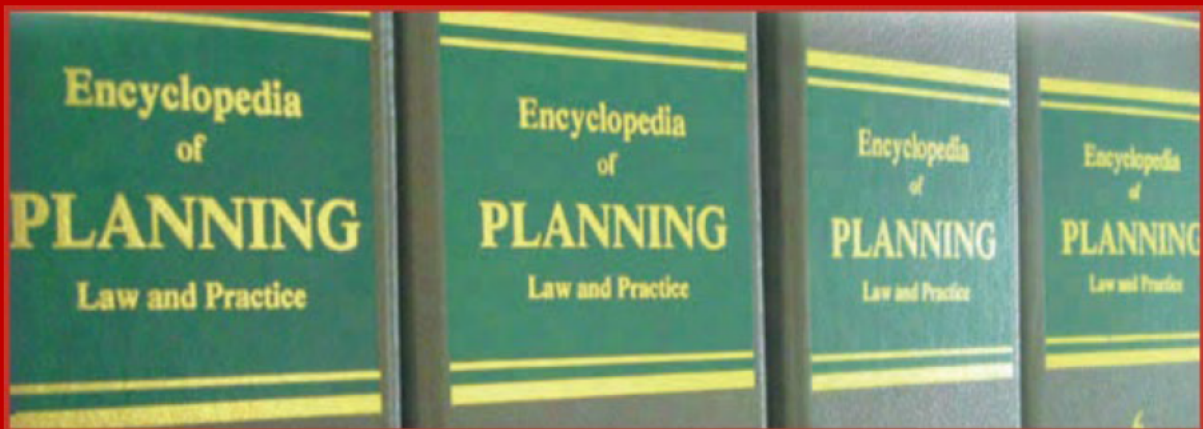


# Local Enforcement and Site Monitoring Plan



**Updated December 2024**



Essex County Council

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## 1. INTRODUCTION

Paragraph 60 of the National Planning Policy Framework (NPPF) states:

*“Effective enforcement is important to maintain 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. They 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 appropriate”*

In accordance with the NPPF the Essex Local Enforcement and Site Monitoring Plan (‘the Plan’) sets out what enforcement and site monitoring service businesses and individuals can expect from Essex County Council as Mineral, Waste and County Planning Authority.

The principal enforcement activities of the authority are directed to avoidance of infringements, it is nonetheless inevitable that breaches will occur and the purpose of this policy is to ensure they are resolved in a consistent, transparent, balanced and fair manner.

## 2. THE COUNTY COUNCIL’S MONITORING AND ENFORCEMENT FUNCTION

For all operational minerals and waste sites with planning permissions granted by the County Council, officers undertake routine monitoring to ensure compliance with conditions imposed as part of such permissions. Where there are breaches of planning control from unauthorised mineral or waste development or from non-compliance with planning conditions, the County Council has the discretionary power to take enforcement action as appropriate.

For dealing with breaches of planning control identified for County Council development (Regulation 3 development) the County Council, as County Planning Authority, has developed an internal protocol that is included as part of this Plan (see Appendix 1).

## 3. TAKING FORMAL ENFORCEMENT ACTION

The Levelling-up and Regeneration Act (LURA) became law on the 26 October 2023, this introduced significant changes designed to strengthen the planning system. This included provisions to the enforcement powers available, which came into effect on 25 April 2024.

S171B of the Town and Country Planning stipulates the time limits for taking enforcement action. S171B is amended by LURA so that the time limit for taking any form of enforcement action is 10 years. This includes action against operational development, material changes of use and breaches of condition. Transitional provisions apply.

The Enforcement Powers available to the authority are set out at Appendix 2:

The County Council has the overall responsibility for taking enforcement action relating to ‘County matters’<sup>1</sup>. This is a discretionary power as the Town and Country Planning Act

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<sup>1</sup> ‘County Matters’ are defined in Schedule 1 of the Town and Country Planning Act 1990: <http://www.legislation.gov.uk/ukpga/1990/8/schedule/1> and the Town and Country Planning (Prescription of County Matters) (England) Regulations 2003: <http://www.legislation.gov.uk/uksi/2003/1033/contents/made>

1990 does not impose a general duty to ensure compliance with planning control. Because of the discretionary nature of enforcement, there is a need for procedures to be adopted and followed to ensure that the authority's approach is consistent and accountable when deciding what action should be taken.

Planning breaches are normally not criminal offences and no punishment can usually be imposed. However, failure to comply with a formal notice (such as an enforcement notice issued under section 172 Town and Country Planning Act 1990) is a criminal offence and makes the person committing the breach liable to prosecution.

A flow chart is attached at Appendix 3 to this Plan outlining the general progression of enforcement investigation.

### **Initial Investigation**

The investigating officer will, under normal circumstances, visit the site in question to determine whether a breach of planning control has taken place. Site visits will normally be unannounced; this is in the interest of public confidence in, and the reputation of, the planning system. Checks will normally be made whether planning permission exists, whether the development has permitted development rights<sup>2</sup> or benefits from a lawful use. When necessary, City/District/Borough Councils will be consulted to determine whether any locally granted permission exists.

### **Follow-up Action**

Upon concluding there has been a breach of planning control, the investigating officer needs to consider the harm being caused, make a judgment as to whether or not planning permission is required and, if so, whether it is likely to be granted for the development in question.

If it is not immediately expedient to take enforcement action ie where the harm being caused is limited, pursuing an agreed course of action will normally be the first step to addressing 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, the need for formal enforcement action may be avoided.

If remedial action to address the breach of planning control needs to be taken, the investigating officer will write to all parties involved setting out what is required to correct the situation and advising of the consequences that would result from failure to carry this out.

A timescale will always be set for the completion of the works. Confirmation will then be sought from the parties in question indicating that they are willing to carry out these works in the time period. If the works do not progress as planned, or a commitment is not received to carry out the necessary remedial works within a reasonable period of time, the investigating officer will then consider taking formal enforcement action.

In certain circumstances, it may be appropriate to allow time for the developer to pursue a retrospective planning application where the investigating officer is of the view that there is a reasonable prospect that planning permission may be granted and such a permission

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<sup>2</sup> In accordance with the Town and Country Planning General Permitted Development Order 1995 (as amended)

would enable the County Council to control the development through the imposition of conditions. In these situations, those responsible for the unauthorised development will be invited to make a planning application. If such an application is not forthcoming within a [reasonable][specified?] timescale, the County Council may then decide to take formal enforcement action to remedy the breach.

### **Enforcement Action**

The investigating officer will make a judgement as to whether it is expedient to take formal enforcement action taking account, in particular, whether the development unacceptably affects public amenity or the existing use of land and it is in the public interest to do so. The taking of enforcement action is discretionary and the local authority may choose to take no action. A recommendation will be made that enforcement action is taken, primarily based on the conflict with planning policy and the harm being caused. Formal enforcement action, in certain circumstances, may well be the only effective way in which to remedy the breach of planning control.

There are a range of notices available to the County Council<sup>3</sup> when considering taking formal enforcement action and the decision as to what route to take will be made in liaison with the County Council's Legal Services. All enforcement action is primarily based upon risk to public health, public safety, harm to amenity, economic wellbeing of the environment. Enforcement action will always be commensurate with the breach of planning control to which it relates (for example, it would usually be inappropriate to take formal enforcement action against a trivial or technical breach of control which causes no harm to amenity in the locality of the site).

### **Contravening Enforcement Action**

Where a breach of planning control continues after an enforcement notice has taken effect, the County Council may take appropriate action against the landowner and/or the person committing or responsible for the breach of planning control. This may involve prosecution proceedings in the Magistrates Court or Crown Court as well as taking out an injunction against the perpetrator if necessary.

## **4. RESOURCES ALLOCATED TO ENFORCEMENT AND MONITORING**

Enforcement and monitoring of sites is labour intensive and in practice often involves a large proportion of officers' time, especially in complex cases where there might be a significant impact on amenity or highway safety or when frequent monitoring is required.

Most planning officers contribute to the overall enforcement and monitoring function in addition to their normal casework. However, the team employs one dedicated Enforcement Officer who is responsible for recording and dealing with all complaints/referrals received, in accordance with this Plan and is normally the first point of contact for enforcement cases.

The County Council's resources are not limitless. It is therefore necessary to target available resources to have maximum effect. In planning terms this means where there is most harm to amenity or the environment rather than necessarily a response dependant on who is complaining or how vociferously.

## **5. DEALING WITH COMPLAINTS**

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<sup>3</sup> See Appendix 2

- a) Acknowledgement of complaints: a complaint will normally be acknowledged within 2 working days of the Enforcement Officer receiving the complaint;
- b) Checking the facts: this may include a site inspection and checking records;
- c) If no breach is found: The complainant(s) and, if necessary, the operator involved will normally be informed within 14 working days of the date of the acknowledgement under a);
- d) If a breach is found but is not a 'County Matter': the relevant District/Borough Council/Environment Agency will normally be informed of the complaint within 14 working days of the date of the acknowledgement, whilst informing the complainant(s) and, if necessary, the operator involved within the same period;
- e) A breach is found that is a County Matter: the necessary course of action will be considered in accordance with this Plan and all parties will normally be informed accordingly within 14 working days of the acknowledgement.

Note: As stated, 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 Development and Regulation Committee. Where complaints appear to be repeatedly unfounded and/or vexatious the complainant will be directed to the County Council's formal complaints procedure for a resolution.

The standards of service are set out at Appendix 4.

## **6. THE APPROPRIATE COURSE OF ACTION**

### WHERE DEVELOPMENT IS CARRIED OUT WITHOUT PERMISSION

It is not an offence to carry out development without first obtaining any planning permission required for it. Where the assessment indicates it is likely that unconditional planning permission would be granted for development which has already taken place, a retrospective planning application should be submitted (together with the appropriate application fee). It may also be appropriate to consider whether any other body (eg the highway, local planning, environmental health authority or Environment Agency) is better able to take remedial action.

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 is acceptable on its planning merits, but for which permission has not been sought. In such circumstances, a planning contravention notice (under S171C of the Town and Country Planning Act 1990) will be considered to establish what has taken place on the land and persuade the owner or occupier to seek permission for it, if permission is required. The owner or occupier of the land may be told that, without a specific planning permission, they may be at a disadvantage if they subsequently wish to dispose of their interest in the land and has no evidence of any permission having been granted for development comprising an important part of the land use or value.

### WHERE UNAUTHORISED DEVELOPMENT CAN BE MADE ACCEPTABLE BY THE

## IMPOSITION OF CONDITIONS

Where the development has been carried out without the requisite planning permission, but the development could be made acceptable by the imposition of planning conditions (for example, to control the hours, or mode, of operation; or to carry out a landscaping scheme), the authority may invite the owner or occupier of the land to submit an application, and pay the appropriate application fee, voluntarily.

It may be pointed out to the person concerned that the County Council does not wish the business, or other activity, to cease; but has a public duty to safeguard amenity by ensuring that development is carried out, or continued, within acceptable limits, having regard to local circumstances and the relevant planning policies.

If, after a formal invitation to do so, the owner or occupier of the land refuses to submit a planning application, the County Council will consider whether to issue an enforcement notice to remedy any 'injury to amenity' which has been caused by the breach.

## WHERE THE UNAUTHORISED DEVELOPMENT IS UNACCEPTABLE ON THE SITE BUT RELOCATION IS FEASIBLE

It is not the County Council's responsibility to seek out and suggest to the owner or occupier of land on which unauthorised development has taken place an alternative site to which the activity might be satisfactorily relocated.

If an alternative site has been suggested, officers will make it clear to the owner or occupier of the site where unauthorised development has taken place that they are expected to relocate to the alternative site. A reasonable time-limit, within which relocation should be completed, will be expected. What is reasonable will depend on the particular circumstances, including the nature and extent of the unauthorised development; the time needed to negotiate for, and secure an interest in, the alternative site; and the need to avoid unacceptable disruption during the relocation process. If a timetable for relocation is ignored, it will usually be expedient for the authority to issue an enforcement notice.

## WHERE THE UNAUTHORISED DEVELOPMENT IS UNACCEPTABLE AND RELOCATION IS NOT FEASIBLE

Where unacceptable unauthorised development has been carried out, and there is no realistic prospect of its being relocated to a more suitable site, the owner or occupier of the land will be informed that the authority are not prepared to allow the operation or activity to continue at its present level of activity, or (if this is the case) at all. If the development nevertheless provides valued local employment, the owner or occupier will be advised how long the County Council is prepared to allow before the operation or activity must stop, or be reduced to an acceptable level of intensity. If agreement can be reached between the operator and the County Council about the period to be allowed for the operation or activity to cease, or be reduced to an acceptable level, and the person concerned honours the agreement, formal enforcement action may be avoided.

If no agreement can be reached, the issue of an enforcement notice will usually be justified, allowing a realistic compliance period for the unauthorised operation or activity to cease, or its scale to be acceptably reduced. Any difficulty with relocation will not normally be a sufficient reason for delaying formal enforcement action to remedy unacceptable unauthorised development.

**WHERE THE UNAUTHORISED DEVELOPMENT IS UNACCEPTABLE AND IMMEDIATE REMEDIAL ACTION IS REQUIRED**

Where, in the County Council’s view, unauthorised development has been carried out and it is considered that:

1. the breach of control took place in full knowledge that planning permission was needed (whether or not advice to this effect was given by County Council officers to the person responsible);
2. the person responsible for the breach will not submit a planning application for it (despite being advised to do so); and;
3. the breach is causing serious harm to public amenity;

the County Council will normally take vigorous enforcement action (including, if appropriate, the service of a stop notice under S183 or S171E of the Town and Country Planning Act 1990) to remedy the breach urgently, or prevent further serious harm to public amenity.

**Prioritising Cases**

In order to make the best use of time and resources there is a need to prioritise cases according to the urgency of response that is required and without losing sight of the 'lesser' breaches. This enables staff to concentrate on the more harmful cases. The County Council has established a ‘Harm Assessment’ procedure (see Appendix 5) to reflect the importance it places on the quality of life for its residents and businesses and to protect the natural environment. The categories are intended as a set of guiding principles, rather than attempting to list every possible eventuality. Regardless of who has made the complaint, the M&WPA will normally ‘score’ the suspected breach and assign it a priority category. Notwithstanding the appropriate course of action as each case is logged in, a harm assessment score will normally be given in accordance with the procedure at Appendix 5 under the following headings:

1	Is there a breach: (including breach of condition)	Yes (1) Worsening (2)
2	Is there a potential statutory nuisance?	Yes (1)
3	Have complaints been received?	Yes (1)
4	Time Table i.e, (estimated period left before enforcement action can no longer be taken and lawful use/development rights exist)	Less than 6 Months (2) More than 6 Months (1)
5	Development Plan Policy Breach	Yes (1)
6	Is the harm:	Widespread (2) Local (1)



7	Irreversible harm:	Yes (2)
8	Intensity of activity	High (2) Low (1)
9	Prolonged detriment to amenity	Yes (1)
10	Undesirable precedent	Yes (1)
11	Other (up to maximum of 3 total) e.g. Highway safety issue (please specify) Potential environmental issues (please specify) Potentially hazardous waste (please specify)	

### **Informing the Local County Council Member**

Where enforcement action is considered, the County Council Member(s)\_ will be kept informed.

### **Informing the Development and Regulation Committee**

Where the Committee itself has not authorised enforcement action to be taken (i.e. the action is authorised under officer delegated powers), the matter will be reported to Members at the next available Committee meeting.

Any recommendation not to take enforcement action will be referred to the Committee for a decision, unless there are exceptional circumstances for not doing so.

### **Prosecution**

The decision to prosecute is a serious step. Essex County Council as Mineral and Waste Planning Authority (M&WPA) will not normally start a prosecution unless there is sufficient, admissible and reliable evidence that the offence has been committed, and there is reasonable prospect of conviction. A prosecution will only be brought where it is in the public interest to do so. The M&WPA reserves the option to apply cautions in cases where a prosecution could be sought and may use cautions in accordance with Home Office Guidance. Owners, occupiers or those with an interest in the land who have previously received a formal caution will normally be dealt with by prosecution. However, fair and effective enforcement is essential to the maintenance of Planning Law. A prosecution has serious implications for all involved and a policy is in place (at Appendix 7) so that the M&WPA can make fair and consistent decisions in all cases. In formulating this policy, account has been taken of the Code for Crown Prosecutors and the Regulators' Code.

In addition the policy explains how the M&WPA will approach Financial Investigations. The M&WPA recognises that the investigation of offences that are to the detriment of Essex residents and businesses, and the utilisation of the powers given within the

Proceeds of Crime Act 2002 (POCA), can make a significant contribution to the disruption of criminal enterprises through the use of money laundering investigation to complement and aid criminal investigations and through the recovery of criminal assets.

For appropriate cases, the M&WPA has committed to work in co-operation with a fraud/financial investigation unit, incorporating money laundering and confiscation capability to tackle offenders at all levels of criminal activity

### **Working in Partnership with the Environment Agency**

There is often an overlap of enforcement activities involving waste disposal and recycling between the M&WPA and the Environment Agency (EA). The M&WPA will have regard to the fact that some unauthorised development and some breaches of planning conditions involving wastes may be a criminal offence under legislation enforced by the EA and the County Council will liaise with the EA accordingly. The EA may be in a stronger position to ultimately remedy harm to amenity by way of prosecution and enforcing cessation of the harmful activities.

Appendix 8 sets out a framework for joint enforcement activities where there is an overlap between the Planning Enforcement activities of the M&WPA and the regulatory responsibilities of the EA. The joint protocol has been developed to promote the objectives of the Regulator's Code and better partnership working.

## **7. THE HUMAN RIGHTS ACT 1998**

The enactment of the Human Rights Act reinforces the need for openness and consistency as the decision to take, or not to take action may adversely affect someone's rights under the Act.

The County Council will seek to uphold an individual's rights as set out in the European Convention on Human Rights. Where interference is permitted with an individual's rights by that Convention the Council will seek to ensure that any action it does take which affects a person's rights is:

1. Proportionate to the breach of planning control it seeks to address and;
2. In accordance with the exceptions set out in the article which permit interference with that right.

Where there is a clear breach of planning control the County Council's delay in taking enforcement action, or its decision not to take action, may adversely affect the rights of third parties who have been affected by the breach of planning control. When reaching its decision on whether or not to take action and, if so, on what action to take, the County Council will consider the effect on the rights of these third parties as well as on the rights of the person committing the breach of planning control.

Appendix 6 lists the above-mentioned rights conveyed under The Human Rights Act 1998, and gives an interpretation of how they may affect enforcement issues.

## **8. CHARGEABLE MINERAL AND LANDFILL SITE MONITORING VISITS**

Mineral and landfill sites involve continuous activity sometimes over many years. Planning permissions are subject to technical planning conditions to help mitigate the

environmental impact of mineral and waste working.

Regulations allow the County Council to charge a fee to mineral and waste operators to visit a site and carry out a site visit to monitor compliance with the planning permissions.

The purpose of a monitoring site visit is to check compliance with operating conditions attached to mineral and landfill planning permissions, any related planning obligations relevant for a site and the need to ensure that no unauthorised development is taking place.

Officers and operators to work together constructively to review compliance with permissions in the light of the stage of development reached and possible changing operational circumstances and needs. In this way problems can be avoided and formal enforcement action is less likely to be necessary.

Objective of site monitoring: To charge a fee for a formal monitoring visit to mining and landfill sites to check compliance with the planning permissions and any related planning obligations or legal agreements.

Explanation of site monitoring: The Government considers that charging a fee for site monitoring is a positive process that will have several positive outcomes. The main benefits are improving communications and relations between operators and the planning authorities and local communities close to mining or landfill operations. The monitoring will encourage good practice in site operation and management and therefore reduce the need for enforcement or other action. This is very much a proactive exercise rather than a reactive way of working. By working in this way the number of potential complaints received from local residents to the planning authorities should be reduced.

### **The Essex Approach:**

Mineral Sites - If an active site has a very poor history of compliance and has received several justified complaints and the operator shows no sign of improving and working according to the planning permissions then it is very likely that the maximum number of 8 visits per year would be required for this site. Further visits may also be warranted but these cannot be charged for.

If the operator starts to comply with conditions and fewer complaints are received about the site the following year the number of visits could be reduced to 4 and then if the trend continues the following year 2 visits may be all that is required.

Inactive sites receive the maximum allowance of one chargeable monitoring visit per year.

If after taking all of this into account an operator considers that it has been subjected to an excessive number of visits then they are entitled to approach the County Council to request that the number of annual visits is reduced.

Landfill sites - All waste landfill disposal sites and mineral sites under the remit of the County Council will be visited by an officer with suitable experience;

The frequency of these visits will vary depending on whether the site is dormant, inactive or active;

All sites will be visited every financial year.

Fees and Invoicing: As described, the Regulations have set the fees for monitoring visits. A fee shall be paid to the authority in respect of a site visit to an active site<sup>4</sup> and in respect of a visit to an inactive site<sup>5</sup>. The operator of the site is responsible for the payment of the fee. If there are multiple operators within a site the operator in overall control is expected to pay the fee. If multiple operators cannot be identified or where an operator is not currently present at a site then the site owner(s) are required to pay the fee.

The County Council agrees the invoicing arrangements with the individual operators. The fee is only to be charged after the monitoring site visit has taken place and the monitoring report sent to the operator. A period of payment in accordance with the County Council's invoicing procedures is given and any failure to pay is referred through the County Council's debt recovery procedure.

Prior to site monitoring visits:

1. A letter is sent to the operator to explain the site monitoring fee process and procedure;
2. The planning authority compile a file which contains a complete planning history of the site and a list all the current and previous planning permissions, any related planning obligations or legal agreements and the site monitoring reports.
3. A date and time for site visit is scheduled with the operator. This usually is between 7 to 10 working days prior to the visit. This does not apply to unannounced or enforcement visits.

At the Chargeable Site Monitoring Visit:

1. A systematic review of all the conditions attached to current planning permissions and any related planning obligations or legal agreements that are associated with the operation is carried out;
2. Recognition of any good practice is noted;
3. Boundary Limits are checked;
4. Discussion is held with the operator to reach agreement on any course of action and timescales to redress any non-compliance with conditions attached to the current planning permission;
5. Notes of the visit are made on the Chargeable Site Monitoring Visit form;
6. Photographs are taken of the site.

After the site monitoring visit:

1. A report is written of the site monitoring visit, sent to the operator and published on-line normally within 21 days of the visit;
2. An invoice for the monitoring fee is raised and is sent out;

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<sup>4</sup> £331.00 per visit to an active site at April 2013

<sup>5</sup> £110.00 per visit to an inactive site at April 2013

3. On receipt of the site operator's reply, if appropriate, the planning authority makes any amendments to the monitoring report it considers appropriate.
4. The operator is then expected to carry out any actions agreed at the site meeting and identified in the report in order to comply with the relevant planning permissions/ conditions/obligations/legal agreements and to do so within the agreed timescales to avoid potential enforcement action against a breach of planning control.

## 9. NON-CHARGEABLE WASTE MANAGEMENT SITE MONITORING VISITS

Regulation 19 of the Waste (England and Wales) Regulations 2011 specifically requires that the (waste) planning authority must ensure that appropriate periodic inspections of those establishments or undertakings (carrying out the disposal or recovery of waste) are made.

Currently the County Council has limited resources available to monitor waste sites on a frequent basis; however the Waste Regulations only require 'periodic inspection'. Given this, it is considered that the most appropriate method of scheduling monitoring visits to waste sites in Essex is through a 'risk-based' approach that sets the frequency of visits using The Environment Agency's categorisation of sites based on potential environmental risk (OPRA – operational risk appraisal) and previous record of complaints/planning enforcement.

If the site is a high risk, for example (code 'D') and has been subject to planning enforcement action and/or had planning complaints, then the frequency of visits is recommended to be at least every 6 months. If a site is low risk and the Waste Planning Authority has not received complaints or taken previous action then a monitoring visit every 2 years takes place.

The following table provides examples of how the visit schedule works in practice.

Activity	OPRA code	Complaints?	Visit Frequency
A09 - Hazardous waste transfer station	D	Yes	6 months
		No	12 months
A10 - In-house storage facility	B	Yes	12 months
		No	24 months
A11 - Household, commercial and industrial waste transfer station	C	Yes	6 months
		No	12 months
A12 - Clinical waste transfer station	D	Yes	6 months
		No	12 months
A13 - Household waste amenity site not taking hazardous waste	B	Yes	12 months
		No	24 months
A13a - Household waste amenity site taking hazardous waste	C	Yes	12 months
		No	24 months
	B	yes	12 Months

A14 - Transfer station taking non-biodegradable wastes		no	24 months
A15 - Material recycling facility	A	Yes	12 months
		No	24 Months
A16 - Physical treatment of non-hazardous waste facility	A	Yes	12 months
		No	24 months
A16a – Physical treatment of hazardous waste	D	Yes	6 months
		No	12 months
A17 - Physico-chemical treatment facility	E	Yes	6 months
		No	12 months
A18 - Incinerator (other than pet crematorium)	D	Yes	6 months
		No	12 months
A19 - Metal recycling site (vehicle dismantler)	C	Yes	6 months
		No	12 months
A19a - End of life vehicles <2500 tonne per year	B	Yes	6 months
		No	12 Months
A20 - Metal recycling site (MRS) (mixed)	C	Yes	6 months
		No	12 Months
A21 - Chemical treatment facility	E	Yes	6 months
		No	12 months
A22 - Composting facility	C	Yes	6 months
		No	12 months
A23 - Biological treatment facility	C	Yes	6 months
		No	12 months
A24 - Mobile plant	B	Yes	12 months
		No	24 months
A25 - Deposit of waste to land as a recovery operation	B	Yes	12 months
		No	24 months
A27 - Incinerator (pet crematorium)	A	Yes	12 months
		No	24 months
A29 - Gas engine for burning of landfill or other bio-gas	B	Yes	12 months
		No	24 months

## **Protocol for Dealing with Breaches in Planning Control relating to Development Undertaken by the County Council under Regulation 3 of the Town and Country Planning General Regulations 1992**

### **Introduction**

This document sets out how the County Planning Authority (CPA) would regulate any breaches of planning control relating to development undertaken by County service providers under Regulation 3 of the Town and Country Planning General Regulations 1992.

Where development is approved the CPA is obliged to ensure that all planning conditions attached to planning permissions are complied with in full. In addition, the CPA is obliged to investigate any allegation that a County Council development is taking or has taken place without the pre-requisite deemed planning permission.

The Town and Country Planning Act 1990 imposes a general but not mandatory duty to ensure compliance with planning control.

Accordingly, because there is an element of discretion as to whether or not it might be expedient to take appropriate action, there is a need for procedures to be adopted and followed to ensure that the CPA's approach is consistent and effective when deciding what action should be taken.

This protocol for Regulation 3 planning matters establishes formal procedures to enable the CPA, both the Development and Regulation Committee (the Committee) and officers acting under delegated powers to be consistent and effective in their approach. Additionally, promoting service providers would understand that should there be any breaches of planning control the CPA would take action under the terms of the protocol to remedy them.

The protocol would make the processes involved transparent, and reduce the risk of ombudsman or City/District/Borough Council intervention.

### **Breaches of Planning Control**

Breaches of planning control are likely to be brought to the attention of the CPA either by routine site monitoring inspections or following a complaint from a member of the public or other third party.

All complaints received from the general public would be logged on the complaints database and acknowledged within 2 working days of the Enforcement Officer receiving the complaint. The complainant should, if the complaint is accepted, be able to expect a response within 14 working days setting out how the County Council, as County Planning Authority, intends to deal with the reported issue. The matter would then be dealt with, in the first instance, in the same manner as for non-County Council development, i.e. in accordance with this Local Enforcement and Site Monitoring Plan.

## **Site Monitoring and Gathering of Information**

The CPA has the responsibility for determining all applications for Regulation 3 development that the County Council wishes to carry out. Officers acting for the CPA may need to investigate alleged breaches of control once informed about them. In addition, in respect of planning permissions, officers may undertake routine monitoring to ensure planning conditions are met. County Council officers and contractors working with or for the County Council shall enable site inspections to take place and assist in providing any necessary information.

## **Regulation of Breaches**

The Planning Manager has delegated powers to initiate enforcement action, although matters will be referred upwards to the Committee if a Member decision is considered preferable. For clarity, where a local resident or firm brings a confirmed breach of planning control to the attention of the CPA and in the officer's opinion it would not be expedient to seek remedial action, then this would always be referred to the Committee for a final decision.

## **Remedial Action Procedure**

Initial Action: The investigating officer will, under normal circumstances, visit the site in question to determine whether or not a breach of planning control has taken place. Reference will need to be made to extant planning permissions (where they exist) and to the General Permitted Development Order 1995 to ascertain if permitted development rights exist. If necessary, District/Borough Councils will be consulted to determine if they have granted planning permission.

If no breach of planning control were found the complainant would be informed accordingly. Additionally, the local member would be informed of the complaint and the outcome of the investigation.

Follow-up Action: Upon concluding there has been a breach of planning control, negotiation would be the first step in addressing the situation. The investigating officer will discuss the situation with the relevant officer(s) acting for the promoting service provider and try to reach an agreed settlement including a timescale to carry out any remedial works, make any rectifying application, etc. Where the promoting department is willing to comply with an agreed way forward and agreed time periods, this will usually result in no further action being required.

Where remedial action is agreed to address the breach of planning control, the investigating officer will write to all parties involved setting out what has been agreed to correct the situation, including timescales.

The service provider should respond in writing stating that they are willing to carry out these works and in the time period.

If the works do not progress, or a commitment is not received to carry out the necessary remedial works, the investigating officer will then consider taking a more formal approach to resolving the situation.

At all times, any complainant and local Member would be kept informed.



Committee Involvement: Should the necessary action not be agreed, or the agreed action not be undertaken in full, then the matter would be brought to the attention of the Development and Regulation Committee for resolution.

If the Committee consider that remedial action is not necessary then no further enforcement action is required. The complainant and the local Member would be informed accordingly.

If the Committee determine that the breach of planning control does justify remedial action, then it would also determine any necessary action to overcome the breach, and refer the matter to the relevant Cabinet Member for action. The complainant and the local Member would be informed accordingly.

### **Cabinet Member Involvement**

Heads of Service may wish to involve the relevant Cabinet Members throughout the whole process. However, the relevant Cabinet Member will be brought formally into the process at the stage of the Committee. They will be asked to take a formal decision to determine what action needs to be taken.

Should the Cabinet Member determine that it would be appropriate to take the action recommended by the Committee, then this should proceed.

Should the Cabinet Member determine that different or no action is required, then the Committee, any complainant and the local Member will be informed.

### Final Resolution

If the Committee accept this determination, then accordingly the matter will be resolved, subject to the completion of any agreed action. If the Committee consider this would not resolve the issue satisfactorily, then the matter would be referred to Full Council for a decision which shall be final.

### **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:

1. Breach of conditions attached to an extant planning permission;
2. The carrying out of development where there is no planning permission and such a planning permission is unlikely to be granted;
3. 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.

There are a number of 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.

#### **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 to ascertain whether there has been a breach of planning control in accordance with the Town and Country Planning Act 1990.

Any person that wilfully obstructs an authorised person in carrying out these duties is committing an offence, punishable on summary conviction to a fine not exceeding level 3 on the standard scale.

The Enforcement Officer will normally make themselves known to the landowner/occupier when they enter the site. The Council's duly authorised Enforcement Officer is legally entitled to enter land and property<sup>6</sup>. An owner, occupier or anyone with an interest in the land does not have to be present for the Enforcement Officer to enter onto land and make a site visit.

#### **Requisition for Information**

Where the County Council considers it has sufficient information regarding activities on land use but requires further details on the ownership of the land, a Requisition for Information may be issued.

The issuing of a Requisition for Information is optional and does not have any bearing on other action taken by the local planning authority.

#### **Planning Contravention Notice**

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<sup>6</sup> In pursuance of Sections 196A-196C of the Town and Country Planning Act 1990 (as amended)

A Planning Contravention Notice (PCN) may be issued in order to ask specific questions in relation to an alleged breach in planning control. This enables a decision to be made regarding whether or not formal enforcement action is necessary or should be taken. There is a legal requirement to respond to a PCN within 21 days of the date of the notice, unless a longer period of time is specified in the notice.

The issuing of a PCN is optional and does not have any bearing on other action taken by the local planning authority. It is especially useful when trying to identify all parties who have an interest in land or have been involved in a suspected breach of planning control. The PCN also provides for a formal meeting between the planning authority and the recipient of the notice, whenever appropriate. This may help to clarify any misunderstandings and assist in resolving the situation.

Non-compliance with completing the requirements of a PCN is an offence punishable on summary conviction to a fine not exceeding level 3 on the standard scale. Knowingly providing false or misleading information in response to a PCN, is an offence punishable on summary conviction to a fine not exceeding level 5 on the standard scale.

### **Enforcement Warning Notice**

LURA has introduced a new power for the authority to issue an Enforcement Warning Notice (EWN). EWNs are used where a breach of planning control has been identified, that requires regularisation by way of planning permission; this can be a condition one. EWNs will only be issued where the County Council considers there is a realistic prospect of obtaining planning permission for the breach identified, if sought.

The Enforcement Warning Notice will clearly define the breach, the requirements, and timescales for compliance.

EWNs represent a formal warning. While they are unable to compel submission of an application, in its absence or failure to comply, the County Council will consider the expediency of taking further enforcement action.

An EWN is effective immediately and there is no right of appeal.

Failure to comply with an EWN does not constitute a criminal offence; it is a warning further enforcement action may be taken.

### **Enforcement Notice**

The authority can issue an enforcement notice where there has been an identified breach of planning control and where it is considered expedient to do so. The enforcement notice will define the breach and set out prescriptive steps for compliance, with specific timescales, for remedying the breach.

A notice can be served in respect of unauthorised operational development, an unauthorised material change of use of land, or where there has been a breach of a condition attached to an extant planning permission. Such a notice must be served on the owners, occupiers and all other parties with an interest in the land that is affected by the notice.

An enforcement notice must come into effect not less than 28 days after its date of issue. There is a right to appeal to the Secretary of State, and such an appeal must be made

before the notice comes into effect. Where an appeal is submitted, the requirements of the notice are held in abeyance until the appeal has been decided.

Failure to comply with the requirements of an enforcement notice is a criminal offence which is liable on summary conviction to a fine per offence, or on conviction on indictment to an unlimited fine.

### **Stop Notice**

A stop notice must be issued either with or before the enforcement notice comes into effect. A stop notice cannot be issued without an enforcement notice being issued. The service of a stop notice will take place where the local planning authority considers it expedient to stop an activity before the associated enforcement notice comes into effect. A stop notice would not normally come into effect until 3 days after service unless special considerations are attached indicating that it should come into effect earlier.

There is no right of appeal against a stop notice. An appeal against an enforcement notice will hold the requirements of the enforcement notice in abeyance, but the requirements of the stop notice to cease a particular activity remain effective.

As a stop notice prevents an activity from continuing, there is a right to claim compensation against the local planning authority if the notice has not been served properly.

Non-compliance with the requirements of a stop notice is an offence, punishable by a fine on summary conviction and, on conviction on indictment, to an unlimited fine.

### **Temporary Stop Notice**

The authority may issue a temporary stop notice (TSN) where there has been an identified breach of planning control and when it is expedient that the activity, or any part of the activity that amounts to the breach, should cease immediately.

Unlike a 'stop notice', a 'temporary stop notice' can be served on its own; there is no requirement for it to be served with an enforcement notice. Representations can be made to the authority but there is no right of appeal against the service of such a notice, although it can be challenged by way of applying to the High Court for a judicial review.

LURA has increased the duration of temporary stop notices in England from 28 days to 56 days.

The notice has effect immediately but ceases to have effect after 56 days, unless it is withdrawn earlier. This allows a period of time (up to the maximum of 56 days) for the local planning authority to decide whether further enforcement action is appropriate and what that action should be, without the breach intensifying by being allowed to continue.

As a TSN prevents an activity from continuing, there is a right to claim compensation against the local planning authority if the notice has not been served properly.

There is risk of immediate prosecution for failing to comply with a TSN, for which a fine is payable on summary conviction for the first offence, and for any subsequent offence, or on conviction on indictment to an unlimited fine.

## **Breach of Condition Notice**

A breach of condition notice (BCN) may be issued where there has been a breach of condition that is attached to an extant planning permission. There is no right of appeal against the service of such a notice, although it can be challenged by way of applying to the High Court for a judicial review.

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.

The penalty for non-compliance with a BCN is an offence punishable on summary conviction to a fine.

## **Injunction**

Where the authority deems it expedient to restrain any actual or anticipated breach of planning control it may apply to either the High Court or the County Court for an injunction. Such an application can be made whether or not the local planning authority has exercised, or proposes to exercise, any of its other powers to enforce planning control.

The taking of such action would be necessary where other enforcement powers are unlikely to stop unauthorised activities.

Failure to comply with the terms of an injunction is contempt of court. The court has the discretion to imprison anyone found to be in contempt, or to administer an unlimited fine.

## **Direct Action by the County Council**

In order to secure compliance with an enforcement notice the Planning Acts empower local planning authorities to take direct action in default by the owner or occupier of the land. Where any steps required by an enforcement notice to be taken are not taken within the period for compliance with the notice, the local planning authority may:

1. Enter the land and take the steps and;
2. Recover any expenses reasonably incurred by them in doing so.

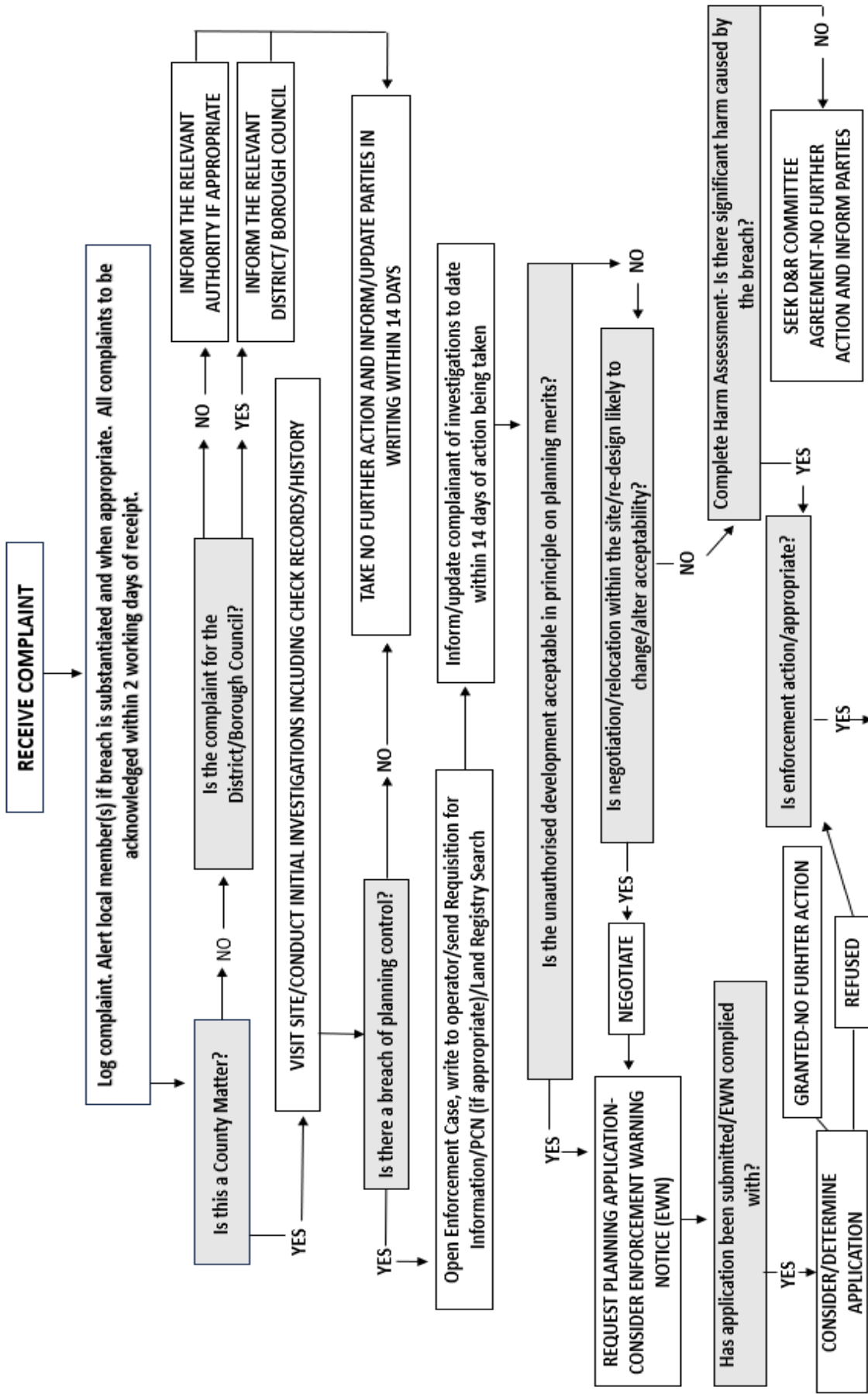
Planning legislation also creates an offence of wilful obstruction. Any person who wilfully obstructs any person who is exercising the local planning authority's power to take direct action may be guilty of an offence. The offence is triable in the Magistrates' Court, and punishable by a fine.

The Town and Country Planning Act 1990 enables local planning authorities to recover from a person who is then the owner of the land any expenses reasonably incurred by them in taking any direct action to carry out the steps required by an enforcement notice.

By virtue of regulation 14(2) of the Town and Country Planning General Regulations 1992, the local planning authority's expenses in taking default action become a legal charge on the land to which the enforcement notice relates until the expenses are fully recovered. This charge is binding on successive owners of the enforcement notice land.

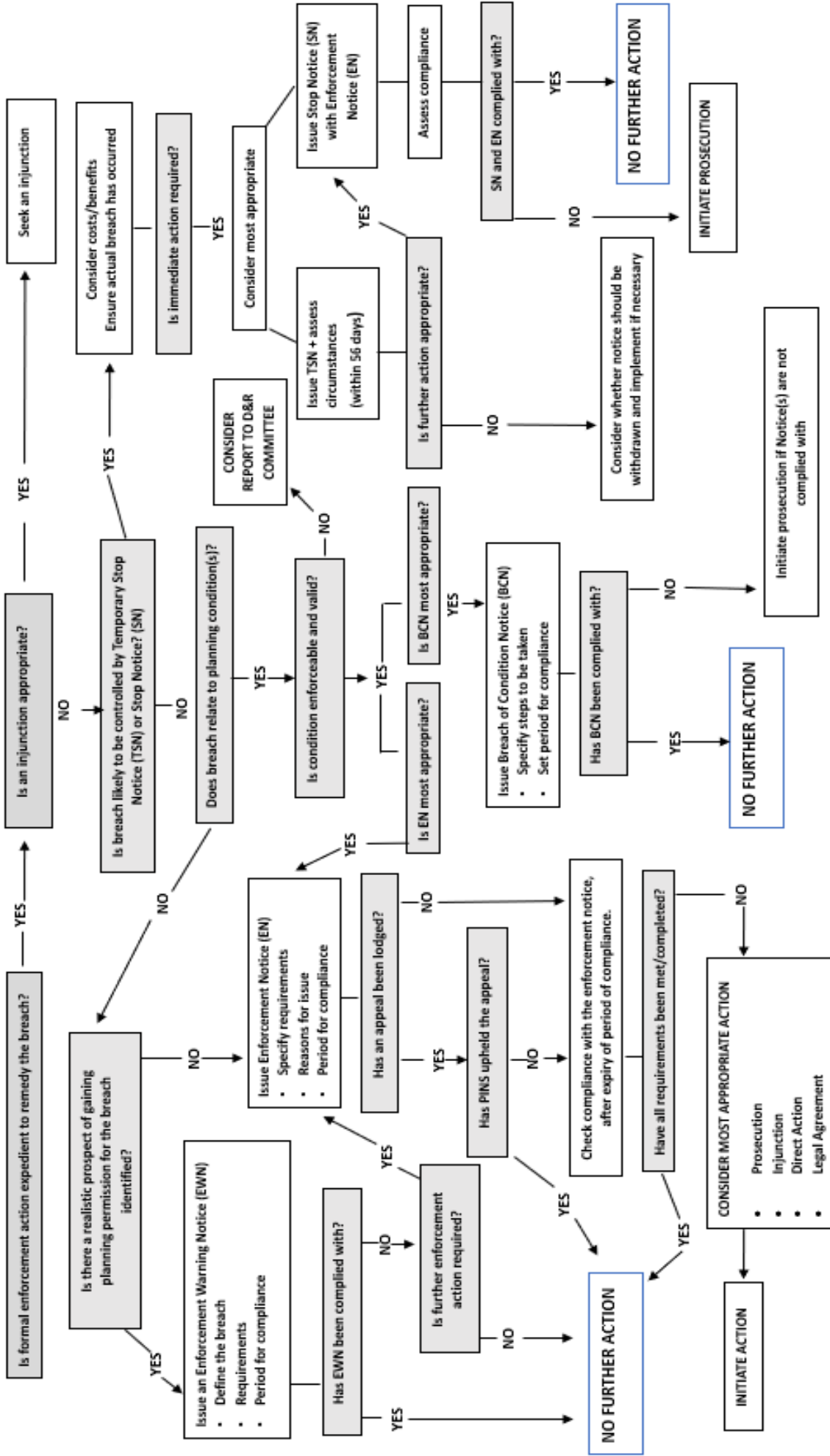
The decision by the County Council to take direct action may be challenged by an application to the High Court for a Judicial Review, of the County Council's decision.

# ENFORCEMENT PROCEDURES FLOW CHART



## INITIATE ENFORCEMENT ACTION

**By detailed discussion with Law and Administration/Use of delegated powers and report action to Committee or direct report to Committee for authorisation.**



## Standard of Service

### Openness

1. We will advise any complainant and anyone carrying out unauthorised development what we will do;
2. We will keep as much as possible in the public domain whilst protecting the confidentiality of the complainant and any sensitive business information;
3. We will report on a quarterly basis to the Council's Development and Regulation Committee the latest situation on all ongoing enforcement cases;
4. We will meet with company staff when requested both before and during any enforcement action to seek an agreed solution.

### Helpfulness

1. We will keep any complainant advised as to the stage reached in any enforcement action.
2. We have a specific enforcement officer to whom all initial contact can be made. However, the team's officers can answer general enquiries.
3. All letters and telephone calls will be answered promptly and all responders will leave a contact name and telephone number.

### Complaints about the Service

The County Council has clear and specific procedures. If we cannot resolve your complaint, you will be advised on how to take this further.

### Proportionality

1. We will deal with each case on a priority basis, following an initial investigation following a complaint received.
2. Depending on the scale of the breach of planning control, we will always seek co-operation to resolve problems and use formal enforcement powers only as a last resort.

### Consistency

1. Adhering to Enforcement Policy will help ensure a consistent approach to all cases.;
2. We will attend Essex Enforcement Officers' Liaison Group meetings and remain in close contact with our opposite numbers in the City/District/Borough Councils to ensure a consistent approach;
3. We will attend regular liaison meetings with the Environment Agency and abide by the Joint Environment Agency Protocol at Appendix 8;
4. We will share information with these other enforcing agencies, subject to confidentiality;



5. Where discretion is applied against standards, this will be the responsibility of the team's manager whose responsibility is to ensure that it happens in a fair, equitable and consistent way.

## **Procedures**

1. Advice following an investigation will be put clearly and simply in writing. All letters/electronic mail and notices to unauthorised developers will explain the breach, the requirements of the authority to put the matter right including time scales and remind the developer of the powers the authority has to take formal action. Letters will also give contact names and telephone numbers to ensure developers are given as much information as is possible to help and advice.
2. The rights of appeal of the developer against any formal notice will be clearly explained;
3. Before any formal enforcement action is undertaken, operators will be invited to discuss their problems with the officer, unless immediate action against the breach of planning control is necessary;
4. Any threat of formal action will be followed up with such action swiftly if there is inadequate evidence of steps being taken to resolve the problems.

## **Planning Enforcement**

### **HARM ASSESSMENT – PRIORITISATION SCHEME**

#### **PROCEDURE FOR CLOSURE OF REPORTED BREACH OF PLANNING CONTROL INCIDENTS**

##### **Purpose**

This document sets out the Mineral and Waste Planning Authority's (M&WPA's) Harm Assessment procedure in relation to the handling of alleged breach of planning incidents. It assesses the "planning harm" the incident is perceived to cause and provides a process for the "closure" of minor breaches of planning control. One of the M&WPAs responsibilities is to protect the public and prevent harm to the environment. There may be occasions when the breach of statutory controls will justify statutory action. Any such action will only be taken in accordance with the law and after due consideration has been given to any Convention Rights under the Human Rights Act 1998 that may be affected by such action. However, the M&WPA's resources are limited and this procedure is based on an assessment of harm that will enable the use of available resources to maximum effect.

##### **Background**

In the past when the M&WPA considered an alleged breach of planning control the case was not closed until the breach of planning control was rectified. This resulted in the M&WPA continuing to use resources to pursue minor breaches of planning control that were not causing harm to public amenity and/or interest.

##### **The Scheme**

The Harm Assessment procedure is applied to incidents which are found to be a breach of planning control following site inspection. The procedure grades the "harm" of that breach against a series of scored planning criteria (up to maximum score of 18). The level of harm warranting resource (the score) is 6 and above. Where the cumulative score is 5 or under, it is generally not considered to be expedient to pursue the breach as the impact on public amenity and/or interest will normally be negligible.

In such low scoring incidents, the case will normally be closed and advisory letters will be sent to both the offender and complainant. The landowner/occupier will also be advised of the need to rectify the situation, most usually through the submission of a retrospective planning application, or the compliance with any conditions attached to a planning approval. The submission of an application will not, however, be usually monitored or pursued. Once all parties have been notified the M&WPA will normally take no further action. This will not apply to those cases with a score of 5 or less where it is agreed by the relevant Manager (or equivalent authorised officer) that the breach would not receive an unconditional grant of planning permission. In these instances the breach may be pursued to a successful conclusion.

Breaches of planning control that attract a score of 6 or more will normally be actioned until the breach is resolved either through negotiation or by taking formal action, in accordance with the Local Enforcement and Site Monitoring Plan.

The Harm Assessment will be applied to all incidents involving unauthorised development.

Fifteen planning “harm” factors are set out in the harm assessment form dealing with factors such as, the nature of the breach, safety issues, policy matters, degree of harm etc.

### **Operational Aspects**

The “Harm Assessment Form” will normally be completed by the M&WPA’s Enforcement Officer within 20 working days of receipt of notification of an incident. Where the alleged breach of control relates to a change of use of land the M&WPA will usually visit the site a minimum of three times in that twenty-day period (if necessary) to establish if a breach of control is occurring (if the initial or second visit are inconclusive). The result of the harm assessment by the twentieth day will allow the decision on “harm” to be incorporated in the authority’s normal 21 day letter to complainants informing them of the authority’s findings and intended action or, where applicable, that no additional action is to be taken.

The Harm Assessment provides:

- a quantitative and qualitative assessment of harm to public amenity/interest;
- a procedure that is open and transparent;
- a quick and effective processing of incidents;
- a flexible system to make efficient use of resources;
- equality of treatment of dealing with incidents.

The harm assessment criteria and scoring is an effective means of identifying minor/trivial breaches of planning control, as well as providing an opportunity for it to be used in prioritising of other breaches of planning control to be progressed by the M&WPA.

The actions that the M&WPA takes will be in a fair, just and consistent manner, taking into account the particular aspect of each individual case, however the M&WPA will ensure that the Harm Assessment procedure is reviewed periodically to ensure its effectiveness.

**ESSEX COUNTY COUNCIL AS MINERAL AND WASTE PLANNING AUTHORITY'S HARM ASSESSMENT FORM**

**TO BE COMPLETED BY AN OFFICER WHO HAS INSPECTED THE DEVELOPMENT**

All retrospective refusal of planning permission will automatically receive a full investigation – do not complete form.

Each new complaint will be allocated scores as set out below to assess its harm. The total will provide its harm score in which its priority will be based.

Where there is no breach of planning control found, the case will be closed accordingly.

Points Allocation			Score
1	Is there a breach: (including breach of condition)	Yes (1) Worsening (2)	
2	Is there a potential statutory nuisance	Yes (1)	
3	Have complaints been received?	Yes (1)	
4	Time Table i.e, (estimated period left before enforcement action can no longer be taken and lawful use/development rights exist)	Less than 6 Months left (2) More than 6 Months left (1)	
5	Development Plan Policy Breach	Yes(1)	
6	Is the harm:	Widespread (2) Local (1)	
7	Irreversible harm:	Yes (2)	
8	Intensity of activity	High (2) Low (1)	
9	Prolonged detriment to amenity	Yes (1)	
10	Undesirable precedent	Yes (1)	
11	Other (up to maximum of 3 total) e.g. Highway safety issue (please specify) Potential environmental issues (please specify) Potentially hazardous waste (please specify)		
14	Visiting Officer		
<b>TOTAL POINTS (HARM SCORE)</b>			

## **Interpretation of how the Human Rights Act may affect Enforcement Issues**

### **Article 6: Right to a fair trial**

Any person(s) issued with an enforcement notice has the right to appeal to the Secretary of State for Communities and Local Government and then, on a point of law, to the Courts. Other enforcement action may not be subject to an appeal procedure but an affected person will have the right to refer the matter to the courts by way of judicial review. This ensures that there is no breach of an individual's right to a fair trial against the decision of the enforcement-taking authority to take action. Any person affected by an unauthorised development should expect action to be taken within a reasonable time period by the authority which, following Planning Enforcement Policy should ensure that there was no breach of human rights or Local Government Ombudsman intervention.

### **Article 8: Right to respect for private and family life**

Both parties to any dispute could claim that their rights under this article were being adversely affected by a decision of the enforcement authority. Therefore, it is important that whether action is taken under delegated powers or following a Committee resolution, the impact on the parties' rights under this article is, and is actually seen to be, taken into account. The decision should be based on the balance between the respective harms to private and family life of both sides whilst seeking to minimise any interference at all. Any interference that does occur with this right must also be seen to be proportionate to the need to restrain the breach of planning control that is being committed.

Accordingly, to ensure that this factor is given sufficient weight in reaching any decision whether or not to take enforcement action, it is considered that it should be specifically referred to under the severity of breach/proportionality section in the Harm Assessment procedure.

### **Article 14: Prohibition of discrimination**

Compliance with the Planning Enforcement Policy should not result in any discrimination.

### **Article 1 of the First Protocol: Protection of property**

The right to peaceful enjoyment of possessions is a matter of balance between those in breach and those affected by the breach.

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

Any action taken will comply with the balance struck by the UK government in the relevant legislation and by, where appropriate, stringent application of the expediency.

## Prosecution Policy - Factors Which Influence How a Case Should Proceed

### Decision Stages

There are two stages in the decision to prosecute. The first stage is the **evidential test**. If the case does not pass the evidential test, it must not go ahead, no matter how important or serious it may be. If the case does pass the evidential test, the M&WPA will decide if a prosecution is needed in the public interest.

The second stage is the **public interest test**. The M&WPA will only start or continue a prosecution if the case has passed both tests.

### The Evidential Test

The M&WPA must be satisfied that there is enough evidence to provide a 'realistic prospect of conviction' against each potential defendant on any charge. Consideration will be given to any defence case and how that is likely to affect the prosecution case.

A realistic prospect of conviction is an objective test. It means that a jury or bench of magistrates, properly directed in accordance with the law, is more likely than not to convict the defendant of the charge alleged.

When deciding whether there is enough evidence to prosecute, The M&WPA will consider whether the evidence is relevant and reliable. There will be many cases in which the evidence does not give any cause for concern, but there will also be cases in which the evidence may not be as strong as it first appears. The M&WPA will consider the following questions:

Can the evidence be used in court? There are certain legal rules which might mean that evidence which seems relevant cannot be given at a trial. For example, is it likely that the evidence will be excluded because of the way in which it was gathered or because of the rule against using hearsay as evidence? If so, a decision will be made whether there is enough other evidence for a realistic prospect of conviction.

Is the evidence reliable? Is it likely that an admission or confession is unreliable, for example, because of the potential defendant's age, intelligence or lack of understanding?

Is the witness's background likely to weaken the prosecution case? For example, does the witness have any dubious motive that may affect his attitude to the case or a relevant previous conviction?

If the identity of the potential defendant is likely to be questioned, is the evidence about this strong enough? The M&WPA must not ignore evidence because it is unsure that it can be used or is reliable, but must look closely at it when deciding if there is a realistic prospect of conviction.

### The Public Interest Test

Prosecution must be in the public interest. This is weighted by the seriousness of the breach of control. In serious cases a prosecution will usually occur unless there are public interest factors against, which clearly outweigh those in favour.

By considering the factors listed below and applying them to the circumstances of an investigation, it should be possible to form an opinion as to how best a case might be dealt with. However, the factors are not necessarily in order of importance and it is not necessary to score a minimum number of them before recommending a prosecution. Indeed, it may be the case, for example, that a potential defendant has acted so unlawfully that this alone indicates that a prosecution is the only way ahead.

- any deliberateness, negligence or carelessness of the action in question;
- any failure to heed previous advice given specifically to the potential defendant;
- any cause or likelihood of substantial prejudice to others;
- any exposure to a serious risk to the environment, safety, well-being or health of the public
- any disregard for the law, even though appropriate notice has been given that legal proceedings will be considered in those circumstances (e.g. after previous correspondence)
- any obstruction of officers in their duties
- any history of previous offending;
- any likelihood of offending continuing if no formal legal action is taken
- any delay between the date of the alleged offence and the laying of information unless it was attributable to the defendant, the matter only recently coming to light or the complexity of the investigation
- any likelihood of the same outcome being equally achieved by considering an alternative course of action (i.e. are we using a sledgehammer to crack a nut?)
- the circumstances of those affected by the alleged offence
- the circumstances of the defendant, for example, age or health
- whether the potential defendant has put right the loss or harm that was caused, however, the defendant will not always avoid prosecution solely because of reparation

Finally, only if it is considered 'reasonable' to do so, will a prosecution be brought. This in planning terms is known as the *Wednesbury* principle (*Associated Provincial Picture Houses Ltd. v Wednesbury Corporation* [1948] 1 KB 223). Unreasonable conduct is defined as "conduct which no sensible authority acting with due appreciation of its responsibilities would have decided to adopt". Deciding on the public interest is not simply a matter of adding up the number of factors on each side as some factors will be more important than others. As such authorised officers will 'weigh' factors in making an overall assessment.

## **Proceeds of Crime Investigation**

### **General Principles**

The M&WPA, in considering the need for utilising the powers under POCA, has taken account of:

- Its contribution to local crime and disorder strategies and other corporate priorities;
- The need to consider pre-conviction orders as part of the prosecution process in connection with money laundering investigations and the need to consider post-conviction orders as part of confiscation investigations;
- Its role in tackling 'lifestyle criminals';
- Its potential to raise the profile of the service;
- The need to ensure that crime doesn't pay and is seen not to pay;
- Helping to meet the expectations of legitimate operations and activities.

The M&WPA will promote the use of financial investigations, where appropriate, as part of criminal investigations which may lead to confiscation. Confiscation is not just for serious criminals but applies in every case of acquisitive crime.

Acquisitive crime describes offences where the perpetrator derives material gain from the crime. This encompasses crime types unauthorised waste disposal activity.

When a person has benefited from their crime, the objective is to secure a criminal conviction and, if possible, remove the benefit of that crime. A confiscation order made under POCA is an effective way of achieving this.

Opportunities for money laundering and confiscation proceedings, which are normally undertaken by Financial Investigators, will be considered.

Following appropriate advice, officers will refer suitable cases for financial investigation and are reminded that failure to follow this policy, in referring acquisitive crimes to the Financial Investigation Unit (FIU) may result in the true extent of the criminal activity being uncovered, the correct perpetrators being prosecuted and reduction of the amount of assets seized and thereby reduce the deterrent aspect which is required to assist in reducing crime.

## **Statement of Policy**

Where appropriate, a financial investigation will be carried out by a Financial Investigation Unit (FIU) for cases where there are alleged or convicted offences of an acquisitive crime, with a view to making an application to a court for a confiscation order to be made to the value of the benefits derived from the crimes.

Referrals to the FIU will be considered on merit by the FIU but will be prioritised with reference to one or more of the following factors;

- Propensity of the defendant(s) to commit offences nationally or throughout the East of England and Essex.
- Where the harm caused by the offence is deemed to be significant or the Environment is at risk from the defendant(s) criminality.
- Where the criminal investigation would struggle to deal with the defendant, or their offending effectively, without the FIU's parallel support.
- Where financial benefit from the defendant's criminality is clearly significant and realisable assets have already been identified.
- Special circumstances, e.g. in appropriate cases where the benefit calculated is significant but assets cannot be found, it may be prudent to pursue confiscation proceedings in order to obtain a 'nominal order' of say £1.00. POCA allows cases to be revisited in the future so where assets subsequently come to light then the 'available amount' may be re-calculated in terms of satisfying the Order using the recently discovered assets. The use of nominal orders may also deter defendants from re offending.

The M&WPA may consider applying for forfeiture under POCA; after confiscation under POCA has been considered.

## **Implications of the Policy**

Financial Implications: The full implementation of this policy involves a significant opportunity to have a proportion of the amounts confiscated under POCA returned to the Authority under the incentive scheme operated by the Home Office. Any funds received as a result of the



“incentivisation” scheme must be used for the further prevention or reduction in crime or further asset recovery.

**Staffing and Training:** All Financial Investigators receive training from the Proceeds of Crime Centre of the National Crime Agency and must receive this training before being accredited. The M&WPA is committed to working alongside trained staff within Essex Trading Standards and other law enforcement agencies and organisations to implement this policy.

Some of these organisations are:

- Essex Police and the National Crime Agency (NCA)
- Her Majesty’s Revenue and Customs (HMRC)
- The Competition and Markets Authority (CMA)
- Other local authorities (Benefit Fraud)
- The Financial Conduct Authority (FCA)
- Department of Work and Pensions (DWP)
- UK Border Agency
- Post Office Investigation Unit

### **Risk Assessments**

This policy is compliant with the requirements of health and safety legislation and internal health and safety procedures. The risk assessment for Investigating Officers applies and will be reviewed annually.

### **Monitoring/Review**

The FIU will ensure that all referrals from the M&WPA under POCA are fully investigated and where appropriate confiscation or forfeiture of assets is applied for.

### **Related Policies and Information Sources**

- ACPO Practice Advice on the Management and Use of Proceeds of Crime Legislation
- ACPO Practice Advice on Financial Investigation.

### **Legal Basis**

The legal basis within which this policy is to operate can be found in:

- Criminal Justice Act 1993;
- Proceeds of Crime Act 2002;
- Terrorism Act 2000;
- HMRC Gateway Procedure;
- The Police and Criminal Evidence Act 1984;
- The Human Rights Act 1998;
- The Criminal Procedure and Investigations Act 1996 (CPIA);
- The Regulation of Investigatory Powers Act 2000 (RIPA);
- The Data Protection Act 1998 (DPA);
- The Freedom of Information Act 2000.



## JOINT ENFORCEMENT PROTOCOL

### Introduction

This document sets out a framework for joint enforcement activities where there is an overlap between the Planning Enforcement activities of Essex County Council (ECC) as Mineral, Waste and County Planning Authority and the regulatory responsibilities of Environment Agency (EA) to promote the objectives of the [Regulator's Code](#).

The aims of the protocol are to:

- Identify where there is an overlap in enforcement activity to ensure that the Planning Authority and Agency is aware of the activity of the other.
- To ensure that where both ECC and the EA are considering taking action in relation to the same business activity or unauthorised operation, joint investigations, inspections and or prosecutions shall be undertaken to avoid any unnecessary burden on businesses and/or individuals.
- To ensure that the enforcement of legislation in respect of breaches of relevant legislation is pursued in a proportionate, consistent, transparent and fair manner.
- To ensure the best use of public resources in respect of promoting compliance with regulations enforced by both authorities.

### Shared Working Arrangements

There are a number of areas where officers of the Planning Authority and Agency may identify that the other body may have an enforcement role in relation to a business/individual or become aware that the other body is already engaging in an enforcement capacity to address a breach of planning control or environmental issue. This could include, but is not restricted to:

- Authorised and unauthorised waste disposal and management and operations, and;
- Mineral sites and ancillary activities which have planning permission from ECC and a permit and/or licence from the EA.

Wherever officers of either ECC and EA recognise the potential for involving each other in regulatory activity they will:

- Share information about their findings and concerns on the business/individual;
- Arrange a joint inspection, when considered appropriate;
- Follow up any inspection with a post inspection meeting to decide upon the next steps and the best use of available powers to address any breaches disclosed by the inspection;
- Determine which body should take the enforcement lead;
- Follow up any enforcement action with further joint inspections;

- Share communications;
- Consider conducting joint PACE interviews where more formal enforcement action is contemplated;
- Meet to discuss cases considered for prosecution to ensure best practice
- Inform respective legal advisors of the joint nature of the enforcement action and where suitable provide witness statements to the lead body;
- Where enforcement action is to be taken by more than one body, to ensure there is no duplication of action and that the resultant prosecution is a proportionate response to the circumstances;
- Coordinate press releases and briefings where appropriate from enforcement action and prosecutions.

**Communication**

Officers from the EA and ECC will jointly liaise, at least biannually, to:

- Discuss any ongoing issues;
- Ensure that this protocol is still fit for purpose;
- Provide an update on contact details for various officers within the authority
- Provide feedback on any learning from earlier joint investigations

Signed..... 

Richard Greaves, Acting Head of County Planning

On behalf of Essex County Council

Signed...  .....

Claire Beecroft, Essex Environment Manager

On behalf of the Environment Agency