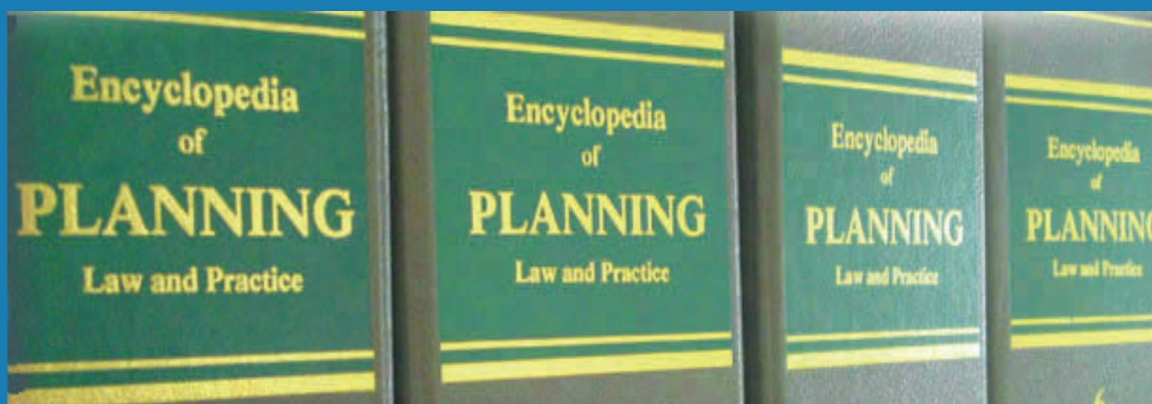


Local Enforcement and Site Monitoring Plan



Essex County Council

May 2013

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1. INTRODUCTION

Paragraph 207 of the National Planning Policy Framework (NPPF) 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.”

In accordance with the NPPF the Essex Local Enforcement and Site Monitoring Plan ('the Plan') sets out what enforcement and site monitoring service businesses and individuals can expect from Essex County Council as Mineral, Waste and County Planning Authority.

2. THE COUNTY COUNCIL'S MONITORING AND ENFORCEMENT FUNCTION

For all operational minerals and waste sites with planning permissions granted by the County Council, officers undertake routine monitoring to ensure compliance with conditions imposed as part of such permissions. 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 appropriate.

For dealing with breaches of planning control identified for County Council development (Regulation 3 development) the County Council, as County Planning Authority, has developed an internal protocol that is included as part of this Plan (see Appendix 1).

3. TAKING FORMAL ENFORCEMENT ACTION

The Enforcement Powers available to the authority are set out at Appendix 2:

The County Council has the overall responsibility for taking enforcement action relating to 'County matters'¹. This is a discretionary power as the Town and Country Planning Act 1990 does not impose a general duty to ensure compliance with

¹ 'County Matters' are defined in Schedule 1 of the Town and Country Planning Act 1990: <http://www.legislation.gov.uk/ukpga/1990/8/schedule/1> and the Town and Country Planning (Prescription of County Matters) (England) Regulations 2003: <http://www.legislation.gov.uk/uksi/2003/1033/contents/made>

planning control. 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 chart is attached at Appendix 3 to this Plan outlining the general progression of enforcement investigation.

Initial Investigation

The investigating officer will, under normal circumstances, visit the site in question 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 rights² 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 investigating 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 a permission would enable the County Council 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, the County Council may then decide to take formal enforcement action to remedy the breach.

² In accordance with the Town and Country Planning General Permitted Development Order 1995 (as amended)

Enforcement Action

The investigating officer will make a judgement 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 the County Council³ 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, the County Council 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.

4. RESOURCES ALLOCATED TO ENFORCEMENT AND MONITORING

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.

Most planning officers contribute to the overall enforcement and monitoring function, in addition to their normal casework. However, the team employs one specific Enforcement Officer who is responsible for recording and dealing with all complaints/referrals received, in accordance with this Plan and is normally the first point of contact for enforcement cases.

5. DEALING WITH COMPLAINTS

- a) Acknowledgement of complaints: a complaint will be acknowledged within 2 working days of the Council receiving a complaint;

³ See Appendix 2

- b) Checking the facts: this may include a site inspection and checking records;
- c) If no breach is found: The complainant(s) and, if necessary, the company involved will be informed within 14 working days of the date of the acknowledgement;
- d) If a breach is found but is not a 'County Matter': the relevant District/Borough Council/Environment Agency will be informed of the complaint within 14 working days of the date of the acknowledgement, whilst informing the complainant(s) and, if necessary, the company involved within the same period;
- e) A breach is found that is a County Matter: the necessary course of action will be considered in accordance with this Plan and all parties will be informed within 14 working days of the acknowledgement.

Note: As stated, formal enforcement action may not always be expedient or appropriate. Where the County Council is the responsible planning authority, any decision not to take enforcement action following a breach of planning control will normally be made by the Development and Regulation Committee. 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.

The standards of service are set out at Appendix 4.

6. THE APPROPRIATE COURSE OF ACTION

WHERE DEVELOPMENT IS CARRIED OUT WITHOUT PERMISSION

It is not an offence to carry out development without first obtaining any planning permission required for it. 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, local planning, 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. In such circumstances, 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.

WHERE UNAUTHORISED DEVELOPMENT CAN BE MADE ACCEPTABLE BY THE IMPOSITION OF CONDITIONS

Where the development has been carried out without the requisite planning permission, but the development could be made acceptable by the imposition of planning conditions (for example, to control the hours, or mode, of operation; or to carry out a landscaping scheme), the authority may invite the owner or occupier of the land to submit an application, and pay the appropriate application fee, voluntarily.

It may be pointed out to the person concerned that the authority does not wish the business, or other activity, to cease; but has a public duty to safeguard amenity by ensuring that development is carried out, or continued, within acceptable limits, having regard to local circumstances and the relevant planning policies.

If, after a formal invitation to do so, the owner or occupier of the land refuses to submit a planning application, the council will consider whether to issue an enforcement notice to remedy any 'injury to amenity' which has been caused by the breach.

WHERE THE UNAUTHORISED DEVELOPMENT IS UNACCEPTABLE ON THE SITE BUT RELOCATION IS FEASIBLE

It is not the authority'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.

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. A reasonable time-limit, within which relocation should be completed, will be expected. 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. 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 AND RELOCATION IS NOT FEASIBLE

Where unacceptable unauthorised development has been carried out, and there is no realistic prospect of its being relocated to a more suitable site, the owner or occupier of the land will be informed that the authority are not prepared to allow the operation or activity to continue at its present level of activity, or (if this is the case) at all. If the development nevertheless provides valued local employment, the owner or occupier will be advised how long the authority is prepared to allow before the

operation or activity must stop, or be reduced to an acceptable level of intensity. If agreement can be reached between the operator and the County Council about the period to be allowed for the operation or activity to cease, or be reduced to an acceptable level, and the person concerned honours the agreement, formal enforcement action may be avoided.

If no agreement can be reached, the issue of an enforcement notice will usually be justified, allowing a realistic compliance period for the unauthorised operation or activity to cease, or its scale to be acceptably reduced. Any difficulty with relocation will not normally be a sufficient reason for delaying formal enforcement action to remedy unacceptable unauthorised development.

WHERE THE UNAUTHORISED DEVELOPMENT IS UNACCEPTABLE AND IMMEDIATE REMEDIAL ACTION IS REQUIRED

Where, in the council's view, unauthorised development has been carried out and it is considered that:

1. 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);
2. the person responsible for the breach will not submit a planning application for it (despite being advised to do so); and;
3. the breach is causing serious harm to public amenity;

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 serious harm to public amenity.

Prioritising Cases

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:

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.

A list of enforcement priority categories is attached at Appendix 5.

Informing the Local County Council Member

Where enforcement action is considered, the County Council Member will be kept informed.

Informing the Development and Regulation Committee

Where the 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 at the next available Committee meeting.

Any recommendation not to take enforcement action will normally be referred to the Committee for a decision.

7. THE HUMAN RIGHTS ACT 1998

The enactment of the Human Rights Act 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.

The County Council 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:

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

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.

Appendix 6 lists the above-mentioned rights conveyed under The Human Rights Act 1998, and gives an interpretation of how they may affect enforcement issues.

8. CHARGEABLE MINERAL AND LANDFILL SITE MONITORING VISITS

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.

In 2006 regulations came into force in England to allow the Council to charge a fee to mineral and waste operators to visit a site and carry out a site visit to monitor compliance with the planning permissions.

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.

Officers and operators to 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.

Objective of site monitoring: To charge a fee for a formal monitoring visit to mining

and landfill sites to check compliance with the planning permissions and any related planning obligations or legal agreements.

Explanation of site monitoring: The Government considers that charging a fee for site monitoring is a positive process that will have several positive outcomes. The main benefits 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 Essex Approach:

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 to 4 and then if the trend continues the following year 2 visits may be all that is required.

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.

- 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;
- All sites will be visited in the financial year.

Fees and Invoicing: As described, the Regulations have set the fees for monitoring visits. A fee shall be paid to the authority in respect of a site visit to an active site⁴ and in respect of a visit to an inactive site⁵. The operator of the site is responsible

⁴ £331.00 per visit to an active site at April 2013

⁵ £110.00 per visit to an inactive site at April 2013

for the payment of the fee. 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.

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 and the monitoring report sent to the operator. 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.

Prior to site monitoring visits:

1. A letter is sent to the operator to explain the site monitoring fee process and procedure;
2. 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.
3. A date and time for site visit is scheduled with the operator. This usually is between 7 to 10 working days prior to the visit. This does not apply for unannounced or enforcement visits.

At the 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. Recognition of any good practice is noted;
3. Boundary Limits are checked;
4. 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;
5. Notes of the visit are made on the Chargeable Site Monitoring Visit form;
6. Photographs are taken of the site.

After the site monitoring visit:

1. A report is written of the site monitoring visit, sent to the operator and published on-line within 21 days of the visit;
2. An invoice for the monitoring fee is raised and is sent out on quarterly;
3. On receipt of the site operator's reply, if appropriate, the planning authority makes any amendments to the monitoring report.
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/conditions/obligations/legal agreements and to do so within the agreed timescales to avoid potential enforcement action against a breach of planning control.

9. NON-CHARGEABLE WASTE MANAGEMENT SITE MONITORING VISITS

In 2011 The Waste (England and Wales) Regulations 2011 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.

Currently the County Council has limited resources available to monitor all the waste sites on a frequent basis; however the Waste Regulations only require 'periodic inspection'. Given this, it is considered that the most appropriate method of

monitoring waste sites in Essex is through a 'risk-based' approach that would set the frequency of visits based on The Environment's Agency's categorisation of sites based on potential environmental risk (OPRA – operational risk appraisal) and previous record of complaints/planning enforcement.

If the site is a high risk, for example (code 'D') 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 6 months. If a site is low risk and the WPA has not received complaints or taken previous action then a monitoring visit every 2 years takes place.

The following table provides examples of how the visit schedule works in practice.

Activity	OPRA code	Complaints?	Visit Frequency
A09 - Hazardous waste transfer station	D	Yes	6 months
		No	12 months
A10 - In-house storage facility	B	Yes	12 months
		No	24 months
A11 - Household, commercial and industrial waste transfer station	C	Yes	6 months
		No	12 months
A12 - Clinical waste transfer station	D	Yes	6 months
		No	12 months
A13 - Household waste amenity site not taking hazardous waste	B	Yes	12 months
		No	24 months
A13a - Household waste amenity site taking hazardous waste	C	Yes	12 months
		No	24 months
A14 - Transfer station taking non-biodegradable wastes	B	yes	12 Months
		no	24 months
A15 - Material recycling facility	A	Yes	12 months
		No	24 Months
A16 - Physical treatment of non-hazardous waste facility	A	Yes	12 months
		No	24 months
A16a – Physical treatment of hazardous waste	D	Yes	6 months
		No	12 months
A17 - Physico-chemical treatment	E	Yes	6 months

facility			
		No	12 months
A18 - Incinerator (other than pet crematorium)	D	Yes	12 months
		No	24 months
A19 - Metal recycling site (vehicle dismantler)	C	Yes	6 months
		No	12 months
A19a - End of life vehicles <2500 tonne per year	B	Yes	6 months
		No	12 Months
A20 - Metal recycling site (MRS) (mixed)	C	Yes	6 months
		No	12 Months
A21 - Chemical treatment facility	E	Yes	6 months
		No	12 months
A22 - Composting facility	C	Yes	6 months
		No	12 months
A23 - Biological treatment facility	C	Yes	6 months
		No	12 months
A24 - Mobile plant	B	Yes	12 months
		No	24 months
A25 - Deposit of waste to land as a recovery operation	B	Yes	12 months
		No	24 months
A27 - Incinerator (pet crematorium)	A	Yes	12 months
		No	24 months
A29 - Gas engine for burning of landfill or other bio-gas	B	Yes	12 months
		No	24 months

Protocol for Dealing with Breaches in Planning Control relating to Development Undertaken by the County Council under Regulation 3 of the Town and Country Planning General Regulations 1992

Introduction

This document sets out how the County Planning Authority (CPA) would regulate any breaches of planning control relating to development undertaken by County service providers under Regulation 3 of the Town and Country Planning General Regulations 1992.

Where development is approved the CPA is obliged to ensure that all planning conditions attached to planning permissions are complied with in full. In addition, the CPA is obliged to investigate any allegation that a County Council development is taking or has taken place without the pre-requisite deemed planning permission.

The Town and Country Planning Act 1990 imposes a general but not mandatory duty to ensure compliance with planning control.

Accordingly, because there is an element of discretion as to whether or not it might be expedient to take appropriate action, there is a need for procedures to be adopted and followed to ensure that the CPA's approach is consistent and effective when deciding what action should be taken.

This protocol for Regulation 3 planning matters establishes formal procedures to enable the CPA, both the Development and Regulation Committee (the Committee) and officers acting under delegated powers to be consistent and effective in their approach. Additionally, promoting service providers would understand that should there be any breaches of planning control the CPA would take action under the terms of the protocol to remedy them.

The protocol would make the processes involved transparent, and would, if followed in full, avoid the need for ombudsman or City/District/Borough Council intervention.

Breaches of Planning Control

Breaches of planning control are likely to be brought to the attention of the CPA either by routine site monitoring inspections or following a complaint from a member of the public or other third party.

All complaints received from the general public would be logged on the complaints

database and acknowledged within 2 working days. The complainant should, if the complaint is accepted, be able to expect a response within 14 working days setting out how the County Council intends to deal with the problem. The matter would then be dealt with, in the first instance, in the same manner as for non-County Council development, ie in accordance with the Local Enforcement Plan.

Site Monitoring and Gathering of Information

The CPA has the responsibility for determining all Regulation 3 development the County Council wishes to carry out. Officers acting for the CPA may need to investigate alleged breaches of control once informed about them. In addition, in respect of planning permissions, officers may undertake routine monitoring to ensure planning conditions are met. County Council officers and contractors working with or for the County Council shall enable site inspections to take place and assist in providing any necessary information.

Regulation of Breaches

The Planning Manager has delegated powers to initiate enforcement action, although matters will be referred upwards to the Committee if a Member decision is considered preferential. For clarity, where a local resident or firm brings a confirmed breach of planning control to the attention of the CPA and in the officer's opinion it would not be expedient to seek remedial action, then this would always be referred to the Committee for a final decision.

Remedial Action Procedure

Initial Action: The investigating officer will, under normal circumstances, visit the site in question to determine whether or not a breach of planning control has taken place. Reference will need to be made to extant planning permissions (where they exist) and to the General Permitted Development Order 1995 to ascertain if permitted development rights exist. When necessary, District/Borough Councils will be consulted to determine if they have granted planning permission.

If no breach of planning control were found the complainant would be informed accordingly. Additionally, the local member would be informed of the complaint and the outcome of the investigation.

Follow-up Action: Upon concluding there has been a breach of planning control, negotiation would be the first step in addressing the situation. The investigating officer will discuss the situation with the relevant officer(s) acting for the promoting service provider and try to reach an agreed settlement including a timescale to carry out any remedial works, make any rectifying application, etc. Where the promoting department is willing to comply with an agreed way forward and agreed time periods, this will usually result in no further action being required.

Where remedial action is agreed to address the breach of planning control, the investigating officer will write to all parties involved setting out what has been agreed to correct the situation, including timescales.

The service provider should respond in writing stating that they are willing to carry out these works and 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 a more formal approach to resolving the situation.

At all times, any complainant and local Member would be kept informed.

Committee Involvement: Should the necessary action not be agreed, or the agreed action not be undertaken in full, then the matter would be brought to the attention of the Development and Regulation Committee for resolution.

If the Committee consider that remedial action is not necessary then no further enforcement action is required. The complainant and the local Member would be informed accordingly.

If the Committee determine that the breach of planning control does justify remedial action, then it would also determine any necessary action to overcome the breach, and refer the matter to the relevant Cabinet Member for action. The complainant and the local Member would be informed accordingly.

Cabinet Member Involvement

Service providers may wish to involve the relevant Cabinet Members throughout the whole process. However, Cabinet Members will be brought formally into the process at the stage of the Committee to determine what action needs to be taken.

Should the Cabinet Member determine that it would be appropriate to take the action recommended by the Committee, then this should proceed.

Should the Cabinet Member determine that different or no action is required, then the Committee, any complainant and the local Member will be informed.

Final Resolution

If the Committee accept this determination, then accordingly the matter will be resolved, subject to the completion of any agreed action. If the Committee consider this would not resolve the issue satisfactorily, then the matter would be referred to Full Council for a decision which shall be final.

Appendix 2

Powers Available to the County Council in Undertaking its Enforcement Function

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

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

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.

There are a number of powers available to the County Council when it considers investigating unauthorised development and taking enforcement action. 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.

Right to Enter Land

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 1990.

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.

Requisition for Information

Where the County Council considers it has sufficient information regarding activities on land use but requires further details on the ownership of the land, a Requisition for Information may be issued.

The issuing of a Requisition for Information is optional and does not have any bearing on other action taken by the local planning authority.

Planning Contravention Notice

A Planning Contravention Notice (PCN) 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. 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.

The issuing of a PCN is optional and does not have any bearing on other action taken by the local planning authority. 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. The PCN also provides for a formal meeting between the planning authority and the recipient of the notice, whenever appropriate. This may help to clarify any misunderstandings and assist in resolving the situation.

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.

Enforcement Notice

The authority can issue an enforcement notice where there has been an identified breach of planning control and where it is considered expedient to do so. The enforcement notice will define the breach and set out prescriptive steps for compliance, with specific timescales, for remedying the breach.

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.

An enforcement notice must come into effect not less than 28 days after its date of issue. 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.

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

A stop notice must be issued either with or before the enforcement notice comes into effect. A stop notice cannot be issued on its own. The service of a stop notice is essential where the local planning authority considers it expedient to stop an

activity before the associated enforcement notice comes into effect. A stop notice 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 stop notice. An appeal against an enforcement notice will hold the requirements of the enforcement notice in abeyance, but the requirements of the stop notice to cease a particular activity remain effective.

As a stop notice 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.

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.

Temporary Stop Notice

The authority may issue a temporary stop notice (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 'stop notice', a 'temporary stop notice' can be served on its own; there is no requirement for it to be served with an enforcement notice. 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.

The notice 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 local planning authority to decide whether further enforcement action is appropriate and what that action should be, without the breach intensifying by being allowed to continue.

As a temporary stop notice 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.

Breach of Condition Notice

A breach of condition notice (BCN) 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.

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.

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.

Injunction

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.

Failure to comply with the terms of an injunction is contempt of court. The court has the discretion to imprison anyone found to be in contempt, or to administer an unlimited fine.

Direct Action by the County Council

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. 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:

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.

Planning legislation also creates an offence of wilful obstruction. Any person who wilfully obstructs any person who is exercising the local planning authority's power to take direct action may be guilty of an offence. The offence is triable in the Magistrates Court, and punishable by a fine.

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.

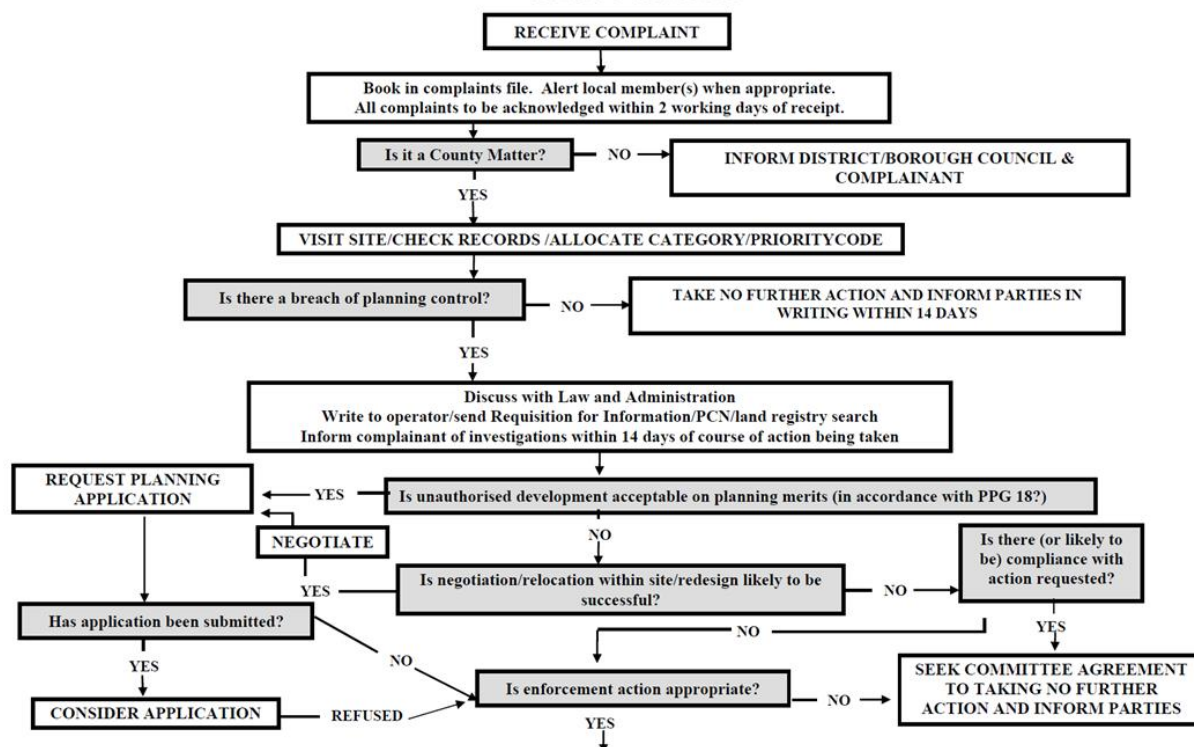
By virtue of regulation 14(2) of the Town and Country Planning General Regulations 1992, the local planning authority's expenses in taking default action become a legal charge on the land to which the enforcement notice relates until the expenses are

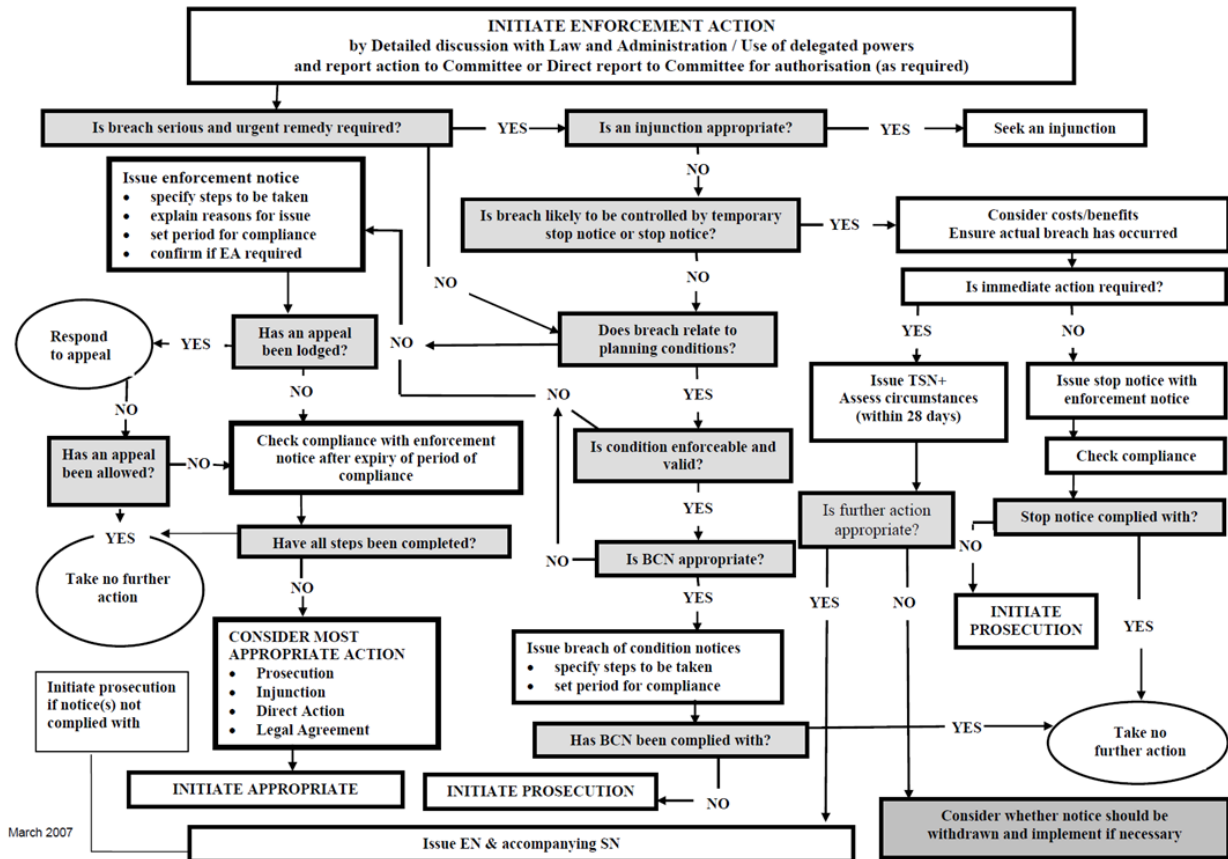
fully recovered. This charge is binding on successive owners of the enforcement notice land.

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.

ENFORCEMENT PROCEDURES FLOW CHART

Appendix





Standard of Service

Openness

1. We will advise any complainant and anyone carrying out unauthorised development as to the code that applies;
2. We will keep as much as possible in the public domain whilst protecting the confidentiality of the complainant and any sensitive business information;
3. We will report on a quarterly basis to the Council's Development and Regulation Committee the latest situation on all ongoing enforcement cases;
4. We will meet with company staff when requested both before and during any enforcement action to seek an agreed solution.

Helpfulness

1. We will keep any complainant advised as to the stage reached in any enforcement action.
2. We have a specific enforcement officer to whom all initial contact can be made. However, the team's officers can answer general enquiries.
3. All letters and telephone calls will be answered promptly and all responses will leave a contact name and telephone number.

Complaints about the Service

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.

Proportionality

1. We will deal with each case on a priority basis, following an initial investigation following a complaint received.
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.

Consistency

1. Adhering to Enforcement Policy will ensure this;
2. We will attend Essex Enforcement Officers' Liaison Group meetings and remain in close contact with our opposite numbers in the City/District/Borough Councils to ensure a consistent approach;
3. We will attend regular liaison meetings with the Environment Agency;
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.

Procedures

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. The rights of appeal of the developer against any formal notice will be clearly explained;
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.

Enforcement Categories

Category 1: Safety Hazards	Priority
Life threatening	A
Hazard being caused	B
Potential hazard	C
Limited or no safety aspects	D

Category 2: Existing Enforcement Action	Priority
Notice in force	A
Notice issued	B
Action threatened	C
No present action	D

Category 3: Severity of Breach/Proportionality	Priority
This is left as a matter of judgment to the case officer and the Planning Manager but should be based on scale of site, scale of breach, precedent, local amenity, intensity of activity, balance under Articles 6, 8, 14 and First Protocol of The Human Rights Convention.	A
	B
	C
	D

Category 4: Political Dimension/Public Enquiries	Priority
High political profile	A
High public profile	B
Public interest	C
No public interest	D

Category 5: Past History of Operator	Priority
Total disregard	A
Previous problems of significance	B
Some previous, low-key history	C
No previous history	D

Category 6: Time Table (i.e. estimated period left before enforcement action can no longer be taken and lawful use/development rights exist)	Priority
3 months left	A
6 months left	B
1 year left	C
Greater than 1 year	D

Interpretation and scoring:

1. Each 'Category' is given equal weight.
2. 'A' is the highest importance - 'D' is the lowest.

Interpretation of how the Human Rights Act may affect Enforcement Issues

Article 6: Right to a fair trial

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.

Article 8: Right to respect for private and family life

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.

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.

Article 14: Prohibition of discrimination

Compliance with the Planning Enforcement Policy should not result in any discrimination.

Article 1 of the First Protocol: Protection of property

The right to peaceful enjoyment of possessions is a matter of balance between those in breach and those affected by the breach.

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.