



Development Section, Economy, Skills & Environment

# Development Management Monitoring & Enforcement Plan



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## 1. Monitoring & Enforcement Plan

- 1.1 Paragraph 207 of the National Planning Policy Framework (March 2012) states:

‘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.’

- 1.2 In addition, Section 19 of The Waste (England and Wales) Regulations 2011 makes it a duty that where a planning authority has planning functions in relation to establishments or undertakings carrying on disposal or recovery of waste, the planning authority must ensure that appropriate periodic inspections of those establishments or undertakings are made.

- 1.3 The purposes of this Monitoring and Enforcement Plan are to set out:

- a) The County Council’s regime for monitoring of sites falling within the remit of its planning function;
- b) The County Council’s role in enforcing planning control;
- c) The circumstances in which the County Council will take formal enforcement action;
- d) The remedies available to the County Council in taking enforcement action;
- e) The way in which the County Council will deal with alleged breaches of planning control and, in particular, the service complainants may expect to receive.

- 1.4 The County Council considers that effective monitoring and enforcement of planning control is extremely important in protecting

the built and natural environment of the County and to ensure that the quality of life of its residents is properly protected.

- 1.5 The County Council therefore expects developers to comply with conditions which have been imposed on any planning permissions and for prospective developers to have received the appropriate planning permissions before the commencement of any works. If developers are unsure of the need for planning permission then they should contact the County Council Development Section for advice (in relation to those developments for which the County Council is the Local Planning Authority).

## **2. Background**

- 2.1 The County Council is responsible for determining applications for mineral working and waste management facilities and for its own development such as new schools, roads etc.
- 2.2 The responsibility for monitoring and enforcing conditions of planning permission relating to these developments also falls to the County Council, as does any unauthorised development relating to these areas of activity. Whilst the District and Borough Councils are also able to take enforcement action in respect of unauthorised waste disposal, in practice the need for such action is usually considered by the County Council.

## **3. Town and Country Planning Act**

- 3.1 The County Council's enforcement powers are contained within the Town and Country Planning Act 1990 (as amended). The Act stipulates that enforcement powers should be used where it appears to the County Council that it is expedient to do so, having regard to the provisions of the development plan and to any other material considerations. Enforcement action is therefore not mandatory but is for the County Council to use at its discretion.
- 3.2 The Town and Country Planning Act 1990 (as amended) provides for the County Council to serve a Planning Contravention Notice, to require the landowner or operator of a site to provide information about activities on the land. However, the service of a Planning Contravention Notice is not formal enforcement action.

3.3 The enforcement powers provided by the Town and Country Planning Act 1990 (as amended) are often referred to as the 'enforcement toolkit', and comprise:

- a) Breach of Condition Notice
- b) Enforcement Notice
- c) Temporary Stop Notice
- d) Stop Notice
- e) Injunction

The Town and Country Planning Act 1990 (as amended) also allows the County Council to undertake direct action to execute the requirements of an enforcement notice where those steps have not been undertaken within the period for compliance stipulated in the notice. It is rare for the County Council to use this provision. It is preferable for breaches of planning control to be remedied by the site operator or landowner, either through voluntary cessation or regularisation of the unauthorised development, or by appropriate compliance with the requirements of a formal notice.

3.4 The enforcement powers outlined above may be used individually or in combination depending on the particulars of the breach of planning control.

## **4 General Enforcement Considerations**

4.1 Planning breaches are normally not criminal offences and it is not an offence to carry out development without first obtaining planning permission for it. However, failure to comply with a formal notice is a criminal offence, making the person committing the breach liable to prosecution.

4.2 While it is clearly unsatisfactory for anyone to carry out development without first obtaining the required planning permission, an enforcement notice will not normally be issued solely to "regularise" development which may be acceptable on its planning merits.

4.3 Where development which has already taken place may be considered acceptable, and it appears that any actual or potential harm can be made acceptable by the imposition of planning

conditions, and that development is not contrary to the policies of the development plan, the authority will invite the person responsible to submit a retrospective planning application.

- 4.4 If an operator or owner submits a planning application that the authority has requested, the authority will not normally instigate formal enforcement action whilst the application is being considered. However, if, after a formal invitation to do so, the owner or occupier of the land fails to submit a planning application within a reasonable timescale, the authority will consider whether to take formal enforcement action.
- 4.5 Suffolk County Council officers may determine whether a breach is minor or serious. Any departure from the Monitoring and Enforcement Plan must be exceptional, capable of justification and be fully considered by the appropriate officer before the decision is taken, unless it is considered there is significant risk to the public or amenity in delaying the decision.
- 4.6 Where Suffolk County Council officers judge that the breach which has taken place is minor and the other party has given written confirmation of their intention to comply with the required remedial action within a reasonable, prescribed timescale, no immediate enforcement action will be initiated. If the matter is not satisfactorily resolved within the prescribed timescale the County Council will consider the use of enforcement powers.
- 4.7 Where Suffolk County Council officers judge that the breach which has taken place is serious, the County Council will serve the most appropriate notice in order to remedy the breach or effect necessary improvements.
- 4.8 The Commissioner for Local Administration (the local ombudsman) has held, in a number of investigated cases, that there is "maladministration" if the authority fail to take effective enforcement action which was plainly necessary and has occasionally recommended a compensatory payment to the complainant for the consequent injustice. The County Council will provide appropriate considered justification for decisions to take, and not to take, formal enforcement action.

## **5. Development Management Monitoring & Enforcement Policy**

- 5.1 All enforcement action, be it verbal warnings, written warnings, statutory notices, or prosecution, is primarily based upon an assessment of the risk of harm to public health, public safety, amenity, and economic or environmental well-being, and will only be used where negotiations with the operator or landowner have failed to resolve the matter and it is considered to be in the public interest to pursue the matter. The only exception to this will be where, in the opinion of the County Council, the breach of planning control is causing serious actual or potential harm to the environment or another issue of acknowledged planning importance, e.g. road safety, residential amenity, etc.
- 5.2 In considering any enforcement action the decisive issue for the County Council will be whether the breach of planning control would unacceptably affect public amenity or the existing use of land or buildings meriting protection in the public interest. Such land or buildings would include, for example, a statutorily designated site or a listed building.
- 5.3 In addition, the County Council will aim to ensure that any use of enforcement action is commensurate with the breach of planning control to which it relates.
- 5.4 Suffolk County Council officers will determine the weight to be given to particular factors in this assessment. In coming to any decision as to which is the appropriate form of action, regard shall be had to this policy document and in particular to the following criteria:-
- The harm or potential harm to amenity if the activity or operations are allowed to continue;
  - The past history of the operator's compliance with informal requests to cease or reduce the level of activity or take steps prescribed by the authority to remedy planning breaches;
  - That required action is proportionate to the risks such that the cost of the remedy is balanced against the effect of the work or actions;
  - Any previous advice, correspondence and negotiations;

- The consequences of non-compliance;
  - The likely effectiveness of the various enforcement options;
  - The public interest, and;
  - The availability of appropriate evidence to support the enforcement action proposed with due consideration to the likelihood of success.
- 5.5 A file will be opened for each reported incident or complaint and allocated an enforcement reference number.
- 5.6 This authority will ensure that all authorised officers are fully acquainted with requirements of the Monitoring and Enforcement Plan and appropriate training will be given.
- 5.7 The County Council will ensure that anyone subject to any enforcement action is informed of what is expected of them and the procedures that will be followed. This is to aim to avoid any misunderstandings and ensure transparency of all enforcement action.
- 5.8 Particular care will be taken when working with small businesses to help them meet the legal requirements of any notice without incurring unnecessary costs.
- 5.9 The authority remains committed to fostering business enterprise, provided that the necessary development can take place without unacceptable harm to local amenity. Whilst the authority does not condone wilful breaches of planning law, it has a general discretion to take enforcement action, when it considers it expedient to do so. Nevertheless, in some cases effective enforcement action is likely to be the only appropriate remedy if the business activity is causing unacceptable harm.
- 5.10 The case officer will endeavour to discuss any breach of planning control with the developer before the County Council takes any enforcement action. The only exception to this is where the breach of planning control is considered to be so severe that urgent action is necessary to protect the environment.

- 5.11 Where there is a right of appeal against formal action, advice on how to appeal will be clearly set out in writing at the time action is taken.
- 5.12 The County Council will therefore:
- a) Clearly identify the alleged breach of planning control;
  - b) Clearly state what the County Council expects the developer to do to remedy the breach;
  - c) Give a reasonable period for compliance (unless the breach is considered to be so severe that immediate action is required);
  - d) Provide a named officer contact so that the developer may discuss the matter;
  - e) Set out what potential further action may be considered if the breach is not remedied.
- 5.13 All communications will be clear and in plain English, and will distinguish between advice and legal requirements. Appropriate translated material will be provided where necessary and practical help provided for people with impaired hearing or vision or some other impairment.

## **6. Monitoring of Minerals and Waste Sites**

- 6.1 Monitoring involves the checking of compliance with conditions of planning permission relating to minerals and waste developments. Planning permissions for such developments are often complex and contain many conditions.
- 6.2 The County Council is now able to charge a standard fee for the monitoring of planning conditions at mineral extraction or landfill sites. It agrees with the site operators on an annual basis a programme of site inspections. The frequency of visit is dependent on the circumstances e.g. the size and nature of the site, the number and complexity of conditions attached to a permission, the stage of operation reached at a particular site and the history of compliance exhibited by the site operator over a period of time. In practice most active mineral extraction or landfill sites are inspected three times a year and dormant sites at least once a year.

- 6.3 Inspections to mineral extraction and landfill sites are followed up with a report prepared within 21 days of the date of the visit. The report shall detail any breaches of planning control and/or conditions of the planning permission, and specify timescales for the achievement of compliance by the operator.
- 6.4 Monitoring fees cannot be charged on non-landfill waste management developments. These are however monitored on a similar basis to minerals and landfill sites. All active non-landfill waste management sites are visited at least twice a year, in accordance with Development Control Charter Standards.
- 6.5 Findings from monitoring of non-landfill waste management sites are recorded in a visit report, prepared within 21 days of the inspection. However, a copy of the report is only provided to non-landfill waste management operators when a breach is identified, which is accompanied by a timescale for remedial works.
- 6.6 Most planning permissions granted by Suffolk County Council are subject to conditions whose main purpose is to protect the amenity of a locality. Breaches of conditions may have an immediate harmful impact on amenity, such as operating unauthorised plant and equipment that causes disturbance by noise or operations taking place outside permitted hours. Other breaches may not have an immediate effect, but if allowed to continue, may have a subsequent deleterious effect on amenity, such as failing to adhere to a restoration programme.
- 6.7 In considering formal enforcement action involving service of a Breach of Condition Notice, the authority will have regard to the statutory period of at least 28 days during which an operator is given to take steps to comply with conditions. An exception to the statutory 28 day compliance period will be considered in serious cases of non-compliance.
- 6.8 The authority reserves the right to make decisions on taking formal enforcement on a case by case basis, with due consideration of the seriousness of the issue and any commitment by the operator to undertake remedial works in accordance with stipulated timescales.

## **7. County Council Development**

- 7.1 When the County Council determines applications for its own development, responsibility for compliance with conditions of

permission lies with the relevant Directorate. Planning Officers do carry out limited monitoring of County Council developments and respond to any complaint that conditions are not being complied with.

- 7.2 The County Council cannot take enforcement action against itself. However, on rare occasions where conditions have not been complied with, the matter will be pursued with the applicant or its agent. If the Directorate submitting the application is unwilling to remedy the breach, the matter would be reported to the Development Control Committee.

## **8. The Relevant Enforcing Authority**

- 8.1 The unauthorised disposal of waste is the most frequent subject investigated by the County Council as Waste Planning Authority and there is often an overlap of enforcement between the authority, the District/Borough Councils' Environmental Health departments and the Environment Agency (EA). Where the unauthorised activity results in, or has the potential to result in, pollution, the EA will normally be the lead authority. Where the activities involve a statutory nuisance the District Council may be better placed to take action. In all cases that potentially involve the above bodies, consultations and discussions will take place to see which authority is in the better position to lead the investigation and, if necessary, take action.

## **9. Procedures for Investigation**

- 9.1 Planning officers will expect the co-operation of the owner or occupier when visiting sites for enforcement purposes.
- 9.2 If necessary, officers will advise an owner/occupier of their right of entry. If entry is refused, the person will be advised in writing of the Council's intention to obtain access at a future time. It will be explained that a subsequent refusal to allow entry will be regarded as an "obstruction" and an offence under the Town and Country Planning Act.
- 9.3 Although routine inspection of quarries and waste management sites can identify breaches of planning control, it is often the case that unauthorised operations are brought to the authority's attention by members of the public either directly or via parish councils.

- 9.4 The complainant will be asked to provide certain details such as their name, address, telephone number and email address (if appropriate). This is to ensure that the system is operated fairly and to ensure that complaints are not being made falsely or maliciously. It will also ensure that the complainant is kept informed of progress on the alleged breach of planning control.
- 9.5 If requested to do so the County Council will keep the complainant's identity and contact details confidential. However, there may be circumstances in which the County Council is required to disclose these details if it considers that enforcement action is necessary.
- 9.6 It is often helpful if the complainant is prepared to give evidence at any subsequent appeal or prosecution.
- 9.7 When an alleged breach of planning control is reported to the County Council the site will be inspected within five working days.
- 9.8 Where the County Council is not the appropriate enforcement authority, it will pass the complaint to the relevant enforcement authority within five working days of investigation and inform the complainant that it has done so.

## **10. Investigation by Officers**

- 10.1 The Inspecting Officers will:
  - a) Identify themselves by name and organisation and carry identification.
  - b) Explain clearly the purpose of their visit.
  - c) Act with courtesy, honesty and openness.
  - d) Exercise their judgement impartially.
  - e) Respect commercial confidentiality to the extent that it does not conflict with any enforcement proceedings.
  - f) Caution the person under the Police and Criminal Evidence Act (PACE), if it is necessary to speak to an individual in order to gather evidence.

- g) Confirm to the person or company, in writing and within five working days of investigation, if it finds there has been no breach of the law.
- h) Only undertake surveillance, including covert observation, of a site or activity with prior authorisation by the Director of Economy, Skills & Environment and with regard to the Regulation of Investigatory Powers Act 2000. It is infrequent that covert surveillance of an alleged or actual breach of planning control is necessary.

## **11. Reporting Back to a Complainant**

- 11.1 The County Council will respond to a complainant within ten working days of the complaint:
  - a) Confirming whether or not there has been a breach of planning control.
  - b) Setting out the County Council's intentions together with any timetable to which it will be working.
- 11.2 Enforcement issues can be complex and it is often the case that the Council is unable to obtain sufficient information within 10 working days to be able to respond meaningfully to the complainant. It will instead explain why it has been unable to investigate fully and when the complainant can expect to receive a further response.
- 11.3 The County Council will keep complainants updated with progress on any case under investigation as considered appropriate by the case officer.
- 11.4 Complainants may be asked to assist the County Council if the matter results in a Local Planning Inquiry or court proceedings. This may mean that the complainant is invited to sign a written statement and asked to attend any formal proceedings.
- 11.5 Local County Councillors will also be informed at an early stage about any enforcement action that is likely to be formally pursued within their Division (other than minor breaches, which are likely to be resolved by negotiation).
- 11.6 Details of current enforcement cases (where a notice has been issued) will be published on the County Council's web site.

## **12 Delegation of Enforcement Powers**

- 12.1 Authority to institute enforcement action, including prosecution for non-compliance with the terms of a notice, has been delegated to the Director of Economy, Skills & Environment (details are set out in the County Council's Constitution, available on the County Council website at <http://www.suffolk.gov.uk/your-council/councillors/suffolk-county-council-constitution/>). The Director has further delegated this authority to the Head of Development Control. For Stop Notices delegated authority may only be instituted with the prior consultation of the Chairman and Vice Chairman of the Development Control Committee.
- 12.2 The Local County Councillor will be informed of any formal enforcement action at or before the issue of notices.

## **13 Prosecution**

- 13.1 The County Council will always prosecute for the non-compliance with the terms of any notice, except where the enforcement notice has subsequently been complied with prior to the court hearing and it would not be in the public interest to proceed with prosecution.