvement in September 2023 which committed the Planning Service to preparing a separate local enforcement plan.
- 1.14. The Planning Service has an established Community Forum. This is a meeting with our Community Groups and Amenity Societies. The purpose of the Forum is to:
 - Seek a positive working relationship between the Planning Service and our Community Groups
 - To update on changes to the planning system, policy work and Council Strategies
 - To provide direct feedback to Officers
 - To discuss planning issues thematically
- 1.15. The Planning Service has committed to updating on planning projects such as the planning enforcement via the Community Forum on a quarterly basis.
- 1.16. A Community Forum was held in June 2023. Officers briefed on the progress of the Statement of Community Involvement following public consultation and confirmed that the preparation of a Local Enforcement Plan was a priority for the Planning Service, alongside significant updates to the website such as the publication of the S188 planning enforcement register.
- 1.17. An all-member briefing was held on 20 July 2023 on planning enforcement matters which covered the legal framework, and the matters the Council can investigate and how formal action is taken.

Content for a Local Enforcement Plan

- 1.18. It is proposed that the Local Enforcement Plan is clear in its purpose in accordance with the NPPG as set out below.

The role of planning enforcement

- 1.19. The plan will clearly set out its purpose to explain how the Planning Service will carry out and prioritise enforcement investigations. It will not seek to replicate other published policy or information but will signpost to key documents such as the Statement of Community Involvement.
- 1.20. The Planning Service receives many queries about development which are not planning matters such as party wall and boundary issues. The plan will clearly set out what matters the Council cannot investigate or intervene.

Our approach

- 1.21. The plan will set out how the Planning Service engages with other

Is this report easy to understand?

Please give us feedback so we can improve.

Go to <https://lewisham.gov.uk/contact-us/send-us-feedback-on-our-reports>

departments in the Council such as Private Sector Licensing, Safer Neighbourhoods and Environmental Protection when investigating breaches that cover multiple issues.

- 1.22. The NPPG sets out when formal enforcement action may not be appropriate, and the plan will need to explain the expediency test when considering if enforcement action should be taken. This being that the Council needs to strike a balance between protecting amenity and allowing acceptable forms of development to take place.

How a planning enforcement case is opened and processed

- 1.23. Whilst the majority of enforcement cases raised are from the public who notify the Planning Service of unauthorised works, there is a general lack of clarity around how enforcement complaints can be raised so that an investigation into a potential breach can begin and what steps the Planning Service will take to ensure the public are kept informed.
- 1.24. The Local Enforcement Plan will clearly set out how the public can raise enforcement queries and complaints and the type of information they should provide including. The Local Enforcement Plan will also make clear how the public will be kept informed of case updates, including when a case is closed (and the reason for closure) or when formal action is taken.
- 1.25. The plan will set out how officers obtain information, via site visits, history checks and database searches such as Council Tax records.

How planning breaches are resolved

- 1.26. The planning enforcement process can be complex and difficult to understand, especially those unfamiliar with Planning law. The Local Enforcement Plan will explain the enforcement process and how enforcement officers seek to resolve breaches and harm.
- 1.27. In accordance with the NPPG, the plan will set out that the Council will always try to find informal ways to resolve breaches via voluntary works to remove development, or submission of a retrospective planning application. Enforcement Notices are only issued where the Council is satisfied that there is an unresolved breach of planning control and it is expedient to do so in order to remedy the harm identified.
- 1.28. The plan will need to summarise each type of case and associated potential enforcement notice (as such as Section 215 Notice, Enforcement Notice or Stop Notice) and the rights of appeal to the Planning Inspectorate where applicable.
- 1.29. The plan will also set out the steps the Council has the right to take where an Enforcement Notice has been breached including or an appeal not complied with including Prosecution and injunctions via the Courts, and what this means for anyone/ company subject to enforcement action.

Our enforcement priorities

- 1.30. The Local Enforcement Plan would clearly set out the list of enforcement case priorities. All cases are formally investigated with background history checks and site visits but in priority where there is clear identified harm or breach of law. The draft plan for consultation proposes the following:

Is this report easy to understand?

Please give us feedback so we can improve.

Go to <https://lewisham.gov.uk/contact-us/send-us-feedback-on-our-reports>

1. *Highest Priority* – Listed buildings, demolition in conservation areas, works to protected trees, Houses of multiple occupation and major breaches in planning (including conditions and legal obligations).
 2. *Medium priority 1* – unauthorised residential, community and business uses, residential and commercial extensions.
 3. *Medium priority 2* – shopfronts, detached structures (i.e., garages and sheds), minor breaches in planning, non-compliance with approved plans
 4. *Low priority* – adverts and satellite dishes.
- 1.31. How a case is prioritised will depend on the harm identified. This is taken on a case-by-case basis.
- 1.32. It is anticipated that these case priorities will be of public interest during the consultation period and any comments received will be given full consideration when reviewing the Local Enforcement Plan for adoption.

Formal Local Enforcement Plan Consultation

- 1.33. Subject to approval, the consultation on the draft Local Enforcement Plan will run for six weeks and will involve:
- Consulting (by digital mail-out) to consultation bodies and regular applicants to the planning service.
 - Publication of the draft Local Enforcement Plan on the Lewisham website Consultation Hub.
 - In addition to the above the Planning Service will promote the consultation via the established Community Forum.
- 1.34. After the six-week consultation period, all representations will be considered and a final version of the Local Enforcement Plan will be referred for adoption by Mayor and Cabinet.

Financial implications

- 1.35. The implementation of the Local Enforcement Plan will have anticipated financial costs arising through necessary legal support to pursue enforcement action. Where action results are heard in court the Council can apply to recover its costs. Local Planning Authorities also have powers under the Proceeds of Crime Act 2002 to confiscate any financial gains which are made as a result of a breach in planning control.
- 1.36. A very detailed review of each case, including legal advice and consideration of financial implications, is undertaken before any action is taken. This minimises the risk of financial loss to the Council. Unrecovered enforcement costs will be paid from existing Planning budgets.

Is this report easy to understand?

Please give us feedback so we can improve.

Go to <https://lewisham.gov.uk/contact-us/send-us-feedback-on-our-reports>

Legal implications

- 1.37. A Local Enforcement Plan is a document which sets out how a Local Planning Authority will engage in the process of defining objectives and priorities for taking enforcement action and provide transparency in the use of its discretionary powers. It is not a statutory plan, nor a Development Plan Document.
- 1.38. The Equality Act 2010 (the Act) introduced a public sector equality duty (the equality duty or the duty). It covers the following nine protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

In summary, the council must, in the exercise of its function, have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act
 - Advance equality of opportunity between people who share a protected characteristic and those who do not
 - Foster good relations between people who share a protected characteristic and persons who do not share it
- 1.39. The duty continues to be a “have regard duty”, and the weight to be attached to it is a matter for the decision maker, bearing in mind the issues of relevance and proportionality. It is not an absolute requirement to eliminate unlawful discrimination, advance equality of opportunity or foster good relations.
- 1.40. The provisions of the European Convention on Human Rights, such as Article 1 of the First Protocol, Article 8 and Article 14 are relevant when considering planning enforcement action. There is clear public interest in enforcing planning law and planning regulation in a proportionate way. The NPPG states that when Local Planning Authorities decide to take enforcement action, we should have regard to the potential impact on the health, housing needs and welfare of those affected by the proposed action, and those who are affected by a breach of planning control.
- 1.41. The Equality and Human Rights Commission has issued Technical Guidance on the Public Sector Equality Duty and statutory guidance entitled “Equality Act 2010 Services, Public Functions & Associations Statutory Code of Practice”. The council must have regard to the statutory code in so far as it relates to the duty and attention is drawn to Chapter 11 which deals particularly with the equality duty. The Technical Guidance also covers what public authorities should do to meet the duty. This includes steps that are legally required, as well as recommended actions. The guidance does not have statutory force but nonetheless regard should be had to it, as failure to do so without compelling reason would be of evidential value. The statutory code and the technical guidance can be found at:

<https://www.equalityhumanrights.com/en/publication-download/technical-guidance-public-sector-equality-duty-england>

Is this report easy to understand?

Please give us feedback so we can improve.

Go to <https://lewisham.gov.uk/contact-us/send-us-feedback-on-our-reports>

Equalities implications

- 1.42. The Council's Comprehensive Equality Scheme for 2020-2024 provides an overarching framework and focus for the Council's work on equalities and helps ensure compliance with the Equality Act 2010.
- 1.43. The implementation of a Local Enforcement Plan may have positive equalities implications. Whilst formal enforcement action is not taken in respect of any of the protected characteristics, action may have positive benefits in ensuring that planning permissions are complied with. Responses received via the formal public consultation will be given full consideration prior to the formal adoption of a new local enforcement plan.

Climate change and environmental implications

- 1.44. There are potential positive implications on climate change and the environment by enforcing breaches in construction management plans and unauthorised development which has been constructed without planning permission. Responses received via the formal public consultation will be given full consideration prior to the formal adoption of a local enforcement plan.

Crime and disorder implications

- 1.45. There are potential positive implications on crime and disorder through pursuing prosecution where developers fail to comply with enforcement notices which seek to regularise a breach in planning harm. Responses received via the formal public consultation will be given full consideration prior to the formal adoption of a local enforcement plan.

Health and wellbeing implications

- 1.46. There are potential positive implications for health and wellbeing via the management of unauthorised residential uses such as Houses of Multiple Occupation. Responses received via the formal public consultation will be given full consideration prior to the formal adoption of a local enforcement plan.

Conclusion

- 1.47. Mayor and Cabinet and recommended to:
- a) Approve the content of the draft Planning Enforcement Plan.
 - b) Delegate authority to the Director of Planning to make corrections or clarifications to the draft Planning Enforcement Plan prior to Public Consultation

Background papers

- 1.48. Lewisham Statement of Community Involvement
<https://lewisham.gov.uk/myservices/planning/policy/ldf/statement-of-community-involvement>

Is this report easy to understand?

Please give us feedback so we can improve.

Go to <https://lewisham.gov.uk/contact-us/send-us-feedback-on-our-reports>

Glossary

Term	Definition
Local Enforcement Plan	<p>A document which sets the Councils priorities for enforcement investigations and actions and explains the range of measures available to resolve unauthorised development.</p> <p>A Local Enforcement Plan does not form part of the Local Development Framework.</p>
General consultation bodies	<p>Prescribed by the Town and Country Planning (Local Planning) (England) Regulations 2012 (as amended). For Lewisham they include:</p> <ul style="list-style-type: none">- Voluntary bodies some, or all of whose activities benefit any part of the Borough, including but not limited to Neighbourhood Forums and Amenity Societies- Bodies which represent the interests of different racial, ethnic, or national groups in the Borough- Bodies which represent the interests of different religious / faith groups in the Borough- Bodies which represent the interests of disabled persons in the Borough- Bodies which represent the interests of persons carrying on business in the Borough- Bodies which represent the interests of different age groups in the Borough- Bodies which represent the interests of different equalities groups

Report author and contact

1.49. Michael Forrester – Head of Development Management, Planning Service

1.50. Michael.forrester@lewisham.gov.uk

Comments for and on behalf of the Executive Director for Corporate Resources

1.51. Shola Ojo – Strategic Finance Business Partner

1.52. 02083147778 - Shola.Ojo@lewisham.gov.uk

Is this report easy to understand?

Please give us feedback so we can improve.

Go to <https://lewisham.gov.uk/contact-us/send-us-feedback-on-our-reports>

Comments for and on behalf of the Director of Law, Governance and HR

1.53. Paula Young Senior Planning Lawyer

1.54. 02083146784 – Paula.Young@lewisham.gov.uk

Is this report easy to understand?

Please give us feedback so we can improve.

Go to <https://lewisham.gov.uk/contact-us/send-us-feedback-on-our-reports>