



Hampshire
County Council



Planning Enforcement and Site Monitoring Plan



**Guidance on the monitoring and enforcement of minerals and waste
developments in Hampshire**

*A guide for elected members, local communities, other local planning authorities,
developers and other interested parties*

April 2016

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1. Introduction

- 1.1 This document sets out the Hampshire County Council's (HCC) approach to planning enforcement and provides guidance on the range of options available to achieve compliance with planning control enforced by the County Council.
- 1.2 The Council recognises the importance of an effective planning enforcement service within its area and has officers assigned to investigate reported breaches of planning control and the monitoring of new developments.
- 1.3 Relevant Government guidance is found in the National Planning Policy Framework (NPPF) (2012) which came into effect in March 2012¹. This states that:

“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.”

- 1.4 In accordance with the NPPF, the Hampshire Planning Enforcement and Site Monitoring Plan (hereafter referred to as ‘the Plan’) sets out what enforcement and site monitoring service businesses and individuals can expect from HCC as Mineral, Waste and County Planning Authority (MWCPA).



National Planning Policy Framework



1.NPPF, para 207: www.gov.uk/government/uploads/system/uploads/attachment_data/file/6077/2116950.pdf

2. What is the County Council's monitoring and enforcement function?

- 2.1 For all operational minerals and waste sites with planning permissions granted by HCC, officers undertake routine monitoring to ensure compliance with planning conditions imposed as part of such planning permissions.
- 2.2 Where there are breaches of planning control from unauthorised mineral or waste development or from non-compliance with planning conditions, the County Council has the discretionary power to take enforcement action as expedient.

Right to enter land

- 2.3 All officers, or other persons duly authorised in writing by the County Council, may at any reasonable hour enter any land to ascertain whether there has been a breach of planning control in accordance with the Town and Country Planning Act 1990².
- 2.4 Any person that wilfully obstructs an authorised person in carrying out these duties is committing an offence, punishable on summary conviction to a fine not exceeding level 3 on the standard scale.

2. Town and Country Planning Act 1990: www.legislation.gov.uk/ukpga/1990/8/contents

3. What is a breach of planning control?

- 3.1 Planning Enforcement is responsible for the investigation of alleged breaches of planning control.

For HCC, this relates to mining, mineral extraction, waste deposit and disposal which are all considered to be 'County Matters'.

The three types of breach that may be likely to occur during development are:

- Breach of conditions attached to an extant planning permission;
- The carrying out of development where there is no planning permission and such a planning permission is unlikely to be granted;
- The carrying out of development where there is no planning permission but permission is likely to be granted retrospectively.

Breaches of planning control will include:

- Unauthorised minerals or waste development;
- Unauthorised erection of a structure;
- Development not in accordance with the approved plans of the planning permission;
- Material change of use of a building or land;
- Failure to comply with the conditions attached to a planning permission; and
- Failure to properly maintain land so that it affects the amenity of the area.

- 3.2 Potential breaches of planning control, as outlined above, are likely to be brought to the attention of the County Council through either routine site monitoring inspections, or as a complaint from a member of the public or other third parties.
- 3.3 There are a number of powers available to the County Council when it considers investigating unauthorised development and taking enforcement action ([see section 4 \[See page 6\]](#)). These are described in order to explain the extent of the County Council's powers and to identify which course of action is likely to be most appropriate.

4. How does the County Council take enforcement action?

- 4.1 The Enforcement Powers available to the authority are set out at [Appendix 1 \[See page 21\]](#).
- 4.2 The County Council has the overall responsibility for taking enforcement action relating to 'County matters'³ ⁴. This is a discretionary power as the Town and Country Planning Act 1990⁵ does not impose a general duty to ensure compliance with planning control.
- 4.3 Because of the discretionary nature of enforcement, there is a need for procedures to be adopted and followed to ensure that the authority's approach is consistent and accountable when deciding what action should be taken. A flow chat outlining the general progression of enforcement investigation is set out in [Appendix 2 \[See page 28\]](#).

3. 'County Matters' are defined in Schedule 1 of the Town and Country Planning Act 1990: www.legislation.gov.uk/ukpga/1990/8/schedule/1

4. The Town and Country Planning (Prescription of County Matters) (England) Regulations 2003: www.legislation.gov.uk/uksi/2003/1033/contents/made

5. Town and Country Planning Act 1990: www.legislation.gov.uk/ukpga/1990/8/contents

Figure 1: Enforcement Investigations in Hampshire

Initial Investigation: The investigating officer will, under normal circumstances, *visit the site to determine whether a breach of planning control has taken place*. Checks will normally be made whether planning permission exists, whether the development has permitted development rights or benefits from a lawful use. When necessary, City/District/Borough Councils will be consulted to determine whether any locally granted permission exists.



Follow-up Action: Upon concluding there has been a breach of planning control, the investigating officer needs to consider the harm being caused and make a judgment as to whether or not planning permission is required and if so whether it is likely to be granted for the development in question. If it is not immediately expedient to take enforcement action, as the harm being caused is limited, *negotiation* will normally be the first step to addressing the situation. Where a landowner or operator is willing to comply with the recommendations of the investigating officer and the officer is confident that such recommendations are likely to be implemented swiftly, the need for formal enforcement action may be avoided. If remedial action to address the breach of planning control needs to be taken, the investigating officer will write to all parties involved setting out what is required to correct the situation and advising of the consequences that would result from failure to carry this out.

A *timescale* will always be set for the completion of the works. *Confirmation* will then be sought from the parties in question indicating that they are willing to carry out these works in the time period. If the works do not progress, or a commitment is not received to carry out the necessary remedial works, the investigating officer will then consider taking formal enforcement action. In certain circumstances, it may be appropriate to seek a *retrospective planning application* where the investigating officer is of the view that planning permission may be granted and such permission would enable HCC to control the development through the imposition of conditions. In these situations, those responsible for the unauthorised development will be invited to make a planning application. If such an application is not forthcoming within a reasonable timescale, HCC may then decide to take formal enforcement action to remedy the breach.



Enforcement Action: The investigating officer will make a judgment as to whether it is *expedient to take formal enforcement action*, in particular whether the development unacceptably affects public amenity or the existing use of land and it is in the public interest to do so. A recommendation will be made that enforcement action is taken, primarily based on the conflict with planning policy and the harm being caused. *Formal enforcement action*, in certain circumstances, may well be the only effective way in which to remedy the breach of planning control. There are a range of notices available to HCC (see Appendix 1) when considering taking formal enforcement action and the decision as to what route to take will be made in liaison with the council's Legal Service. Enforcement action will always be commensurate with the breach of planning control to which it relates (for example, it would be usually inappropriate to take formal enforcement action against a trivial or technical breach of control which causes no harm to amenity in the locality of the site).



Contravening Enforcement Action: Where a breach of planning control continues after an enforcement notice has taken effect, HCC may take appropriate action against the person committing or responsible for the breach of planning control. This may involve prosecution proceedings in the Magistrates Court or Crown Court as well as taking out an injunction against the perpetrator if necessary.

5. Council resources allocated to monitoring and enforcement

- 5.1 Enforcement and monitoring of sites is labour intensive and in practice often involves a large proportion of officers' time, especially in complex cases where there might be a significant impact on amenity or highway safety or when frequent monitoring is required.
- 5.2 Many Authorities rely on their planning officers to contribute to the overall enforcement and monitoring function, in addition to their normal casework. However, HCC employs a specific team of one Enforcement Officer and two Monitoring Officers who are responsible for recording and dealing with all complaints/referrals, all routine and chargeable monitoring of authorised sites and the investigation of unauthorised activities. This is undertaken in accordance with this Plan. As part of the routine monitoring function the Officers also handle submission, negotiation and approval of Article 27 details (schemes to be agreed under conditions of a planning permission) and Non Material Amendments for minor variations to existing permissions.

6. How to report a breach of planning control

You can contact the Monitoring and Enforcement team by:



01962 845891 or 01962 846746



Strategic Planning, Economy, Transport & Environment Department, Hampshire County Council, Elizabeth II Court West 1, The Castle, Winchester, Hampshire, SO23 8UD



planning@hants.gov.uk

- 6.1 Before making a complaint it is helpful to have as much information as possible, such as:

- Description of the possible breach;
- Date the activity started (is it continuing?);
- Site address;
- Name and any details of the site owner or those involved (including vehicle registration numbers if possible); and
- Name, address and telephone number or email of the complainant.



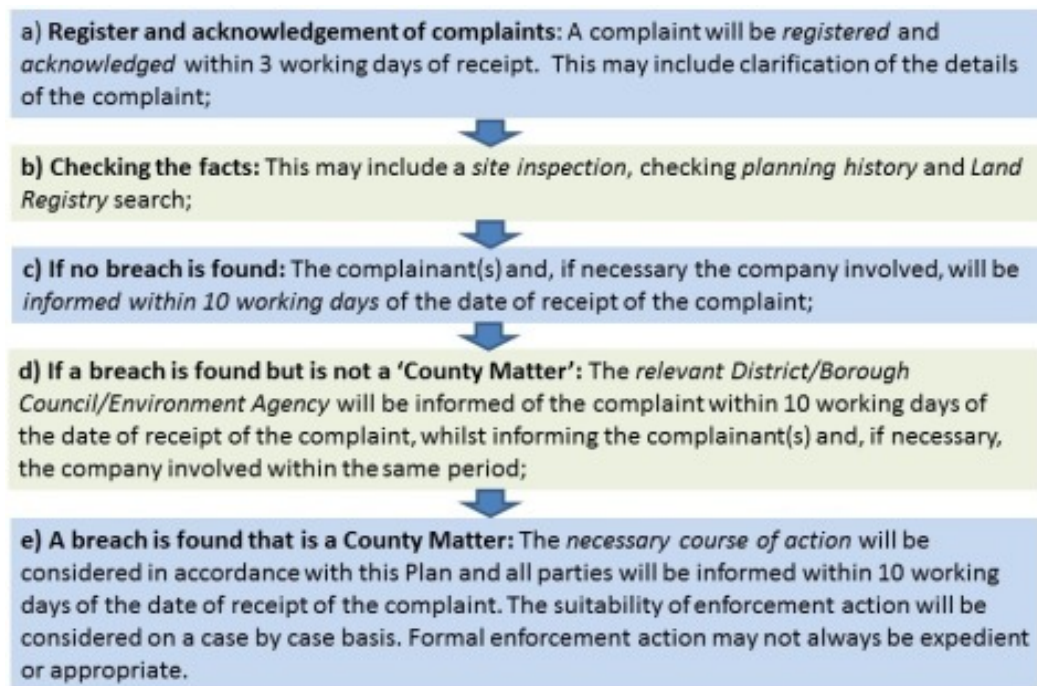
- 6.2 All investigations are dealt with in the strictest confidence ([see section 7 \[See page 10\]](#)).

7. How does the Council deal with investigate complaints received?

Procedure for dealing with complaints

7.1 The following procedure is applied to dealing with complaints

Figure 2: Complaints Procedure in Hampshire



Note: As stated, formal enforcement action may not always be expedient or appropriate.

7.2 Where complaints appear to be repeatedly unfounded and/or vexatious the complainant will be directed to the County Council's formal complaints procedure for a resolution.

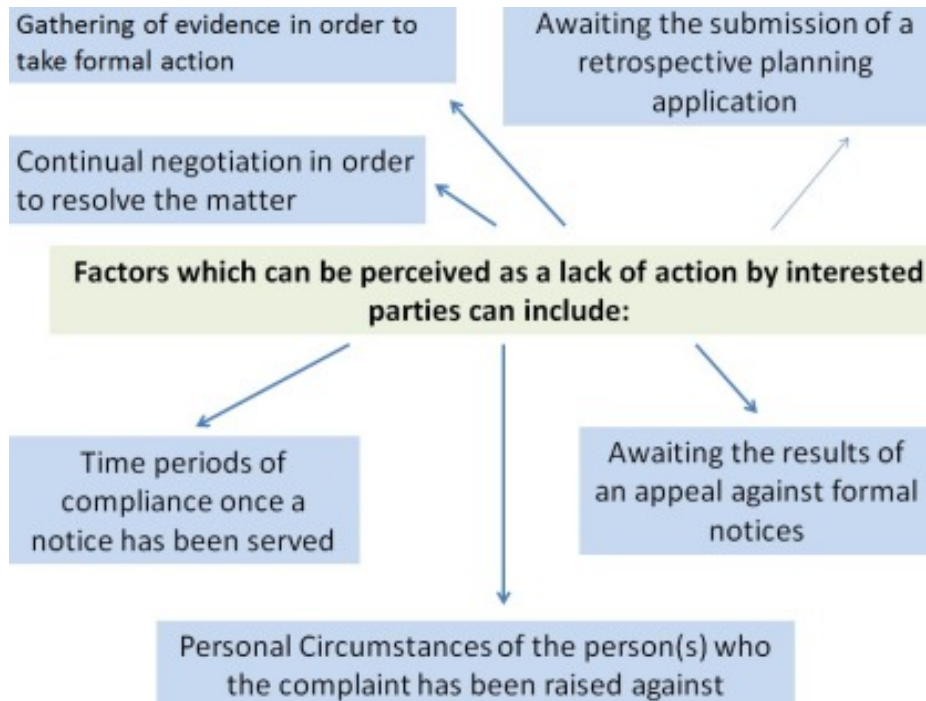
How long will it take for a complaint to be investigated?

7.3 The standards of service are set out at [Appendix 3 \[See page 29\]](#).

7.4 An enforcement investigation can be lengthy and complex. The time taken to determine each case will vary depending on the site, the people involved and the type of breach reported.

7.5 **Some of the factors which can be perceived as a lack of action by interested parties can include:**

Figure 3: Factors which may be perceived relating to lack of action



The Human Rights Act 1998

- 7.6 The enactment of the Human Rights Act⁶ reinforces the need for openness and consistency as the decision to take, or not to take action may adversely affect someone's rights under the Act.
- 7.7 HCC will seek to uphold an individual's rights as set out in the European Convention on Human Rights. Where interference is permitted with an individual's rights by that Convention the Council will seek to ensure that any action it does take which affects a person's rights is:

- **Proportionate to the breach of planning control it seeks to address and;**
- **In accordance with the exceptions set out in the article which permit interference with that right.**

- 7.8 Where there is a clear breach of planning control the Council's delay in taking enforcement action, or its decision not to take action, may adversely affect the rights of third parties who have been affected by the breach of planning control. When reaching its decision on whether or not to take action and, if so, on what action to take, the Council will consider the effect on the rights of these third parties as well as on the rights of the person committing the breach of planning control.
- 7.9 [Appendix 4 \[See page 31\]](#) lists the above-mentioned rights conveyed under The Human Rights Act 1998, and gives an interpretation of how they may affect enforcement issues.

6. www.legislation.gov.uk/ukpga/1998/42/contents

Confidentiality

- 7.10 All investigations are dealt with in the **strictest confidence** and details of the person reporting will not be made known without their agreement. However, the nature of the alleged breach is not confidential. However, be aware that if the complaint progressed into a court of law you may be required to provide evidence.
- 7.11 It should be noted that anonymous reports will not be investigated unless they relate to a matter of public safety or serious environmental damage or harm to amenity.

8. Will enforcement action be taken?

Where development is carried out without planning permission

- 8.1 It is not an offence to carry out development without first obtaining the necessary planning permission.
- 8.2 Where development is **carried out without planning permission**, the following apply:

Figure 4: Factors to take into consideration where development is carried out without planning permission

Where the assessment indicates it is likely that unconditional planning permission would be granted for development which has already taken place, a retrospective planning application should be submitted (together with the appropriate application fee).	It may also be appropriate to consider whether any other body (eg. the highway's authority, local planning authority, environmental health authority or Environment Agency) is better able to take remedial action.
While it is clearly unsatisfactory for anyone to carry out development without first obtaining the required planning permission, an enforcement 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. A planning contravention notice will be considered to establish what has taken place on the land and persuade the owner or occupier to seek permission for it, if permission is required. The owner or occupier of the land may be told that, without a specific planning permission, they may be at a disadvantage if they subsequently wish to dispose of their interest in the land and has no evidence of any permission having been granted for development comprising an important part of the valuation.	If owners of land or property consider that a breach of planning control has become immune from enforcement action they may apply for a Lawful Development Certificate or one may be requested in the course of an investigation in order to resolve the breach. The certificate can be granted and would confirm that an existing use of land, or some operational development, or some activity being carried out in the breach of a planning condition is lawful for planning purposes.

- 8.3 The following table shows the timescales for immunity from enforcement action:

Table 1: Timescales and immunity from enforcement action

Activity:	Immune after:
Operational development	Substantially completed for 4 years +
Change of use	Continuous occupation at the same intensity for 10 years +
Breach of a condition on a planning permission	Continuous non compliance for 10 years +

Where the unauthorised development is unacceptable and immediate remedial action is required

Prioritising Cases

- 8.4 In order to make the best use of time and resources there is a need to prioritise cases according to the urgency of response that is required and without losing sight of the 'lesser' breaches. This enables staff to concentrate on the more harmful cases. Notwithstanding the appropriate course of action described above, as each case is logged in, it will be considered as a priority under the following headings:

Figure 5: Priority and enforcement actions

1.	Safety Hazards: whether the development is causing or could cause a hazard.
2.	Existing Enforcement Action: whether existing enforcement action is being taken or whether the matter has been drawn to the attention of the operator on previous occasions.
3.	Severity of Breach/Proportionality: whether, for instance, the degree of harm caused to residents, the highway network, the landscape or the countryside is significant or not.
4.	Past History of Operator: whether the operator has previously shown disregard for planning legislation and is therefore likely not to respond to reasonable requests to curtail activities.
5.	Time Periods: whether the periods of time for taking enforcement action are running out.
6.	Political Dimension: whether there is significant public interest in action being taken.

Informing the Regulatory Committee

- 8.5 Where the Regulatory Committee itself has not authorised enforcement action to be taken (i.e. the action is authorised under officer delegated powers), the matter will be reported to Members on a six monthly basis.
- 8.6 Where the Committee has authorised enforcement action, the committee will be updated of the progress of the action at the next available and suitable committee.

Where the unauthorised development is unacceptable and relocation is feasible

- 8.7 Where development is carried out without planning permission and is considered to be on an unacceptable site but relocation is considered to be feasible it is not the Council's responsibility to seek out and suggest to the owner or occupier of land on

which unauthorised development has taken place an alternative site to which the activity might be satisfactorily relocated.

- 8.8 If an **alternative site has been suggested**, officers will make it clear to the owner or occupier of the site:
- where unauthorised development has taken place that they are expected to relocate to the alternative site; and
 - a reasonable timescale, within which relocation should be completed, will be expected.
- 8.9 What is reasonable will depend on the particular circumstances including:
- the nature and extent of the unauthorised development;
 - the time needed to negotiate for, and secure an interest in, the alternative site; and
 - the need to avoid unacceptable disruption during the relocation process.
- 8.10 If a timetable for relocation is ignored, it will usually be expedient for the authority to issue an enforcement notice.

Where the unauthorised development is unacceptable on the site but relocation is not feasible

- 8.11 Where, in the Council's view, **unauthorised development has been carried out in line with the following factors**, the County Council will normally take vigorous enforcement action (including, if appropriate, the service of a stop notice) to remedy the breach urgently, or prevent further harm to public amenity or the environment.

Figure 6: Unauthorised development

The breach of control took place in full knowledge that planning permission was needed (whether or not advice to this effect was given by officers to the person responsible);

The person responsible for the breach will not submit a planning application for it (despite being advised to do so); and/or;

The breach is causing harm to public amenity or the environment.

Where the unauthorised development is unacceptable and immediate remedial action is required

- 8.12 Where, in the Council's view, **unauthorised development** has been carried out and it considers that the **breach of control took place in full knowledge that planning permission was needed** (whether or not advice to this effect was given by officers to the person responsible), the County Council will normally take vigorous enforcement action (including, if appropriate, the service of a stop notice) to remedy the breach urgently, or prevent further harm to public amenity or the environment.

9. How does the Council monitor active minerals and waste sites in Hampshire?

Chargeable monitoring visits for minerals and landfill sites

- 9.1 Mineral and landfill sites involve continuous activity sometimes over many years. Planning permissions are subject to technical planning conditions to help mitigate the environmental impact of mineral and waste working.
- 9.2 In 2006 regulations came into force in England to allow the Council to charge a fee to mineral and waste operators for site inspections to monitor compliance with the planning permissions⁷. The regulations were amended in 2012. The Government considers that charging a fee for site monitoring is a positive process that will have several positive outcomes.
- 9.3 The purpose of a monitoring site visit is to check compliance with operating conditions attached to mineral and landfill planning permissions, any related planning obligations relevant for a site and the need to ensure that no unauthorised development is taking place.
- 9.4 Officers and operators should work together constructively to review compliance with permissions in the light of the stage of development reached and possible changing operational circumstances and needs. In this way problems can be avoided and formal enforcement action is less likely to be necessary.
- 9.5 The main benefits of monitoring are improving communications and relations between operators and the planning authorities and local communities close to mining or landfill operations. The monitoring will encourage good practice in site operation and management and therefore reduce the need for enforcement or other action. This is very much a proactive exercise rather than a reactive way of working. By working in this way the number of potential complaints received from local residents to the planning authorities should be reduced.

The Hampshire Approach:

- 9.6 The Regulations allow HCC to charge for up to 8 visits per year, although sites that are inactive, in aftercare or dormant can only be charged for 1 visit per year. HCC has assessed each site taking into account issues such as size of site, type of operation, previous history of compliance or enforcement, location and distance to sites with environmental protection and local or political sensitivities (copy attached as [Appendix 5 \[See page 32\]](#)) to come up with a figure for the number of chargeable sites visits per annum.

7. www.legislation.gov.uk/ukxi/2012/2920/regulation/15/made

9.7 The following principles apply:

- **If an active site has a very poor history of compliance and has received several justified complaints and the operator shows no sign of improving and working according to the planning permissions then it is very likely that the maximum number of 8 visits per year would be required for this site. Further visits may also be warranted but these cannot be charged for.**
- **If the operator starts to comply with conditions and fewer complaints are received about the site the following year the number of visits could be reduced.**
- **Inactive sites receive the maximum allowance of one chargeable monitoring visit per year.**
- **If, after taking all of this into account, an operator considers that it has been subjected to an excessive number of visits then they are entitled to approach the Planning Authority to request that the number of annual visits is reduced.**

9.8 All waste disposal sites (namely landfill sites) and mineral sites under the remit of the County Council will be visited by an officer with suitable experience. The frequency of these visits will vary depending on whether the site is dormant, inactive or active, and all sites will be visited in the financial year.

9.9 The Regulations have set the fees for monitoring visits, at

- **£331.00 per visit to an active site; and**
- **£110.00 per visit to an inactive site, as at April 2013.**

9.10 The operator of the site is responsible for the payment of the fee.

9.11 If there are multiple operators within a site the operator in overall control is expected to pay the fee. If multiple operators cannot be identified, or where an operator is not currently present at a site, then the site owner(s) are required to pay the fee.

9.12 The authority agrees the invoicing arrangements with the individual operators. The fee is only to be charged after the monitoring site visit has taken place. A period of payment in accordance with the County Council's invoicing procedures is agreed and any failure to pay is referred through the Council's debt recovery procedure.

9.13 When the Regulations first came into force a letter was sent to the operator to explain the site monitoring fee process and procedure and the number of visits that the site was due. For relevant developments that have gained permission since, a letter is sent to the operator informing them of the position prior to the development commencing.

9.14 The planning authority compile a file which contains a complete planning history of the site and a list all the current and previous planning permissions, any related planning obligations or legal agreements and the site monitoring reports.

9.15 A date and time for site visit is scheduled with the operator for visits for specific purposes (i.e. aftercare meetings). Normal routine monitoring is unannounced.

9.16 Chargeable Site Monitoring Visits include the following:

What happens on a chargeable site monitoring visit?

1. A systematic review of all the conditions attached to current planning permissions, and any related planning obligations or legal agreements that are associated with the operation, is carried out;
2. Boundary Limits are checked;
3. Discussion is held with the operator to reach agreement on any course of action and timescales to redress any non-compliance with conditions attached to the current planning permission;
4. Recognition of any good practice is noted;
5. Notes of the visit are made on the Site Monitoring form and compliance with all relevant conditions is graded (from 0 for fully compliant up to 3 for a serious problem requiring immediate remedy to avoid formal enforcement action). The form is signed by the Monitoring Officer and the Site Manager and a copy left on site. Where there is no Manager on site, the form is sent to the Area Office or Estates Manager or other responsible person;
6. Photographs are taken of the site

9.17 Following the site monitoring visit, the following will take place:

What happens after the site monitoring visit?

1. The form is entered onto the County's database;
2. On receipt of any comments from the site operator, if appropriate, the planning authority makes any amendments to the monitoring report;
3. An invoice for the monitoring fee is raised and is sent out on quarterly basis;
4. The operator is then be expected to carry out any actions agreed at the site meeting and identified in the report in order to comply with the relevant planning permissions and the conditions/obligations/legal agreements associated with that and to do so within the agreed timescales to avoid potential enforcement action against a breach of planning control.

Non chargeable monitoring visits to other waste management sites

- 9.18 In 2011 The Waste (England and Wales) Regulations 2011⁸ came into force. Regulation 19 specifically requires that the (waste) planning authority must ensure that appropriate periodic inspections of those establishments or undertakings (carrying out the disposal or recovery of waste) are made.
- 9.19 Currently HCC has limited resources available to monitor all the waste sites on a frequent basis. However the Waste Regulations only require 'periodic inspection'.
- 9.20 Matrix working arrangements have been made with other sections of the Economy, Transport and Environment (ETE) Department at HCC that where sites are inspected for other reasons, i.e. Household Waste Recycling Centres or Waste Transfer Stations under contract with HCC, planning issues will also be considered and the reports of these visits are passed to the Monitoring & Enforcement Team. Any issues or concerns raised are then addressed by the team.
- 9.21 With regards the remainder of the waste sites, it is considered that the most appropriate method of monitoring is through a 'risk-based' approach that would set the frequency of visits based on potential environmental risk and previous record of complaints/planning enforcement and investigations will take place accordingly.
- 9.22 If the site is a high risk and has been subject to planning enforcement action and/or had planning complaints, then the frequency of visits is recommended to be at least every 3 months. If a site is low risk and the Waste Planning Authority (WPA) has not received complaints or taken previous action then monitoring visits should take place annually. Sites that are also monitored by the Environment Agency will be considered as lower risk and so have less frequent routine visits. Complaints or concerns will continue to be investigated as a priority irrespective of the set frequency of routine visits.

Appendices

Appendix 1: Enforcement Powers

Requisition for Information & Planning Contravention Notice (PCN)

	Requisition for Information	Planning Contravention Notice (PCN)
<i>What is this?</i>	Where the County Council considers it has sufficient information regarding activities on land use but requires further details on the ownership of the land	May be issued in order to ask specific questions in relation to an alleged breach in planning control. This enables a decision to be made regarding whether or not formal enforcement action is necessary or should be taken. It is especially useful when trying to identify all parties who have an interest in land or have been involved in a suspected breach of planning control.
<i>What will it include?</i>		Provides for a formal meeting between the MWPA and the recipient of the notice, whenever appropriate. This may help to clarify any misunderstandings and assist in resolving the situation.
<i>When will it be served?</i>	Issuing is optional and does not have any bearing on other action taken by the local planning authority.	Issuing is optional and does not have any bearing on other action taken by the local planning authority.
<i>Timescales for response</i>		There is a legal requirement to respond to a PCN within 21 days of the date of the notice, unless a longer period of time is specified in the notice.
<i>What happens if it is not complied with?</i>		Non-compliance with completing the requirements of a PCN is an offence punishable on summary conviction to a fine not exceeding level 3 on the standard scale. Knowingly providing false or misleading information in response to a PCN, is an offence punishable on summary conviction to a fine not exceeding level 5 on the standard scale.

Breach of Condition Notice (BCN) and Enforcement Notice (EN)

	Breach of Condition Notice (BCN)	Enforcement Notice (EN)
<i>What is this?</i>	May be issued where there has been a breach of condition that is attached to an extant planning permission. There is no right of appeal against the service of such a notice, although it can be challenged by way of applying to the High Court for a judicial review.	HCC can issue an EN where there has been an identified breach of planning control and where it is considered expedient to do so. A notice can be served in respect of operational development, a material change of use of land, or where there has been a breach of a condition attached to an extant planning permission. Such a notice must be served on the owners, occupiers and all other parties with an interest in the land that is affected by the notice.
<i>What will it include?</i>		The EN will define the breach and set out prescriptive steps for compliance, with specific timescales, for remedying the breach.
<i>When will it be served?</i>		An EN must come into effect not less than 28 days after its date of issue.
<i>Timescales for response</i>	The BCN will set out the necessary remedial action to ensure compliance with the condition(s) being breached, with a minimum period of 28 days for compliance.	There is a right to appeal to the Secretary of State, and such an appeal must be made before the notice comes into effect. Where an appeal is submitted, the requirements of the notice are held in abeyance until the appeal has been decided.
<i>What happens if it is not complied with?</i>	The penalty for non-compliance with a BCN is an offence punishable on summary conviction to a fine not exceeding level 3 on the standard scale.	Failure to comply with the requirements of an enforcement notice is a criminal offence which is liable on summary conviction to a fine per offence, or on conviction on indictment to an unlimited fine.

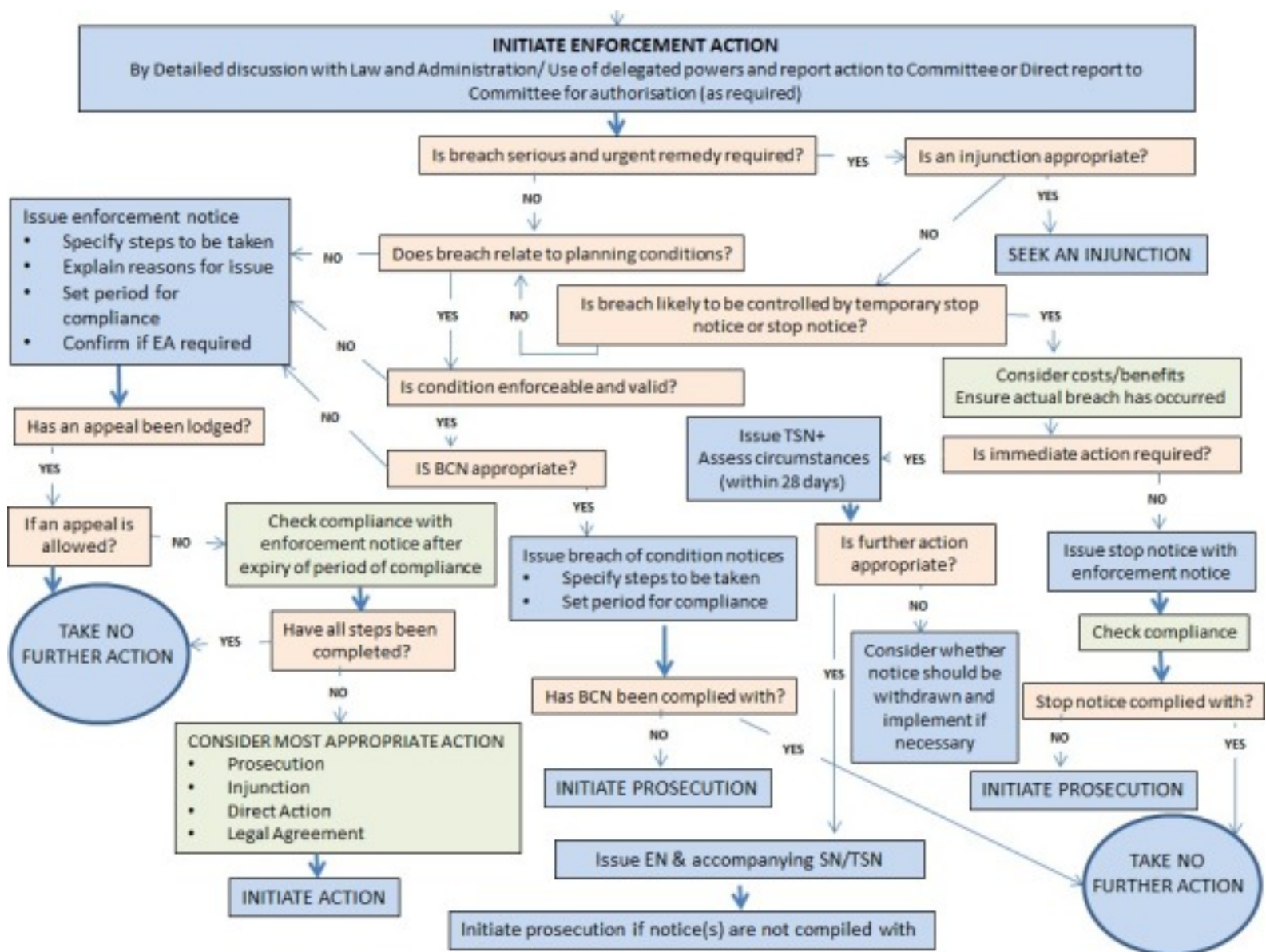
Stop Notice (SN) and Temporary Stop Notice (TSN)

	Stop Notice (SN)	Temporary Stop Notice (TSN)
What is this?	A SN must be issued either with or before the enforcement notice comes into effect. A SN cannot be issued on its own. The service of a SN is essential where the local planning authority considers it expedient to stop an activity before the associated enforcement notice comes into effect.	HCC may issue a TSN where there has been an identified breach of planning control and when it is expedient that the activity, or any part of the activity that amounts to the breach, should cease immediately. Unlike a SN, a TSN can be served on its own; there is no requirement for it to be served with an enforcement notice.
When will it be served?		The TSN has effect immediately but ceases to have effect after 28 days, unless it is withdrawn earlier. This allows a period of time (up to the maximum of 28 days) for the MWPA to decide whether further enforcement action is appropriate and what that action should be, without the breach intensifying by being allowed to continue.
Timescales for response	A SN would not normally come into effect until 3 days after service unless special considerations are attached indicating that it should come into effect earlier. There is no right of appeal against a SN. An appeal against an EN will hold the requirements of the EN in abeyance, but the requirements of the stop notice to cease a particular activity remain effective. As a SN prevents an activity from continuing, there is a right to claim compensation against the local planning authority if the notice has not been served properly.	There is no right of appeal against the service of such a notice, although it can be challenged by way of applying to the High Court for a judicial review. As a TSN prevents an activity from continuing, there is a right to claim compensation against the local planning authority if the notice has not been served properly. There is risk of immediate prosecution for failing to comply with a temporary stop notice, for which a fine is payable on summary conviction for the first offence, and for any subsequent offence, or on conviction on indictment to an unlimited fine.
What happens if it is not complied with?	Non-compliance with the requirements of a stop notice is an offence, punishable by a fine on summary conviction and, on conviction on indictment, to an unlimited fine.	

Injunction and Direct Action by the County Council

	Injunction	Direct Action by the County Council
What is this?	Where the authority deems it expedient to restrain any actual or anticipated breach of planning control it may apply to either the High Court or the County Court for an injunction. Such an application can be made whether or not the local planning authority has exercised, or proposes to exercise, any of its other powers to enforce planning control. The taking of such action would be necessary where other enforcement powers are unlikely to stop unauthorised activities.	<p>In order to secure compliance with an enforcement notice the Planning Acts empower local planning authorities to take direct action in default by the owner or occupier of the land.</p> <p>The Town and Country Planning Act 1990 enables local planning authorities to recover from a person who is then the owner of the land any expenses reasonably incurred by them in taking any direct action to carry out the steps required by an enforcement notice.</p> <p>By virtue of regulation 14(2) of the Town and Country Planning General Regulations 1992, the local planning authority's expenses in taking default action become a legal charge on the land to which the enforcement notice relates until the expenses are fully recovered. This charge is binding on successive owners of the enforcement notice land.</p> <p>The decision by the County Council to take direct action may be challenged by an application to the High Court for a Judicial Review, of the Council's decision.</p>
What will it include?		<p>Where any steps required by an enforcement notice to be taken are not taken within the period for compliance with the notice, the local planning authority may:</p> <ol style="list-style-type: none"> 1. Enter the land and take the steps an; 2. Recover from the person who is the owner of the land any expenses reasonably incurred by them in doing so.
When will it be served?		
Timescales for response		

Appendix 2: Enforcement Procedures Flow Chart



Appendix 3: Standards of Service

Openness:		Consistency:	
1.	We will advise any complainant and anyone carrying out unauthorised development as to the code that applies;	1.	We will adhere to the Enforcement Policy;
2.	We will keep as much as possible in the public domain whilst protecting the confidentiality of the complainant and any sensitive business information;	2.	We will hold regular Enforcement and Monitoring Officers' Group meetings and liaise with our opposite numbers in the City/District/Borough Councils to ensure a consistent approach;
3.	We will report on a six monthly basis to the Council's Regulatory Committee the latest situation on all ongoing enforcement cases;	3.	We will endeavour to maintain close liaison with the Environment Agency;
4.	We will meet with company staff when requested both before and during any enforcement action to seek an agreed solution.	4.	We will share information with these other enforcing agencies, subject to confidentiality;
		5.	Where discretion is applied against standards, this will be the responsibility of the team's manager whose responsibility is to ensure that it happens in a fair, equitable and consistent way.
Helpfulness:		Procedures:	
1.	We will keep any complainant advised as to the stage reached in any enforcement action.	1.	Advice following an investigation will be put clearly and simply in writing. All letters/electronic mail and notices to unauthorised developers will explain the breach, the requirements of the authority to put the matter right including time scales and remind the developer of the powers the authority has to take formal action. Letters will also give contact names and telephone numbers to ensure developers are given as much information as is possible to help and advise.
2.	We have a specific enforcement officer to whom all initial contact can be made. However, the team's officers can answer general enquiries.	2.	The rights of appeal of the developer against any formal notice will be clearly explained;
3.	All letters and telephone calls will be answered promptly and all responses will leave a contact name and telephone number.	3.	Before any formal enforcement action is undertaken, operators will be invited to discuss their problems with the officer, unless immediate action against the breach of planning control is necessary;
		4.	Any threat of formal action will be followed up with such action swiftly if there is inadequate evidence of steps being taken to resolve the problems.
Proportionality:		Complaints about the Service:	
1.	Following a complaint received, we will deal with each case on a priority basis, ascertained during an initial investigation.	The County Council has clear and specific procedures, which are published as part of all policy standard documents. If we cannot resolve your complaint, you will be advised on how to take this further.	
2.	Depending on the scale of the breach of planning control, we will always seek co-operation to resolve problems and use formal enforcement powers only as a last resort.		

Appendix 4: Interpretation of how the Human Rights Act may affect Enforcement Issues

Interpretation of how the Human Rights Act may affect Enforcement Issues

<p>Article 6: Right to a fair trial</p>	<p>Any person(s) issued with an enforcement notice has the right to appeal to the First Secretary of State and eventually the Courts. This ensures that there is no breach of an individual's right to a fair trial against the decision of the enforcement-taking authority to take action. Any person affected by an unauthorised development should expect a service within a reasonable time period by the authority, which following Planning Enforcement Policy should ensure that there was no breach of human rights or Ombudsman intervention.</p>
<p>Article 8: Right to respect for private and family life</p>	<p>Both parties to any dispute could claim that their rights under this article were being adversely affected by a decision of the enforcement-taking authority. Therefore, it is important that whether action is taken under delegated powers or following a Committee resolution, the impact on the parties' rights under this article is, and is actually seen to be, taken into account. The decision should be based on the balance between the respective harms to private and family life of both sides whilst seeking to minimise any interference at all. Any interference that does occur with this right must also be seen to be proportionate to the need to restrain the breach of planning control that is being committed.</p> <p>Accordingly, to ensure that this factor is given sufficient weight in reaching any decision whether or not to take enforcement action, it is considered that it should be specifically referred to under the severity of breach/proportionality section in the enforcement priority categories.</p>
<p>Article 14: Prohibition of discrimination</p>	<p>Compliance with the Planning Enforcement Policy should not result in any discrimination.</p>
<p>Article 1 of the First Protocol: Protection of property</p>	<p>The right to peaceful enjoyment of possessions is a matter of balance between those in breach and those affected by the breach.</p> <p>Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.</p>

Appendix 5: Monitoring Fees Assessment

Site Name:	Date:
HCC Number:	Grid Ref:

1. Environmental Appraisal (all current uses on site)

A. Waste (as defined post Landfill Directive)

Hazardous Landfill (5)	Transfer Station (3)	
Non hazardous Landfill (HCI) (4)	MRF (2)	
Inert Landfill (3)	Compost Site (2)	
Clinical Waste Transfer Station (4)	HWRC (2)	
Chemical Treatment Plant (4)	Pet Cemeteries (1)	
Incinerator (3)	WWTW (1)	
Gas flare / power Plant (1)		

B. Minerals

Minerals extraction and processing (5)	Aggregates wharf (2)	
Minerals extraction (4)	Oil and gas extraction (2)	
Aggregates recycling (3)	Conbloc (1)	
Aggregates rail depot (2)		

2. Operational Status

Operational (2)	Pre-operational (-2)	
Restored (-1)	Lapsed (-2)	
Aftercare (-1)	Dormant (-2)	
Extraction complete but not yet landfilled (-1)	Post Operational (1)	
Not yet implemented (-1)		

3. Proximity

Within 250 m from residents (1)	
Site entrance more than 100 metres from classified road (1)	
Within 100m from sensitive habitat (1)	
Within airport birdstrike zone (1)	

4. Other

Legal Agreement (1)	Enforcement history (total x2)	
Liaison Panel / significant public interest (1)	More than 3 current permissions (1)	
Monitored by other competent authority (-1)		

Score:

Annual visits required*:

*Annual visits required = Score divided by 2 (rounded)

This document can be made available in large print, on audio media, in Braille or in some other languages.

For further information, please contact Development Management (Monitoring and Enforcement) in the Strategic Planning group:

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