

Oxfordshire County Council Local Monitoring and Enforcement Plan.

1 INTRODUCTION

- 1.1 The Town and Country Planning Acts give Councils, as Local Planning Authorities, powers to control unauthorised development. The County Council is the Local Planning Authority for minerals and waste developments (county matters). This includes breaches of conditions relating to existing planning permissions, as well as unauthorised minerals or waste development.
- 1.2 This document sets out the Council's strategy for pursuing planning compliance in Oxfordshire and the approach that the Council will take in investigating and remedying breaches of planning control. The County Council's Enforcement Policy, which was the predecessor to the Local Monitoring and Enforcement Plan, was first formally adopted by the Council following Planning Regulation Committee approval in February 2006.
- 1.3 Oxfordshire County Council is firmly committed to the effective and proportionate enforcement of planning control. It views breaches of planning control very seriously and therefore has a specialist Monitoring & Enforcement Team within the Development Management Team, which is tasked with resolving such breaches. In accordance with paragraph 207 of the National Planning Policy Framework (NPPF) this Local Enforcement Plan has been prepared to outline the approach that will be taken by the Council to remedy unauthorised development, and the procedures that will be followed.
- 1.4 Oxfordshire County Council is currently progressing its Minerals and Waste Core Strategy (OMWCS), to replace the existing Oxfordshire Minerals and Waste Local Plan adopted in July 1996. The Council will follow this with work on the Minerals Local Plan and the Waste Local Plan which will contain site allocations and detailed development management policies. These Local Plans will also contain policies relating to monitoring and enforcement.
- 1.5 For the avoidance of doubt, this Local Monitoring and Enforcement Plan is intended to review and replace the County Council's existing Planning Enforcement Policy and has therefore been produced in accordance with the guidance set out in paragraph 207 of the NPPF.

2 ENFORCEMENT AIMS

2.1 The County Council's Planning Enforcement aims are:

- To effectively and efficiently remedy the undesirable effects of unauthorised development and breaches of planning control by working with landowners, operators, Councillors and the general public;
- To bring unauthorised activity under control, in a timely manner, to ensure that the credibility of the planning system is not undermined; and
- To facilitate appropriate and high-quality development through the development management process.

3 ENFORCEMENT OBJECTIVES

3.1 In order to meet the Enforcement Aims, the County Council will:

- Investigate all complaints pertaining to breaches of planning control in respect of county matters;
- Investigate and seek to resolve breaches of planning caused by County Council developments;
- Proactively monitor consented sites regularly to verify compliance with the consent and any conditions attached to consents and seek compliance where breaches are identified;
- Acknowledge complaints about breaches of planning control within five working days;
- Undertake an initial site inspection within five working days of receipt of a complaint;
- Decide on the most expedient course of action to deal with breaches of planning control and notify all parties concerned within four weeks of receiving a complaint of our preliminary investigations;
- Keep complainants and Councillors informed of progress throughout the processes of investigating and taking action on breaches of planning control;
- Keep all details of complainants in confidence unless the circumstances of the case makes confidentiality impossible;
- Always consider the expediency of taking enforcement action, and will normally take enforcement action when it is essential to protect the amenity of the area, public or highway safety, and/or the integrity of the planning process;
- Only take formal enforcement action, or require remedial action, which is proportionate to the breach;
- Set reasonable but firm deadlines for actions required to resolve breaches of planning control, and make these clear to all parties concerned;
- Only invite a retrospective application to regularise a breach where there is a reasonable prospect that planning permission would be granted (notwithstanding the rights of an alleged offender to submit such an application);
- Facilitate appropriate development that conforms to planning policy, and try to secure the best possible development retrospectively where suitable;
- Proactively work and cooperate with other regulating authorities and agencies to resolve breaches of planning or other legislation, share intelligence, and reduce crime;

- Not normally investigate anonymous, vexatious and repetitive complaints, unless they allege serious breaches of planning control which can be substantiated;
- Follow the principles of the Enforcement Concordat (refer to Appendix 1), and;
- Maintain the resources to carry out these objectives and meet the aims.

4 MONITORING CONDITIONS AT CONSENTED SITES

- 4.1 Regulation 19 of the Waste (England and Wales) Regulations 2011 imposes a duty on the Council to ensure that appropriate periodic inspections of establishments or undertakings carrying out disposal or recovery of waste are made. The monitoring of sites benefitting from planning consent is an important tool in proactively preventing breaches of planning control from occurring, and to resolve breaches of conditions which are imposed to protect environmental and public amenity.
- 4.2 The Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012 requires operators to pay the Council a standard fee for the monitoring of planning conditions at mineral extraction or landfill sites. The Council will agree a schedule of site inspections with operators of sites requiring monitoring.
- 4.4 The frequency of inspections will depend on:
- The size and nature of the site;
 - The number and complexity of conditions attached to the consent;
 - The stage of operation reached at a particular site, and;
 - The history of compliance exhibited by the site operator over a period of time.

Monitoring fees cannot be charged on non-landfill waste management developments. However, these will be monitored on a similar basis to minerals and landfill sites.

- 4.5 Site inspections will be followed up with a report. The report shall detail any breaches of planning control or conditions of the planning permission, specify the actions required to resolve these breaches, and timescales for achieving compliance.
- 4.6 Most planning permissions granted by the Council are subject to conditions whose main purpose is to protect the amenity of a locality. Breaches of conditions may have an immediate harmful impact on amenity, such as operating unauthorised plant and equipment that causes disturbance by noise, or operations taking place outside permitted hours. Other breaches may not have an immediate effect, but if allowed to continue, may have a subsequent deleterious effect on amenity, such as failing to adhere to a restoration programme.
- 4.7 The Council has the power to take formal enforcement action against breaches of planning control and conditions, as detailed in Section 6 and Appendix 2. Decisions on taking formal action will be made on a case by case basis with due consideration of the seriousness of the issue and any commitment by the

operator to undertake remedial works in accordance with stipulated timescales. In particular, decisions will have regard to the criteria set out in paragraph 6.2.

5 INVESTIGATING ALLEGED BREACHES OF PLANNING CONTROL

- 5.1 The investigation of alleged breaches of planning control will be conducted adopting a process which will facilitate prompt and solid decision-making and action.

Stage 1: Acknowledgment

- 5.2 Once a complaint is received, a priority will be assigned to a case officer. The complaint will be acknowledged within five working days.

Stage 2: Initial Desktop Investigation

- 5.3 Once the complaint has been acknowledged, a desktop investigation of the breach of planning control will be undertaken to gather as much relevant information as possible. This will include identification of:

- The planning history of the site, including the terms of any planning consents which have been granted, and Section 106 obligations or other relevant documents;
- Site constraints by reference to existing spatial data and other records;
- Any planning policy considerations relevant to the alleged breach of planning control; and,
- Relevant legislation (including planning and other legislation) and case law. Covering for example, whether the breach constitutes development; whether it could be permitted development, and what needs to be checked and measured on site.
- The owner, operator and any other person with an interest in the site

Stage 3: Initial Site Visit

- 5.4 An officer of the Monitoring and Enforcement team will visit the site to which the alleged breach relates to ascertain whether the allegations are substantiated within 5 working days of receipt of the complaint. This will involve:

- Obtaining the identity of the owner, operator or person responsible for the site and interviewing them if possible;
- Recording the names and addresses of any people who have an interest in the land;
- Recording the activities or development taking place, including the taking of photographs and measurements;
- Recording a brief site description including of the alleged unauthorised development; and,
- Identifying neighbouring properties that may be affected by the alleged breach .

- 5.5 The officer visiting the site will:

- Identify themselves when on site, explain the reason for the visit and be able to explain their legal right to enter land to investigate a suspected breach of planning control;
- Adopt a considerate approach, recognising that there may be no breach or that any breach may be unintentional;
- Have regard to the provisions of Section 66 and 67(9) of the Police and Criminal Evidence Act 1984, which relates to the cautioning of suspected offenders.

Stage 4: Action Following the Initial Site Visit

- 5.6 If a breach of planning control is considered to have taken place, then (depending on the nature of the breach) the landowner, operator or person responsible will be contacted immediately to clarify the nature of the breach with reference to local and national policies where appropriate. They will also be advised to cease the unauthorised activity until the matter is resolved and that any works or activities carried out would be entirely at their own risk and may be subject to enforcement action. This will all be confirmed in writing.
- 5.7 Officers will also advise the landowner, operator or responsible person of the intended action or options available to resolve the matter, or seek further information to determine whether a breach has occurred. Where a complaint does not fall within the remit of the County Council, officers will refer the matter to the relevant authority and advise the complainant accordingly. Where a complaint is substantiated, the complainant will be advised in writing of the initial findings and proposed actions. Where appropriate, the complainant will be asked to take photographs or keep a diary of events for use as evidence if the matter proceeds to formal compliance action.

Stage 5: Further Investigation

- 5.8 Following the initial site visit and actions taken, it may be necessary for the Council to:
- Monitor activity on site to collect further information or evidence about the alleged breach;
 - Serve a Planning Contravention Notice (PCN) or a requisition for information under Section 330 of the Town & Country Planning Act or Section 16 of the Local Government (Miscellaneous provisions) Act 1976. These require the recipient to provide information relating to the alleged breach and who has an interest in the site within 21 days;
 - Carry out a Land Registry search to establish ownership of the land (if registered);
 - Carry out a search of the Council Tax and/or the Business Rates databases to establish who the responsible person or company may be (if registered);
 - Carry out a search of the Companies House database to establish who the directors of the company are;
 - Consult the parish council, District Council, Councillors, neighbouring residents and other agencies,
 - Liaise with other Council services and external agencies, and;
 - Carry out other lawful investigations relating to the alleged breach as appropriate.

Stage 6: Action Following Investigation

- 5.9 Investigations should provide as much information as necessary for the Council to take a decision on whether action should be taken, the expediency of taking action and what form this should take. The complainant will be advised of the next course of action. Some examples are;
- If a complaint relates to non-planning matters (such as disputes over land ownership or boundaries, restrictive covenants, moral and ethical concerns or commercial, competitive or private interests) no action under planning legislation will be taken;
 - If a complaint concerns a planning matter under the District Council's authority, or relates to a breach of non-planning legislation, this will be referred to the relevant authority or agency for their attention;
 - If a complaint relates to an activity or development which constitutes permitted development, or is lawful, no further action will be taken;
 - If it is considered by the Council that the complaint relates to a very minor breach, where formal action would not be justified or in the public interest, no further action will be taken;
 - If investigations indicate a material breach of planning control has occurred, but the operator or landowner claims that it is lawful (for example, because it occurred or commenced over ten years ago for a change of use of land, or over four years ago for operational development) a Certificate of Lawful Use application will be invited in the first instance. If the owner chooses not to submit an application the Council will reconsider formal compliance/enforcement action; or,
 - If investigations indicate that a material breach of planning control has occurred then the Council will either invite a planning application to regularise the development (and impose appropriate planning conditions) or commence formal compliance/enforcement action.
- 5.10 Breaches of planning control are not normally criminal offences and it is not an offence to carry out development without first obtaining planning permission. Whilst it is clearly not satisfactory for anyone to carry out development without first obtaining the required planning permission, formal enforcement action will not normally be taken solely to regularise development which may be acceptable on its planning merits.
- 5.11 Where development which has already taken place may be considered acceptable, and it appears that any actual or potential harm can be made acceptable by the imposition of planning conditions, and that development is not contrary to the policies of the development plan, the authority will invite the person responsible to submit a retrospective planning application. However, if, after a formal invitation to do so, the owner or occupier of the land fails to submit a planning application within a reasonable timescale, the authority will consider whether to take formal enforcement action.

6 FORMAL ENFORCEMENT ACTION

- 6.1 Where a breach of planning control is identified, the Town and Country Planning Act 1990 (as amended) provides the Council with discretionary power to take enforcement action if it is expedient to do so, having regard to the provisions of the development plan and to any other material considerations. Whilst the Council will normally seek to negotiate a resolution with the landowner, there will be cases where negotiations will be inappropriate and immediate enforcement action is required, for example, where the harm to amenity is such that the breach must be stopped immediately. When applicable, negotiations will involve the setting of firm deadlines for actions to resolve the matter and achieve compliance with planning control. All timescales agreed will be confirmed in writing and the Council will expect these to be adhered to unless exceptional circumstances that have prevented this can be demonstrated.
- 6.2 If negotiation is unsuccessful, the expediency of formal enforcement action will be considered. Decisions on expediency will be dependent on the individual circumstances of cases. However, in coming to any decision as to which is the appropriate form of action the following criteria and the particular circumstances of the case:
- The harm or potential harm to amenity if the breach or breaches are allowed to continue;
 - The past history of the operator's compliance with both formal and informal requests to take steps prescribed or requested by the authority to remedy planning breaches;
 - That the enforcement action proposed is commensurate with and in proportionate to the breach to which it relates;
 - Any previous advice, correspondence and negotiations;
 - The consequences of non-compliance;
 - The likely effectiveness of the various enforcement options;
 - The public interest, and;
 - The availability of appropriate evidence to support the enforcement action proposed with due consideration to the likelihood of success.
- 6.3 These criteria will assist officers in determining whether a breach is minor or serious. The Council will ensure that any officers making such decisions are fully acquainted with the law in relation to planning enforcement and Local Monitoring and Enforcement Plan. Appropriate training and professional development will be provided. Any departure from the Local Monitoring and Enforcement Plan must be exceptional, capable of justification and be fully considered by the appropriate officer before the decision is taken; unless it is considered there is significant risk to the public or amenity in delaying the decision. Where officers judge that the breach which has taken place is minor and the other party has given written confirmation of their intention to comply with the required remedial action within a reasonable, prescribed timescale, immediate enforcement action is unlikely to be initiated. If the matter is not satisfactorily resolved within the prescribed timescale the County Council will consider the use of enforcement powers.
- 6.4 The enforcement powers provided by the Town and Country Planning Act 1990 (as amended) are often referred to as the 'Enforcement Toolkit'. A summary of these tools is provided at Appendix 2. In addition to these, the Council also has

authority to enter the land and carry out the requirements of an Enforcement Notice if the steps set out in the notice have not been undertaken within the compliance period set out in that notice. Although it is preferable for breaches of planning control to be remedied by the landowner or operator, this power can be utilised at any time an Enforcement Notice has not been complied with and the Council is satisfied that it is appropriate to use this power. The costs associated with the action can then be recovered from the owner of the land.

- 6.5 Failure to comply with a formal Notice is a criminal offence, making the people committing the breach liable to prosecution. The Council will always consider prosecuting for the non-compliance with the terms of any notice. However, the Council will always keep enforcement action under review. For example, where an enforcement notice has been complied with or sufficient compliance action is considered to have been taken prior to a court hearing, the Council may consider suspending or even halting a prosecution, particularly where it is no longer considered to be in the public interest to proceed with a prosecution.
- 6.6 The case officer will endeavour to discuss any breach of planning control with the developer or land owner, as appropriate, before the Council takes any enforcement action. The only exception to this is where the breach of planning control is considered to be so severe that urgent action is necessary, for example to protect the environment or amenity of local people. Where officers judge that the breach which has taken place is sufficiently serious, the Council will serve the most appropriate Notice in order to remedy the breach or effect necessary improvements as soon as appropriate.
- 6.7 The authority remains committed to fostering business enterprise, provided that the necessary development can take place without unacceptable harm to local amenity. Whilst the authority does not condone willful breaches of planning law, it has a general discretion to take enforcement action, when it considers it expedient to do so. Nevertheless, in some cases effective enforcement action is likely to be the only appropriate remedy if the business activity is causing unacceptable harm.

7 PERFORMANCE STANDARDS

- 7.1 The following are performance standards which the Council will attempt to meet in all instances that a breach of planning control is reported:
- Officers will carry out an initial site visit, and advise the complainant and landowner/operator of the initial outcome within 10 working days of receiving a complaint;
 - Where it becomes apparent that a complaint does not fall within the remit of the Council the authority will refer the matter to the relevant agency and advise the complainant accordingly within 2 working days;
 - If an alleged breach cannot be substantiated, the complainant will be advised within 2 working days of conducting the initial site visit;
 - Where it is suspected that a breach of planning control has occurred, 14 days will be allowed for the landowner to respond to an initial letter, unless the breach is causing such severe harm that action is required sooner;
 - Where a breach has been confirmed, the complainant, Local Member and any other interested parties will be advised within 4 weeks of receiving a complaint of the Council's intended course of action.

7.2 Customers reporting breaches of planning control can expect:

- Their identity to be kept confidential unless circumstances of the case make confidentiality impossible;
- To be advised of what action is proposed and why, including an explanation of the planning situation, once the complaint has been investigated; and,
- To be kept informed at all stages of the investigation.

7.3 Landowners and operators of sites where a breach of planning control is alleged can expect:

- Officers investigating the report to look at the facts and only state that a breach has occurred when the Council is satisfied that this is the case;
- Council Officers have a legal right to enter land and investigate reported breaches. These rights will be explained to landowners wherever possible;
- The Council will, in most cases, write to you where a breach of control is considered to have occurred and ask you to clarify the nature of the activity/alleged breach and how you propose to remedy the breach within a reasonable timescale;
- All timescales agreed will be confirmed in writing and the Council will expect these to be adhered to unless exceptional circumstances that have prevented this can be demonstrated;
- The exact breach of planning will be explained clearly with reference to local and national policies where appropriate; and,
- If a solution is not forthcoming, then you will be advised that formal enforcement action is likely to be taken.

7.4 Customers affected by breaches can expect:

- The case officer will keep complainants informed of progress on enforcement matters, at least at key stages of the progression of a case;
- The Local Member and Parish Council will be advised once a notice or injunction has been served against a breach of planning control, and will be kept informed at key stages throughout the investigation thereafter; and,
- Those residents most likely affected by a development will also be informed of Enforcement Notice appeals so that they have the opportunity to make representations to the Planning Inspectorate.

8 WORKING WITH OTHER AGENCIES

8.1 There is often overlap in the investigation of breaches of County Matter planning control by the County Council with other legislation, often involving investigations by other authorities such as the District Council's Planning and Environmental Health Teams, and the Environment Agency. Where the unauthorised activity results in, or has the potential to result in, pollution, the Environment Agency will normally be the lead authority. Where the activities involve a statutory nuisance the District Council may be better placed to take action. In all cases that potentially involve the above bodies, consultations and discussions will take place to see which authority is in the better position to lead the investigation and, if necessary, take action.

- 8.2 Where an activity does not fall within the remit of the County Council to investigate, the investigating officer will refer the issue to the relevant authority and advise the complainant accordingly. Sometimes the responsibilities of two or more authorities may overlap and in these situations the Council will seek to work together with those other agencies. Where this is the case, a course of action will be determined and the complainant advised which agency is investigating what aspects of the breach. The complainant will also be provided with the relevant contact details for the investigating officers of other authorities.

9 REGULATION 3 DEVELOPMENTS

- 9.1 The County Council cannot take legal action against itself. However, the Monitoring & Enforcement Team has responsibilities for resolving breaches of planning caused by County Council Developments. In the first instance, once a breach has been identified, the officers will seek to rectify the breach through negotiation with the relevant Directorate of the Council. Where negotiation is unsuccessful, the breach will be reported to the Planning and Regulation Committee for consideration. Should the Planning and Regulation Committee decide that action is necessary, they will seek to gain a resolution through the involvement of the relevant Cabinet Member.

10 DECISION MAKING

- 10.1 All decisions pertaining to the authorisation of taking formal enforcement action are delegated in accordance with the County Council's constitution to the Planning Regulation Manager in consultation with the County Solicitor. The Council's Planning and Regulation Committee can also authorise formal enforcement action. All enforcement actions authorised by the Planning Regulation Manager will be reported to the Planning and Regulation Committee. All enforcement action, formal or otherwise, is reported to the Planning and Regulation Committee on a six monthly basis.

11 REVIEW

- 11.1 This plan will be reviewed whenever there is a significant change in legislation, national or local policy, or otherwise every two years.

APPENDIX 1: THE ENFORCEMENT CONCORDAT

The County Council will have full regard to the Parliamentary Secretary's, Office of Public Service, Enforcement Concordat. Therefore, the County Council's planning enforcement function will be conducted to the following good practice principles of this agreement:

- Standards:** This document sets out clear service and performance standards and performance the public can expect to receive.
- Openness:** The planning enforcement service will provide information in plain language and disseminate the information as widely as possible. All regulatory advice will be clear, confirmed in writing and clearly distinguish between legal requirements and best practice. Progress updates on resolving breaches of planning control will be reported to the County Council's Planning and Regulation Committee on a six monthly basis.
- Helpfulness:** Complainants and Councillors will be kept informed of progress with investigations and actions taken. All communications will be responded to as promptly as possible and contact details provided.
- Complaints:** The County Council has a clear and specific complaints procedure, which can be accessed at: <http://www.oxfordshire.gov.uk/cms/content/how-make-complaint-about-oxfordshire-county-council>
- Proportionality:** The County Council will deal with each case on a priority basis following initial investigation of a complaint received. Depending on the scale of the breach of planning control and unless the breach is such that it requires immediate action, cooperation will always be sought to resolve the issue, and formal enforcement action will be used only where a satisfactory and appropriate resolution cannot be reached.
- Consistency:** The County Council will adopt a consistent approach to dealing with breaches of planning control by adhering to this document. National and regional best practice will be followed through research, communication with other authorities, and attendance of the National County Enforcement Officers Forum. Regular liaison meetings will be held with the District Councils in Oxfordshire, and with the Environment Agency. We will share information with other regulatory bodies, subject to data protection legislation, confidentiality, and inter-agency Information Sharing Agreements. The Planning and Regulation Service Manager is responsible for ensuring that planning enforcement is delivered in a fair, consistent and equitable fashion.
- Procedures:** The procedures for carrying out the planning enforcement function are set out in this document.

APPENDIX 2: THE ENFORCEMENT 'TOOLKIT'

The following notices and tools are available to the Council in dealing with breaches of planning control should formal enforcement action be deemed necessary:

Planning Contravention Notice (PCN)

This is served on landowners, operators or other relevant people to obtain information about a suspected breach of planning control. The information provided is used to decide whether further action is required. Failure to reply to the notice could lead to a fine of up to £1000 upon conviction.

Breach of Condition Notice (BCN)

This requires an operator or landowner to comply with planning permission conditions that they have breached. There is no right of appeal and failure to comply could result in prosecution and a fine of £1000 for each offence.

Enforcement Notice

This is used when a serious breach of planning control has occurred. The Notice does not come into effect until at least 28 days after its date of issue. A person served with an Enforcement Notice can appeal during this period. The effect of the appeal is to suspend the Notice. The appeal is usually determined by an independent Planning Inspector. If the appeal is dismissed or no appeal is made, then failure to comply with the requirements of the Notice could result in a prosecution and a maximum fine of £20,000 for each offence.

Stop Notice

This can be issued with or following an Enforcement Notice in order to require a particularly harmful activity to cease before the Enforcement Notice comes into effect. There is no right of appeal, but the Council may have to pay compensation if the associated Enforcement Notice is, on appeal, quashed on legal or planning grounds. Non-compliance with a Stop Notice is an offence which carries a maximum fine of £20,000.

Temporary Stop Notice

If the breach of planning control is causing significant environmental effects, a Temporary Stop Notice can be served. This requires the unauthorised activity to cease immediately for a period of no more than 28 days.

Injunction

An Injunction is a Court Order requiring the defendant to either refrain from doing a specific act or requiring the defendant to carry out a specific act and is therefore used to prevent or stop harmful activity or force remedial measures to be carried out.

Direct Action

If a person fails to comply with the requirements of a notice the County Council can enter the land and undertake works in compliance with a notice. The cost would then be charged to the landowner, but would have to be borne by the Council in the short term until the money is collected. Direct action may be pursued at any time after the compliance period of a Notice has passed.