



# Enforcement Plan

County Planning, Minerals and Waste

January 2020

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# 1 Introduction and Purpose

- 1.1 Cambridgeshire County Council (the Council) is committed to delivering an effective and proportionate planning control service for 'County matters' which are defined in Schedule 1 of The Town and Country Planning Act 1990 (as amended) and The Town and Country Planning (Prescription of County Matters) (England) Regulations 2003, i.e. those relating to mineral and waste.

The Council also determines applications for its own development such as new roads and transportation schemes, and education facilities under Regulation 3 of the Town and Country Planning Regulations 1992 (as amended), but is not the Local Planning Authority responsible for any other planning matters that take place within the County.

- 1.2 The purpose of this Enforcement Plan (the Plan) is to explain our approach to achieving planning compliance at mineral and waste management sites within Cambridgeshire. The Plan also sets out what action can be taken and how decisions will be made in respect of pursuing formal action.
- 1.3 The publication of this Plan accords with paragraph 58 of the National Planning Policy Framework (NPPF), published February 2019, 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."*

*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."*

- 1.4 Section 55 of the Town and Country Planning Act 1990 (as amended) defines 'development' as:

'...the carrying out of building, engineering, mining or other operations, in, on, over or under land or the making of any material change in the use of any buildings or other land.'

- 1.5 A Breach of planning control is defined under section 171A (1) of the Town and Country Planning Act 1990 (as amended), as carrying out development without the required planning permission or failing to comply with any condition or limitation subject to which planning permission has been granted.

- 1.6 Our approach consists of two broad elements: monitoring and enforcement.

**Monitoring** refers to the proactive periodic inspection of permitted mineral and waste management sites. Monitoring mineral and waste sites is a statutory duty under Regulation 19 of The Waste (England and Wales) Regulations 2011.

**Enforcement** refers to how investigations into allegations that a breach of planning control has occurred will be undertaken, and, where appropriate, the steps that the Council may pursue to remedy a breach.

## 2 General Principles

- 2.1 A key principle of the Council's approach to planning is to support sustainable growth, which takes into account the needs of the environment.
- 2.2 The principles in this Plan align with the vision, corporate objectives and priorities of the Council.
- 2.3 Each set of circumstances is unique and must be considered on its own merits. However, the Regulators' Code published by the Department for Business Innovation and Skills in April 2014 sets out the general principles of good enforcement and these include transparency, consistency and accountability.
- 2.4 Effective enforcement should be risk based and not necessarily limited to formal enforcement actions; it can include preventative measures such as inspections to check compliance with legal or other requirements and the provision of advice and guidance to support compliance.
- 2.5 All Council officers with responsibility for planning matters will have regard to the Enforcement Plan, the Regulators' Code and relevant legislation and guidance. The Council will only take action which is proportionate to the planning harm and to the seriousness of any breach of planning control.
- 2.6 Where a breach of planning control has been confirmed, officers will usually begin by trying to secure compliance with the use of an advisory approach. However, in certain circumstances, this will not be appropriate and further action will be considered necessary to remedy the planning harm being caused.

- 2.7 All officers undertaking enforcement activities will be duly authorised under the Council's scheme of delegation and will be appropriately trained to undertake their enforcement duties, and understand the principles of good regulation.

## 3 Enforcement and Compliance Objectives

- 3.1 The Council's enforcement and monitoring objectives are to ensure that:
  - serious or irremediable harm occurring as a result of mineral and waste development is prevented and / or addressed;
  - site operators, landowners and occupiers comply with the planning conditions imposed by the Council; and
  - breaches of planning control are addressed reasonably, appropriately and proportionately.
- 3.2 These objectives are intended to help:
  - maintain the integrity of the decision-making process; and
  - ensure that public confidence in the decision-making process is maintained.
- 3.3 When it is considered necessary and expedient to do so, the Council will act decisively and liaise closely with other enforcement agencies in order to reduce any adverse effects that unauthorised development has on local amenity and minimise any damage to the environment.

## 4 Monitoring Visits and Fees

- 4.1 The main purpose of a monitoring visit is to check compliance with conditions of the relevant planning permission(s) and, if relevant, legal agreement(s) relating to mineral or waste development. These planning permissions may include complex and technical conditions, which are designed to mitigate the impact of the activity.
- 4.2 The Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012 (as amended) enable the Council to charge a fee for monitoring permitted mineral extraction and landfill sites, from the date that the permission is implemented to the end of the aftercare period.
- 4.3 The monitoring fees are set by Government and, at the time of publishing this Plan, the following monitoring fees are payable:
- where the whole or a part of the site is active the fee is £397; or
  - if the site is inactive or dormant the fee is £132.
- 4.4 The cost of visiting other types of mineral and waste management sites, such as waste transfer stations, material recycling facilities, energy from waste plants, scrap yards and mineral rail heads (including any associated industrial development), is borne by the Council.

- 4.5 Monitoring visits will serve to:
- allow the Council to gain an overall impression of the day-to-day operation of the site, chart progress to date, and identify and address potential problems before they arise;
  - encourage good operational practice rather than punish bad practice;
  - act as a means of regular liaison with operators; and
  - provide information to support any site liaison forums.

## 5 Assessing Complaints

- 5.1 The Council will investigate complaints alleging a breach of planning control within Cambridgeshire, which are 'County matters'.
- 5.2 Anonymous complaints or complaints that appear to be vexatious in nature will not normally be investigated, unless they allege a serious breach of planning control that is capable of being verified by a Council Officer.
- 5.3 All complaints are assessed and prioritised based on the potential severity of the issues raised and the risks determine the timescales for the investigation. The Council will aim to meet the timescales for visiting complaint sites shown in the table on the following page:

	Description of harm	Site Visit
<b>High</b>	<p><b><u>Severe risk of irreversible harm occurring</u></b></p> <p>County matters which may cause immediate or irreversible harm either to:</p> <ul style="list-style-type: none"> <li>• local amenity;</li> <li>• designated sites under the Ramsar<sup>1</sup> international wetlands convention, special protection areas, special areas of conservation, sites of special scientific interest, scheduled monuments, habitats of statutorily protected species, local nature reserves or county wildlife sites;</li> <li>• human health and/or safety;</li> <li>• potable ground and/or surface water supplies; or</li> <li>• archaeological resources.</li> </ul>	within 3 working days
<b>Medium</b>	<p><b><u>Significant /Medium risk of harm occurring</u></b></p> <p>County matters which may impact, but does not appear to cause immediate or irreversible harm, on the designated sites listed above or may cause significant harm either to:</p> <ul style="list-style-type: none"> <li>• local amenity;</li> <li>• human health and/or safety;</li> <li>• ground and/or surface water; or</li> <li>• archaeological resources.</li> </ul>	within 5 working days
<b>Low</b>	<p><b><u>Low Risk of harm occurring</u></b></p> <p>County matters which do not appear to be causing significant harm or do not have the potential to cause significant harm to the designated sites listed in above or to:</p> <ul style="list-style-type: none"> <li>• local amenity;</li> <li>• human health and/or safety;</li> <li>• ground and/or surface water; or</li> <li>• archaeological resources.</li> </ul>	within 10 working days

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<sup>1</sup> Wetlands of international importance designated under the Ramsar Convention.

## 6 Investigating Complaints

- 6.1 Complaints will be recorded and acknowledged within 5 working days of receipt. Complainants will be updated at key stages during the investigation and their details will be kept confidential.
- 6.2 Following a desktop investigation into the relevant planning history and constraints relating to the land, officers will usually need to undertake a site visit to gather more information and evidence relating to the alleged breach.
- 6.3 If a breach of planning control is confirmed, the occupier/landowner will be advised of the details of the breach and of the likely steps and timescales required to remedy it.
- 6.4 Further site visits and monitoring may be undertaken to ensure the required actions are completed within the specified timescales.
- 6.5 Because breaches of planning control relating to waste and mineral development can have a serious and detrimental impact on local amenity and the environment, it is normal practice for officers to notify the local County Councillor (and occasionally also the Parish Council) when there is a confirmed breach of planning control in the area that they represent.

## 7 Legal Powers to Obtain Information

- 7.1 The Council may serve the following notices on the owner or occupier of the land to obtain land ownership

information, to assess whether a breach of planning control has occurred and to gather evidence in respect of the seriousness of any breach:

- A Planning Contravention Notice under Section 171C Town and Country Planning Act 1990 as amended;
- A notice under Section 330 of the Town and Country Planning Act 1990; and
- A notice under Section 16 Local Government (Miscellaneous Provisions) Act 1976.

- 7.2 There is no right of appeal against the service of these notices and failure to provide a formal written response to a notice within the specified timescale is a criminal offence, which is open to prosecution.

## 8 When a Breach is Confirmed

- 8.1 Before considering any possible enforcement action, the investigation will establish whether or not the development is acceptable in principle, and if anything needs to be done to bring it up to a satisfactory standard, or to ensure it complies with the relevant legislation.
- 8.2 If the principle of development is not acceptable, officers will consider what action is appropriate to prevent it continuing and produce a written report to support any recommendations for further action. The report will set out the background and circumstances of the breach, the planning harm caused, any relevant planning policy, the

options for taking action and the justification for the recommended course of action.

- 8.3 Although the Council would prefer to negotiate a satisfactory outcome, in some cases formal enforcement action may be considered necessary.

## 9 Where Enforcement Action will not be taken

- 9.1 There are some circumstances where the County Council will not be able to take formal enforcement action. These include:

- When the Council determines applications for its own development. In these cases, the responsibility for compliance with the permission lies with the relevant Council Directorate. If the breach is not remedied, the matter will be reported to the Planning Committee.
- Where the time limit for taking action in respect of a breach of planning control has expired, Section 171B of the Town and Country Planning Act 1990 (as amended) explains the time scales after which ongoing breaches of planning control become immune from enforcement action.
- Where the development benefits from permitted development rights under the provisions of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), provided that all the relevant restrictions and conditions have been met.

- Where the County matters have no impact on designated sites or on the local amenity and in cases where technical breaches of planning control cause no material harm or adverse impact on amenity.

- 9.2 The County Council does not deal with enforcement matters arising from:

- Fly tipping or general household waste matters;
- Development that has been permitted by District Councils. The Council may be involved in assessing whether the importation of material (such as hardcore) is necessary for enabling the permitted scheme or development to go ahead.

## 10 Retrospective Applications

- 10.1 Where the unauthorised development could be acceptable in planning terms the Council may ask the occupier/landowner to submit a retrospective planning application. The occupier/landowner will be encouraged to seek pre-application advice before submitting a retrospective planning application. Officers will not provide advice outside the formal pre-application advice process.
- 10.2 Information on obtaining formal pre-application advice is available on the Council's website at:

<https://www.cambridgeshire.gov.uk/business/planning-and-development/planning-applications/submitting-a-planning-application/>

- 10.3 The Council will not invite a retrospective planning application if the unauthorised development is contrary to policy, or appears to have the potential to cause harm that could not be satisfactorily mitigated by the use of planning conditions.
- 10.4 If a retrospective planning application is invited and submitted, the Council will not usually take formal enforcement action whilst the application is being considered. However, the Council will continue to monitor the implications of the development.
- 10.5 If planning permission is refused and further negotiations fail to remedy the breach, appropriate enforcement action is likely to be pursued.
- 10.6 Where a retrospective planning application is submitted contrary to advice that there is no reasonable prospect of planning permission being granted, enforcement action may be taken prior to the application being determined.
- 10.7 The Council has the power to decline to determine a retrospective planning application for development, which is already the subject of a pre-existing enforcement notice.

## 11 Working with District Councils and other Agencies

- 11.1 If a breach of planning control that is not either a 'County matter' or permitted under Regulation 3 of the Town and Country Planning General Regulations 1992 (as amended) is established, it will be passed on to the relevant Local Planning Authority (District Council).
- 11.2 In cases where unauthorised development involves both County matters and district planning issues, the Council will liaise with the relevant District Council to establish all the lawful and unlawful planning land uses. If enforcement action is considered to be necessary and expedient, the Council will work with the relevant District Council to ensure that all aspects of the planning harm can be adequately and appropriately addressed before commencing action. Each case will be decided on its merits and consideration will be given to the land use implications and the respective jurisdiction and powers of County and District Councils.
- 11.3 In cases where the enforcement role is shared with other agencies, (for example the Police, Environment Agency, Internal Drainage Boards, Environmental Health Department of the local council or the Health and Safety Executive), the Council will coordinate and collaborate with these agencies to secure regulatory compliance is achieved effectively and efficiently. Where it becomes necessary to exchange information with partner agencies, we ensure we follow the requirements of the data protection legislation, and other relevant legislation, in force at the time.
- 11.4 Where a breach of planning control relating to county development occurs within Cambridgeshire which impacts on the amenity of residents in an adjacent county, the investigating officer will provide the other Council or authority details of the breach within 5 working days.

## 12 Principles of Enforcement Action

- 12.1 Where breaches of planning control are identified, the Council may take enforcement action, where it is satisfied that it is expedient, necessary and in the public interest to do so.
- 12.2 The Council will take a consistent, clear and fair approach to enforcement, having balanced the need for environmental protection against the desire to encourage sustainable development.
- 12.3 The Council will usually only take enforcement action when there is evidence that a breach of planning control has occurred that has, or is likely to, cause demonstrable harm to the public amenity or the environment.
- 12.4 Where an educational and advisory approach has not succeeded in remedying the harmful effects of unauthorised development, continued negotiations will not be allowed to delay formal enforcement action.
- 12.5 The enforcement action taken and the required remediation will be proportionate to the nature of the breach.
- 12.6 The time taken to pursue formal action varies on a case by case basis. The emphasis will be on balancing the urgency to remedy the planning breach with mounting a properly constituted legal response, taking into account available resources.
- 12.7 The Council will co-operate closely with other agencies to ensure a satisfactory solution to breaches of planning control.

12.8 National legislation provides the Council with a number of enforcement tools, which can be used to address breaches of planning control. These include:

- **Planning Contravention Notice**
- **Section 215 Notice of the Town and Country Planning Act 1990**
- **Breach of Condition Notice**
- **Enforcement Notice**
- **Stop Notice**
- **Temporary Stop Notice**
- **Prosecution**
- **Default Action**
- **Injunctive relief**
- **Planning Enforcement Order.**

12.9 Further information on planning enforcement and the various options available to the Council can be found online at:

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

12.10 Where an offence has been committed under planning legislation, the Council may, depending on the circumstances, take action under the Proceeds of Crime Act 2002 to recover a company's or individual's assets that are considered to be the proceeds of crime.

## 13 Enforcing Planning Obligations

13.1 Where a breach of a planning obligation, such as an HGV routeing scheme contained within a section 106 agreement or a unilateral undertaking is identified, the Council will initially try to address the breach by working with the relevant site operator.

- 13.2 If the breach cannot be resolved by negotiation and co-operation the Council will, where necessary, take legal advice on enforcing the relevant clause of the planning obligation.

## 14 Feedback, comments and complaints

- 14.1 If you wish to make an enquiry about this Plan, provide feedback or raise a complaint about the Enforcement Service you can:

- contact the officer dealing with your case directly;
- complete the [online form](#);
- email [planningDC@cambridgeshire.gov.uk](mailto:planningDC@cambridgeshire.gov.uk);
- telephone us on 0345 045 5200 (charged at local rate); or
- contact your County Councillor.

## 15 Plan Review

- 15.1 This Enforcement Plan will be reviewed every three years and published on the Council website at:

<http://www.cambridgeshire.gov.uk/>

- 15.2 The date of the next plan review will be 2023.