



Suffolk
County Council

Resource Management – Strategic Planning

Development Management Local Monitoring & Enforcement Plan



2015

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1. **Introduction**

- 1.1 This Local Monitoring and Enforcement Plan sets out the way that Suffolk County Council as Mineral, Waste and County Planning Authority will deal with site monitoring planning and enforcement issues in accordance with the National Planning Policy Framework (NPPF). It replaces The Development Management and Enforcement Plan dated July 2012.
- 1.2 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.”
- 1.3 Planning Policy Guidance states that effective enforcement is important to:
 - a) Tackle breaches of planning control which would otherwise have unacceptable impact on the amenity of the area;
 - b) Maintain the integrity of the decision-making process, and;
 - c) Help to ensure that public acceptance of the decision-making process is maintained.

2. **The County Council’s Monitoring and Enforcement Function**

- 2.1 The County Council is responsible for determining planning applications for mineral and waste development (known as County Mattersⁱ) and for its own development (Regulation 3ⁱⁱ) such as new schools, roads etc.
- 2.2 For operational minerals and waste sites with planning permission granted by the County Council, routine monitoring is undertaken to ensure compliance with conditions imposed as part of such permissions.
- 2.3 Where there are breaches of planning control from unauthorised minerals or waste development or from non-compliance with planning conditions, the County Council, as Mineral and Waste Planning Authority has discretionary powers to take enforcement action as appropriate.
- 2.4 The County Council’s enforcement powers are contained within the Town and Country Planning Act 1990 (as amended). The County Council has discretion, rather than a duty to take enforcement action 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.
- 2.5 The enforcement powers available to the County Council are set out at Appendix 3

3. **General Enforcement Considerations**

- 3.1 It is not an offence to carry out development without first obtaining planning permission for it. However, if formal enforcement action is taken failure to comply may be a criminal offence and may, make the person responsible for the breach liable to prosecution.
- 3.2 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.
- 3.3 If however, the breach of planning control is causing serious harm to public amenity or the breach of control took place in full knowledge that a planning permission was needed and the person responsible for the breach will not submit a planning application the County Council will in those circumstances consider taking immediate enforcement action.
- 3.4 There are statutory time limits within which enforcement action must be taken or the breach will be immune from enforcement action, except in certain circumstances. These time limits are set out in section 171B of the Town and Country Planning Act 1990.

Harm

- 3.5 In deciding whether it is appropriate to take enforcement action the degree of harm that the unauthorised development is causing, or is likely to cause will be carefully considered. Harm resulting from a breach of planning control could concern amenity or highway safety and include, for example, noise nuisance, loss of daylight or privacy, or danger from increased traffic flows. Harm to the visual amenity of an area could occur for example through unauthorised work to: a listed building, demolition within a Conservation Area or work to a protected tree.
- 3.6 Harm does not include:
 - Competition caused to another business
 - Loss of an individual's view or trespass onto their land
 - Loss of value to a neighbouring property

Expediency

- 3.7 Expediency as a test is the balancing of the advantages and disadvantages of a course of action. Planning Policy Guidance states that "In deciding, in each case, what is the most appropriate way forward, local planning authorities should usually avoid taking formal enforcement action where:
 - a) There is a trivial or technical breach of control which causes no material harm or adverse impact on the amenity of the site or the surrounding area;
 - b) Development is acceptable on its planning merits and formal enforcement action would solely be to regularise the development, and;
 - c) In their assessment, the local planning authority considers that an application is the appropriate way forward to regularise the situation, for example where planning conditions may need to be imposed".

Proportionality

- 3.8 Where enforcement action is taken it should be proportionate to the seriousness of the harm being caused. For example:
- a) Restricting hours of working or settling noise limits on a business activity that is otherwise acceptable but is giving rise to disturbance at certain times of day rather than seeking to prevent the operation altogether;
 - b) Requiring the removal of a window or insertion of obscured glazing in a house extension, when overlooking is a problem rather than requiring the whole extension to be removed.

Human Rights Act

- 3.9 The enactment of the Human Rights Act 1998 reinforces the need for openness and consistency as the decision to take, or not take, action may adversely affect someone's rights.
- 3.10 An individual's rights, as set out in the European Convention on Human Rights, are relevant when considering enforcement action and will be taken into account by the County Council when taking any decision on enforcement action. The County Council will seek to ensure that any action it takes is:
- a) Proportionate to the breach of planning control it seeks to address, and;
 - b) To balance the rights of those who may be in breach of planning control and those who are affected by it.

4. Monitoring of Minerals and Waste Sites

- 4.1 Mineral and Waste sites often involve continuous activities over many years. Planning permissions are subject to conditions to help mitigate the environmental impacts and protect amenity.
- 4.2 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, that the planning authority must ensure that appropriate periodic inspections of those establishments or undertakings are made. The County Council takes a proactive approach to monitoring of existing sites.
- 4.3 The County Council is now able to charge a standard fee for the monitoring of planning conditions at mineral extraction or landfill sites. The County Council agrees with the site operators a program of site inspections. The frequency of visits 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 operations 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.
- 4.4 Monitoring fees cannot be charged on non-landfill waste management developments. These are however monitored on a proactive basis and all active non-landfill waste management sites are visited at least twice a year

- 4.5 Monitoring visits involve the checking of compliance with, conditions of planning permission, any related planning obligations relevant for the site and checking that no unauthorised development is taking place.
- 4.6 Officers and operators generally work constructively together to review compliance with permissions. In this way problems can be avoided and formal enforcement action is less likely to be necessary.
- 4.7 Inspections of mineral extraction and landfill sites are followed up with a report to the operator 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.
- 4.8 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.

5. **Making a complaint**

- 5.1 Anyone who believes that a breach of planning control has occurred can make a complaint. Except for urgent cases, all complaints should be made in writing. A form is available at Appendix 1 which may be emailed to planning@suffolk.gov.uk
- 5.2 The County Council's Development Management Section is concerned with resolving serious breaches of planning control. It does not deal with neighbour or business disputes or a change to the environment that an individual or group of residents may not like. There must be significant harm (see paragraph 3.5) to public amenity, safety or the environment for enforcement action to be justified.
- 5.3 We will not deal with any anonymous complaints, so will not register or start to deal with a complaint until we receive the information in paragraph 5.4, or a fully completed complaints form available at:
<https://www.suffolk.gov.uk/planning-and-environment/planning-applications/minerals-and-waste-development-planning/monitoring-and-enforcement-plan/> (Appendix 1)

What should be included in your complaint

- 5.4 The following minimal information should be included:
- a) Complainant's name and contact details (postal address and telephone number);
 - b) The site address or location, and;
 - c) Nature of the development or activity that is causing harm and when it began.
- 5.5 Please include as much information as you can about the activity which is causing harm and who you consider is responsible for it, attaching dated photographs and plans wherever possible.

How we will deal with complaints

- 5.6 The identity of a person making a complaint is normally kept confidential unless the County Council is required to release the information by law. However, the substance of the complaint is not confidential. If a case proceeds to formal action, and if a complainant's evidence is part of the County Council's case anonymity cannot be guaranteed, however we will ask for the complainant's agreement if we need to do this
- 5.7 All complaints will be logged and investigated. The following procedures will take place:
- a) Acknowledgement of complaints: a complaint will be acknowledged within 5 working days of the County Council receiving a complaint;
 - b) Checking of facts;
 - c) If no breach is found: the complainant(s) and, if necessary, the company involved will be informed within 15 working days of the date of the acknowledgement;
 - d) If a breach is found but it is not a 'County Matter'ⁱ or 'Regulation 3 Matter'ⁱⁱ the relevant District/Borough Council / Environment Agency will be informed of the complaint within 15 working days of the date of the acknowledgement, whilst informing the complainant(s) and, if necessary, the company involved within the same period, and;
 - e) A breach is found that is a 'County Matter'ⁱ all parties will be informed within 15 working days of the acknowledgement and proposed action set out.

How long will it take?

- 5.8 Dealing with enforcement cases can be a lengthy and complex process. Enforcement cases vary considerably in complexity as does the time taken for their resolution. If a person exercises a right of appeal; this will add to the time taken to resolve the case. In consequence it is not possible to give a standard time for dealing with enforcement cases.
- 5.9 The investigating officer will advise you of any significant progress made, as and when it occurs.

What are the priorities?

- 5.10 Because of the often lengthy and complex nature of planning investigations, it is necessary to give priority to those cases where the greatest harm is being caused. The following in paragraph 5.11 provides examples of how cases are prioritised.
- 5.11 Only where a case is categorised as Priority One will immediate action be initiated to address the breach of control.
- i) Priority One
 - A serious threat to harm and / or safety (e.g. traffic hazard, storage of hazardous substances, development creating pollution problems).
 - Permanent damage to the environment (e.g. loss of protected tree, unauthorized works affecting the character of a listed building).

ii) Priority Two

- Building work, which is unlikely to be given planning permission without substantial modification.
- Unauthorised uses causing severe nuisance through noise, smells, congestion etc.

iii) Priority Three

- A breach causing problems, which may be resolved by, limited modifications to working practices.

How the County Council will Deal with a Complaint

5.12 The County Council will follow the relevant legislation in relation to the gathering of evidence and the conduct of investigations which may lead to prosecution.

5.13 Formal enforcement action may not always be expedient or appropriate. Where the County Council is the responsible planning authority, any decision not to take enforcement action following a breach of planning control will normally be made by the Head of Planning.

5.14 Where complaints appear to be repeatedly unfounded and / or vexatious the complaint will be directed to the County Council's formal complaints procedure for a resolution at <https://www.suffolk.gov.uk/about/make-a-complaint-or-give-feedback/>

Initial Investigation

5.15 The following actions will be undertaken:

- a) Checks will normally be made as to whether planning permission exists, whether the development has permitted development rights or benefits from a lawful use. When necessary, District / Borough Councils will be consulted to determine whether any locally granted permission exists;
- b) The investigating officer will, under normal circumstances, visit the site in question to determine whether a breach of planning control has taken place;
- c) The complainant may be asked to complete an evidence form (Appendix 2) to enable the investigating officer to fully understand the extent and nature of the complaint, and;
- d) 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. The service of a Planning Contravention Notice is not formal enforcement action.

What if someone complains about you?

- 5.16 If you are contacted about an alleged breach of planning control you are entitled to know what the allegation is (but not who made it), and have the opportunity to explain your side of the case.
- 5.17 If you are not involved, no action will be taken against you. If you are involved, the Development Management Section will advise you of the details of the breach and how it can be put right.
- 5.18 Your co-operation will be sought to correct the breach, either by removing or modifying the unauthorised development or by ceasing the unauthorised work. A reasonable period of time will be allowed for you to do this.
- 5.19 In some circumstances you may be invited to submit a retrospective planning application, if it is considered that permission may be granted.
- 5.20 You may be served with a 'Planning Contravention Notice' that requires information concerning the development carried out. This Notice is used to establish the facts of what has occurred so that the County Council can determine whether a breach of control has taken place, and whether formal enforcement action is appropriate. The implications of not completing and returning the Notice will be explained to you.
- 5.21 There are several types of enforcement action available to the County Council as set out in Appendix 3 and further information and guidance on planning enforcement can be obtained from the [Department of Communities & Local Government](#):

6. Enforcement Action

- 6.1 Suffolk County Council officers will, in coming to any decision as to which is the most appropriate form of action, have regard to the Monitoring and Enforcement Plan and in particular to the following criteria:
 - a) The harm or potential harm to amenity if the activity or operations are allowed to continue;
 - b) 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;
 - c) 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;
 - d) Any previous advice, correspondence and negotiations;
 - e) The consequences of non-compliance;
 - f) The likely effectiveness of the various enforcement options;
 - g) The public interest, and;
 - h) The availability of appropriate evidence to support the enforcement action proposed with due consideration to the likelihood of success.

- 6.2 A file will be opened for each site with a reported incident or complaint. 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).

Follow up action

- 6.3 Depending upon the nature of the breach of planning control, there are a range of measures the County Council can take:
- a) If the harm (see paragraph 3.5) being caused is limited – negotiation will normally be the first step to address the situation. Where a landowner or operator is willing to comply with the recommendations of the investigating officer and the investigating officer is confident that such recommendations are likely to be implemented swiftly, remedial action will be agreed to address the breach and the investigating officer will write to all parties setting out the agreed timeframe for works to be undertaken;
 - b) Retrospective planning application – In certain circumstances, it may be appropriate to seek a retrospective planning application where the investigating officer is of the view that planning permission may be granted and such permission would enable the County Planning Authority to control the development through the imposition of conditions. A reasonable timescale will be set for an application to be made and the investigating officer will write to all parties setting out the agreed timeframe for works to be undertaken, there is however no guarantee that approval will be forthcoming, and;
 - c) Should the agreed action not be forthcoming within the agreed timescale, the County Council may then decide to take formal enforcement action to remedy the breach.

Complaints

- 6.4 If you are concerned that relevant procedures have not been followed, you should contact the Head of Planning in the first instance. Formal complaints will be handled in accordance with the County Council's Complaints Procedure details of which can be found at: <https://www.suffolk.gov.uk/about/make-a-complaint-or-give-feedback/>

7. **Appendix 1 - Complaint form**

Online version can be found at: <https://www.suffolk.gov.uk/planning-and-environment/planning-applications/minerals-and-waste-development-planning/monitoring-and-enforcement-plan/>

	For office use only	
	Reference Number	
	Date	

Planning Enforcement

Reporting a suspected breach

You should complete this form if you suspect that an unauthorised activity or operation is taking or has taken place which is in breach of the planning, listed building permission.

Personal details entered onto this form will be treated as confidential and will not be published. (Fields Marked * are mandatory)

Your details			
Name *			
Address *			
	Postcode		
Telephone number	Mobile number	Email	

Details of where suspected breach is taking or has taken place	
Site location or address *	
Occupier's or Owners name and contact details if known	
Are they: (please check the relevant box)	the owner <input type="checkbox"/> tenant/occupier <input type="checkbox"/> contractor/work person <input type="checkbox"/>

Description of the suspected breach *	
Please provide if possible: <ul style="list-style-type: none"> • Date/Time of breach • Vehicle registration • Activities being undertaken 	
Other documents/photos attached	

Please return this form to: Planning Enforcement, Suffolk County Council, 5th Floor Endeavour House, 8 Russell Road, Ipswich, IP1 2BX
 Or email as an attachment to: planning@suffolk.gov.uk

9. **Appendix 3 – Powers available to the County Council in Undertaking its Enforcement Function**

The three types of breach that may be likely to occur during development are:

- a) Breach of conditions attached to an extant planning permission;
- b) The carrying out of development where there is no planning permission and such a planning permission is unlikely to be granted, and;
- c) The carrying out of development where there is no planning permission but permission is likely to be granted retrospectively.

Potential breaches of planning control, as outlined above, are likely to be brought to the attention of the County Council through either routine site monitoring inspections, or as a complaint from a member of the public or other third parties.

Enforcement procedures are intended to be remedial rather than punitive: *Tapecrown Ltd v First Secretary of State* [2006] EWCA Civ 1744

There are a number of measures and enforcement and regularising powers available to the County Council when it considers investigating unauthorised development and taking enforcement action. These are described in order to explain the extent of the County Council's powers and to identify which course of action is likely to be most appropriate.

- d) Ongoing Review: Take no action, but monitor the position in case circumstances change. Such cases might include minor breaches causing no significant harm, those which are unlikely to create a precedent or which may be remedied of their own accord;
- e) Allow Time to Remedy: Time may be given to remedy the breach or justify its retention. Such cases may include situations where harm is easily repairable and is not so serious as to warrant immediate action or where it may be justifiable by some other benefit. However, because formal enforcement action takes some time, any informal action to resolve the breach will not be allowed to delay enforcement action unnecessarily;
- f) Planning Contravention Notice: This can give an opportunity through the provision of more information by answers to detailed questions to formally regularise the position, or to persuade the County Council that further action is inappropriate;
- g) Enforcement Notices: These will be the normal means of remedying unacceptable development where the County Council's enquiries regarding a breach of planning control, or informal action, are met with no satisfactory response. There is a right of appeal to the Secretary of State against the Notice, which can be quashed or amended, and;
- h) Breach of Condition Notice: These can be issued in addition or as an alternative to an enforcement notice where the unauthorised activity is in breach of a condition attached to a planning permission;
- i) Stop Notice: The Council can issue a Stop Notice where a breach of planning control is causing serious or irreparable harm and more immediate action is justified despite the cost of depriving a developer of the benefit of development;

- j) Court Injunction: This may be sought in the most serious cases where irreparable harm is being done or where other actions have failed. Significant costs are involved in bringing such actions and can only be justified in extreme cases. Defendants risk of imprisonment if they do not comply with the terms of an injunction;
- k) “Default” Powers or Direct Action: The County Council may enter land to take the necessary steps to secure compliance when an enforcement or advert notice is given, and;
- l) Prosecution

Right to Enter Land

Any officer, or other persons duly authorised in writing by the County Council may, at any reasonable hour, enter any land for enforcement purposes if there are reasonable grounds for doing so. The Town and Country Planning Act 1990 specifies the purposes for which entry to land may be authorised

- m) To ascertain whether there has been a breach of planning control on the land or any other land;
- n) To determine whether any of the County Council’s enforcement powers should be exercised in relation to the land or any other land;
- o) To determine how such powers should be exercised in relation to that land or any other land, and;
- p) To ascertain whether there has been compliance with any requirement imposed as a result of any such power having been exercised in relation to the land, or any other land.

It is a criminal offence to wilfully obstruct an authorised person in exercise of their right of entry. Any person who does wilfully obstruct an authorised person may be prosecuted and, if convicted, maybe liable to a fine.

ⁱ County Matters are defined in Schedule 1 of the Town and Country Planning Act 1990 and the Town and Country Planning (Prescription of County Matters)(England) Regulations 2003

ⁱⁱ Local Authorities may determine planning applications for their own development on land in which they have an interest or for development by an authority jointly with another person. These are known as Regulation 3 development, procedures dealing with development undertaken by local authorities are contained in The Town and Country Planning General Regulations 1992