

# LOCAL ENFORCEMENT PLAN

Nottinghamshire County Council's Guide to  
Monitoring and Enforcement

Adopted XXXX 2015

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## CHAPTER ONE - INTRODUCTION

- 1.1. Nottinghamshire County Council is firmly committed to delivering an effective and proportionate planning control service which is fair and transparent to applicants and the wider community alike. This Local Enforcement Plan has been prepared in accordance with the guidance set out in paragraph 207 of the National Planning Policy Framework which states:

*“Effective enforcement is important as a means of maintaining public confidence in the planning system. Enforcement action is discretionary, and Local Planning Authorities should act proportionately in responding to suspected breaches of planning control. Local Planning Authorities should consider publishing a Local Enforcement Plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where it is appropriate to do so.”*

- 1.2. The need to produce this Local Enforcement Plan has become necessary following the publication of the National Planning Policy Framework and the associated Planning Practice Guidance, changes brought in by the Localism Act and the need to incorporate implications of the Human Rights Act. As such this Local Enforcement Plan formally replaces the County Council’s Monitoring and Enforcement Policy and Protocol which was published in February 2009.
- 1.3. The Local Enforcement Plan sets out what enforcement and site monitoring service that businesses and the public can expect from Nottinghamshire County Council as Local Planning Authority. The Plan sets out the Council’s approach to dealing with alleged breaches of planning control and secondly, its proactive role in periodic inspection of minerals and waste sites within the County. The Plan is an electronic document which may be viewed and downloaded from the County Council’s website by following the link below:

<http://www.nottinghamshire.gov.uk/thecouncil/democracy/planning/monitoringand enforcement/>

## **CHAPTER TWO - OVERVIEW**

### **Key points on planning enforcement**

2.1 Monitoring and enforcement are key elements of County Council development management. 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 involves the failure to comply with a statutory notice.

### **Human Rights implications of enforcement action**

2.2 The provisions of the European Convention on Human Rights such as Article 1 of the First Protocol (Protection of property), Article 6 (Right to a fair trial), Article 8 (Right to a private and family life) and Article 14 (Prohibition of discrimination) are relevant when considering enforcement action. Planning Practice Guidance advises that there is clear public interest in enforcing planning law and planning regulation in a proportionate way. In deciding whether to take enforcement action Nottinghamshire County Council will, where relevant, have regard to the potential impact on the health, housing

needs and welfare of those affected by the proposed action, and those who are affected by a breach of planning control.

### **Possible breaches of planning control**

2.3 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.

2.4 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. Paragraphs 2.6 – 2.16 below set out the various enforcement tools available to the Council.

### **Time limits for taking enforcement action**

2.5 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. There are two time limits laid down in Section 171B of the Town and Country Planning Act, 1990. These are as follows:

- a four year limit applies to “unauthorised operational development” which includes building works, engineering, mining or other operations and
- 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. However, in cases relating to “concealment” the Council is able to take action even after the above time limits have expired. This new provision, which came into force in April 2012, was introduced by Section 124 of the Localism Act. Paragraph 2.16 below sets out this provision in more detail.

## **Enforcement powers**

- 2.6 There are a variety of enforcement and regularising powers 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. Enforcement action will be proportionate to the breach of planning control and will only be taken when it is expedient to do so. Where relevant this will involve prior liaison with the Council's legal advisers. A summary of the main powers 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 through internal Council procedures.
- 2.7 **Retrospective Planning Applications** - Unauthorised development can sometimes be made acceptable by the granting of planning permission, usually involving the imposition of planning conditions, where the unauthorised development is in line with the development plan. Where appropriate, the Council may invite a retrospective planning application to regularise the unauthorised work (made under Section 73 A of the Town and Country Planning Act, 1990). The planning process follows the same procedures as a normal planning application and the development is publicised and consulted upon in the standard way. However no prior guarantee can be given that planning permission will be forthcoming. An Enforcement Notice may also be issued in relation to elements of the development. The Localism Act 2011 brought in a reduction in the options available to anyone who has undertaken unauthorised development. Regularising unauthorised development can either be by the submission of a retrospective planning application OR by means of an appeal against an enforcement notice on the grounds that planning permission ought to have been granted or the condition or limitation concerned ought to be discharged (known as a ground (a) appeal). Under the new provisions the Council now has the power to decline to determine a retrospective application if an enforcement notice has been issued. Subsection (4) limits the right of appeal against an enforcement notice after a retrospective application has been submitted, but before the time for making a decision has expired.
- 2.8 **Certificates of Lawfulness of Existing Use or Development** - 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.

- 2.9 **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 may have occurred. This notice enables the Council to obtain relevant information relating to any use of, or activities being carried out on, land and other relevant facts to ascertain whether a breach of planning control has occurred, and if so, whether enforcement action is appropriate. Failure to complete or return a notice within 21 days is an offence, as is providing false or misleading information on the notice.
- 2.10 **Breach of Condition Notice (BCN)** – A breach of condition notice served under Section 187A of the Town and Country Planning Act 1990 requires compliance with the terms of one or more planning conditions attached to a planning permission as specified by the notice. It can be served on any party carrying out the development on the land and/or any person having control of the land. The BCN will set out the necessary steps to ensure compliance with the condition(s) being breached with a minimum of 28 days for compliance. Following the end of the period for compliance a “person responsible” who has not ensured full compliance with the conditions will be in breach of the notice and guilty of an offence under S187A (8) and (9) of the Town and Country Planning Act 1990. Summary prosecution can be brought in the Magistrates’ Court for the offence of contravening a breach of condition notice. This can result in a fine of up to £1,000. There is no right of appeal to the Secretary of State against a BCN, although it can be challenged by applying to the High Court for a judicial review.
- 2.11 **Enforcement Notice** - Under Section 172 of the Town and Country Planning Act 1990, the County Council has the discretionary power to 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 exactly what, in the Council’s view, constitutes the breach of planning control; and secondly what steps are necessary to remedy the breach of planning control. This may require activities to cease and the land to be restored to its condition before the breach took place. There is a right of appeal to the Secretary of State against

an Enforcement Notice. The appellant must submit their appeal to the Planning Inspectorate within 28 days from when it was issued. If an appeal is lodged the terms of the notice are suspended until the appeal is determined. If no appeal is made then the notice takes effect and all the requirements of the notice must be met. It is an offence not to comply with an Enforcement Notice, once the period for compliance has elapsed, and there is no outstanding appeal. The maximum fine on summary conviction in a Magistrates' Court is £20,000. The Council has the powers under Section 178 of the Town and Country Planning Act 1990 to enter enforcement notice land and carry out the requirements of the notice itself (known as Direct Action). It is an offence to wilfully obstruct anyone who is exercising those powers on the Council's behalf. The Council is able to recover from the owner of the land any expenses reasonably incurred by them in undertaking this work (Regulation 14 Town and Country Planning General Regulations 1992). The Council will consider such action in appropriate cases. The enforcement notice is registered as a local land charge and will therefore be made known to any potential purchaser of the land. Where appropriate, the provisions under the Proceeds of Crime Act 2002 will be used for non-compliance with Enforcement Notices and other relevant breaches.

- 2.12 **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 specified in the associated enforcement notice. The Council will specify in the Stop Notice when it is to take effect, this is normally no less than 3 days after the service unless special reasons exist for an earlier date. 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 it will take effect even if the accompanying Enforcement Notice is appealed. A person guilty of this offence is liable on summary conviction to a fine of up to £20,000, and on conviction on indictment, to an unlimited fine. 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.
- 2.13 **Temporary Stop Notices (TSNs)** - This 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 TSNs 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. Temporary Stop Notices will prohibit only what is essential to safeguard amenity or public safety, or prevent serious or irreversible harm

to the environment. Before serving the Notice, the Council, where practicable, may discuss whether there are alternative means of production or operation which would overcome the objections to it in an environmentally and legally acceptable way. It is an offence to contravene a TSN and any person found guilty is liable on summary conviction to a fine of up to £20,000 and on conviction on indictment, to an unlimited fine. Any person affected by a TSN can make representations to the Council to challenge the notice however there is no right of appeal to the Secretary of State against the prohibitions in a TSN, although the validity of a decision can be judicially reviewed and compensation be payable for financial loss if development is held lawful by granting a Certificate of Lawfulness.

- 2.14 **Injunctions** - Applications can be made by the Council to the High Court or County Court for an injunction to restrain an actual or apprehended breach of planning control where it is expedient to do so. Local Planning Authorities can apply for an injunction whether or not it has exercised any other powers to enforce planning control. However injunctions are generally used as a last resort for the most serious cases where there have been persistent breaches of planning control over a long period and/or other enforcement options have been ineffective. Courts may grant an injunction against a person whose identity is unknown. Failure to comply can lead to unlimited fine or imprisonment. Councils will be required to provide evidence of their inability to ascertain the identity of the person and the steps taken in attempting to do so.
- 2.15 **Prosecution** – The option of pursuing prosecution is open to the Council if a formal notice has not been complied with within a specified period. This involves an evidential test and would need to satisfy a public interest test.
- 2.16 **Planning Enforcement Orders** - The Localism Act 2011 introduced planning enforcement orders (PEOs) to tackle breaches of planning control, both unauthorised uses and development that are deliberately concealed. Planning enforcement orders enable Council's to take enforcement action after the usual time limits for taking enforcement action (as referred to in paragraph 2.5 above) have expired. Councils must have sufficient evidence of the apparent breach to justify applying for a PEO which must be made within 6 months of becoming aware of the breach. The application for a PEO must be made to a Magistrates' Court and a copy served on the owner and occupier of the land and anyone with an interest who would be materially affected by the enforcement action. The applicant and those affected have the right to appear before and be heard by the court. The effect of the PEO is that the Council can take enforcement action during the "enforcement year" which does not begin until the end of 22 days starting with the day of the Court's decision to make the Order or when an appeal against the order has been dismissed. Planning Enforcement Orders will focus on the worst cases of concealment and can only be made where the developer has deliberately concealed the

unauthorised development rather than merely refraining from informing the Council about it.

### **Monitoring and Enforcement Team**

2.17 The Monitoring and Enforcement Team form part of the Development Management Team within the Planning Group. Currently the Team comprises the Senior Practitioner -Monitoring and Enforcement, together with two 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 THREE - 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 and share data where appropriate.

### **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 under the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) (Amendment) Regulations 2013. 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 £331.00 per inspection for active/partially active sites and £110.00 for dormant sites.
- 3.9 The number of sites falling within this regime in Nottinghamshire as at March 2015 is as follows:
- 82 minerals sites
  - 8 waste sites
  - 8 combined minerals and waste sites
  - 1 inactive sites
  - 11 dormant sites (none fee paying)

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 purposes<sup>1</sup>. 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).

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

### **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 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 evidence<sup>2</sup> and how investigations leading to potential prosecutions are structured<sup>3</sup>.

<sup>2</sup> Police and Criminal Evidence Act, 1984 (and subsequent amendments) and Protection of Freedoms Act 2012. <sup>3</sup>Criminal Procedure and Investigations Act, 1996.

## **CHAPTER FOUR - 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, in writing or on-line. 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](http://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 etc will take place where the nature of the complaint may be relevant to them.

*\*These targets are internal performance indicators against which the Development management 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](http://www.nottinghamshire.gov.uk)

## **5 CHAPTER FIVE - 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 Notice<sup>4</sup> which may only be served when it appears to the LPA that a breach of planning control may have occurred. The service of PCNs does not constitute formal enforcement action and are used to determine site ownership or other relevant information relating to the alleged breach of planning control<sup>5</sup>. 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 Monitoring and Enforcement database and a copy of the notice entered onto the 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.

<sup>4</sup> PCN's are served under Sections 171C and 171D of the Town and Country Planning Act 1990, as amended. <sup>5</sup> 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 applications**

- 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 Chairman and Vice-Chairman of Planning and Licensing Committee and the Divisional 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.

## **6 CHAPTER SIX - MEMBER INVOLVEMENT IN MONITORING AND ENFORCEMENT WORK**

6.1 Under the Council Constitution all enforcement functions are delegated to the Corporate Director, Policy, Planning and Corporate Services 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 Chairman and Vice Chairman of Planning and Licensing Committee will be sought prior to the service of these notices.

## **CHAPTER SEVEN - 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 Group Manager- Planning 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 Group Manager Planning or in their absence the Team Manager of Development Management. 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 continue to take place between officers from planning and legal services.

## **CHAPTER EIGHT - THE MONITORING AND ENFORCEMENT LEGISLATIVE AND POLICY FRAMEWORK**

### **Statutory Background:**

Enforcement is a complex area of planning law. Legislation relevant to enforcement and monitoring is contained within the following Acts;

- The Police and Criminal Evidence Act 1984 (PACE)
- Town and Country Planning Act, 1990
- The Planning and Compensation Act 1991
- The Human Rights Act 1998
- The Regulation of Investigatory Powers Act 2000 (RIPA)
- The Planning and Compulsory Purchase Act, 2004
- The Localism Act 2011
- Proceeds of Crime Act 2002
- Protection of Freedoms Act 2012

and the following Statutory Instruments;

- The Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) (Amendment) Regulations 2013
- The Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002
- Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedures) (England) Rules 2002
- Town and Country Planning (Enforcement) (Hearings Procedures) (England) Rules 2002
- Town and Country Planning (Enforcement) (Written Representations Procedures) (England) Regulations 2002
- Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002
- The Town and Country Planning (Temporary Stop Notices) (England) Regulations 2005.

### **Enforcement policy guidance is contained within:**

- National Planning Policy Framework 2012

- Planning Practice Guidance 2014
- The Planning Inspectorate Guides - Procedural Guide - Enforcement Appeals - England - March 2014
- Procedural Guide - Certificate of Lawful use or development appeals – England - June 2014
- Guide to taking part in enforcement appeals and lawful development certificate appeals proceeding by an Inquiry – England - March 2014
- Local Government Ombudsman - Fact sheet 7 - Complaints about planning enforcement
- Planning Portal - Enforcement Appeals.

**Local policies are contained within:**

- Nottinghamshire Minerals Local Plan (to be replaced by the New Minerals Local Plan and other Minerals Development Documents)
- Nottinghamshire County Council and Nottingham City Council Waste Core Strategy adopted December 2013 and other waste site specific and development management policies (forming the second part of the replacement Waste Local Plan)
- Nottinghamshire and Nottingham Waste Local Plan (Saved Policies) – adopted 2002
- Statement of Community Involvement – adopted 2013
- Various Local Plans produced by District and Borough Councils in Nottinghamshire.

**The above legislative and policy framework have been taken into account in preparing this Local Enforcement Plan and are relevant to the monitoring and enforcement work of the County Council.**

## **CHAPTER NINE - 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, transparent 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 Chairman and Vice Chairman 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 Environmental 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 the Local Enforcement Plan. The Plan will be periodically reviewed and updated, as appropriate.

## CHAPTER TEN - USEFUL CONTACTS

### Monitoring and Enforcement Team:

Tim Turner – Senior Practitioner, Monitoring and Enforcement	0115 9932585	<a href="mailto:tim.turner@nottscc.gov.uk">tim.turner@nottscc.gov.uk</a>
John Cranham – Senior Monitoring and Enforcement Officer	0115 9932579	<a href="mailto:john.cranham@nottscc.gov.uk">john.cranham@nottscc.gov.uk</a>
vacant – Monitoring and Enforcement Officer	0115 9932587	

### Other useful contacts:

Environment Agency	08708 506506	<a href="mailto:enquiries@environmentagency.gov.uk">enquiries@environmentagency.gov.uk</a>
Planning Portal		<a href="http://www.planningportal.gov.uk">www.planningportal.gov.uk</a>
Ashfield District Council	01623 450000	<a href="http://www.ashfield-dc.gov.uk">www.ashfield-dc.gov.uk</a>
Bassetlaw District Council	01909 533533	<a href="http://www.bassetlaw.gov.uk">www.bassetlaw.gov.uk</a>
Broxtowe Borough Council	0115 9177777	<a href="http://www.broxtowe.gov.uk">www.broxtowe.gov.uk</a>
Gedling Borough Council	0115 9013901	<a href="http://www.gedling.gov.uk">www.gedling.gov.uk</a>
Mansfield District Council	01623 463463	<a href="http://www.mansfield.gov.uk">www.mansfield.gov.uk</a>
Newark and Sherwood District Council	01636 650000	<a href="http://www.newark-sherwooddc.gov.uk">www.newark-sherwooddc.gov.uk</a>
Nottingham City Council	0115 9155555	<a href="http://www.nottinghamcity.gov.uk">www.nottinghamcity.gov.uk</a>
Rushcliffe Borough Council	0115 9819911	<a href="http://www.rushcliffe.gov.uk">www.rushcliffe.gov.uk</a>

**Appendix 1 Enforcement Complaint Form**

**Complaint origin: (please circle)**

Member of public.....Councillor....Environment Agency....District Council.....  
Other (state).....

**Complaint made via: (please circle)**

Telephone.....Email.....Letter....Verbal...Other (state).....

**Complainant details:**

Name:.....

Address.....

.....

.....

.....

Telephone:.....

Email address.....

**Description of complaint/alleged breach:**

Date/time/duration:

Location of site:

Nature of complaint/breach:


Any other relevant information:

Complaint received by.....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 noncompliance.
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).

### CONTACT US

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