Planning Enforcement Policy Guidance

Assessing Hertsmere’s Supplementary Enforcement Guidance

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Executive Summary

This report is designed to assess the quality of guidance offered by Hertsmere in its Supplementary Planning Guidance document for enforcement policy. This will be carried out by putting Hertsmere’s enforcement guidance in the context of other Hertfordshire planning authorities’ and comparing and contrasting the quality of advice offered. The terms upon which the guidance will be judged include the document’s user friendliness and ease of reading, depth of information, presentation and evidence of specific measures to improve efficiency of enforcement (e.g. a system of prioritisation or expediency measures).

In brief summary, it is suggested that Hertsmere’s strengths lie in presentation, layout and explanation through flowchart. It is noted that Hertsmere could take inspiration from Watford and East Herts council’s priority systems and expediency sections, North Herts’ glossary and Welwyn-Hatfield’s structure of documentation. Grounding local policy in national policy would also be effective for sake of completeness of understanding.
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Introduction

Following the adoption of the National Planning Policy Framework (NPPF) in 2010, national planning policy experienced a major shift of focus; seeing a reduction in rigid, centrally prescribed policy and a rise of a more flexible ‘guideline’ based policy. An example of this can be seen in the abolition of Planning Policy Guidance Note 18 (PPG18) which required LPAs to follow a strict set of guidelines setting out the specific elements of Planning Enforcement. The NPPF has simplified these rules and has reduced guidance to a one paragraph section providing loose advice:

Enforcement

207. Effective enforcement is important as a means of maintaining 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. Local planning authorities 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 it is appropriate to do so.

Fig 1: Paragraph 207: The National Planning Policy Framework’s loose enforcement guidelines (Reference 3 – p47).

Whilst the NPPF asks LPAs to “consider publishing a local enforcement plan to manage enforcement proactively”, it does not provide any specific guidance as to how this should be achieved. For all councils who are looking to update their supplementary enforcement guidance, the NPPF affords them much more freedom to develop their own policy initiatives. A by-product of this freedom is the requirement of more research, thus ensuring that new policy adoptions are suitable and follow good practices. Hertsmere Borough Council, whose Supplementary Enforcement Guidance dates from 2003 (making it Hertfordshire’s oldest) is one council that could benefit from this research process. This report will act as an element of this research by analysing what is good and bad about both Hertsmere’s guidance and those of surrounding boroughs (some of whose guidance has been developed following the adoption of the NPPF). The terms upon which the guidance will be judged include the document’s user friendliness and ease of reading, depth of information, presentation and evidence of specific measures to improve efficiency of enforcement (e.g. a system of prioritisation or expediency measures). Additionally, a key consideration that effective policy should make is being able to strike a balance between relating to planners and non-planners. This will act as a background consideration when assessing Hertfordshire’s policy.

Ultimately, by drawing better practice examples, this research will be used to provide recommendations for Hertsmere Borough Council, identifying what current enforcement policy needs retention and what may benefit from improvement.
The Assessment Process

The assessment of Hertsmere’s Enforcement Policy will be achieved by putting Hertsmere’s enforcement guidance documents into the context of Hertfordshire’s other Local Authorities, and then making comments on which local authorities perform particularly well or badly in four categories of the policy writing process. Drawing a study from around all of Hertfordshire should provide a suitable range of comparative material, as well as having the advantage of inspiring ideas from local authorities that experience similar planning conditions. Hertsmere is one of ten local authorities that make up the County of Hertfordshire. Three Rivers, Dacorum, Hertsmere, East Herts, North Herts, Watford, Welwyn-Hatfield and St Albans have all made their enforcement policy literature publicly available online and as such they will be used in this study. Unfortunately, Broxbourne and Stevenage have not made enforcement literature available and it has therefore proved difficult to involve these boroughs in the assessment process. To compensate for this, other nearby boroughs such as those in North London, or boroughs from neighbouring counties that display particular strengths will be referred to at points throughout the report.

Explaining the Enforcement Process

One of the simplest and most effective forms of communication observed in Hertfordshire policy is the ‘Enforcement Investigation Flowchart’. One of Hertsmere’s enforcement policy sections is a full page flowchart detailing the process of development complaints and the stages of enforcement action. The flowchart provides a visually simplistic, but highly informative method of communicating enforcement policy. The flowchart is particularly effective because it removes the need for lengthy passages of text describing enforcement in depth as other councils opt for instead. It also succeeds at bridging the gap between information that is relevant to a planner and a member of the public. Flowchart inclusion is popular amongst nearby North London councils such as Harrow, in fact Waltham Forest has made use of Hertsmere’s own flowchart; however only two Hertfordshire councils have opted to include one, encouragingly, Hertsmere is one of them. This shows evidence that Hertsmere’s quality of communication of its policy is ahead of its time, particularly when one considers that Hertsmere’s enforcement policy is technically the most outdated.

Whilst simplicity is important, ensuring that all topics required are discussed is also necessary. A common omission among Hertfordshire councils is a lack of explanation of a system of expediency testing. Hertsmere is one of the boroughs which has not discussed this and could look to boroughs such as Three Rivers, Welwyn-Hatfield or Dacorum for examples; inclusion of this will significantly enhance the reader’s understanding of enforcement. On the whole, the remainder of content coverage is consistent, however North Herts has a particularly glaring omission in its policy, with no discussion of deadlines or targets for dealing with cases; the policy redeems this to some extent by being the only council to include a glossary of terms, which could act as another enhancer of Hertsmere’s policy.
Enforcement Flow Chart

Fig 2: East Herts' detailed enforcement flowchart (Reference 5 – p.3-4).
Defining a System of Priority for Cases

A more common implementation amongst Hertfordshire Enforcement Policy is a priority system for enforcement complaints. Hertfordshire priority systems generally fall into three categories, with some opting for a two tiered system, some three tiered and some four tiered. Hertsmere’s priority system has three tiers; however the differences between priorities are not always strongly evident. ‘Priority One’ is strong in that it is clear in its intentions to apply the most importance to cases involving listed and conservation area development; i.e. development that is irreparable in nature. However, ‘Priority One’ cases also cover “change of use/unauthorised development that creates serious harm due to their visual impact, adverse traffic implications or through noise and pollution”; by comparison ‘Priority Two’ cases cover “changes of use/unauthorised development that harms due to their visual impact, adverse traffic implications or through noise and pollution”. Whilst it is appreciated that there is always going to be an element of subjectivity in planning disputes, these two priority levels are only separated by an ambiguous difference in seriousness. To improve the quality of this priority system it would be advisable to increase the objectivity of the priorities by providing examples of what constitutes serious harm and what does not. Hertsmere’s ‘Priority Three’ shows a good example of this through its direct examples of ‘low level harm’ breaches, such as untidy sites and unauthorised housing extensions.

Three Rivers and East Hertfordshire are two councils that do not suffer from this problem because of their two tier priority systems. Both councils stipulate urgent priority and normal priority as their categories. The lack of a third tier removes the middle-ground that suggests an ambiguous scale of seriousness or severity for cases. East Hertfordshire’s priority system is particularly effective with its use of examples (see fig 3), removing almost all doubt over whether a case is urgent or non-urgent. Identifying “all other unauthorised developments” as ‘normal priority cases’ makes the system very comprehensive and complements the ‘urgent priority cases’ checklist of criteria effectively; it should leave the decision maker in no doubt as to what level of priority their case warrants.

Watford and Welwyn-Hatfield opt for a four tier priority system, which potentially exposes them to a higher degree of ambiguity than Hertsmere or Dacorum experience with their three tier systems. Watford and Welwyn-Hatfield manage to avoid this for the most part through effective, precise writing. Assuming that the categories are worded effectively without cause for controversy, the presence of more categories is likely to be beneficial, since it should result in a more precisely targeted planning response. Watford and Welwyn-Hatfield have used their fourth category to identify specific example cases where a lower priority category would benefit the system, for example: unauthorised advertisements in Welwyn-Hatfield and cases that have an on-going programme of remedy in Watford. This is something that Hertsmere should consider implementing, to improve the appropriateness of their response. Despite these advantages, Welwyn-Hatfield share Hertsmere’s problems with failing to define seriousness in the context of tangible examples in the higher priority tiers; this is a problem that is not faced by Watford (see figs 3 and 4).

Whilst Hertsmere’s priority system may not be the strongest countywide, it is certainly far from the weakest; St Albans and North Hertfordshire show little evidence that they have even considered implementing a priority system in their literature. In my opinion, it can be concluded that East Hertfordshire and Watford showcase the strongest examples of priority systems in Hertfordshire. East Hertfordshire has a two tier priority system that relies on the simplicity of its categorisation,
whilst Watford attempts a more ambitious four tiered system that retains its clarity of meaning through tangible case examples.

**Priority A (highest priority)**
A complaint of unauthorised development that causes significant, immediate and irreversible harm to the amenity of a neighbourhood, unauthorised works to listed buildings works in a sensitive area, or unauthorised works to a protected tree by a tree preservation order or works to tree in conservation areas, (in conjunction with the Council’s arboricultural officer).

**Priority B**
Breaches of planning control that result in irreversible harm to a locally, residents or businesses and unauthorised building works taking place when agreed time limits and those associated with enforcement action are about to run out (i.e. the four and ten year rules).

**Priority C**
All ongoing investigations cases that do not fall into group A or B and which may cause some loss of amenity to a neighbourhood or other interest including adverts and fly posting.

**Priority D**
Ongoing breaches about which the planning service is aware and which are being resolved in accordance with a timetable agreed with the enforcement service.

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**Fig 3**: East Hertfordshire’s two tier system of priority (Reference 4 – p8 – 9).

**Fig 4**: Watford’s four tier system of priority (Reference 13 – p6).

**Fig 5**: Basingstoke and Deane (Hampshire) Council’s system of priority. The inclusion of an ‘example’ column is something that would be of benefit to all Hertfordshire Councils; it clearly stipulates the terms of each priority band (Reference 1 – p6).
Document Structure and User Friendliness

Hertfordshire councils have a high degree of variety concerning their written language. It is clear that all Enforcement Supplementary literature is written as so to be relevant to both planners and the public, however some balance this relationship better than others. Hertsmere does a fairly good job of speaking in easy-to-understand terms, with much of its effectiveness coming from its brevity of information. Hertsmere’s supplementary planning guidance is merely 5 pages long, being one of the shortest of all the Hertfordshire Enforcement Literatures. Despite its short length, it covers a wide breadth of information through its conciseness. Hertsmere along with Welwyn-Hatfield, East Herts and St Albans are the four Hertfordshire councils who have created enforcement leaflets to supplement their main enforcement guidance documents. Hertsmere’s ‘Enforcement Charter’, Welwyn-Hatfield’s ‘Planning Enforcement Leaflet’, East Herts’ ‘Planning Enforcement Guidance Note’ and St Albans’ ‘Planning Advisory Leaflet’ compile together the Enforcement information that the public is most likely to need, and convey this information in a more instructional way than is seen in their corresponding guidance documents. It appears that Welwyn-Hatfield’s ‘Planning Enforcement Leaflet’ is far superior to the three others however. This document utilises an eye-catching colour scheme and layout, and condenses most of the information onto a single page so as not to overwhelm the reader. The document also uses the most effective language for communicating information with the public; the combination of numbered question titles (e.g. What is a breach of planning control?) and short paragraphed or bullet-pointed answers is by far the easiest to comprehend (see fig 6).

By comparison, Welwyn-Hatfield’s and Dacorum’s main enforcement policy documents are by far the most long-winded, both spanning 19 pages in length. It is clear that much of this length comes from the documents’ unfailing abilities to explain the many terms they discuss in depth; rarely, if ever taking the reader’s knowledge for granted (e.g. both documents contain a whole section that is dedicated to describing immunity rolling time limits and the wider national policy that governs this). This raises a question that asks whether a supplementary guidance document benefits from this rigorous depth of explanation and detail, particularly when the document is at least meant to be appropriate for an expert planner, and that much of the general policy detail is available elsewhere. Despite this, there are clear benefits to full explanation, which obviously includes the increased ease of use in a general context. It is perhaps most reasonable to suggest that finding a compromise between detail and brevity is ideal. St Albans has struck an interesting balance, compiling information relevant to both the public and planners into its extensive ‘Planning Advisory Leaflet’ and leaving the planner friendly technical policy for its ‘main’ supplementary document, which amounts to a mere 17 lines of text.

Hertsmere’s policy document might benefit from the inclusion of more technical policy and/or references to national policy and the NPPF. This will help a reader to understand Hertsmere’s take on enforcement from a national perspective. Welwyn-Hatfield is one borough that has included this, with a direct quote of paragraph 207 from the NPPF. When you consider that the borough has a supplementary ‘enforcement charter’ document designed to relay public-friendly enforcement information. Three Rivers does not provide supplementary leaflets and instead has tried to construct a document that covers all bases. The document achieves this fairly well; in places appearing to speak directly to a stakeholder (e.g. ‘What contraveners can expect…’ or ‘most people
are familiar with the concept of planning control and will ask themselves the question “do I need planning permission?” before they undertake development.’)

**Fig 6:** Welwyn-Hatfield’s supplementary planning enforcement leaflet; perhaps the best example of user-friendliness and high quality presentation among Hertfordshire councils (Reference 15 — p1).

### Layout and Presentation

Hertsmere’s guidance note is nicely presented and clearly laid out, something that cannot be said for many other Hertfordshire LPA documents. Generally, the documents that communicate the most effectively tend to utilise colour and clear font differences for headings. Of the Hertfordshire supplementary documents, Hertsmere’s is the most effective at doing this. The document makes use of colour to draw the reader in, with the theme of the red colour being used to stipulate the various sections. Concise bursts of text interspersed with bullet pointed lists make the information easier to digest than more concentrated blocks of text. In this respect, Hertsmere also performs strongly.

Hertsmere’s literature is somewhat unique in that all other Hertfordshire boroughs opt for a very uniform black and white approach that is driven by a numbered paragraph structure (e.g. 1.0, 1.1, and 1.2), which comes across as generic by comparison. Retaining the current style of presentation would be advisable for Hertsmere.
Conclusion and Recommendations

This report has analysed Hertfordshire policy in an attempt to better understand what elements are required to make policy fit for purpose and communicate as effectively as possible with both planners and the public.

The first section, ‘Explaining the Enforcement Process’ identified Hertsmere’s inclusion of a flowchart as a strong element of the enforcement policy’s explanatory powers, and noted its common absence across other Hertfordshire policy. At the very least it would be practical to retain this through policy revision and potentially expand upon it in a similar manner to the flowchart seen in East Herts’ Planning Enforcement Guidance Note. Another aspect that was noted in this section was the relative brevity of Hertsmere’s enforcement literature when compared with most other Hertfordshire councils. As was noted in section three, many of the councils with lengthier policy documents, particularly Three Rivers, Welwyn-Hatfield and East Herts achieve much of this length by padding out their local policies with reference to relevant national policy from the NPPF or otherwise, they also often go out of their ways to speak directly to and explain things in detail for the public (E.g. explaining key terms such as rolling time limits and a contravener’s rights). However, there are obviously natural limits for this style of policy communication; looking to Dacorum’s preoccupation with policy sourcing is enough to understand how too much of this works against the quality of the document. It would be advisable to introduce a glossary of terms (as seen in North Herts’ literature).

The second section of the report dealt with a council’s consideration of priorities for enforcement cases. It was noted that the number of tiers a priority system has does not affect its effectiveness per se, but that ensuring each tier is clearly defined with a lack of ambiguity is the key to success. Using examples of cases of varying priority is a good way of achieving this. It was concluded that East Herts (two tier) and Watford (four tier) reflect the best practice examples of this in Hertfordshire, with Basingstoke and Deane reflecting an even stronger example from farther afield.

Section three dealt with the arrangement of policy, identifying councils that had taken the initiative to separate their reader bases through user friendly ‘supplementary documents’ compared with those who had tried to speak to both planners and the public through a single document. For the most part, it appears that separation (as Hertsmere currently adopts) is the most effective option, with Welwyn-Hatfield’s, easy-to-digest, single page leaflet reflecting the best practice example (fig 5), and something for Hertsmere to consider implementing.

Section four identified Hertsmere as a leading Hertfordshire council with respect to quality of presentation and layout, and it would be ideal to maintain a similar structure and presentation. Despite this, Hertsmere could still look towards Welwyn-Hatfield’s Supplementary Planning Leaflet when redesigning supplementary enforcement guidance, since this document possesses outstanding presentation and layout.

It is hoped that the research conducted through this report will prove useful to Hertsmere Borough Council during their enforcement policy revision process.
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Fig 7: A comparison of different elements in Hertfordshire Borough Policy documents.
References


