

CAMBRIDGESHIRE COUNTY COUNCIL

Local Enforcement Plan for Minerals and Waste Development in Cambridgeshire

**Version 3
November 2014**

CONTENTS

1. INTRODUCTION	3
2. GENERAL PRINCIPLES	3
3. COMPLIANCE OBJECTIVES	4
4. MONITORING VISITS	4
5. MONITORING FEES	6
6. ASSESSMENT OF COMPLAINTS	7
7. PRIORITISING COMPLAINTS	7
8. INVESTIGATING COMPLAINTS	8
9. GATHERING FURTHER INFORMATION.....	9
10. RETROSPECTIVE APPLICATIONS.....	10
11. MIXED USES	11
12. COUNTY COUNCIL DEVELOPMENTS	11
13. ENFORCEMENT	11
14. ENFORCING PLANNING OBLIGATIONS.....	17
15. LIAISING WITH OTHER AUTHORITIES	17
16. PARISH (OR TOWN) COUNCIL AND MEMBER INVOLVEMENT	17
17. MONITORING PERFORMANCE.....	17
18. MAKING A COMPLAINT	18
APPENDIX 1 – LEGISLATION, GUIDANCE AND POLICY DOCUMENTS	19
GLOSSARY	21

1. INTRODUCTION

1.1 Cambridgeshire County Council (the Council) is committed to delivering an effective and proportionate planning control service. As a principle the Council supports sustainable growth which takes into account the needs of the environment.

1.2 The existence of an Enforcement Plan (EP) accords with paragraph 207 of the National Planning Policy Framework (NPPF) 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.

1.3 In addition, section 19 of The Waste (England and Wales) Regulations 2011 makes it a duty that where a planning authority has planning functions in relation to establishments or undertakings carrying on disposal or recovery of waste, the planning authority must ensure that appropriate periodic inspections of those establishments or undertakings are made.

1.4 This EP sets out the Council's approach to achieving planning compliance at mineral and waste management sites within Cambridgeshire and consists of two broad elements. The first relates to the proactive periodic inspection of permitted mineral and waste management sites. The second sets out how complaints alleging that a breach of planning control has occurred will be investigated, and where appropriate remedied.

1.5 In preparing the EP due regard has been given to the legislation, guidance and policy documents set out in Appendix 1.

2. GENERAL PRINCIPLES

2.1 Each set of circumstances is unique and must be considered on its own merits. However, there are general principles that apply to the way in which each enforcement case should be approached. The principles of good enforcement contained in the Enforcement Concordat have been formally agreed and adopted by the Council.

2.2 Council officers must be fair, independent and objective and must not let any personal views about issues such as ethnic or national origin, sex, religious beliefs, political views or the sexual orientation of the suspect, victim, witness or offender influence their decisions. They must not be affected by improper or undue pressure from any source.

- 2.3 All Council officers with responsibility for planning matters will have regard to the EP and take action which is proportionate to the risk and to the seriousness of any breach of planning control where appropriate. In the first instance, action will often consist of an educational and advisory approach with the operator/landowner/occupier responsible for securing compliance. However, in certain circumstances, this will not be appropriate.
- 2.4 All officers undertaking enforcement activities will be duly authorised under the Council's scheme of delegation and will be appropriately trained. All authorised officers will be made fully aware of the requirements of this Enforcement Plan. Any departure from this Enforcement Plan will have to be justified to and endorsed by the Head of Service.
- 2.5 The Council is committed to equal opportunities both in employment and in the provision of services. Accordingly, this Enforcement Plan is in accordance with our equality duties.

3. COMPLIANCE OBJECTIVES

- 3.1 The planning compliance role of the Council relates specifically to 'county matters' as defined in Schedule 1 of The Town and Country Planning (Prescription of County Matters) (England) Regulations 2003, and comprises the monitoring and control of mineral and waste management sites.
- 3.2 The Council's planning compliance objectives are to ensure that:
- serious or irreparable harm occurring as a result of minerals and waste development is addressed whether this is authorised or unauthorised development;
 - there is compliance by site operators, landowners and occupiers with the planning conditions imposed by the Council; and
 - breaches of planning control are addressed in the most appropriate and proportionate way.

4. MONITORING VISITS

- 4.1 The principal purpose of a monitoring visit is to check compliance with conditions of the relevant planning permission(s) relating to a minerals or waste development. Planning permissions for such developments are often complex and contain many conditions.
- 4.2 Section 19 of The Waste (England and Wales) Regulations 2011 requires the Council to undertake appropriate periodic monitoring visits to permitted waste sites, whilst The Town and Country Planning (Fees for Applications Deemed Applications Requests and Site Visits) (England) Regulations 2012 provide the Council with a power to charge a fee for inspecting quarries and landfill sites.
- 4.3 The proactive monitoring of permitted sites will generally:

- consistently determine whether the development is taking place in accordance with the conditions (and schemes approved therein) of all the relevant planning permission(s) and section 106 agreement(s);
- record the lawful implementation and date of commencement of a development;
- allow the visiting officer 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;
- minimise the need for enforcement or other action;
- 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.

4.4 The effective monitoring of sites can only be achieved through a proactive and structured monitoring regime. Before the start of each monitoring year the Council will identify which sites will be monitored and how many visits are proposed for each site. In determining the number of visits the Council will consider a range of factors including:

- the size, type and stage of development;
- the number and complexity of planning conditions, planning obligations such as section 106 agreements, and any associated schemes;
- the number of issues requiring regular monitoring;
- whether the operator has any third party accreditation such as ISO 14001;
- the nature of working/restoration;
- the type and frequency of breaches of planning control observed on previous visits (if known); and
- whether any complaints have been received for the site which, upon review, have been proven to be justified in respect of planning conditions/planning obligations currently in force.

4.5 An appointment will usually be made with the site operator before the initial site visit at the start of each monitoring year, which currently runs from the 1st April to 31st March. Further visits may be announced or unannounced.

4.6 Visiting officers will always:

- make their presence known when arriving at a site and where appropriate present their identity cards;
- complete the operator's health and safety induction; and
- comply with both the operator's and the Council's health and safety procedures.

4.7 The first visit of the monitoring year will usually be a full audit consisting of a detailed site visit and a comprehensive review of the operator's compliance with the planning permission and associated planning obligations. The audit also provides an opportunity to review the adequacy and effectiveness of the conditions and provides a compliance baseline for future inspections during the year.

- 4.8 Further site visits may focus on different aspects of the activity, such as emerging issues, restoration works or any breaches or failings identified during the audit or any previous monitoring visit. On occasions visiting officers may be accompanied by consultants or specialist officers who will undertake specific work on behalf of the Council, for example noise monitoring or the inspection of archaeological work. All consultants or specialist staff will be identified to site staff upon arrival and will be expected to comply with the Council's and the site operator's health and safety procedures at all times.
- 4.9 Visiting officers may take photographs and make notes to help them draft their site visit reports. They may also wish to see relevant documents held on site such as records of heavy commercial vehicle movements.
- 4.10 Prior to leaving the site the officer will summarise any issues arising from the visit and any actions required. A written report will then be forwarded to the operator within 10 working days of the visit, unless otherwise agreed. The report will include the following information:
- the date and time of the visit;
 - the name of the officer who conducted the visit;
 - the prevailing weather conditions;
 - what planning permissions and conditions have been inspected;
 - the officer's observations;
 - any breaches of planning control identified (where applicable); and
 - the actions required to address the breaches and a timescale for achieving compliance.

5. MONITORING FEES

- 5.1 Mineral extraction and landfill operations are large scale developments which, by their nature, have the potential to cause significant harm to the amenity of the local area, often over a period of many years or even decades. It is therefore essential that these developments are regularly and proactively monitored.
- 5.2 The planning permissions for these developments may include complex and technical conditions which are designed to mitigate the impact of the activity. However, inspecting these sites is often time consuming and costly, particularly if the site has a number of planning permissions with many conditions attached or it covers a large geographic area.
- 5.3 The Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012 enable the Council to charge a prescribed fee for monitoring permitted mineral extraction and landfill sites, from the date that the permission is implemented to the end of the aftercare period. The following monitoring fees are payable:
- where the whole or a part of the site is active the fee is £331; or
 - if the site is inactive or dormant the fee is £110

- 5.4 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 the associated industrial development), is borne by the Council.

6. ASSESSMENT OF COMPLAINTS

- 6.1 There are two main routes to planning enforcement. The first is through proactive monitoring of sites by the Council. The second is through the investigation of complaints of alleged breaches of planning control reported by other parties. The Council will investigate all complaints alleging a breach of planning control within Cambridgeshire which are 'county matters'.
- 6.2 Any complaint received will be acknowledged and investigated to establish the facts. The Council will not disclose the name or address of anyone providing information without their express written consent. In some cases the Council may invite the complainant to provide evidence, particularly if this will assist officers with the investigation. Occasionally complainants may be asked to make witness statements and attend court should enforcement action result in prosecution. However, they would be under no obligation to do so.
- 6.3 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.

7. PRIORITISING COMPLAINTS

- 7.1 When a complaint alleging a breach of planning control is received it will be assigned to an investigating officer who will enter the details of the complaint onto the Council's enforcement database. The investigating officer will then assess the complaint, using the criteria set out below, to determine the potential significance of the issues raised, the category that the complaint may fall into, and how to respond effectively.

Category 1 - Severe risk of irreversible harm occurring Visit site within 3 working days

- 7.2 Activities or development which appears to be causing immediate and potentially irreversible harm either to:-
- the local amenity;
 - designated sites under the Ramsar 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;
 - human health and/or safety (including road safety);
 - potable ground and/or surface water supplies; or
 - archaeological resources.

Category 2 - Significant risk of harm occurring
Visit site within 5 working days

- 7.3 Activities or development which appears to be indirectly impacting on the designated sites listed in Category 1 or having the potential to cause significant harm either to:-
- the local amenity;
 - health and/or safety (including road safety);
 - ground and/or surface water; or
 - archaeological resources.
- 7.4 A site visit will also be undertaken in five working days where the time-limit for enforcement action will expire within six months.

Category 3 - Risk of harm occurring
Visit site within 10 working days

- 7.5 Activities or development which does not appear to be causing significant harm or having the potential to cause significant harm to the designated sites listed in Category 1 or to:
- the local amenity;
 - human health and/or safety (including road safety);
 - ground and/or surface water; or
 - archaeological resources.
- 7.6 A site visit will also be undertaken in 10 working days where it appears that permitted development rights may have been exceeded.

Category 4 - Low risk of harm occurring
Visit site within 15 working days

- 7.7 Activities or development which does not appear to be impacting on or have the potential to impact on the designated sites listed in Category 1 or on the local amenity. Also included in this category are technical breaches of planning control which cause no material harm or adverse impact on amenity of the surrounding area.

8. INVESTIGATING COMPLAINTS

- 8.1 All complaints will be acknowledged within 5 working days of being received. Before conducting a site visit the investigating officer will:
- identify the relevant planning constraints;
 - review the site records and files including planning permissions and section 106 agreements (where available);
 - consider if the development or activity could be viewed as permitted development under the Town and Country Planning (General Permitted Development) Order 1995 (as amended); and
 - consider the main planning policy implications of the development or activity.

- 8.2 On arriving at the site the officer will identify themselves to the occupier where an occupier is present and explain the reasons for the visit. They will then seek the co-operation of the occupier in gathering evidence to determine whether a breach of planning control has taken place. At the end of the visit the officer will provide a verbal summary of their findings. Further information may be requested in writing from the occupier/landowner to assist the officer in reaching a decision.
- 8.3 After the visit the occupier/landowner will be provided with written confirmation of the officer's decision in investigating the complaint. Where applicable the letter will set out the steps and timescales required to address any breaches of planning control which were identified during the visit. If immediate action is required this will be confirmed in writing within 5 working days of the visit. If no immediate action is required this will be confirmed in writing within 15 working days of the site visit. If it is decided that no breach has occurred or it is not expedient to take enforcement action the reasons for this decision will be clearly set out in the letter.
- 8.4 A letter will be sent to the complainant within 15 working days of the site visit confirming whether or not a breach of planning control has occurred and what actions the site operator is required to undertake, if any, to address the breach and by when. The complainant may be asked to keep a record of any activity on the site as evidence to be used should the matter proceed to formal enforcement action.
- 8.5 Further site visits and monitoring may also be undertaken as appropriate to ensure the required actions are completed within the specified timescales.
- 8.6 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. If it is not acceptable in principle officers will decide what action is appropriate to prevent it continuing. Every effort will be taken to negotiate a satisfactory outcome, but in some cases formal enforcement action may need to be taken.
- 8.7 The complainant will be kept informed of all enforcement action taken by the Council to address a breach of planning control unless to do so could potentially prejudice any prosecution proceedings.

9. GATHERING FURTHER INFORMATION

- 9.1 In some cases the Council may need further information before an informed decision can be made about whether a breach of planning control has occurred. In order to collect this information one of the following notices may be issued and served on the occupier and/or landowner:
- A Planning Contravention Notice (PCN) (Section 171C Town and Country Planning Act 1990 as amended);
 - A notice under Section 330 of the Town and Country Planning Act 1990; or

- A notice under Section 16 Local Government (Miscellaneous Provisions) Act 1976.

9.2 None of the notices referred to above can be appealed and failure to provide a formal written response to the notice within the stated timescale is a criminal offence open to prosecution. However, the issuing of these notices does not constitute formal enforcement action but are methods used to obtain information regarding interest in, ownership and use of the land.

10. RETROSPECTIVE APPLICATIONS

10.1 In appropriate cases where the unauthorised activity or development might be considered acceptable in planning terms the Council will ask the occupier/landowner to submit a retrospective planning application within a specified timescale. The occupier/landowner will be encouraged to seek pre-application advice before submitting a retrospective planning application. Further information on the pre-application advice which is available to applicants is available on the Council's web site at:

http://www.cambridgeshire.gov.uk/info/20099/planning_and_development/234/planning/3

10.2 A decision to grant or refuse planning permission will be taken after considering the nature of the proposal, assessing it against the policies set out in the Local Development Plan and the NPPF, and the views of residents and other relevant organisations or bodies. Proposals that result in objections will usually be determined by the Planning Committee (PC) at one of their regular meetings.

10.3 The Council will not invite a retrospective planning application if the unauthorised development is contrary to policy, appears to have the potential to cause harm, or is causing harm, and the harm could not be satisfactorily mitigated by the use of planning conditions on any grant of planning consent.

10.4 If a retrospective planning application is submitted in response to an invitation the Council will not take formal enforcement action whilst the planning application is being considered. However, the Council will regularly monitor the activity to gather evidence and information relevant to the consideration of the land use implications of the development. If planning permission is refused and any further negotiations fail to remedy the breach, appropriate enforcement action will be pursued.

10.5 Where a retrospective planning application is submitted despite advice from officers that there is no reasonable prospect of planning permission being granted, enforcement action may be taken, where appropriate, prior to the application being determined.

10.6 The Council has the power to decline to determine any retrospective planning application for development on land which is the subject of pre-existing enforcement notice.

11. MIXED USES

- 11.1 Where a mixed use involving a 'district' and 'county matter' is identified within a single planning unit the Council will liaise with the relevant District Council to establish all the lawful and unlawful elements of the mixed use. This will ensure that the description of the alleged breach is complete and accurate.
- 11.2 If enforcement action is considered to be expedient the Council will notify and consult with the relevant District Council before commencing that 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.

12. COUNTY COUNCIL DEVELOPMENTS

- 12.1 When the Council determines applications for its own development, responsibility for compliance with conditions of permission lies with the relevant Directorate. Officers do carry out limited monitoring of County Council developments and respond to any complaint that conditions are not being complied with.
- 12.2 The Council cannot take enforcement action against itself. However, on rare occasions where conditions have not been complied with, the matter will be pursued with the applicant or its agent. If the Directorate submitting the application is unwilling to remedy the breach, the matter would be reported to the Planning Committee.

13. ENFORCEMENT

- 13.1 The objectives of enforcement action are to:
- bring unauthorised activity under control;
 - remedy the undesirable effects of unauthorised development and help create a 'level playing field' for legitimate business whilst encouraging sustainable development; and
 - ensure site operators, occupiers and landowners comply with the conditions set out in any planning permission granted by the Council.
- 13.2 Where breaches of planning control are identified, the Council has a discretionary power to take enforcement action, where it is satisfied that it is in the public interest to do so. When undertaking enforcement action the Council will take a consistent, clear and fair approach having balanced the need for environmental protection against the desire to encourage sustainable development. The key principles of our approach to enforcement are as follows:
- The Council will only enforce planning control where it is considered necessary and expedient. It is usually inappropriate to take formal

- enforcement action to address a trivial or technical breach of control, which causes no harm to the public amenity in the locality of the site;
- The Council will take formal action when we have evidence that a breach of planning control has occurred and that it has or is likely to cause demonstrable harm to the public amenity or the environment;
 - Where initial attempts to persuade the operator, occupier/landowner to remedy the harmful effects of unauthorised development fail, negotiations will not be allowed to hamper or delay whatever formal enforcement action may be required to make the development acceptable on planning grounds, or to compel it to stop;
 - When deciding what action to take, the Council will give consideration to the policies set out in the Local Development Plan, the impact of the development on public amenity and on the environment and any other material considerations;
 - The enforcement action taken and the required remediation will be proportionate to the nature of the breach; and
 - The Council will co-operate closely with other agencies to ensure a satisfactory solution to breaches of planning control.
- 13.3 The nature of any enforcement action will depend upon the amount of harm caused by the breach, the risk of further harm occurring, the length of time that any site has not been in compliance with planning control and whether or not the operator/landowner/occupier has demonstrated any settled intention to comply. The greater the impact of the breach on public amenity or the environment, the stronger the action will need to be, depending upon the willingness of the operator, occupier/landowner to cease the unauthorised activity and remedy the breach.
- 13.4 The Council does not have the power to take enforcement action against an operator, landowner or occupier when:
- an unauthorised building or operational development has been substantially completed and any shielding construction/materials removed for four years or more;
 - an unauthorised change of use of a building or piece of land was made ten years ago or more; or
 - where the conditions of a planning permission were breached ten years ago or more.
- 13.5 Where the planning regulations are not enforced, the planning system risks being brought into disrepute and others may be encouraged to carry out operations without planning permission. The Local Government Ombudsman (LGO) has identified 'maladministration' in a number of cases where a local planning authority (LPA) has, for example, failed to take effective enforcement action which was plainly necessary in a timely manner. In some cases the LGO has compelled the relevant LPA to pay compensation to the complainant for the injustice caused.
- 13.6 There are a number of enforcement tools available to the Council under the Town and Country Planning Act 1990 (as amended) and these are summarised below.

Enforcement Notice (EN)

13.7 An Enforcement Notice (EN) may be served on an occupier, landowner and any other parties who have a material interest in the land where:

- there is a continuing breach of planning control; and
- the breach is causing serious harm or has the potential to cause serious or irrevocable harm to the amenity of an area.

13.8 The EN is used to bring unauthorised development into compliance with planning control, either by stopping the development and/or specifying steps to be taken to rectify the situation.

13.9 An EN can be used for all forms of unauthorised development and breaches of a planning condition. It cannot take effect sooner than 28 days following the date on which it is issued and must set out the steps and the timescale to remedy the breach. Failure to comply with the requirements of an EN may result in prosecution in either the Magistrates' or the Crown Court.

13.10 This type of notice will not normally be issued solely to 'regularise' development which is acceptable on its planning merits, but for which permission has not been sought.

Appealing an Enforcement Notice

13.11 The recipient(s) of an EN can appeal against the notice to the Secretary of State. However, they must submit their appeal to the Planning Inspectorate within 28 days from when the EN is issued. Wherever possible the appeal documents should be submitted on-line at:

<http://www.planning.gov.uk/planning/appeals/online/makeanappeal>

The lodging of an appeal effectively suspends the notice until the appeal is determined.

13.12 The appellant can appeal under any of the following grounds:

- that planning permission should be granted;
- that the breach of control alleged in the enforcement notice has not occurred as a matter of fact;
- that there has not been a breach of planning control;
- that at the time the enforcement notice was issued it was too late to take enforcement action against the matters stated in the notice;
- that the notice was not properly served on everyone with an interest in the land;
- that steps required to comply with the requirements of the enforcement notice are excessive and lesser steps would overcome the objections; or
- that the time given to comply with the notice is too short.

- 13.13 An enforcement appeal can proceed on the basis of written representations, by informal hearing or by a local public inquiry. Appellants and LPA's will be invited to identify which appeal procedure they consider to be the most appropriate, but the final decision on the format of the appeal rests with the Planning Inspectorate.
- 13.14 Should the Planning Inspector dismiss the appeal and uphold the EN, or uphold the notice but with varied requirements, the notice would become effective from the date of the appeal decision. Should the appeal succeed the notice would cease to have any effect. Both the appellant and the Council have the right to challenge the Planning Inspector's decision in the High Court.

Direct Action

- 13.15 Where an EN has been issued and has not been complied with the Council may, in appropriate cases, take direct action against the landowner to secure compliance by carrying out the steps specified in the notice. The Council can also take action in the Courts, if necessary, to recover the cost for undertaking this work from the landowner.

Breach of Condition Notice (BCN)

- 13.16 A BCN may be issued where there is a clear breach of planning conditions on a site with an existing planning permission. The notice requires the recipient to take steps to remedy the breach. There is no right of appeal to the Secretary of State against a BCN, but the recipient can challenge the decision to issue the notice or its validity in the High Court. Failure to comply with a BCN may result in summary prosecution in the Magistrates' Court.

Temporary Stop Notice (TSN)

- 13.17 The TSN can be used to very quickly halt some breaches of planning control for a period of up to 28 days. The notice gives the Council the means to cease or reduce or minimise the impact of an unauthorised development at an early stage without the need to issue an EN. It also allows the Council to determine whether further enforcement action is appropriate without the breach intensifying or continuing. It can also allow the Council to ensure that breaches of planning control are ceased immediately during the period that an Enforcement Notice, having been served, is waiting to take effect. Failure to comply with a TSN is an offence which may result in prosecution in either the Magistrates' or the Crown Court.
- 13.18 Unless withdrawn beforehand, a TSN ceases to have effect 28 days after it is served. There is no right of appeal to the Secretary of State against a TSN, but the recipient can challenge the decision to issue the notice or its validity in the High Court. The recipient of the notice may be entitled to compensation if:
- the activity specified in the temporary stop notice was the subject of an existing planning permission and any conditions attached to the planning permission have been complied with; or

- the activity is permitted development; or
- the Council issues a lawful development certificate confirming that the development was lawful; or
- the Council withdraws the notice for some reason, other than because it has granted planning permission for the activity specified in the TSN.

Stop Notice (SN)

13.19 The Council may serve a SN which requires immediate cessation of the development or activity because the breach of planning control is so serious that it should not be permitted to continue until the associated EN takes effect. There is no right of appeal to the Secretary of State against an SN. However, if the associated EN is quashed, varied or withdrawn the Council may be liable to pay compensation in certain circumstances for any losses incurred by the developer as a result of serving the SN. Failure to comply with a SN is an offence which may result in prosecution in either the Magistrates' or the Crown Court.

Injunction

13.20 An injunction is an order of the County Court or the High Court requiring the defendant to refrain from undertaking a specific act (a prohibitory injunction) or to carry out a specific act (a mandatory injunction). Whilst all the other measures are retrospective (i.e. cannot be used until a breach has actually occurred), an injunction can be sought, in serious circumstances, in respect of an anticipated breach. Injunctions are also 'personal' in that they relate to the activities of a person or persons rather than a use of land.

Prosecution

13.21 The Council is required to consider prosecution in all cases where there is or has been non-compliance with the terms of an EN.

13.22 Where prosecution is an option, the Council will need to assess whether or not it is in the public interest to bring a prosecution against the operator/landowner/occupier. In doing so, the Council will take into account matters such as:-

- The seriousness of the breach of planning control
- The impact of the breach of planning control on local residents and the environment
- The loss of amenity arising out of the breach of planning control
- Whether or not the operator/landowner/occupier has complied with any notices served on him/her even if such compliance is after the timescale during which compliance ought to have been achieved.
- Whether or not there is evidence that the operator/landowner/occupier has repeatedly breached planning control or has repeatedly failed to comply with notices within the given timescales
- What steps, if any have been taken by the operator/landowner/occupier in an attempt to secure compliance

- The duration of any breach of planning control and any failure to comply with any notices
 - Whether or not the operator/landowner/occupier engaged with Council officers so as to reach an agreement on remedying the breach
 - Any other matters that seem relevant in all of the circumstances
- 13.23 Whether or not it is in the public interest to prosecute is a matter that is routinely reviewed throughout the course of any investigation and subsequent prosecution.
- 13.24 As well as considering whether or not it is in the public interest to prosecute, the Council is also required to consider the Code for Crown Prosecutors when deciding whether or not to commence prosecution proceedings.

Timescales

- 13.25 The time taken to pursue formal action (serving of notices and injunctions) will vary 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.
- 13.26 The time taken to pursue prosecution proceedings will vary significantly depending upon the individual circumstances of each case. Where the Council is intending to bring prosecution proceedings against either a company or an individual it is necessary for it to collate sufficient evidence to support the prosecution. This means that Council officers will need to undertake an investigation into the circumstances surrounding the breach of planning control. Such investigations and the preparation of a prosecution file can take several months.
- 13.27 In cases where an Enforcement Notice is served prosecution proceedings will only be commenced once the time period for compliance with the Enforcement Notice has expired and an investigation has taken place. In some cases, the time period for compliance with an Enforcement Notice could be several months.
- 13.28 Once prosecution proceedings have been commenced, the matter will then be subject to the timescales imposed by the judicial system. Furthermore, some pre-trial delays may be unavoidable.

Proceeds of Crime

- 13.29 The Council has the power to take action under the Proceeds of Crime Act 2002 where this is deemed appropriate in all of the circumstances. Such action can include taking restraint action so as to, effectively, 'freeze' a company's or individual's assets and proceedings to confiscate any monies or assets that are considered to be the proceeds of crime.

Further Information

- 13.30 Further information on planning enforcement and the various options available to the Council can be found on line at:

14. ENFORCING PLANNING OBLIGATIONS

- 14.1 Where a breach of a planning obligation, such as a section 106 routing arrangement or a unilateral undertaking is identified, either in response to a complaint or during a routine site visit, the Council will initially try to address the breach by working with the relevant site operator. If the breach continues and it cannot be resolved by negotiation and co-operation the Council will, where necessary, enforce the relevant clause of the planning obligation using one of the methods set out above.

15. LIAISING WITH OTHER AUTHORITIES

- 15.1 If a breach of planning control is established which is not a 'county matter' it will be passed on to the relevant LPA. The Council will also pass relevant information on to other regulators such as the Environment Agency, Internal Drainage Boards, the Environmental Health Department of the local council or the Health and Safety Executive. Where appropriate the Council will work with these regulators to address a breach of planning control.
- 15.2 Where a suspected breach of planning control relating to minerals or waste development occurs within Cambridgeshire which impacts on the amenity of residents in an adjacent county, or unitary authority, the investigating officers will provide the other Council or authority with details of the complaint within 5 working days of the breach being confirmed.

16. PARISH (OR TOWN) COUNCIL AND MEMBER INVOLVEMENT

- 16.1 The local parish (or town) council and the county council member will be notified within 5 working days of a complaint being substantiated. The parish (or town) council and the county council member will also be apprised of any key stages in the investigation and any resulting enforcement action. The names of all the elected County Councillors and the areas they represent can be found on the Cambridgeshire County Council website at:

<http://www2.cambridgeshire.gov.uk/CommitteeMinutes/Committees/members.aspx>

17. MONITORING PERFORMANCE

- 17.1 In order to assess performance in complying with the EP the following information will be reported to the Planning Committee approximately every quarter:
- the number of complaints received;

- the number of complaints resolved;
- new enforcement cases commenced;
- ongoing enforcement cases;
- the number of enforcement and breach of condition notices served;
- the number and type of site monitoring visits completed; and
- the number of LGO complaints received and resolved.

17.2 The results of appeals against individual enforcement notices will be reported to the Planning Committee as necessary. The final report of the year will also propose the action required to improve compliance with the EP.

18. MAKING A COMPLAINT

18.1 If you wish to make a complaint about any aspects of this Enforcement Plan you may do so by:

- contacting the officer dealing with your case directly;
- completing the [on-line complaint form](#);
- telephoning us on 0345 045 5200 (charged at local rate);
- using Minicom on 01480 376 743;
- e-mailing us at feedback@Cambridgeshire.gov.uk;
- contacting your County Councillor; or
- by writing to us at:

Customer Feedback
Cambridgeshire Direct
PO Box 144
St Ives
Cambridgeshire PE27 9AU

18.2 If you have exhausted the Council's complaints procedure and you are still not satisfied that your complaint has been satisfactorily addressed you may wish to contact the LGO by any of the following means:

- via their website at <http://www.lgo.org.uk/>
- by telephoning them on 0300 061 0614 or 0845 602 1983; or
- by writing to them at:

The Local Government Ombudsman
PO Box 4771
Coventry
CV4 0EH

APPENDIX 1 – LEGISLATION, GUIDANCE AND POLICY DOCUMENTS

In preparing this plan due regard has been given to the following legislation, guidance, and policy documents.

- The Town and Country Planning Act 1990
- Planning (Hazardous Substances) Act 1990
- The Planning and Compensation Act 1991
- The Environment Act 1995
- The Human Rights Act 1998
- The Planning and Compulsory Purchase Act 2004
- The Localism Act 2011
- The National Planning Policy Framework 2012
- The Planning (Hazardous Substances) Regulations 1992
- The Town and Country Planning General Regulations 1992 (as amended)
- The Town and Country Planning (Prescription of County Matters)(England) Regulations 2003
- The Town and Country Planning (General Permitted Development) Order 1995 (as amended)
- Town and Country Planning (Enforcement) Written Representations Procedure) (England) Regulations 2002
- The Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002
- The Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002
- The Town and Country Planning (Enforcement)(Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002
- The Town and Country Planning (Fees for Applications and Deemed Applications) (Amendment) (England) Regulations 2006
- The Planning (Hazardous Substances) (Amendment) (England) Regulations 2009
- The Planning (Hazardous Substances) (Amendment) England Regulations 2010
- The Waste (England and Wales) Regulations 2011
- The Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012
- The Proceeds of Crime Act 2002
- The Government's Enforcement Concordat 1998
- The Government's Enforcement Concordat 2003 - Good Practice Guide
- The Code for Crown Prosecutors 2013
- The Councils overarching Enforcement Policy which sets out how the Council goes about complying with the principles of the Enforcement Concordat 1998
- Fees for monitoring of mining and landfill sites in England – A guide to implementation and good practice
- Department of Communities and Local Government's Review of Planning Enforcement 2006
- Procedural Guidance - Enforcement appeals and determination of appeal procedure PINS 02/2009 April 2010
- The Planning Inspectorate - Procedural Guide Enforcement Appeals - England 6th March 2014.

- The Cambridgeshire and Peterborough Minerals and Waste Local Development Framework (Development Plan Documents)
- National Planning Policy for Waste and the accompanying guidance October 2014

GLOSSARY

Breach of planning control – 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.

County Matters – Prescribed in section 2 of the Town and Country Planning (Prescribed County Matters) (England) Regulations 2003 as the use of land or the carrying out of building, engineering or other operations or the erection of plant or machinery used or proposed to be used wholly or mainly for the purposes of treating, sorting, processing, storing, transferring or depositing waste or ancillary operations.

Development – Defined by section 55 of the 1990 Act as meaning 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.

Development Plan – The relevant planning policy documents, including where appropriate saved policies, to be considered for an area. In areas of two-tier local government structure, such as Cambridgeshire, this will include documents produced by the County and district Councils.

County wildlife sites – Non statutory areas of land which are important in a county context for their wildlife or geological interest.

Enforcement action - Defined by section 171A (2) of the 1990 Act as the issue of an enforcement notice (defined in section 172) or the service of a breach of condition notice (defined in section 187A).

Local nature reserves - Places with wildlife or geological features that are of special interest locally.

Permitted development – Development which is allowed under a deemed grant of planning permission set out in the Town and Country Planning (General Permitted Development) Order 1995 (amended in 2008) or the Use Classes Order 1987.

Ramsar sites - Wetlands of international importance designated under the Ramsar Convention.

Scheduled monuments – Nationally important archaeological sites or historic buildings, given protection against unauthorised change. Scheduled Monuments are defined in the Ancient Monuments and Archaeological Acts 1979.

Section 106 agreement - Section 106 of the Town and Country Planning Act 1990 allows a local planning authority to enter into a legally-binding agreement or planning obligation with a developer over a related issue in association with the grant of planning permission. The term planning obligation is commonly applied to a 'Section 106 Agreement' or other unilateral undertaking. These agreements are a way of delivering or addressing matters that are necessary to make a development acceptable in planning terms but are outside the scope of planning conditions.

Sites of special scientific interest – Defined under the Wildlife and Countryside Act 1981 (as amended by the Countryside and Rights of Way Act 2000) as an area of special interest by reason of any of its flora, fauna, or geological features.

Special areas of conservation (SAC) – These are strictly protected sites designated under the EC Habitats Directive. Article 3 of this Directive requires the establishment of a European network of important high-quality conservation sites that will make a significant contribution to conserving the habitat types and species identified in Annexes I and II of the Directive (as amended). The listed habitat types and species are those considered to be most in need of conservation at a European level (excluding birds).

Special protection areas (SPA) – These are strictly protected sites classified in accordance with Article 4 of the EC Birds Directive, which came into force in April 1979. They are classified for rare and vulnerable birds (as listed on Annex I of the Directive), and for regularly occurring migratory species.