

Procedures and information removed from 2014 Enforcement Plan Updated February 2016

This information was correct at time of publication but please refer to legislation and government guidance for clarification and current information

Monitoring Visits

The principal purpose of a monitoring visit is to check compliance with conditions of the relevant planning permission(s) relating to a minerals or waste development. Planning permissions for such developments are often complex and contain many conditions.

Section 19 of The Waste (England and Wales) Regulations 2011 requires the Council to undertake appropriate periodic monitoring visits to permitted waste sites, whilst The Town and Country Planning (Fees for Applications Deemed Applications Requests and Site Visits) (England) Regulations 2012 provide the Council with a power to charge a fee for inspecting quarries and landfill sites.

The proactive monitoring of permitted sites will generally:

- determine whether the development is taking place in accordance with the conditions (and schemes approved therein) of all the relevant planning permission(s) and section 106 agreement(s);
- record the lawful implementation and date of commencement of a development;
- allow the visiting officer to gain an overall impression of the day-to-day operation of the site, chart progress to date, and identify and address potential problems before they arise;
- minimise the need for enforcement or other action;
- encourage good operational practice rather than punish bad practice;
- act as a means of regular liaison with operators; and
- provide information to support any site liaison forums.

The effective monitoring of sites can only be achieved through a proactive and structured monitoring regime. Before the start of each monitoring year the Council will identify which sites will be monitored and how many visits are proposed for each site. In determining the number of visits the Council will consider a range of factors including:

- the size, type and stage of development;
- the number and complexity of planning conditions, planning obligations such as section 106 agreements, and any associated schemes;
- the number of issues requiring regular monitoring;
- the nature of working/restoration;
- the type and frequency of breaches of planning control observed on previous visits (if known); and
- whether any complaints have been received for the site which, upon review, have been proven to be justified in respect of planning conditions/planning obligations currently in force.

An appointment will usually be made with the site operator before the initial site visit at the start of each monitoring year, which currently runs from the 1st April to 31st March. Further visits may be announced or unannounced.

Visiting officers will always:

- make their presence known when arriving at a site and, where appropriate, present their identity cards;
- complete the operator's health and safety induction; and
- comply with both the operator's and the Council's health and safety procedures.

The first visit of the monitoring year will usually be a full audit consisting of a detailed site visit and a comprehensive review of the operator's compliance with the planning permission and associated planning obligations. The audit also provides an opportunity to review the adequacy and effectiveness of the conditions and provides a compliance baseline for future inspections during the year.

Further site visits may focus on different aspects of the activity, such as emerging issues, restoration works or any breaches or failings identified during the audit or any previous monitoring visit. On occasions visiting officers may be accompanied by consultants or specialist officers who will undertake specific work on behalf of the Council, for example noise monitoring or the inspection of archaeological work. All consultants or specialist staff will be identified to site staff upon arrival and will be expected to comply with the Council's and the site operator's health and safety procedures at all times.

Visiting officers will take photographs and make notes to help them draft their site visit reports. They may also wish to see relevant documents held on site such as records of heavy commercial vehicle movements.

Prior to leaving the site the officer will usually summarise any issues arising from the visit and any actions required. A written report will then be forwarded to the operator within 10 working days of the visit, unless otherwise agreed. The report will include the following information:

- the date and time of the visit;
- the name of the officer who conducted the visit;
- the prevailing weather conditions;
- what planning permissions and conditions have been inspected;
- the officer's observations;
- any breaches of planning control identified (where applicable); and
- the actions required to address the breaches and a timescale for achieving compliance.

Explanation of formal enforcement action

Enforcement Notice (EN)

An Enforcement Notice (EN) may be served on an occupier, landowner and any other parties who have a material interest in the land where:

- there is a continuing breach of planning control; and
- the breach is causing serious harm or has the potential to cause serious or irrevocable harm to the amenity of an area.

The EN is used to bring unauthorised development into compliance with planning control, either by stopping the development and/or specifying steps to be taken to rectify the situation.

An EN can be used for all forms of unauthorised development and breaches of a planning condition. It cannot take effect sooner than 28 days following the date on which it is issued and must set out the steps and the timescale to remedy the breach. Failure to comply with the requirements of an EN may result in prosecution in either the Magistrates' or the Crown Court.

This type of notice will not normally be issued solely to 'regularise' development which is acceptable on its planning merits, but for which permission has not been sought.

The recipient(s) of an EN can appeal against the notice to the Secretary of State. However, they must submit their appeal to the Planning Inspectorate within 28 days from when the EN is issued. Wherever possible the appeal documents should be submitted on-line at:

<http://www.planning.gov.uk/planning/appeals/online/makeanappeal>

The lodging of an appeal effectively suspends the notice until the appeal is determined.

The appellant can appeal under any of the following grounds:

- that planning permission should be granted;
- that the breach of control alleged in the enforcement notice has not occurred as a matter of fact;
- that there has not been a breach of planning control;
- that at the time the enforcement notice was issued it was too late to take enforcement action against the matters stated in the notice;
- that the notice was not properly served on everyone with an interest in the land;
- that steps required to comply with the requirements of the enforcement notice are excessive and lesser steps would overcome the objections; or
- that the time given to comply with the notice is too short.

An enforcement appeal can proceed on the basis of written representations, by informal hearing or by a local public inquiry. Appellants and LPA's will be invited to identify which appeal procedure they consider to be the most appropriate, but the final decision on the format of the appeal rests with the Planning Inspectorate.

Should the Planning Inspector dismiss the appeal and uphold the EN, or uphold the notice but with varied requirements, the notice would become effective from the date of the appeal decision. Should the appeal succeed the notice would cease to have any effect. Both the appellant and the Council have the right to challenge the Planning Inspector's decision in the High Court.

Direct Action

Where an EN has been issued and has not been complied with the Council may, in appropriate cases, take direct action against the landowner to secure compliance by carrying out the steps specified in the notice. The Council can also take action in the Courts, if necessary, to recover the cost for undertaking this work from the landowner.

Breach of Condition Notice (BCN)

A BCN may be issued where there is a clear breach of planning conditions on a site with an existing planning permission. The notice requires the recipient to take steps to remedy the breach. There is no right of appeal to the Secretary of State against a BCN, but the recipient can challenge the decision to issue the notice or its validity in the High Court. Failure to comply with a BCN may result in summary prosecution in the Magistrates' Court.

Temporary Stop Notice (TSN)

The TSN can be used to very quickly halt some breaches of planning control for a period of up to 28 days. The notice gives the Council the means to cease or reduce or minimise the impact of an unauthorised development at an early stage without the need to issue an EN. It also allows the Council to determine whether further enforcement action is appropriate without the breach intensifying or continuing. It can also allow the Council to ensure that breaches of planning control are ceased immediately during the period that an Enforcement Notice, having been served, is waiting to take effect. Failure to comply with a TSN is an offence which may result in prosecution in either the Magistrates' or the Crown Court.

Unless withdrawn beforehand, a TSN ceases to have effect 28 days after it is served. There is no right of appeal to the Secretary of State against a TSN, but the recipient can challenge the decision to issue the notice or its validity in the High Court. The recipient of the notice may be entitled to compensation if:

- the activity specified in the temporary stop notice was the subject of an existing planning permission and any conditions attached to the planning permission have been complied with; or
- the activity is permitted development; or
- the Council issues a lawful development certificate confirming that the development was lawful; or
- the Council withdraws the notice for some reason, other than because it has granted planning permission for the activity specified in the TSN.

Stop Notice (SN)

The Council may serve a SN which requires immediate cessation of the development or activity because the breach of planning control is so serious that it should not be permitted to continue until the associated EN takes effect. There is no right of appeal to the Secretary of State against an SN. However, if the associated EN is quashed,

varied or withdrawn the Council may be liable to pay compensation in certain circumstances for any losses incurred by the developer as a result of serving the SN. Failure to comply with a SN is an offence which may result in prosecution in either the Magistrates' or the Crown Court.

Injunction

An injunction is an order of the County Court or the High Court requiring the defendant to refrain from undertaking a specific act (a prohibitory injunction) or to carry out a specific act (a mandatory injunction). Whilst all the other measures are retrospective (i.e. cannot be used until a breach has actually occurred), an injunction can be sought, in serious circumstances, in respect of an anticipated breach. Injunctions are also 'personal' in that they relate to the activities of a person or persons rather than a use of land.

Prosecution

The Council is required to consider prosecution in all cases where there is or has been non-compliance with the terms of an EN.

Where prosecution is an option, the Council will need to assess whether or not it is in the public interest to bring a prosecution against the operator/landowner/occupier. In doing so, the Council will take into account matters such as:-

- The seriousness of the breach of planning control
- The impact of the breach of planning control on local residents and the environment
- The loss of amenity arising out of the breach of planning control
- Whether or not the operator/landowner/occupier has complied with any notices served on him/her even if such compliance is after the timescale during which compliance ought to have been achieved.
- Whether or not there is evidence that the operator/landowner/occupier has repeatedly breached planning control or has repeatedly failed to comply with notices within the given timescales
- What steps, if any have been taken by the operator/landowner/occupier in an attempt to secure compliance
- The duration of any breach of planning control and any failure to comply with any notices
- Whether or not the operator/landowner/occupier engaged with Council officers so as to reach an agreement on remedying the breach
- Any other matters that seem relevant in all of the circumstances.

Whether or not it is in the public interest to prosecute is a matter that is routinely reviewed throughout the course of any investigation and subsequent prosecution.

As well as considering whether or not it is in the public interest to prosecute, the Council is also required to consider the Code for Crown Prosecutors when deciding whether or not to commence prosecution proceedings.

Timescales

The time taken to pursue formal action (and prosecution proceedings where necessary) will vary on a case by case basis. The emphasis will be on balancing the

urgency to remedy the planning breach with mounting a properly constituted legal response taking into account available resources.

Where the Council is intending to bring prosecution proceedings against either a company or an individual it is necessary for it to collate sufficient evidence to support the prosecution. This means that Council officers will need to undertake an investigation into the circumstances surrounding the breach of planning control. Such investigations and the preparation of a prosecution file can take several months.

In cases where an Enforcement Notice is served prosecution proceedings will only be commenced once the time period for compliance with the Enforcement Notice has expired and an investigation has taken place. In some cases, the time period for compliance with an Enforcement Notice could be several months.

Once prosecution proceedings have been commenced, the matter will then be subject to the timescales imposed by the judicial system. Furthermore, some pre-trial delays may be unavoidable.

Proceeds of Crime

The Council has the power to take action under the Proceeds of Crime Act 2002 where this is deemed appropriate in all of the circumstances. Such action can include taking restraint action so as to, effectively, 'freeze' a company's or individual's assets and proceedings to confiscate any monies or assets that are considered to be the proceeds of crime.

ENFORCING PLANNING OBLIGATIONS

Where a breach of a planning obligation, such as a section 106 routing arrangement or a unilateral undertaking is identified, either in response to a complaint or during a routine site visit, the Council will initially try to address the breach by working with the relevant site operator. If the breach continues and it cannot be resolved by negotiation and co-operation the Council will, where necessary, enforce the relevant clause of the planning obligation using one of the methods set out above.

MONITORING PERFORMANCE

In order to assess performance in complying with the EP the following information will be reported to the Planning Committee approximately every quarter:

- the number of complaints received;
- the number of complaints resolved;
- new enforcement cases commenced;
- ongoing enforcement cases;
- the number of enforcement and breach of condition notices served;
- the number and type of site monitoring visits completed; and
- the number of LGO complaints received and resolved.

The results of appeals against individual enforcement notices will be reported to the Planning Committee as necessary.

LEGISLATION, GUIDANCE AND POLICY DOCUMENTS

Due regard is given to the following legislation, guidance, and policy documents:

The Town and Country Planning Act 1990
Planning (Hazardous Substances) Act 1990
The Planning and Compensation Act 1991
The Environment Act 1995
The Human Rights Act 1998
The Planning and Compulsory Purchase Act 2004
The Localism Act 2011
The National Planning Policy Framework 2012
The Planning (Hazardous Substances) Regulations 1992
The Town and Country Planning General Regulations 1992 (as amended)
The Town and Country Planning (Prescription of County Matters) (England) Regulations 2003
The Town and Country Planning (General Permitted Development) Order 1995 (as amended)
Town and Country Planning (Enforcement) Written Representations Procedure) (England) Regulations 2002
The Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002
The Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002
The Town and Country Planning (Enforcement)(Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002
The Town and Country Planning (Fees for Applications and Deemed Applications) (Amendment) (England) Regulations 2006
The Planning (Hazardous Substances) (Amendment) (England) Regulations 2009
The Planning (Hazardous Substances) (Amendment) England Regulations 2010
The Waste (England and Wales) Regulations 2011
The Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012
The Proceeds of Crime Act 2002
The Government's Enforcement Concordat 1998
The Government's Enforcement Concordat 2003 - Good Practice Guide
The Code for Crown Prosecutors 2013
Fees for monitoring of mining and landfill sites in England – A guide to implementation and good practice
Department of Communities and Local Government's Review of Planning Enforcement 2006
Procedural Guidance - Enforcement appeals and determination of appeal procedure PINS 02/2009 April 2010
The Planning Inspectorate - Procedural Guide Enforcement Appeals - England 6th March 2014.
The Cambridgeshire and Peterborough Minerals and Waste Local Development Framework (Development Plan Documents)
National Planning Policy for Waste and the accompanying guidance October 2014

GLOSSARY OF HELPFUL TERMS

Breach of planning control – Defined under section 171A (1) of the Town and Country Planning Act 1990 (as amended) as carrying out development without the required planning permission or failing to comply with any condition or limitation subject to which planning permission has been granted.

County Matters – Prescribed in section 2 of the Town and Country Planning (Prescribed County Matters) (England) Regulations 2003 as the use of land or the carrying out of building, engineering or other operations or the erection of plant or machinery used or proposed to be used wholly or mainly for the purposes of treating, sorting, processing, storing, transferring or depositing waste or ancillary operations.

Development – Defined by section 55 of the 1990 Act as meaning the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.

Development Plan – The relevant planning policy documents, including where appropriate saved policies, to be considered for an area. In areas of two-tier local government structure, such as Cambridgeshire, this will include documents produced by the County and district Councils.

County wildlife sites – Non statutory areas of land which are important in a county context for their wildlife or geological interest.

Enforcement action - Defined by section 171A (2) of the 1990 Act as the issue of an enforcement notice (defined in section 172) or the service of a breach of condition notice (defined in section 187A).

Local nature reserves - Places with wildlife or geological features that are of special interest locally.

Permitted development – Development which is allowed under a deemed grant of planning permission set out in the Town and Country Planning (General Permitted Development) Order 1995 (amended in 2008) or the Use Classes Order 1987.

Ramsar sites - Wetlands of international importance designated under the Ramsar Convention.

Scheduled monuments – Nationally important archaeological sites or historic buildings, given protection against unauthorised change. Scheduled Monuments are defined in the Ancient Monuments and Archaeological Acts 1979.

Section 106 agreement - Section 106 of the Town and Country Planning Act 1990 allows a local planning authority to enter into a legally-binding agreement or planning obligation with a developer over a related issue in association with the grant of planning permission. The term planning obligation is commonly applied to a 'Section 106 Agreement' or other unilateral undertaking. These agreements are a way of delivering or addressing matters that are necessary to make a development acceptable in planning terms but are outside the scope of planning conditions.

Sites of special scientific interest – Defined under the Wildlife and Countryside Act 1981 (as amended by the Countryside and Rights of Way Act 2000) as an area of special interest by reason of any of its flora, fauna, or geological features.

Special areas of conservation (SAC) – These are strictly protected sites designated under the EC Habitats Directive. Article 3 of this Directive requires the establishment of a European network of important high-quality conservation sites that will make a significant contribution to conserving the habitat types and species identified in Annexes I and II of the Directive (as amended). The listed habitat types and species are those considered to be most in need of conservation at a European level (excluding birds).

Special protection areas (SPA) – These are strictly protected sites classified in accordance with Article 4 of the EC Birds Directive, which came into force in April 1979. They are classified for rare and vulnerable birds (as listed on Annex I of the Directive), and for regularly occurring migratory species.