

West Sussex County Council

Planning Compliance and Enforcement Plan

June 2015

1. Introduction

Role of the County Council

- 1.1 The County Council is the waste planning authority (WPA) and mineral planning authority (MPA) for those areas of West Sussex which are not included in the South Downs National Park; the South Downs National Park Authority (SDNPA) is the WPA and MPA for those areas of West Sussex which are within the National Park.
- 1.2 The County Council is responsible for determining planning applications for waste and mineral development (also known as 'county matters'). The County Council also determines 'Regulation 3' applications for development associated with the delivery of the County Council's own services (e.g. the construction of a new school building or library).
- 1.3 The County Council is also responsible for controlling development that it allows through the grant of planning permission, and for investigating 'unauthorised' development and taking appropriate enforcement action.

Purpose of the Plan

- 1.4 The purposes of the Compliance and Enforcement Plan are to outline:
 - the County Council's approach to controlling development and ensuring compliance with planning permissions;
 - the legislative background and national policy context to planning enforcement;
 - how the County Council will investigate alleged breaches of planning control;
 - how the County Council will decide whether to take enforcement action against breaches of planning control;
 - the County Council's approach to planning enforcement including the formal enforcement 'tools' available to it; and
 - how the County Council will work with other regulators.

2. Controlling Development

- 2.1 Conditions can be attached by the County Council when granting planning permission to help ensure that the impact of the development will be controlled or mitigated. Conditions compel the applicant to take measures to render the development acceptable in planning policy terms. Conditions can only be imposed where they are necessary, relevant to

planning and to the development to be permitted, enforceable, precise, and reasonable in all other aspects (paragraph 206, National Planning Policy Framework (NPPF)).

- 2.2 Planning permission can also be granted subject to the completion of a legal agreement by the applicant with the County Council. Section 106 of the Town and Country Planning Act (TCPA) 1990 allows the County Council to require the applicant to enter into an agreement with the County Council to govern the use of the land in some way. Such agreements must be necessary to make the development acceptable in planning terms; be directly related to the development; and be fairly and reasonably related in scale and kind to the development.

3. Planning Compliance

- 3.1 Mineral and waste operations can involve continuous activity, sometimes over many years and are often controlled by complex planning permissions to minimise environmental harm. Monitoring of all mineral and waste sites that have planning permission is carried out to ensure that the development takes place in 'compliance' with the terms of the planning conditions attached to the permission and, where relevant, the associated legal agreement. In this way, the County Council can ensure the impact of the authorised development e.g. on the environment and local amenity, is controlled.
- 3.2 Site inspections are the principal means of site monitoring. It is the aim of the County Council to visit each mineral and waste site, active or non-active, at least once a year. The number of visits will depend on the nature, complexity and sensitivity of the site, the number of justified complaints, and, in many cases, sites will be visited more frequently. In particular, there is likely to be the need for more site visits when there is a period of intensive activity.
- 3.3 Officers and operators are able to work together constructively to review compliance with permissions in the light of the stage of development and operational circumstances and needs. In this way, problems can be avoided and formal enforcement action is less likely to be necessary.
- 3.4 Different regulations apply to minerals/landfill sites, and to waste sites.

Minerals/Landfill Sites

- 3.5 The County Council can undertake between one and eight chargeable monitoring visits to mineral sites and landfill sites each year^{1 2}.
- 3.6 Although up to eight chargeable visits to mineral/landfill sites are allowed, the County Council only undertakes the number of visits that are

¹ <http://www.legislation.gov.uk/uksi/2012/2920/regulation/15/made>

² <http://planningguidance.planningportal.gov.uk/blog/guidance/fees-for-planning-applications/fees-for-monitoring-mining-and-landfill-sites/>

necessary to ensure that the sites are monitored effectively and that there is compliance with the relevant permission/s.

- 3.7 The number of visits undertaken will be reviewed on an annual basis, with more visits carried out where a site is at a particularly sensitive stage of development, or where there are concerns about compliance. Minor breaches of planning control at otherwise compliant sites, would not normally lead to additional visits.

Waste Sites

- 3.8 The County Council is required to ensure that appropriate periodic inspections of waste sites are undertaken, although there is no provision to charge for doing so; the exception is for landfills, as set out above.
- 3.9 The County Council will carry out a review on an annual basis of the number of monitoring visits to be undertaken to each waste site.

4. Planning Enforcement

- 4.1 It is not a legal offence to carry out development without first obtaining the planning permission required for it. However, if formal enforcement action is taken, failure to comply may be a criminal offence and make the person responsible for the breach liable to prosecution.

Legislative Background

- 4.2 A 'breach of planning control' is a contravention of the planning laws. A breach is defined in Section 171A of the TCPA 1990 as "*the carrying out of development without the required planning permission or failing to comply with any condition or limitation subject to which planning permission has been granted*".
- 4.3 In addition, any contravention of the law regarding 'permitted development' rights, under the Town and Country Planning (General Permitted Development) (England) Order 2015, constitutes a breach of planning control against which enforcement action may be taken.
- 4.4 Paragraph 11 of Schedule 1 of the Town and Country Planning Act 1990 sets out that the planning enforcement function is exercisable by the district planning authority subject to the following:
- (i) if the function is a county matter the district shall not exercise that function without first consulting the county planning authority;
 - (ii) if the function is a county matter that function shall also be exercisable by a county planning authority;
 - (iii) if the function relates to minerals, only the county planning authority shall exercise the function.
- 4.5 Case law has reaffirmed that "... unless the case is one where it appears to the county planning authority that the breach of planning control relates

to a matter which 'should properly be considered a county matter', then it is for the district planning authority to bring enforcement action." (*East Sussex County Council v Robins [2009] EWHC 3841 (Admin)*).

National Policy and Guidance

- 4.6 The NPPF sets out the national approach to planning enforcement:

"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 proportionally 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." (Paragraph 207)

- 4.7 National Planning Practice Guidance on Ensuring Effective Enforcement³ clarifies what a 'breach of planning control' is, who can take enforcement action and when they should do so, why it is important, and set out options for doing so.

5. Investigation

- 5.1 The County Council will thoroughly and consistently investigate any alleged breach of planning control whether it is the result of a complaint or it is discovered through routine monitoring.

Evidence

- 5.2 Site operators and complainants will be contacted as necessary to establish the facts of the case. Any necessary written and photographic evidence will be collected during visits to the sites, which may be announced or unannounced.

Prioritisation

- 5.3 Priority will be given to investigations where there is potential or actual serious detriment to matters of public interest, such as sensitive environmental or ecological receptors, amenity, or irreplaceable historic features.

Investigation Tools

- 5.4 The following range of 'tools' is available to the County Council when investigating potential breaches of planning control:

- 5.5 **Right to Enter Land:** All officers, or other persons duly authorised in writing by the County Council, may at any reasonable hour enter any land

³ <http://planningguidance.planningportal.gov.uk/blog/guidance/ensuring-effective-enforcement>

to ascertain whether there has been a breach of planning control under s196 of the Town and Country Planning Act 1990. It is an offence to obstruct an authorised person carrying out these duties.

- 5.6 **Planning Contravention Notice (PCN):** Where there is good reason to believe a breach may have occurred, a PCN may be issued to a developer and/or land owner to ask specific questions about either the unauthorised development and/or land ownership.
- 5.7 There is a legal requirement to respond to a PCN within 21 days of the date of the notice. Non-compliance with the requirements of a PCN (not returning the PCN, or not answering all the questions) is an offence. Knowingly providing false or misleading information in response to a PCN is also an offence.
- 5.8 The PCN includes an offer of a formal meeting between the County Council and the recipient of the notice. This may help to clarify any misunderstandings and assist in resolving the situation. In some cases, it could lead to the submission of a retrospective planning application under Section 73A of the TCPA 1990 so that the matter can be formally considered by the County Council.
- 5.9 **Requisition for Information:** Where the County Council considers it has sufficient information regarding activities on land but requires further details on the ownership (or occupation), a Requisition for Information may be issued to require such information. It also warns the recipient that enforcement action is being considered, which is often enough to satisfactorily resolve the breach of control.

Handling of Complaints about Alleged Breaches of Planning Control

- 5.10 In dealing with alleged breaches of planning control, the County Council will:
- treat complainants confidentially. Complainants' details will not be disclosed to the developer/operator or any third party; the exception is disclosure to other regulatory bodies that may be involved in the investigation. Anonymous complaints will not usually be investigated;
 - ensure allegations are acknowledged within 10 working days;
 - deal with allegations expeditiously, in an efficient manner;
 - take all necessary steps to establish whether there has been a breach of planning control;
 - notify the complainant, upon request, of the progress of the investigation, where such information would not put the investigation at risk. Information and updates may be limited at times of sensitive negotiations, around the time of serving notices or taking direct action, and particularly where an offence is being investigated;

- notify the complainant of the outcome of the case, including the actions taken to resolve the breach, or, in the event that no action is taken, provide an explanation of the reasons for this.

6. Deciding Whether to take Enforcement Action

6.1 Following investigation, the County Council must consider whether it is appropriate to take enforcement action. Accordingly, the following matters must be considered:

- whether there is a breach of planning control;
- whether the breach substantially involves county matter development; and, if so
- whether the breach is immune from planning control; and
- whether it is expedient to take action.

Breach of Planning Control?

6.2 For there to be a 'breach of planning control', development must have taken place and that development must not be 'permitted development' or have planning permission; or there must be a failure to comply with a planning condition or limitation.⁴

6.3 'Development' can refer to either operational development (e.g. the erection of a structure on the land), or to a material change of use of the land.

6.4 Many minor operations and some changes of use are 'permitted development' and so are excluded from the need to obtain planning permission⁵. In most cases, conditions are attached to these permitted development rights; failure to comply with these conditions is also a breach of planning control.

County Matter?

6.5 The County Council is only authorised in law to take enforcement action against development which is considered a 'county matter' – that is minerals and waste development⁶.

6.6 Paragraph 11 of Schedule 1 of the TCPA 1990 clarifies that although the County Council can enforce against mineral development, all other enforcement powers fall to the district planning authority (DPA - i.e. the relevant district or borough council). In the case of waste development or the County Council's own developments, the DPA must consult with the County Council before taking action. The DPA can also authorise the County Council to act on its behalf.

⁴ See Section 171A of the Town and Country Planning Act 1990

⁵ See the Town and Country Planning (General Permitted Development)(England) Order 2015

⁶ See Schedule 1 of the Town and Country Planning Act 1990, and Regulation 2 of The Town and Country Planning (Prescription of County Matters) (England) Regulations 2003

- 6.7 Where the nature of the development is unclear (in terms of whether or not it is substantially a county matter), a joint investigation with the DPA will usually take place. If it is established that it is solely county matter development, the County Council will seek agreement from the DPA to lead on any enforcement action.
- 6.8 In cases where there is mixed waste and non-waste uses, or where the use is not substantially a county matter use, it will usually be appropriate for the DPA to lead on enforcement action.
- 6.9 With the agreement of the DPA, the County Council will also lead on matters relating to its own development (e.g. schools, libraries and fire stations).

Immunity?

- 6.10 Physical development becomes immune from enforcement action after four years, and unauthorised changes of use or breaches of condition become immune after 10 years. Therefore, the investigation will establish when the breach of planning control commenced.
- 6.11 If the County Council is satisfied, on the basis of the available evidence, that the breach of planning control is immune from enforcement action, no action can be taken. However, the onus of proof is on the developer or landowner to demonstrate that this is the case.

Expedience?

- 6.12 Enforcement action is discretionary and it should only be taken to address any material harm caused by unauthorised development. Therefore, consideration must be given to whether it is expedient to take formal enforcement action against a breach of planning control.
- 6.13 In doing so, regard must be had to the extent of the breach, the unacceptability of the development (taking into account the provisions of the statutory development plan and any other material considerations), and whether the breach is causing any material harm.

7. Enforcement Action

- 7.1 Although the County Council has powers to enforce planning laws, the decision to take enforcement action is discretionary. Similarly, the precise form of any action taken against a breach of planning control is at the discretion of the County Council, subject to Judicial Review. Accordingly, the need for enforcement action will be assessed on a case-by-case basis.
- 7.2 Formal enforcement action can be complex and time-consuming. Accordingly, higher priority will be given to resolving potential breaches that result or may result in the greatest risk to people and the environment.

- 7.3 Decisions about enforcement action will be based on land-use planning principles; this will include taking account of the statutory 'development plan' and all material planning considerations including the national planning policy and guidance.
- 7.4 Decisions will not be influenced the identity of the developer/operator or the complainant as these are not material planning considerations.
- 7.5 Particular attention will be paid to the need to protect sensitive areas, sites and features that are an important part of the natural and historic environment from any actual or potential harm.
- 7.6 The scale and persistence/repetition of a breach of planning control will be taken into account in determining the nature of any enforcement action. Where a negotiated solution cannot be agreed, the County Council will move quickly to remedy such breaches.
- 7.7 The County Council will take account of the Equalities Act 2010 to ensure that decisions do not unfairly disadvantage those with 'protected characteristics' on the basis of age, disability, gender, marital status, pregnancy and maternity, race, religion, sex or sexual orientation.
- 7.8 For authorised development, particular regard will be had to any conditions imposed on the planning permission to protect or mitigate environmental or amenity impacts, and without which planning consent would not have been granted.
- 7.9 Wherever possible, officers will seek to negotiate a suitable solution with the operator before any formal action is taken. Formal enforcement action will only be taken when the breach of planning control is unacceptable on planning grounds and it is in the public interest to do so. Any action taken will be appropriate and proportionate to the harm caused or potentially caused.
- 7.10 Formal enforcement action will not usually be taken solely to 'regularise' unauthorised development that may be acceptable on its planning merits. For example, formal enforcement action will not be taken against a minor or technical breach of control which causes little or no harm to the environment or to local amenity.
- 7.11 Where it is considered development may be made acceptable through the imposition of planning conditions, the County Council will 'invite' a planning application to be made under Section 73A of the TCPA 1990 to 'regularise' the unauthorised development. In the event that a retrospective planning permission is not submitted or it is refused, enforcement action would usually follow shortly after the refusal (unless the development is removed).
- 7.12 In considering whether to proceed with formal enforcement action, account will be taken of the possibility of maladministration. Maladministration could arise due to 'under-enforcement' e.g. where enforcement action was clearly necessary and has not been taken or due

to 'over-enforcement' e.g. where enforcement action is taken but it is disproportionate to the harm caused.

8. Enforcement Tool Kit

- 8.1 The following range of enforcement 'tools' are available to the County Council when it decides to take formal enforcement action to deal with breaches of planning control.

Breach of Condition Notice

- 8.2 A breach of condition notice (BCN) will be issued where there has been a breach of a condition attached to a planning permission. The BCN will set out the necessary remedial action to ensure compliance with the condition(s) being breached, with a minimum period of 28 days for compliance. There is no right of appeal, other than on a point of law, and failure to comply is a criminal offence, punishable by a fine on conviction.

Enforcement Notice

- 8.3 An Enforcement Notice (EN) can be served where there has been a breach of condition attached to an extant planning permission or where there is unauthorised development (if the County Council decides that a retrospective planning application is not appropriate or an application has been refused). The Notice must be served on the owners, occupiers and all other parties with an interest in the land.
- 8.4 The EN will define the breach and set out prescriptive steps required to regularise the matter, with specific timescales for each step. The requirements must only include what is necessary to make the development acceptable in planning terms.
- 8.5 An EN must come into effect not less than 28 days after its date of issue (unless an appeal is made against it). A Stop Notice can also be issued to prevent continuation of any activity up to the period of confirmation or otherwise of any Enforcement Notice.
- 8.6 Any appeal stops the EN taking effect until the appeal is determined and, if successful, leads to the notice being quashed. Regardless of the outcome of an appeal against such an EN, an award of costs can be made against the Council or the developer.
- 8.7 Failure to comply with the requirements of an EN is a criminal offence, punishable by a fine on conviction.

Temporary Stop Notice

- 8.8 The County Council may issue a Temporary Stop Notice (TSN) where there has been an identified breach of planning control and when it is expedient to require the unauthorised activity, or any part of it, to cease immediately.

- 8.9 The issue of a TSN allows time for the County Council to determine what further action (if any) should be taken, without the breach continuing. Accordingly, a TSN ceases to have effect after 28 days, unless it is withdrawn earlier.
- 8.10 A TSN can have serious consequences for the business; therefore, a cost/benefit analysis must be undertaken prior to issue.
- 8.11 There is no right of appeal against a TSN, other than by way of Judicial Review, and there is a risk of immediate prosecution for failing to comply with a TSN, for which a fine is payable. However, the operator may be awarded compensation if the TSN is withdrawn or if it transpires that planning permission existed for development included on the TSN.

Stop Notice

- 8.12 A Stop Notice can only be used where an Enforcement Notice has been served or when an appeal has been lodged against the Enforcement Notice. It will be issued where it is necessary to halt unauthorised operations to safeguard amenity or public safety, or to prevent serious or irreversible harm to the environment.
- 8.13 However, before serving a Stop Notice, national guidance states that *"the LPA should discuss, with the operator, whether there is any alternative means of production or operation which would overcome the objections to it in an environmentally and legally acceptable way."*⁷
- 8.14 A cost/benefit analysis must also be carried out prior to the issuing of the SN. The analysis will consider the benefit of the unauthorised activities ceasing, against the cost of such action to the operator and possibly the local economy.
- 8.15 The operator may be awarded compensation if a Stop Notice is later withdrawn or if it transpires that planning permission existed for the development included on the Notice.
- 8.16 Non-compliance with the requirements of a stop notice is an offence, punishable by a fine.

Injunction

- 8.17 Notwithstanding any other actions being taken, the County Council may apply to either the High Court or the County Court for an injunction to restrain any actual or anticipated breach of planning control any breach of planning control that is causing significant harm to the environment. This is the most serious action that the County Council can take; therefore, it will only be taken as a last resort where no other effective means of enforcement remain.

⁷ http://planningguidance.planningportal.gov.uk/blog/guidance/ensuring-effective-enforcement/stop-notice/#paragraph_032

- 8.18 Failure to comply with the terms of an injunction is contempt of court, which is punishable by imprisonment. Therefore, the Court is only likely to grant an injunction in the most serious of cases.

Direct Action

- 8.19 In order to secure compliance with an Enforcement Notice, the County Council can take direct action to carry out the steps required in the notice, when the time period for compliance has expired. The County Council may:
- enter the land and take the steps; and
 - recover from the owner of the land any expenses reasonably incurred by them in doing so.
- 8.20 Any person who wilfully obstructs any person exercising the County Council's power to take direct action may be guilty of an offence, punishable by a fine.
- 8.21 The authority's expenses in taking default action become a legal charge on the land until the expenses are fully recovered. This charge is binding on successive owners of land.

9. Other Regulatory Regimes

- 9.1 There is often an overlap of enforcement of activities involving waste disposal and recycling between the County Council and other authorities, particularly the District and Borough Councils' Environmental Health Departments and the Environment Agency (EA). Other regulatory regimes include those operated by Natural England and the Health and Safety Executive.

Environment Agency

- 9.2 The EA is responsible for the control of pollution and for the regulation of waste activities through the Environmental Permitting regime. Even if planning permission is granted by the County Council, the applicant may have to satisfy the EA that it should grant an Environmental Permit before it becomes operational.
- 9.3 The EA will usually be the lead authority where an activity results in or has the potential to result in pollution. Some activities may be a criminal offence under legislation enforced by the EA so they may be in a stronger position to remedy harm, if required.

District and Borough Councils

- 9.4 Regardless of the planning position, Environmental Health Officers within District and Borough Councils have powers to monitor and enforce against statutory nuisance; this can include noise, odour and dust.

Joint Working

- 9.5 In all cases that involve multiple authorities, the County Council will seek to engage early, and a joint investigation may take place. Once there is sufficient information to do so, a decision will be made about which authority is most appropriate to lead the investigation.

10. Complaints

- 10.1 If a member of the public is not satisfied with the way that a complaint has been handled, they may make a complaint via the County Council's Complaints Procedure⁸. The head of service will undertake a review under Stage 1 of the corporate procedure. If they remain dissatisfied, they may ask for a Chief Operating Officer's review under Stage 2 of the corporate procedure.
- 10.2 If the member of the public remains dissatisfied, they have the right to ask the Local Government Ombudsman to investigate how the County Council has handled the complaint.

11. Contact Details

Email: planning.enforcement@westsussex.gov.uk

Telephone: 0330 2225 777

Address: County Planning, West Sussex County Council, County Hall,
Chichester, PO19 1RH

Website: <https://www.westsussex.gov.uk/planning/planning-enforcement/>

⁸ <https://www.westsussex.gov.uk/about-the-council/get-in-touch/comments-and-complaints/comments-compliments-and-the-corporate-complaints-procedure/>