



Nottinghamshire
County Council

Monitoring and Enforcement Policy and Protocol



A County Council Guide to monitoring and enforcement

Published February 2009

CONTENTS

- Chapter 1 - Purpose of this document and scope.
- Chapter 2 - Overview
- key points on planning enforcement
 - possible breaches of planning control/time limits
 - enforcement tools
 - enforcement team
- Chapter 3 - Monitoring
- monitoring Programme
 - fee regime
 - frequency of inspections and criteria
 - rights of entry
 - legal requirements
- Chapter 4 - Complaints
- complaints procedure
 - local liaison committees
 - corporate complaints
- Chapter 5 - Enforcement Procedures
- Planning Contravention Notices
 - referral to other bodies
 - regularising planning applications
 - service of notices
 - planning Register
 - appeals
- Chapter 6 - Member involvement in monitoring and enforcement work
- Chapter 7 - Involvement of Legal Services in monitoring and enforcement work
- legal advice
 - notices
 - injunctions
 - prosecutions
 - liaison meetings
- Chapter 8 - Enforcement Legislative and Policy Framework
- Chapter 9 - Monitoring and Enforcement Policy Statement
- Chapter 10 - Useful Contacts
- Monitoring and Enforcement Team
 - other useful contacts
- Appendix 1 - Enforcement Complaint form
- Appendix 2 - Criteria for determining monitoring visit frequency for minerals and landfill developments in accordance with the regulations

CHAPTER 1

PURPOSE OF THIS DOCUMENT AND SCOPE

- 1.1 This document is the updated version of the Enforcement Policy and Protocol originally published by the County Council in November 1998. It sets out the County Council's approach to site monitoring and enforcement in respect of developments for which the Council is the relevant planning authority. The County Council deals principally with minerals, waste and its own developments such as schools and roads. The document covers the arrangements for monitoring development, including the new fee regime for recovering the costs of monitoring mineral sites and waste deposit sites introduced in 2006 and sets out the procedural steps to be followed in dealing with complaints. The Protocol also lays down the agreed course of action adopted by Monitoring and Enforcement staff, in conjunction with Legal Services, when dealing with alleged breaches of planning control.
- 1.2 The approach taken by the County Council in its monitoring and enforcement work reflects the Government's Enforcement Concordat published in 1998 which advocates principles of good enforcement. All relevant Government policy and good practice guidance issued since then is also taken on board. The Concordat recommends agreeing a policy and a set of procedures to ensure the approach is open, fair and consistent. The Monitoring and Enforcement Policy statement in Chapter 8 sets out the standards and level of service which can be expected of the County Council in its role as Planning Authority.
- 1.3 Although this Protocol is mainly intended to be used as an internal working document for officers and Members of the County Council, it is also made freely available to those in industry including applicants and developers, as well as the general public to explain the approach that the County Council is taking towards Monitoring and Enforcement. An electronic version of the Protocol may be viewed on the County Council website by following the link below:

www.nottinghamshire.gov.uk/home/environment/planningmatters/developmentcontrol/monitoringenforcement.htm

CHAPTER 2

OVERVIEW

2.1 Monitoring and enforcement are key elements of County Council development control. The long-term and potentially intrusive nature of minerals and waste development requires specialist monitoring and control. The County Council has a statutory responsibility for enforcing planning control in the public interest, in order to protect public amenity, and to ensure protection of the environment. There are some key factors relating to enforcement work which are set out below:

- enforcement action is a discretionary power available to the Council and the decision to take formal action must always be well founded. Enforcement powers are only used by the County Council where it is expedient and in the public interest to do so having regard to the development plan and other material considerations.
- any action taken will be proportionate to the scale of the breach of planning control. The approach will be based upon the specific circumstances of the individual case, taking into account damage or potential damage to the natural or built environment, public amenity and safety.
- enforcement is one of the most complex areas of the planning system and often breaches of planning control can take many months, or even years, to fully resolve.
- notwithstanding regular monitoring by the Council, the public including local groups have a vital role to play in reporting potential problems to us to be investigated further.

Breaches of planning control are not a criminal offence unless the breach relates to works to a listed building, a protected species or is in breach of a statutory notice.

Possible breaches of planning control

2.2 Planning permission is required for most types of development with certain exceptions. Sometimes work commences without planning permission or is not carried out in accordance with the conditions of a planning permission. The County Council will investigate all complaints concerning potential breaches of planning control regarding minerals and waste development and those relating to its own developments. Breaches of planning control include the following:

- work undertaken without planning permission,
- an unauthorised change of use of a building or piece of land,
- non compliance with plans approved by a planning permission,
- non compliance with conditions attached to a planning permission.

2.3 If a breach of planning control is confirmed the County Council will initially try to resolve the issue by negotiation and informal action with the land owner, developer or other relevant party. Where appropriate, this may include

inviting a retrospective planning application. Where a satisfactory outcome cannot be reached through negotiation formal action may be pursued. Section 2.5 below sets out the various enforcement tools available to the Council.

Time limits for taking enforcement action

- 2.4 In certain instances the Council is unable to take any action when too much time has elapsed since the unauthorised work or change of use was carried out. The following time limits generally apply:
- a four year limit applies to “unauthorised operational development” which includes building works, engineering, mining or other operations.
 - a ten year limit applies to all other development, such as a change of use or a breach of condition.

If it can be shown that a breach has continued for the above time period, and no enforcement action has been taken within that time, then the development will be immune from enforcement action.

Enforcement tools

- 2.5 There are a variety of enforcement and regularising tools available to the Council to deal with breaches of planning control under the Town and Country Planning Act 1990. In all instances the most appropriate action will be chosen based upon the specific circumstances of the breach. Where relevant this will involve prior liaison with the Council’s legal advisers. A summary of the main tools are listed below, which are, with the exception of retrospective planning applications, only applicable to minerals and waste activity. For breaches of planning control in respect of the Council’s own development, appropriate action will be taken internally.
- 2.6 **Retrospective Planning Applications** - Unauthorised development can sometimes be made acceptable by the granting of a permission usually involving the imposition of planning conditions. Where appropriate, the Council may invite a retrospective planning application to regularise the unauthorised work. The planning process follows the same procedures as a normal planning application and the development is consulted upon in the normal way. No prior guarantee can be offered that planning permission will be forthcoming.
- 2.7 **Certificates of Lawfulness** - Where development has taken place without planning permission Section 191 of the Town and Country Planning Act, 1990 allows for the issuing of a Lawful Development Certificate if certain conditions can be met. This enables the owner to obtain a statutory document confirming that the use, activity or other development is lawful for planning control purposes at that particular time. The issue of the certificate depends entirely on factual evidence about the activities which have taken place on the land, the planning status of the site and on the interpretation of relevant planning law. Whether the use is acceptable in planning terms is irrelevant -

what is important is the factual evidence. There are factors which must be satisfied for such certificates to be issued in terms of the length of time a use or development has existed uninterrupted. The onus is on the applicant to provide evidence to support any application.

2.8 **Planning Contravention Notice (PCN)** - Service of this notice under Section 171C of the Town and Country Planning Act 1990 does not constitute formal enforcement action but is used where the Council suspects that a breach of planning control has occurred. This notice enables the Council to obtain relevant information relating to the planning history and other facts to ascertain whether a breach of planning control has occurred, and if so, whether enforcement action is appropriate. It is an offence to fail to comply with the provisions of a PCN and a fine of up to £1,000 may be imposed in the Magistrates' Court.

2.9 **Breach of Condition Notice (BCN)** - Served under Section 187A of the Town and Country Planning Act 1990 to enforce conditions attached to any planning permission. It can be served on any party carrying out the development on the land and/or any person having control of the land. There is no right of appeal against a BCN. Contravening a BCN can result in prosecution with a fine of up to £1,000.

2.10 **Enforcement Notice** - Under Section 172 of the Town and Country Planning Act 1990, the County Council may issue an Enforcement Notice where it appears to the Council:

- that there **has** been a breach of planning control **and**,
- that it is **expedient** to issue the notice having regard to the development plan and other material considerations.

The notice is served on the owner(s) and occupier(s) of the land to which it relates and any other party with an interest in the land which is materially affected by the notice. The notice must specify the steps necessary to remedy the breach of planning control which may require activities to cease and the land to be restored to its condition before the breach took place. The recipient of a notice has a minimum of 28 days to appeal against it. If an appeal is lodged the terms of the notice are suspended until a decision is reached. If no appeal is made then the notice takes effect and all the requirements of the notice must be met. The maximum fine on summary conviction in a Magistrates' Court is £20,000. The Council has the power to carry out the requirements of the notice itself (known as Direct Action) and recover the costs it has incurred and will consider such action in appropriate cases. The notice is registered as a local land charge and will therefore be made known to any potential purchaser of the land.

2.11 **Stop Notice** - These are used in the most urgent or serious cases in conjunction with Enforcement Notices where it is considered expedient that an activity **must** cease before the expiry of the period for compliance with the

enforcement notice. This is usually on grounds of public safety or to prevent serious irreversible harm to the environment. There is no right of appeal against a Stop Notice and failure to comply is an offence with a fine of up to £20,000. An appeal can be made against the accompanying Enforcement Notice and where this is successful the Council may be liable to pay compensation in certain circumstances. Consequently the use of stop notices will always be carefully assessed by the Council.

2.12 **Temporary Stop Notices** - This new power available to local planning authorities was introduced by the Planning and Compulsory Purchase Act 2004 (inserting sections 171E to 171 H into the Town and Country Planning Act, 1990). These are similar to Stop Notices in that they require the immediate cessation of an activity or use but do not need to be served in conjunction with an enforcement notice. They take effect immediately they are displayed on a site and last for up to 28 days. This enables the Council to decide on whether further enforcement action is appropriate and also what form it should take. These may be used where developers are not complying with the terms of a planning permission such that significant environmental damage is at risk.

2.13 **Injunctions** - Applications can be made to the High Court or County Court for an injunction to restrain an actual or expected breach of planning control. It is generally used as a last resort if other enforcement methods fail to resolve a breach but could equally be sought by the Council in the first instance. An injunction may be granted in the absence of the person against whom it is sought.

Monitoring and Enforcement Team

2.14 The Monitoring and Enforcement Team form part of the Development Control Team within Planning Services. Currently the Team comprises the Monitoring and Enforcement Manager, together with three Monitoring and Enforcement Officers. Their work involves regular liaison with internal and external legal advisers. The staff and financial resources allocated to the monitoring and enforcement work of the County Council is periodically reviewed to ensure that the resources are commensurate with the duties undertaken.

CHAPTER 3

MONITORING

- 3.1 The County Council has responsibility for monitoring minerals and waste sites and the County's own developments. Monitoring is undertaken for two reasons firstly, to ensure compliance with the terms of planning permissions including conditions and legal agreements and secondly, to ensure that unauthorised developments are regularised or removed.
- 3.2 Regular monitoring is an essential tool for controlling development and activity. This proactive approach enables the Council to anticipate and resolve breaches of planning control often before they occur. It is through effective monitoring that the public's perception of the quality of development is often established.
- 3.3 Planning permissions for minerals and waste sites and for some of the larger County Council developments are often complex sometimes with many conditions and legal agreements attached. These may require the submission of further details, e.g. schemes to be agreed, phasing details, landscaping schemes or compliance with time limits or other requirements. The responsibility for submitting details and complying with time limits required by the permission lies with the applicant and / or the site operator. However, the County Council will, wherever possible, remind applicants of the need to submit details required by a planning permission or the need to renew a temporary permission. For the larger minerals and waste sites, which are often subject to several separate planning permissions, this can be achieved by Site Audits where the terms of relevant planning permissions and associated legal agreements are regularly reviewed with the applicant/operator.

Liaison

- 3.4 Where appropriate, liaison with other bodies such as District Councils or the Environment Agency will take place to co-ordinate monitoring arrangements.

Monitoring Programme

- 3.5 Once planning permission has been granted systems are put in place to ensure adequate monitoring of the decision. The nature of minerals and waste development requires specialist monitoring often over a considerable period of time. However, these sites operate at a high level of activity at certain times, whilst at other times are active only intermittently.
- 3.6 The monitoring programmes need to be based upon a number of factors including the level of activity, the stage the development has reached and the nature of the operations involved. All new sites are entered into a database with appropriate monitoring files established.

Fee Regime

- 3.7 Since April 2006 Minerals and Waste Planning Authorities (MWPA) have been able to recover costs incurred in the routine monitoring of minerals and landfill sites. This does not apply to other forms of waste management such as recycling plants or composting sites. The liability to pay the fee is the responsibility of the primary operator (or split on joint / multi operator sites); in default this would rest with the freehold landowner.
- 3.8 The period over which the fees must be paid covers the full duration of the planning permission from implementation through to final completion of aftercare. At present the national fee set by Government is £288 per inspection for active sites and £96 for dormant sites.
- 3.9 The number of sites falling within this regime in Nottinghamshire is currently as follows:
- 60 minerals sites
 - 15 waste sites
 - 8 combined minerals and waste sites
 - 5 inactive sites

The County Council will continue to monitor all relevant sites, irrespective of whether they are able to recover the cost of monitoring, to ensure compliance with the terms of planning permissions and encourage good practice.

Frequency of inspection

- 3.10 The decision on the appropriate number of inspections for each site rests with the MWPA, although Government guidance restricts inspections to a maximum of eight in any charging year and suggests an average of four per year for an active site.
- 3.11 Visits made in response to a complaint are outside the agreed number of visits and are not chargeable, even if the complaint is substantiated. However, in these circumstances it is likely that an increased frequency of monitoring will be needed in the subsequent year to more closely review the problem area(s).
- 3.12 The mechanism for overcoming a disagreement between the Council and the operator regarding visit frequency is through the Council's complaint procedure and ultimately the Local Government Ombudsman.

Criteria for determining frequency of monitoring visits

- 3.13 The County Council decides the monitoring site visit frequency on a site specific basis, taking into account the following factors: type of site, size, number and complexity of conditions, number of conditions requiring monitoring, stage of development, progressive nature of working, breaches of planning control observed, complaints received and previous history.

- 3.14 A generic set of criteria has been adopted by the Council to determine the site visit frequency. This is set out in Appendix 2. The criteria have been established to reflect guidance that on average a site should expect four chargeable visits per year, with scope to revise this figure in the light of improved / worsened performance and changes in the circumstances regarding the site type or phase of the development.
- 3.15 Provision is also made for unannounced inspections within these in order to retain scope for unscheduled reviews of operations thereby addressing a concern sometimes raised that operations observed on scheduled visits are often unrepresentative of routine day to day operations.

Rights of entry

- 3.16 Generally access to sites will be part of the established monitoring routine. Monitoring staff will have regard to health and safety requirements, and operators are encouraged to nominate a representative who can act as the main point of contact. However, because of the nature of enforcement work it will often not be prudent or possible to give advance notice of the intention to visit a site.
- 3.17 Authorised officers have a statutory right of entry for enforcement purposes¹. This right is limited to what is regarded as reasonable, in the particular circumstances for effective enforcement of planning control. The legislation specifies the purposes for which entry to land maybe authorised. They are:
- to ascertain whether there is, or has been, any breach of planning control on the land, or on any other land;
 - to determine, whether any of the LPA's enforcement powers should be exercised in relation to the land, or any other land;
 - to determine how any such power should be exercised; and
 - to ascertain whether there has been compliance with any requirement arising from earlier enforcement action in relation to the land, or any other land.

(The inclusion of the words "any other land" means that, if necessary, neighbouring land can be entered, whether or not it is owned or occupied by the person whose land is being investigated).

Legal Requirements

- 3.18 Officers visiting sites will carry their identity cards with them at all times and, where relevant, will produce evidence of authorisation and state the purpose of the visit before entering the land.
- 3.19 When visiting sites for enforcement purposes, officers will seek the cooperation of the owner or occupier. If entry to a site is denied, subsequent

¹ Sections 196A, 196B and 196C of the Town and Country Planning Act 1990 as amended.

visits may involve the assistance of the Police to accompany members of staff. Refusal to allow entry can be regarded as “wilful obstruction” and the owner/occupier could be prosecuted under Section 196C of the Town and Country Planning Act 1990.

- 3.20 The County Council will follow relevant legislation in relation to gathering of evidence² and how investigations leading to potential prosecutions are structured³.

² Police and Criminal Evidence Act, 1984 (and subsequent amendments).

³ Criminal Procedure and Investigations Act, 1996.

CHAPTER 4

COMPLAINTS

- 4.1 Minerals and waste activity can be seen as harmful to amenity, destructive to the environment or as a nuisance. Both new and ongoing development can give rise to complaints. It is the responsibility of the County Council to deal with complaints relating to alleged breaches of planning control on minerals and waste sites and for those relating to the County's own developments.
- 4.2 Complaints may arise in a number of ways. They may be reported directly to the County Council either by telephone, or in writing. When a complaint is made by telephone as much information regarding the alleged breach should be supplied, together with complainant's contact details. An Enforcement Complaint Form (see Appendix 1) will be completed and retained by the Monitoring and Enforcement Team. Alleged breaches may also be reported by submitting the on-line complaints form which may be found on the Monitoring and Enforcement page of the County Council website at www.nottinghamshire.gov.uk.
- 4.3 Complaints are sometimes made to other agencies such as District Councils, Parish Councils and the Environment Agency. It is important that close liaison is maintained with such outside bodies to ensure that the correct organisation can follow up the complaint with the appropriate action.

Complaints Procedure

- 4.4 Complaints about alleged breaches of planning control referred to the Team will be dealt with in accordance with the following procedures:

- All complaints will be entered onto the Monitoring and Enforcement Team's Complaints Register.
- The identity of complainants will be kept confidential (in the event of legal proceedings complainants may be asked to appear in court as witnesses).
- All complaints will be acknowledged within 3 working days* informing the complainant of the case officer dealing with the complaint.
- The site operatives or owners (where known) will, where appropriate, be advised of the nature of the complaint within 3 working days* of the complaint being received.
- Where appropriate, an initial investigation will be undertaken within 3 working days* of the complaint being received.
- The complainant will receive a written response within 15 working days* of the complaint being made, confirming the outcome of the investigation and any action the Council proposes to take. If no action is proposed the reasons will be explained.
- Where a breach of planning control is established the person responsible for the breach will be informed and notified what action should be taken to correct it. A time limit will be given and the consequences of not taking the

appropriate action will be explained.

- Where there is no breach of planning control but the complaint is nevertheless considered a problem, the Council will seek the co-operation of the operator in solving or mitigating the effect of the problem.
- Liaison with other agencies, e.g. Environment Agency, District Councils, will take place where the nature of the complaint may be relevant to them.

* These targets are internal performance indicators against which the Planning Service is measured on a quarterly basis.

Local Liaison Committees

- 4.5 For large sites or those operating over a long period of time, arrangements are often made for the establishment of a Local Liaison Committee. These Committees meet regularly to discuss any issues or problems as they arise. This practice is encouraged as it provides a forum where representatives of the County Council, Parish Council, site operatives, other regulatory bodies, elected members and members of the local community can discuss issues which concern them. Whilst some matters can be resolved through these Committees or by local people dealing directly with an on-site contractor, some complaints need to be referred to the Monitoring and Enforcement Team to investigate further.

Corporate Complaints

- 4.6 The County Council has a corporate complaints procedure. Anyone dissatisfied with the way in which the Council has handled any matters relating to monitoring or enforcement can pursue a complaint through this procedure. Complaints may be made on-line, by freephone, in writing or in person. Further details can be found on the County Council website at www.nottinghamshire.gov.uk

CHAPTER 5

ENFORCEMENT PROCEDURES

- 5.1 Enforcement action will be taken in accordance with the following procedures.
- 5.2 Once sufficient information regarding an alleged or actual breach of planning control is available the site operator and land owner will be sent a letter setting out the County Council's concerns. The letter may contain a request to cease the unauthorised activity or remedy the breach by a particular deadline.

Planning Contravention Notices

- 5.3 The letter may be accompanied by the service of a Planning Contravention Notice⁴ which may only be served when it appears to the LPA that a breach of planning control may have occurred. The service of PCN's do not constitute formal enforcement action and are used to determine site ownership or other relevant information relating to the alleged breach of planning control⁵. Failure to comply with a PCN within 21 days or the supply of false information is a summary offence.
- 5.4 Details of the PCN are entered onto the Team's Monitoring and Enforcement database and a copy of the notice entered onto the Team's Planning Contravention Notice Register.
- 5.5 Where appropriate, a Land Registry search of the land and/or a Company search will be carried out in order to ascertain whether the site is registered land and to obtain ownership details.
- 5.6 Within 5 working days of the expiry of the deadline or upon receipt of a written explanation from the site operator or land owner, a decision will be made on the appropriate action to be taken. This decision may be taken following consultation with Legal Services.
- 5.7 If no further action is warranted a written note of explanation will be placed on the file, and the site operator and/or land owner notified in writing.

Referral to other bodies

- 5.8 If other authorities, such as the district council, or agencies such as the Environment Agency, are responsible for further action the site operator / and/or the land owner will be notified within ten working days of the deadline that the County Council has passed on all relevant information to the appropriate body.

⁴ PCN's are served under Sections 171C and 171D of the Town and Country Planning Act 1990, as amended.

⁵ Other legislation is also sometimes used to obtain information including Section 16 of the Local Government (Miscellaneous Provisions) Act, 1976 as subsequently amended / extended and Section 330 of the Town and Country Planning Act, 1990.

Regularising planning application

- 5.9 If it is considered appropriate for a planning application to be sought to regularise any breach the site operator / landowner will be informed within ten working days of the deadline.
- 5.10 If the breach continues and no satisfactory agreement can be reached with the site operator and landowner on an acceptable course of action, following consultation with Legal Services they will be notified in writing that formal proceedings are being instigated. Chapter 2 sets out the enforcement tools available to the County Council and the most appropriate course of action will be chosen based on the particular circumstances of the breach of planning control.

Service of notices

- 5.11 If it is considered expedient to do so an Enforcement Notice, Breach of Condition Notice or, in more serious cases, a Stop Notice (or Temporary Stop Notice) will be served on all relevant landowners, occupiers or any other parties having an interest in the land to remedy a breach of planning control. The appropriate notice will be served following consultation with Legal Services.
- 5.12 The notice will identify the land, specify the nature of the breach, the steps necessary to remedy the breach and the timescale for compliance. It is essential that all information on the notice is correct to ensure the notice is not a nullity and that it can be defended if appealed.
- 5.13 All notices will be signed by an appropriated authorised officer.

Member notification

- 5.14 Following the service of a notice the Chair and Vice-Chair of Planning and Licensing Committee, the Cabinet Member for Environment and Sustainability and the Ward Member(s) will be notified in writing within 3 working days of the service of the notices.

Planning Register

- 5.15 Within five working days of service a copy of the relevant notice will be sent to the relevant District Council with a request that the notice be entered on the Planning Register and Land Charges Register. District Councils have a statutory duty to place all notices on the Planning Register and declare such details in subsequent search enquiries.

Appeals

- 5.16 Anyone served with an Enforcement Notice has 28 days to lodge an appeal with the Planning Inspectorate. (There is no right of appeal against Breach of Condition Notices, Stop Notices or Temporary Stop Notices). Parties served with Enforcement Notices are informed of their rights of appeal and advised of the procedures. In the event that an appeal is lodged, subsequent action will then follow the appeals process.

CHAPTER 6

MEMBER INVOLVEMENT IN MONITORING AND ENFORCEMENT WORK

6.1 Under the Council Constitution all enforcement functions are delegated to the Corporate Director, Communities and other authorised officers. Notwithstanding this delegation of power, Members will continue to be involved in monitoring and enforcement issues in a number of ways.

6.2 Firstly, reports will be presented to Planning and Licensing Committee every six months, plus a more detailed annual update once a year. The reports provide Members with the detail of all monitoring and enforcement work undertaken in the proceeding 6 or 12 months. The following information will be contained within the reports:

- number of site inspections for both County matter and County Council development, including details of the amount of any fees generated by monitoring inspections.
- number of complaints received and investigated and the extent to which those investigations have met local performance indicators. A breakdown of complaints by District will be provided.
- number of notices served and other action taken together with the reasons for their service.
- an update on the current status of all outstanding enforcement cases.

6.3 Secondly, outside the above report dates some individual cases will be reported to Committee including those which raise specific enforcement issues or involve breaches of planning control likely to have significant impact. These reports will include the following details:

- breach of control
- the steps necessary to remedy it
- the type of action recommended
- the period for compliance
- the reasons why it is expedient to take enforcement action
- request for authority for other appropriate action (e.g. legal action) so as to avoid repeated reports to Committee.

6.4 Member endorsement will also be sought for all enforcement action which may give rise to liability to pay compensation, such as the service of Temporary Stop Notices and Stop Notices. The agreement of the Chair and Vice Chair of Planning and Licensing Committee will be sought prior to the service of these notices.

CHAPTER 7

INVOLVEMENT OF LEGAL SERVICES IN MONITORING AND ENFORCEMENT WORK

7.1 Involvement of legal services occurs in the following ways:

Legal advice

Informal and formal requests for information or advice will be sought from Legal Services as required.

Notices

7.2 The advice of Legal Services will be sought prior to the service of all notices, except Planning Contravention Notices. Requests for advice will include the following information:

- planning history and investigations to date
- details of the alleged breach
- ownership details
- copies of draft enforcement notices and plans
- a summary of potential grounds of appeal
- an assessment of the Human Rights issues
- a cost benefit analysis (in the event a Stop Notice or Temporary Stop Notice is to be served)
- a review of the authority to serve.

7.3 Once drafted the notice will be signed by an appropriately authorised officer.

Injunctions

7.4 Within requests for advice concerning injunctions the above information will be sent to Legal Services together with necessary witness statements. In these cases the Head of Planning Services will sign the request.

7.5 Following receipt of the above information Legal Services will be responsible for advising on the suitability of an injunction and for the drafting and service of relevant documents to the courts and other parties. Legal Services will conduct proceedings in Court or be responsible for instructing an outside partner. Officers from the Monitoring and Enforcement Team will give evidence and be cross-examined as required. The Monitoring and Enforcement Team will be responsible for collecting evidence of compliance and advising Legal Services accordingly.

Prosecutions

- 7.6 In the event of a prosecution, this will be initiated by a memo to Legal Services signed by the Head of Planning Services or in their absence the Service Manager of Development Control. This will include details of the notices, the alleged offence and a review of the potential weaknesses of the case. Legal Services will prepare the case, produce and serve the information and conduct the legal case.

Liaison Meetings

- 7.7 Regular liaison meetings will take place between officers from planning and legal services approximately every six months.

CHAPTER 8

THE ENFORCEMENT LEGISLATIVE AND POLICY FRAMEWORK

Enforcement is a complex area of planning law. The legislative framework is contained within the Town and Country Planning Act, 1990, the Planning and Compensation Act 1991 and the Planning and Compulsory Purchase Act, 2004.

The Town and Country (Fees for Applications and Deemed Applications) (Amendment) (England) Regulations 2006.

National policy guidance is contained within:

PPG 18 – Enforcing Planning Control – December 1991.

Circular 10/97 – Enforcing Planning Control: Legislative Provisions and Procedural Requirements – July 1997.

Circular 02/2005 – Temporary Stop Notices – March 2005.

Regulations covering enforcement appeals depending on the chosen mechanism for determination – Town and Country Planning (Enforcement)(Written Representations Procedure)(England) Regulations 2002.; Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002.; Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002.

Good practice is provided within:

Development Control – A Charter Guide – National Planning Forum/DOE
March 1994.

RTPI Practice Advice Note – Enforcement of Planning Control – February 1996.

Enforcing Planning control: Good practice guide for Local Planning Authorities – DETR – July 1997.

Good Practice Guide on Monitoring Minerals and Waste Management Sites – Planning Officers Society – January 1998.

Enforcement Concordat – HM Government Cabinet Office – March 1998.

Review of Planning Enforcement – Summary of recommendations DCLG – November 2006.

Regional and local policies are contained within:

Regional Spatial Strategy for the East Midlands – 2005.

Nottinghamshire and Nottingham Joint Structure Plan – adopted February 2006.

Nottinghamshire Minerals Local Plan – adopted December 2005, saved December 2008.

Nottinghamshire's Nottingham and Waste Local Plan – adopted January 2002, saved January 2005.

Statement of Community Involvement – adopted 2007.

Various Local Plans produced by District and Borough Councils in Nottinghamshire.

The above legislative and policy framework have been taken into account in drafting this document and are relevant to the monitoring and enforcement and work of the County Council.

CHAPTER 9

MONITORING AND ENFORCEMENT POLICY STATEMENT

1. In dealing with the enforcement of planning control the County Council will have regard to the provisions of the Development Plan, current legislation, government guidance and any other material considerations.
2. The County Council, in carrying out its enforcement duties, will be professional, consistent and fair with all parties, including those who are alleged to be responsible for unauthorised activity and those who have reported any alleged breach of planning control.
3. Investigations and action undertaken as part of the enforcement responsibilities of the County Council will be made public on the County Council website and in publicly available committee reports.
4. The details of all monitoring and enforcement work will be regularly reported to Members for information. Approval of the Chair and Vice Chair will be sought in enforcement cases where compensation issues may arise.
5. All monitoring and enforcement work will be undertaken in accordance with the Council's Corporate objectives and will aim to meet locally or nationally set performance indicators.
6. The County Council, in fulfilling its enforcement responsibilities, will liaise with other relevant parties (including the Environment Agency, District Councils and environment health officers) to resolve breaches of planning control. Appropriate contact with the general public and developers will be maintained.
7. The County Council will periodically review the resources that it makes available for enforcement and monitoring work to ensure staff and financial resources are sufficient to fulfil its responsibilities for the enforcement of planning control.
8. The County Council will undertake its monitoring and enforcement work in accordance with an approved and published Monitoring and Enforcement Protocol. The Protocol will be periodically reviewed and updated, as appropriate.

CHAPTER 10

USEFUL CONTACTS

Enforcement and Monitoring Team

Tim Turner – Monitoring and Enforcement Manager	0115 977 4586	tim.turner@nottsc.gov.uk
John Cranham – Senior Monitoring and Enforcement Officer	0115 977 4546	john.cranham@nottsc.gov.uk
Julian Hawley – Monitoring and Enforcement Officer	0115 977 4904	julian.hawley@nottsc.gov.uk
Agnieszka Szewczyk – Monitoring and Enforcement Assistant	0115 977 2107	agnieszka.szewczyk@nottsc.gov.uk

Other useful contacts:

Environment Agency	08708 506 506	enquiries@environment-agency.gov.uk
Planning Portal		www.planningportal.gov.uk
Bassetlaw District Council	01909 53 3533	www.bassetlaw.gov.uk
Mansfield District Council	01623 46 3463	www.mansfield.gov.uk
Newark and Sherwood District Council	01636 65 0000	www.newark-sherwooddc.gov.uk
Broxtowe Borough Council	0115 917 7777	www.broxtowe.gov.uk
Gedling Borough Council	0115 901 3901	www.gedling.gov.uk
Rushcliffe Borough Council	0115 981 9911	www.rushcliffe.gov.uk
Nottingham City Council	0115 915 5555	www.nottinghamcity.gov.uk
Ashfield District Council	01623 450000	www.ashfield-dc.gov.uk

Appendix 1

Enforcement Complaint Form

Complaint Origin: (Please circle)

Member of public Council Environment Agency Other (state)

Complaint made via: (please circle)

Telephone Email Letter Verbal Other (state)

Complaint Details:

Name:

Address:

.....

.....

Postcode:

Telephone: (home)(work)

Email Address:

Description of Complaint/alleged breach:

Date/Time/Duration:

Location of site:

Nature of complaint:

Any other relevant information:

Received By:

Receipt Date: Time:

Appendix 2

CRITERIA FOR DETERMINING MONITORING VISIT FREQUENCY FOR MINERALS AND LANDFILL DEVELOPMENT IN ACCORDANCE WITH THE FEES REGULATIONS

No. visits per year	CRITERIA FOR FREQUENCY
1	Site is dormant or inactive (with no landscaping/aftercare obligations).
2	Site which is in aftercare only, (1 visit for annual aftercare meeting, 1 to review remedial works implemented and the second could be dropped if no issues arising, or remedial action required).
2	Established site with single planning permission and limited ongoing land take, little ongoing soil stripping/restoration or face/cell development, no complaint/breach history (1 visit for full audit, 1 (possibly unannounced) visit for general progress review).
3	Established site with single planning permission and limited ongoing land take, little ongoing soil stripping/restoration or face/cell development, but with substantiated complaint/breach history (1 visit for full audit, 1 (possibly unannounced) visit for general progress review, 1 to review areas of complaint/breach).
3	Established small site with single permission and ongoing extraction/landfill, soil removal and replacement, (no new infrastructure installation) and no history of non-compliance (1 full audit, 1 inspection to review soil stripping/replacement etc, 1 visit to review restoration and overview of development progress).
4	Established site with single/multiple permissions and with ongoing extraction/landfill, soil removal and replacement and no history of non-compliance (1 full audit, 2 inspections to review soil stripping/replacement/extraction, overview of progress etc (1 or both unannounced), 1 visit to review restoration and overview of development progress).
5.	Established site with single/multiple permissions and with ongoing extraction/landfill, soil removal and replacement and history of substantiated complaint/breach (1 full audit, 2 inspections to review soil stripping/replacement and overview of progress etc, 1 visit to review restoration and overview of development progress, 1 to review specific areas arising from breach/complaint).
5	Established large site with single/multiple permissions and with rapid ongoing extraction/landfill, soil removal and replacement and history of non-compliance (1 full audit, 3 inspections to review soil stripping/replacement, overview of progress etc (1 or 2 unannounced), 1 visit to review restoration and overview or development progress).
5	Small new greenfield development site with associated infrastructure, (1 initial inspection to review soil stripping and review conditions, 2 to review infrastructure preparation progress, 2 to review operational conditions once commenced, (including 1 full audit once site operational).
6	Established site (single or multiple permission) with ongoing extraction/landfill, soil removal and replacement and history of substantiated complaint/breach (1 full audit, 4 inspections to review soil stripping/replacement, areas of breach and overview of progress etc, 1 visit to review restoration and overview of development progress).

6	Medium/large greenfield development site with associated infrastructure, (1 initial inspection to review soil stripping and review conditions, 3 to review infrastructure preparation progress 1 to review operational conditions once commenced, and 1 full audit).
7	Established site with ongoing extraction/landfill, soil removal and replacement and history of substantiated complaint/breach (likely to be subject to formal enforcement action requiring monitoring), (1 full audit, 5 inspections to review areas of breach and overview of progress etc, 1 visit to review restoration and overview of development progress).
8	Site with history of non-compliance and failure to comply with conditions, a source of complaints and environmental impact. 1 site audit, 7 remaining visits to cover general operations and activities subject to non-compliance.
8	Substantial new development with significant infrastructure to install prior to commencement. 1 full audit later in the year, 7 further inspections within the year to cover infrastructure installation/site set up and initial operational works, any associated S106 works).



Contacting us

email **tim.turner@nottscc.gov.uk**

phone **0115 977 4586**

fax **0115 977 2414**

post **Communities, Development Control Team,
Planning Services, Trent Bridge House, Fox Road,
West Bridgford, Nottingham NG2 6BJ**

internet **www.nottinghamshire.gov.uk**

published **February 2009**