

Agenda Item No. 3.4

DERBYSHIRE COUNTY COUNCIL
REGULATORY – PLANNING COMMITTEE

12 April 2021

Report of the Director – Economy, Transport and Environment

4 PUBLICATION OF A LOCAL ENFORCEMENT PLAN

Introductory Summary Paragraph 58 of the National Planning Policy Framework 2019 (NPPF), advises local planning authorities to consider publishing a Local Enforcement Plan (LEP) to manage enforcement proactively, in a way that is appropriate to their area.

Following this advice, the Planning Service has prepared such a plan, which it intends to publish on the Council's website. The LEP sets out the enforcement and site monitoring service that businesses and the public can expect from Derbyshire County Council. The Plan is a guide and sets out how the Council will deal with alleged breaches of planning control and also its proactive role in periodic monitoring of minerals and waste sites within the County.

The Local Enforcement Plan that has been prepared for publication is attached at Appendix A.

(1) **Purpose of Report** To notify the Committee of the intention to publish a Local Enforcement Plan.

(2) **Information and Analysis**

The Local Enforcement Plan

The LEP has been prepared in accordance with the guidance set out in Paragraph 58 of the NPPF which states:

“Effective enforcement is important to maintain public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. They should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where appropriate.”

Planning Practice Guidance (PPG), issued by the Ministry of Housing, Communities and Local Government (MHCLG), states that the preparation and adoption of a LEP is important because it:

- allows engagement in the process of defining objectives and priorities which are tailored to local circumstances;
- sets out the priorities for enforcement action, which will inform decisions about when to take enforcement action;
- provides greater transparency and accountability about how the local planning authority will decide if it is expedient to exercise its discretionary powers;
- provides greater certainty for all parties engaged in the development process

Consultations

No consultations are required.

(3) **Financial Considerations** There are not considered to be any significant financial considerations associated with this report.

(4) **Legal Considerations** The LEP has been prepared in accordance with the PPG issued by the MHCLG. It relates to existing Council functions for monitoring and for enforcement under the Town and County Planning Act 1990, which are generally exercised through the Planning Service as provided by the scheme of delegation under the constitution.

(5) **Environmental and Health Considerations** As contained in the report.

(6) **Other Considerations**

In preparing this report the relevance of the following factors has been considered: prevention of crime and disorder, equality and diversity, human resources, property, social value and transport considerations.

(7) **Background Papers** NPPF (2019) MHCLG, Planning Practice Guidance (on line) MHCLG.

(8) **OFFICER'S RECOMMENDATION** That the Committee resolves to endorse the publication of the Local Enforcement Plan on the Council's website.

Tim Gregory
Director – Economy, Transport and Environment



LOCAL ENFORCEMENT PLAN 2021

CONTENTS

Introduction to and Context of this Plan	1
Is Planning Permission Required?	4
What is a Breach of Planning Control?	5
Immunity from Enforcement Action.....	6
The Purpose of Planning Enforcement Action	7
Assessment of Harm	8
Legal Framework for Enforcement and Monitoring	9
Reporting a Suspected Breach of Planning Control	10
Investigation Process.....	11
What happens when a breach is found?.....	13
Formal Enforcement Powers Available to the Council	15
Certificates of Lawfulness of Existing Use or Development (CLEUD)	18
Monitoring.....	19

1. INTRODUCTION TO AND CONTEXT OF THIS PLAN

The Local Enforcement Plan sets out the enforcement and site monitoring service that businesses and the public can expect from Derbyshire County Council. The Plan is intended as a guide to how the County Council deals with alleged breaches of planning control and its proactive role in periodic inspection and monitoring of minerals and waste sites within the county. Section 3 below (from p5) explains what a “breach of planning control” is.

The Local Enforcement Plan has been prepared in accordance with the guidance set out in paragraph 58 of the National Planning Policy Framework - Revised, February 2019 (NPPF), which states:

“Effective enforcement is important to maintain public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. They should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where appropriate.”

National guidance on planning enforcement is provided in the online Planning Practice Guidance (PPG), which can be accessed at: <https://www.gov.uk/guidance/ensuring-effective-enforcement>.

The online PPG is frequently updated.

In taking enforcement action for breaches of planning control, the Council must have regard to the Government’s Enforcement Concordat, the Regulators’ Code, and all relevant Government guidance. The County Council’s actions must also accord with the principles of the Human Rights Act 1998 and The Equality Act 2010 and ensure that unlawful discrimination is eliminated, and all action is taken in a fair and consistent manner.

The County Council’s Planning Service seeks to resolve problems amicably where possible. However, the County Council will use powers of formal enforcement action where it is expedient to do so.

The County Council aims to deal with and close each enforcement case as soon as possible. However, some cases can take months or even years before reaching a final resolution as a consequence of what is needed for effective ongoing investigation, site monitoring or remediation over a longer term, or any other potential complexities. There is a right of appeal to the Planning Inspectorate against an Enforcement Notice, and in such cases the requirements of the notice are held in abeyance pending the outcome of the appeal.

WHAT WE AIM TO DO

The County Council aims to provide a high quality re-active and pro-active approach to monitoring and planning enforcement.

The County Council's principles of good monitoring and enforcement are as follows:

MONITORING

- To monitor existing waste and minerals sites at regular intervals;
- To keep effective records of operations and practices of waste and minerals sites;
- To work with operators to ensure they are operating in compliance with the parameters and conditions set within existing planning permissions.

ENFORCEMENT

- To investigate reported breaches of planning control in accordance with the Local Enforcement Plan [this Plan];
- To carry out investigations proportionately in relation to any breach of planning control suspected / identified;
- To keep all personal identification and details of individuals confidential at all times, unless required to be disclosed as part of statutory notice procedure or court proceedings or other legal obligations;
- To actively pursue a complaint to an expedient conclusion;
- In cases where it is concluded that any breach of planning control is causing insufficient public harm to warrant formal action, to notify all parties of the reason for the decision not to take formal action;
- To allow whoever is responsible for a breach of planning control a time-limited opportunity to take action to resolve the breach voluntarily before the matter is pursued through formal action, provided that no significant additional harm would be generated by any continuing breach up to that time.
- Where it is considered appropriate and expedient to do so having regard to the provisions of the development plan and any other material considerations, to take formal action, and follow it up with legal action where necessary and in the public interest.

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ENFORCEMENT CONTINUED

There are some key factors relating to enforcement work which anyone concerned with it should be aware of:

- Enforcement action is a discretionary power available to the County 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.
- Enforcement action should not be taken simply to remedy the absence of a planning permission where development is acceptable on its planning merits. Planning Permission may be granted retrospectively to regularise development already carried out.
- The County Council is generally keen to encourage breaches of planning control to be resolved informally in the first instance. However this will not delay its use of powers of enforcement whenever it is judged expedient.
- Any action taken will be proportionate to the seriousness of the breach of planning control, as understood by the County Council. The approach will be based upon the specific circumstances of the individual case, taking into account scale of damage or potential damage to the natural or built environment, and of harm to public amenity or safety.
- The public including local groups nevertheless have a vital role to play in reporting problems they experience which might be breaches of planning control, so we can investigate them and potentially enforce against them.
- Carrying out or allowing a breach of planning control is not in itself a criminal offence, unless the breach involves works to a listed building. However failure to comply with a statutory notice requirement is generally an offence liable to prosecution.

2. IS PLANNING PERMISSION REQUIRED?

Planning permission is required for the majority of development with some exceptions.

The County Council is the responsible planning authority for development relating to Minerals and Waste (e.g. quarries, landfill sites, waste recycling/transfer sites). We also deal with planning applications for development the County Council has a significant interest in such as on school sites or libraries where the County Council may also be the landowner.

Planning relating to other types of development (i.e. housing, commercial, industry, shopping and leisure) is dealt with by the District and Borough Councils within the county and any complaints regarding such development should be directed to the relevant district/borough council.

3. WHAT IS A BREACH OF PLANNING CONTROL?

Section 171A of the Town and Country Planning Act 1990 (as amended) (TCPA 1990) provides that the following circumstances constitute a breach of planning control:

- a) Carrying out development without the required planning permission; or
- b) Failing to comply with any condition or limitation subject to which planning permission has been granted.

With respect to mineral and waste development a breach of planning control can include:

- Winning and working of stone and mineral without planning permission.
- Importing onto land, depositing and processing waste without planning permission.
- Unauthorised changes of use of land or buildings linked to mineral and waste development.
- Storing and/or processing scrap metal and carrying out vehicle depolluting and dismantling without planning permission.
- Non-compliance with conditions imposed by a planning permission.
- Non-compliance with approved plans.
- Any contravention of the limitations on, or conditions belonging to, permitted development rights, under the Town and Country Planning (General Permitted Development) Order 2015 and any subsequent amendments.

4. IMMUNITY FROM ENFORCEMENT ACTION

Where too much time has elapsed since a breach of planning has occurred, the County Council will be unable to take any action.

Section 171B of the Town and Country Planning Act 1990 sets two time limits;

- a four year limit which applies to “unauthorised operational development” which includes building works, engineering, mining or other operations in, on, over or under land without planning permission and
- a ten year limit which applies to all other development, such as a change of use or a breach of condition

If evidence shows that a breach has continued for a time period extending beyond the applicable limit, and no enforcement action has been taken within the relevant time limit, then the development will normally be immune from Enforcement Action. This does not apply to cases of deliberate concealment of a breach; in these cases the County Council is able to take action from whenever it becomes aware of the true position.

5. THE PURPOSE OF PLANNING ENFORCEMENT ACTION

The Town and Country Planning system is designed to influence and control the development and use of land and buildings in the public interest. It is not meant to protect the private interests of one person against the activities of another.

While it is unsatisfactory for development to be carried out without first obtaining planning permission, enforcement action should not be taken by the County Council solely to 'regularise' development which it finds is acceptable in all respects in planning terms. In other cases, where it considers that the development would accord with the Development Plan and might be made acceptable through granting of planning permission subject to conditions, the County Council may encourage the developer to apply for retrospective planning permission.

The County Council is expected generally to operate its enforcement activities within Government guidelines and in accordance with County Council policy. This means that:

- The County Council will decide whether the breach of control unacceptably affects public amenity or the existing use of land and buildings meriting protection in the public interest.
- Enforcement action should not be taken just because development has started without planning permission.
- The County Council does not always have to take action but the particular material circumstances of the case must always be considered.
- Enforcement action should be commensurate with the breach of planning control. Formal action is not normally taken against a technical or minor breach of control that causes no real harm.

However, where significant harm is being caused, the County Council will take firm action in the public interest, proportionate to the scale of harm.

6. ASSESSMENT OF HARM

Harm resulting from a breach of planning control could concern amenity or highway safety issues and could for example include noise nuisance, odour and air pollution, drainage, or issues arising from increased traffic flows.

Harm can be operations or development affecting the natural environment including wildlife habitats (such as nesting sites, bat roosts, badger setts), or groundwater conditions and contamination of soils.

Harm to the visual amenity of an area could occur for example through regrading of land levels, unscreened stockpiling of waste and aggregate, erection of buildings or engineering operations out of character with the area, and impacts on heritage assets such as listed buildings, and Conservation Areas.

Once the alleged breach has been investigated and it has been established that a breach of planning control has occurred, and harm is being caused, action may then be taken.

If the County Council consider that the level of harm being caused is not substantial then they may conclude that it is not in the public interest to pursue a breach of planning control further. In assessing any harm officers will refer to the National Planning Policy Framework (NPPF), the development plan and any other material planning considerations. If the breach is unlikely to be granted planning permission then it is likely to be considered harmful and planning enforcement action will be taken.

Issues which the County Council could not normally consider in any enforcement issue would for example include:

- loss of value to a neighbouring property,
- competition to another business,
- loss of an individual's view
- trespass issues
- personal issues with neighbours
- private property rights and covenants

7. LEGAL FRAMEWORK FOR ENFORCEMENT AND MONITORING

The law concerning enforcement is complex.

Legislation and Statutory Instruments relevant to Monitoring and Enforcement is contained within, but not limited to:

- The Police and Criminal Evidence Act 1984 (PACE)
- The 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 Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012.
- The Waste (England and Wales) Regulations 2011

In addition, the government sets out policy on enforcement matters in the following policy, guidance and regulations:

- National Planning Policy Framework 2019
- Planning Practice Guidance (online guidance)

8. REPORTING A SUSPECTED BREACH OF PLANNING CONTROL

Anyone who believes that they have observed a breach of planning control that has occurred or is taking place can make a report. Wherever possible, reports should be made in writing (by post or e-mail).

In writing by post:

Derbyshire County Council
Planning Services
County Hall
Room N8
Matlock
DE4 3AG

In writing by E-mail:

planning.enforcement@derbyshire.gov.uk

Via our website form:

<https://planning.derbyshire.gov.uk/enforcements/report>

Telephone:

(01629) 539800

Our office hours are 9.00am to 5.00pm Monday to Friday. At weekends and on bank holidays the offices are closed. Out of hours there is a facility to leave a telephone message.

To properly investigate an enquiry as much information as possible about the alleged breach should be supplied including the observer's contact details.

PERSONAL INFORMATION

The County Council encourages those making enquiries or reporting incidents to provide contact information so that we get in touch if we require further information or clarification.

Many successful investigations are assisted by information supplied by members of the public providing information.

Whilst the main content of such information held by the Council is public information, the name, address or other personal details of individuals are normally kept strictly confidential, in accordance with Data Protection law. In some exceptional cases, a court or the law may require that we release such personal information.

We sometimes invite people who have witnessed incidents to provide factual statements as evidence for planning appeals or court proceedings. This is one reason why the County Council Planning Service does not encourage any anonymous communications.

9. INVESTIGATION PROCESS

ACKNOWLEDGEMENT

Once a report of an incident is received it will be investigated, unless the incident is clearly so trivial as to not require further attention. Written reports, including emails, will, in most circumstances, be acknowledged in writing within five working days of receipt, as will telephone messages, assuming contact details have been given.

SITE VISITS AND RIGHTS OF ENTRY

The next step will, in the majority of cases be for one of our officers to visit the site. This will be done as soon as possible, but at times we will prioritise our visits according to the apparent seriousness of the problem. We aim to visit within ten working days of the report or earlier if the issue appears to be particularly serious or urgent.

The officer will identify themselves to anyone present on the site at the time and explain the purpose of the visit. They may ask questions, take photographs and obtain measurements as these will often be needed to help determine whether or not there has been a breach of planning control.

Designated officers of the County Council have rights to enter land to ascertain whether there has been a breach of planning control and whether any enforcement action should be taken and to check compliance with any requirement relating to enforcement action in place. This right to enter land extends to any land, including land adjacent to the site in question.

When exercising its rights of entry the County Council's officers will have regard to the Government's Code of Practice, details of which can be viewed at the following link:

<https://www.gov.uk/government/publications/powers-of-entry-code-of-practice>

Within 20 working days of a referral being received we will aim to provide a response which sets out the actions taken, any future action to be taken, or if no action is proposed the reasons why.

INVESTIGATION

If there is no breach of planning control or the County Council decide to end the investigation for another reason we will contact any current correspondents and explain why.

Investigations may be closed for a variety of reasons including:

- there is no, or little, evidence of a breach;
- development has taken place but planning permission is not required, usually as the development benefits from permitted development rights;

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INVESTIGATION CONTINUED

- the development already benefits from planning permission;
- In some cases the development may fall to the District or Borough Council for investigation and the enquiry may be referred accordingly to the relevant authority.

It is important to note that the closure of an investigation does not preclude the County Council from re-opening it or making further investigations should the need arise.

If a breach of planning control is identified we will consider the necessity for further investigation and potential action to remedy the breach. To assist the County Council in assessing a potential breach it may be considered appropriate to require information through a formal notice known as a Planning Contravention Notice.

PLANNING CONTRAVENTION NOTICE

Where it appears that a breach of planning control may have occurred but the County Council requires more information about the circumstances, we may serve a Planning Contravention Notice (PCN). This can be served on the owner or occupier of the land, anyone who has an interest in the land or anyone who is using the land for any purpose. The PCN requires the owner, occupier, etc. to provide information about ownership and the activities taking place on the land or within any buildings on the land.

PCN's are served under section 171C and 171D of the Town and Country Planning Act 1990 as amended. PCNs do not constitute enforcement action, however failure to comply with a PCN within 21 days or knowingly supply false information is an offence.

The PCN may invite the recipient to meet with officers of the County Council to discuss the matter.

There is no right of appeal against a PCN and failure to respond is an offence, although it is a defence to show a reasonable excuse for non-compliance.

SECTION 330 NOTICE

Where it is important to obtain information as to interests in land and use of premises a Section 330 Notice may be served on the occupier requiring them to confirm details of those persons who have a legal interest.

There is no right of appeal against a Section 330 Notice and failure to respond is an offence.

10. WHAT HAPPENS WHEN A BREACH IS FOUND?

Once the initial investigations have been carried out and it appears that a breach of planning control has occurred, there are a number of options available:

NO FORMAL ACTION

It may not always be expedient or possible to take enforcement action, for example, if the harm is insignificant, not in the public interest or there is evidence that the time limit for enforcement has passed. The County Council, in deciding whether or not to take formal action, must consider if it is expedient to do so. This means, that a judgment has to be made in each case as to the seriousness of the breach and the level of any harm caused. In making this decision we must take into account our own planning policies and the policy guidance published by the Government. If the breach is relatively minor, the level of harm caused may be low and in such circumstances if there is no significant conflict with planning policies, the County Council will not normally take formal action.

It should be noted that where there is a breach, however, land may be difficult to sell, mortgage or its value may be reduced even if the County Council takes no or limited action.

VOLUNTARY COMPLIANCE

The County Council may attempt to negotiate with those responsible for a breach to resolve the problem voluntarily rather than through formal enforcement action.

The person responsible for the breach will, in the majority of circumstances be written to with an explanation of the breach and, as appropriate, required by a stated date to:

- provide the County Council with a written proposal and/or timetable by which the breach will be remedied; and/or
- submit a retrospective planning application.

The obligation to remedy the breach lies with those responsible for it, although the County Council is prepared to offer advice.

The County Council will not allow protracted negotiations to prevent the taking of prompt and effective formal enforcement action where this is necessary. It reserves the right to serve any notice during the course of negotiations, or in the event of a retrospective planning application being made, in order to avoid undue delay.

RETROSPECTIVE PLANNING APPLICATIONS

Development carried out without planning permission can sometimes be made acceptable through the granting of planning permission and the imposition of appropriate conditions as necessary.

In cases where the unauthorised development appears to be acceptable in planning terms, and it accords with the Development Plan and all other material considerations, the County Council will normally ask for a retrospective planning application to seek to regularise the breach of planning control. The submission of retrospective planning applications will not be invited where the development is contrary to the development plan and/ or if any harm cannot be made acceptable through the imposition of conditions.

The County Council will not normally consider formal enforcement action if a retrospective application is being considered but such a submission, or proposed submission, does not negate formal enforcement action being taken if it is considered expedient to do so.

If after an invitation to submit a retrospective planning application the owner or occupier refuses to do so the County Council will consider the expediency of taking formal enforcement action to remedy any injury to amenity which has been caused by the breach

POWER TO DECLINE TO DETERMINE RETROSPECTIVE PLANNING APPLICATIONS WHEN AN ENFORCEMENT NOTICE IS IN PLACE

The Localism Act 2011 inserted new sections into the 1990 Act which gives the County Council the power to decline to consider an application for planning permission for the development of land if it involves (wholly or in part) land to which a pre-existing enforcement notice relates.

REFERRAL TO OTHER BODIES

If other authorities such as District or Borough Councils or agencies such as the Environment Agency are responsible for further action, all relevant information will be passed on.

FORMAL ACTION

Where informal negotiations have been unsuccessful and/or where the County Council considers the breach has significant harmful effects enforcement action will usually be taken. The decision to take enforcement action is made by the Head of Planning Services in accordance with the County Council's scheme of delegation.

11. FORMAL ENFORCEMENT POWERS AVAILABLE TO THE COUNCIL

There are a variety of enforcement powers available to the County Council to deal with breaches of planning control. The most appropriate action will be considered based the circumstances of the breach. Enforcement action will only be taken when it is expedient to do so in the public interest and will be proportionate to the breach of planning control.

ENFORCEMENT NOTICE

An Enforcement Notice is the most common form of notice used to deal with unauthorised development and is provided for under Section 172 of the Town and Country Planning Act 1990.

An enforcement notice may be issued where it appears to the County 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.

An Enforcement Notice is served on the owners and occupiers of the land to which it relates and any other party with an interest in the land.

An Enforcement Notice must specify what, in the County Council's opinion, the alleged breach is and the steps that must be taken 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. The notice will specify steps required to be taken, or activities required to cease and a time period in which to carry out those steps. A notice cannot come into effect until at least 28 days after it is served.

An Enforcement Notice is registered as a local land charge and will therefore be made known to any potential purchaser of the land.

Prior to the date that the notice comes into effect the recipient of the notice has a right of appeal to the Secretary of State through the Planning Inspectorate. The Planning Inspectorate will allocate an Inspector to determine the appeal and, in effect, he or she acts as an independent arbitrator between the County Council and the appellant. If a valid appeal is made, the requirements of the Enforcement Notice are suspended until the appeal has been determined or is withdrawn.

It is an offence not to comply with an Enforcement Notice after the period for compliance has expired and no appeal has been made. Where a person is found to be in breach of an enforcement notice that has come into effect the County Council will consider whether to take forward prosecution proceedings.

Copies of all formal notices served are kept on the Enforcement Register which is available for inspection at the relevant District/Borough Council Office.

CARRYING OUT WORKS IN DEFAULT OF COMPLIANCE

Under Section 178 of the Town and Country Planning Act 1990 the County Council is empowered to enter land and take steps required by an enforcement notice (where they have not been taken by the end of the period for compliance) and recover from the landowner any expenses reasonably incurred in doing so. The County Council will only consider such action in appropriate cases and any such action must have regard to the relevant circumstances at the time.

BREACH OF CONDITION NOTICE

Section 187A of the Town and Country Planning Act 1990 provides for this type of notice, which can be used where planning permission has been granted subject to conditions and one or more of the conditions has been breached. The County Council can issue a Breach of Condition Notice (BCN) to ensure full or partial compliance with the planning conditions. A BCN can be served on any party carrying out the development on the land and/or any person who has control of the land.

A BCN would state the breach and set out the necessary steps required to ensure compliance with the condition(s) being breached. The notice would allow a minimum of 28 days in which to comply with the requirements. There are no rights of appeal against a BCN.

STOP NOTICE AND TEMPORARY STOP NOTICE

Under the provision of Section 183 (1) of the Town and Country Planning Act the County Council has the power to issue a Stop Notice in conjunction with an Enforcement Notice. These are used in cases where it is considered that an activity must cease before the expiry of the period for compliance in an enforcement notice.

A Temporary Stop Notice under the provisions of Section 171 E of the Town and Country Planning Act 1990 is similar to a Stop Notice but can be issued without an accompanying Enforcement Notice. Temporary Stop Notices are effective immediately after they are served but are only effective for up to 28 days. Within that period the County Council considers whether to take any further enforcement action.

There is no right of appeal against either type of Stop Notice. In the case of a Stop Notice an appeal can be made against the accompanying Enforcement Notice and where this is successful compensation may be payable.

Failure to comply with a Stop Notice or Temporary Stop Notice is an offence liable to prosecution.

PROSECUTION

A breach of planning control is not a criminal offence. However, non-compliance with the requirements of a formal notice to remedy a breach may be a criminal offence and on conviction the person served with the notice may be subject to a fine.

Where a contravener has failed to comply with a formal notice the County Council will normally instigate prosecution proceedings if there is a realistic prospect of conviction and it is considered to be in the public interest to do so.

PLANNING ENFORCEMENT ORDERS

Planning Enforcement Orders were introduced by the Localism Act 2011 to provide a mechanism to address breaches of planning control, both uses and development, which have been deliberately concealed. In such cases an application can be made by the County Council for a planning enforcement order to allow enforcement action to be taken where concealment has taken place and which would otherwise be out of time. A planning enforcement order does not itself require the landowner to do, or refrain from doing anything but it allows for the taking of enforcement action in a one year period (the enforcement year) beginning 22 days after the decision to make the order, or on the day any appeal to the High Court has been dismissed.

12. CERTIFICATES OF LAWFULNESS OF EXISTING USE OR DEVELOPMENT (CLEUD)

If owners of land or property consider that a breach of planning control has become immune from enforcement action (e.g. because it has continued for longer than the time limits set for any enforcement action), they may apply to the County Council for a Certificate of Lawfulness of Existing Use or Development (CLEUD). If granted, such a certificate provides documentation to establish the lawfulness of the existing development.

An application for a CLEUD may be based on evidence to show that the use or development has existed, uninterrupted, for at least the 4 years (in the case of unauthorised operational development) or 10 years in the case of most other development including a change of use or breach of a condition. The planning merits of the development are irrelevant.

13. MONITORING

When planning permission is granted it is important that the approved plans and any conditions are adhered to. The person carrying out the development is responsible for ensuring this and should make sure that any contractor they employ is aware of the approved plans and any conditions. If any changes are proposed these should be discussed in advance with the Planning Service. If unauthorised changes are made then there is a risk that the work will have to be reversed, resulting in possibly significant cost and disruption.

The County Council has responsibility for monitoring approved minerals and waste developments in order to ensure the development is in accordance with the planning permission(s).

THE MONITORING OF MINERAL EXTRACTION AND LANDFILL SITES

Under regulation 15 of the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012, Mineral and Waste Planning Authorities (the County Council) are able to charge a fee for inspecting mineral and landfill sites.

The Regulations state that up to 8 chargeable visits may be carried out in a 12 month period for an “active” site or one chargeable visit in a 12 month period to an “inactive” site (additional inspections could be made but cannot be charged for).

While the Regulations specify an annual maximum of 8 chargeable inspections, past experience has shown that inspections of active mineral extraction and landfill sites are likely to be carried out 4 times each year, or less.

The County Council seeks to undertake a frequency of monitoring which is appropriate for the site and will keep its monitoring frequencies under continuous review. The actual number of visits undertaken will be determined by a number of factors including the compliance performance of a site operator. Consistently compliant sites should expect fewer visits than those sites where breaches of planning control have been identified.

In deciding the appropriate number of site visits, the County Council will take the following factors into consideration:

- Size and type of development
- Number and complexity of conditions
- Number of issues requiring monitoring
- Stage of development. For example, more frequent visits to a mineral extraction site are likely to be needed during the initial site preparation and restoration phases than at other times

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THE MONITORING OF MINERAL EXTRACTION AND LANDFILL SITES CONTINUED

- Type of development. For example, sand and gravel sites might expect more visits than hard rock quarries that are relatively slow in to progress.
- Whether the operator has ISO14001 or EMAS accreditation
- Breaches of Planning Control observed
- Complaints received for the site which have proved to be justified

Operators will be informed of the proposed number of inspections to be undertaken at the start of each financial year.

OTHER WASTE SITES

For non-landfill waste sites, the Waste (England and Wales) Regulations 2011 (as amended) state that Planning Authorities must ensure that periodic inspections are undertaken.

LIAISON GROUPS AND COMMITTEES

For large sites or those operating over a long period of time, arrangements are often made for the establishment of a Local Liaison Group or Committee. These 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 such as the Environment Agency, elected members and representatives from the local community can discuss issues which concern them relating to the operation of a particular waste or mineral site. The Planning Service is committed to regular attendance by its Officers at Liaison meetings and will offer continued support their facilitation.