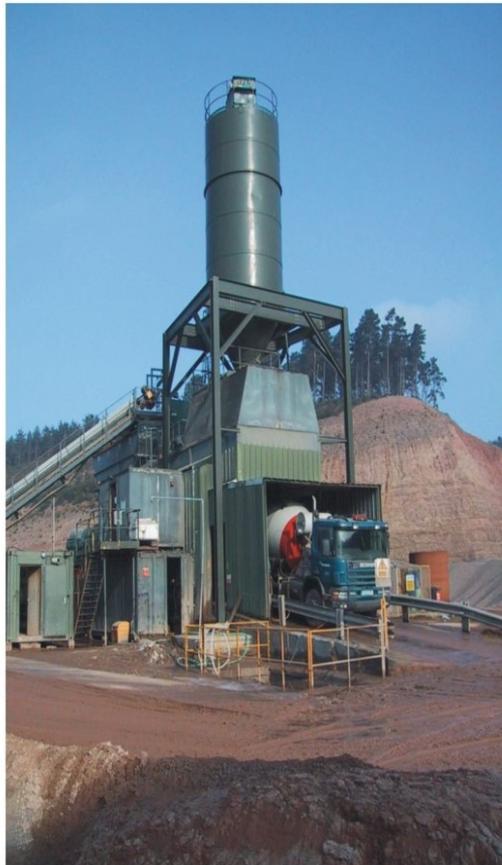


# Local Monitoring and Enforcement Plan 2012



**For the Extraction and Processing of Minerals  
and for Waste Management Facilities in Staffordshire**

Reviewed 5th July 2012

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**STAFFORDSHIRE COUNTY COUNCIL**

**SUSTAINABLE COUNTY**

**PLANNING REGULATION**

**PLANNING REGULATION STRATEGY**

**1.0 BACKGROUND**

1.1 Schedule 1 to The Town and Country Planning Act 1990 as amended sets down the responsibilities for Town Planning within a two tier Planning Authority in England and Wales.

1.2 The Development Plan for the County comprises the Staffordshire and Stoke On Trent Structure Plan 1996-2011, the Staffordshire and Stoke On Trent Minerals Local Plan 1994-2006, the Staffordshire and Stoke On Trent Waste Local Plan 1998 - 2011, and the adopted District wide local plans or Development Frameworks where approved.

1.3 The Planning Guidance from Central Government including PPG 18 on Planning Enforcement has been reviewed under the terms of the new National Planning Policy Framework March 2012 (NPPF).

1.4 Paragraph 207 of the 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.'

## 2.0 GENERAL STATEMENT

- 2.1 Section 19 of The Waste (England and Wales) Regulations 2011 makes it a duty that where a Planning Authority has planning functions in relation to establishments or undertakings carrying on disposal or recovery of waste, the Planning Authority must ensure that appropriate periodic inspections of those establishments or undertakings are made.
- 2.2 There are two elements within this plan. The first being periodic inspections (Section 3.0), the second being the investigation and enforcement of planning breaches (Sections 4-10).
- 2.3 Planning breaches are normally not criminal offences and no punishment can usually be imposed. However, failure to comply with a formal notice is a criminal offence and making the person committing the breach liable to prosecution.
- 2.4 Where a planning breach occurs a Local Planning Authority (LPA - 'the Authority') is required to consider the expediency of formal enforcement action. Formal enforcement action is Breach of Condition Notice, Enforcement Notice, Temporary Stop Notice, Stop Notice, Injunction, or Direct Action (following failure to comply with an Enforcement Notice). Formal action may be any of the above or a combination of the above.
- 2.5 The serving of a Planning Contravention Notice is not formal enforcement action but is a request for information relating to interests in the land and the nature of the alleged breach of planning control, although failure to comply with the notice is an offence.
- 2.6 Similarly the serving of a notice requesting information on land ownership and occupation under Section 16 of Local Government (Miscellaneous Provisions) Act 1976 is not considered to be formal action.
- 2.7 The taking of formal enforcement action is discretionary. The Authority may choose to take no action.

### 3.0 **MONITORING INSPECTIONS**

- 3.1 Regulatory control is well established as part of the general planning system and in collaboration with Policy and Application Determinations can be considered to be the third arm of the planning triangle without which a robust system cannot exist. Furthermore, mineral and waste issues can pose particular operational problems that require technical knowledge, experience and contemporaneous site information from frequent monitoring.
- 3.2 To ensure confidence in the planning control system it is essential that the public and operators are conscious of a fair and effective system of monitoring all authorised and unauthorised development.
- 3.3 Monitoring of permitted sites is an essential tool of controlling development and preventing problems from developing. It is this 'pro-active' approach that often enables officers to anticipate likely breaches of planning control arising before they occur. It enables them to take immediate action to ensure that a deterioration in the situation does not arise. A 'pro-active' approach can only be pursued with a structured monitoring regime, with sufficient staff and the technical equipment to carry out these duties.
- 3.4 There are currently 259 operational and active sites in Staffordshire and the scale of an operation being undertaken at a site is not an accurate yardstick for allocating resources; experience will often show that green waste and small inert tipping sites will give rise to more complaints and the need for more officer time, in comparison with large sites operated by national companies.
- 3.5 Where practicable, and dependent on the various operations which are carried out on mineral extraction and waste management sites, the County Council will seek to carry out a site inspection of sites at regular minimum intervals on the following basis:-

<b><u>SITE CLASSIFICATION</u></b>	<b><u>INTENDED NUMBER OF VISITS PER ANNUM</u></b>	<b><u>NUMBER OF SITES</u></b>
Operational 1 Mineral Extraction and Landfill Sites	4	39
Operational 2 Waste Recovery and Other Waste Management Sites	2	81
Registered Sewage Works	1	72
Aftercare / Inactive / Dormant / District Permissions	Where possible 1 per annum	67

- 3.6 Following an inspection a report shall be prepared (Form PR02) and copied to the operator/owner within two weeks of such inspection taking place. The report shall detail any breaches and specify timescales for compliance with conditions that have been breached.
- 3.7 The Regulation Team should aim to inspect all sites at least once per annum within the constraints of the service at least 75% of all sites shall meet this target annually.
- 3.8 A recent Planning Inspector's decision on the appeal against the refusal of a Lawful Proposed Use at Seisdon, Staffordshire has highlighted the necessity that a fundamental requirement in the monitoring of planning permissions is to record the lawful implementation and date of commencement for long term operational developments e.g. mineral extraction and uses of land e.g. disposal of waste where they have begun, or whether the development has deemed to have lapsed without lawful commencement.
- 3.9 The Regulation Team will be consulted on all proposals to permit development by the Development Control Team in particular they will be consulted on the planning conditions intended to be attached to the planning permission, they will ensure a

requirement of all county matter permissions will be to request that the developer notifies the County Planning Authority in writing when the development is considered to have been lawfully implemented and the Regulation Team will be responsible for verifying the date when lawful implementation occurs.

**LMEP 1 THE COUNTY COUNCIL WILL ALLOCATE A LEVEL OF RESOURCES TO THE REGULATION OF PLANNING CONTROL SUFFICIENT TO ACHIEVE:**

**I. THE OBJECTIVES SET OUT IN POLICY LMEP 2;**

**II. THE MOST EXPEDIENT ENVIRONMENTAL SOLUTION CONSIDERING THE COSTS AND BENEFITS ARISING TO REMEDY A BREACH;**

**III. THE MAINTENANCE OF A SYSTEM OF MONITORING AUTHORISED MINERAL EXTRACTION AND WASTE DISPOSAL SITES AND**

**IV. THE COLLECTION OF DATA AND STATISTICS BY THE MOST EFFICIENT MEANS, INCLUDING THE USE OF THE BEST AVAILABLE AND APPROPRIATE TECHNOLOGY**

**MONITORING FEES**

3.10 On 6 April 2006 The Town and Country Planning (Fees for Applications and Deemed Applications) (Amendment) (England) Regulations 2006 came into force. This amendment enables Mineral and Waste Planning Authorities (MWPAs) to charge operators, where sites have planning permissions for mineral extraction and/or waste landfill, for the re-imbusement of the average costs calculated over all MWPAs providing a monitoring service.

3.11 In 2011/2012, 80 sites were eligible for a site monitoring fee visit. There were 104 site visits made to 64 dormant and active sites providing a total invoiced amount of £28,224. The total amount of fees paid, as of 31 March 2012, was £23,808 compared to £25,152 for the previous year, at a national rate of £288

per site per visit for active mineral and landfill sites and £96 for dormant mineral and landfill sites. Fees unpaid total £4,416

- 3.12 As part of the Government's planning reform agenda it is proposed to allow Planning Authorities to determine their own fees for planning matters at a local rather than national level. The actual cost to the Authority in 2011/12 of monitoring and regulating the County Matter Planning sites is £493 per site visit, rather than the overall national figure of £288. It is estimated that full site audits would cost between £1000 and £1500 per audit.
- 3.13 Other income received were contributions in part toward our legal costs paid by the offenders on the judgment of the courts, in the successful legal cases.
- 3.14 An analysis of the cost of service in 2011 reveals that approximately 27% to 46% of the total cost of service over the last 4 years is attributable to legal costs incurred through prosecution.
- 3.15 Only the most difficult 5% of cases, as identified in the performance review of 2006, are prosecuted through the legal system often over a protracted period, this does not necessarily result in a resolution of the original breach. The majority of the remaining 95% of Breaches of Planning Control are resolved through negotiation and discussion or by undertaking less traditional means of remedial action.

#### **4.0 INVESTIGATION AND ENFORCEMENT**

- 4.1 In seeking to secure the highest possible level of compliance with relevant legislation whilst conforming with The Human Rights Act 1998, The Police and Criminal Evidence Act 1984 (P.A.C.E.) the Enforcement Concordat, the Code for Crown Prosecutors and the Regulation of Investigatory Powers Act 2000 (R.I.P.A.), the principal enforcement activities of the Authority are directed towards avoidance of infringements. It is nevertheless inevitable that breaches and offences will occur and the purpose of this policy is to ensure that they are resolved in a consistent,

transparent, balanced and fair manner.

- 4.2 Similarly, where an operator carries out development without complying with the conditions attached to a planning permission and this gives rise to problems leading to an unacceptable injury to amenity, the County Council's policy will be to seek to remedy the injury in the first instance by negotiation and persuasion.
- 4.3 All enforcement action, be it verbal warnings, the issue of written warnings, statutory notices, or prosecution, is primarily based upon assessment of risk to public health, public safety, harm to amenity, economic well being or the environment.
- 4.4 Any departure from the 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.
- 4.5 This Authority will ensure that all authorised officers are fully acquainted with requirements of the plan and appropriate training will be given.
- 4.6 This Authority will ensure that all clients subject to any enforcement action are informed of what is expected and the procedures that will be followed. This is to aim to avoid any misunderstandings and ensure transparency of all enforcement action.
- 4.7 Formal enforcement action can be extremely costly. The unauthorised Within lane, Hopton, (Staffordshire County Council) and Dale Farm traveller site in Essex (Basildon Council) are examples of how planning enforcement costs can rapidly spiral upwards, especially where Direct Action in Default of the requirements of an Enforcement Notice combined with extensive legal costs up to and including the Supreme Court are undertaken. There is the right of appeal against Enforcement Notices which may result in public inquiries, prosecutions, and higher court appeals. It is extremely rare for the full costs of all such actions to be recovered.
- 4.8 To try and avoid incurring such costs the Authority places a high emphasis on negotiation to resolve planning breaches without the need for formal enforcement

action and will provide advice for compliance. However the Authority recognises that at times negotiation will fail to result in compliance. In such circumstances the Authority will consider the most cost-effective provision within the enforcement 'toolkit' (see 7.0) to achieve compliance.

- 4.9 It is not uncommon for persons committing planning breaches to give various assurances of ceasing activities or carrying out works within reasonable timescales to remedy planning breaches, but thereafter fail to comply with those agreed timescales. In all negotiations and decisions to resolve planning breaches within a reasonable timescale, or for a planning application to be submitted, the Authority will have regard for a person's history of compliance or non-compliance with planning legislation and any previous failure to comply with informal agreements without reasonable excuse. As a general rule very little weight will be given to assurances made by persons who have previously given assurances of compliance but subsequently have failed to carry out those assurances.

***LMEP 2 THE COUNTY COUNCIL, IN EXERCISING ITS FUNCTION OF ENSURING COMPLIANCE WITH PLANNING CONTROL, WILL:***

***I. WHERE THERE IS SERIOUS HARM CAUSED TO THE AMENITY, TAKE IMMEDIATE ACTION AGAINST A BREACH OF PLANNING CONTROL TO STOP FURTHER DAMAGE;***

***II. IN ALL OTHER INSTANCES, SEEK TO RESOLVE ANY PROBLEMS WITHIN A REASONABLE TIMESCALE BY DISCUSSION AND NEGOTIATION WITHOUT THE NEED TO RESORT TO LEGAL ACTION;***

***III. ONLY TAKE ENFORCEMENT ACTION WHERE IT IS NECESSARY TO DO SO TO PROTECT THE PUBLIC INTEREST OR TO PROTECT THE ENVIRONMENT, PEOPLE AND TRANSPORT SYSTEMS AND THE AMENITY OF THE AREA IN ACCORDANCE WITH THE PROVISIONS OF THE LOCAL DEVELOPMENT FRAMEWORK ;***

- IV. ENSURE THAT ACTION IS ALWAYS COMMENSURATE WITH THE BREACH OF PLANNING CONTROL;**
- V. GIVE DUE REGARD TO CURRENT LEGISLATION, POLICY FRAMEWORK, INSTRUCTIONS, APPEAL DECISIONS AND RELEVANT JUDICIAL AUTHORITY;**
- VI. WHERE APPROPRIATE TAKE INTO ACCOUNT COMMENTS MADE BY THE GENERAL PUBLIC AND CONSULTEES;**
- VII. ENABLE ACCEPTABLE DEVELOPMENT TO TAKE PLACE, EVEN THOUGH IT MAY INITIALLY HAVE BEEN UNAUTHORISED;**
- VIII. MAINTAIN THE INTEGRITY OF SITES HAVING INTERESTS OF ACKNOWLEDGED IMPORTANCE;**
- IX. WHERE APPROPRIATE MAINTAIN LIAISON AND CONTACT WITH THE GENERAL PUBLIC, AND MINERAL AND WASTE MANAGEMENT OPERATORS.**

## **5.0 THE RELEVANT ENFORCING AUTHORITY**

- 5.1 There is often an overlap of enforcement of activities involving waste disposal and recycling between the Authority, the District and Borough Councils' Environmental Health Departments (EHO) and the Environment Agency (EA). Where the unauthorised activity results in, or has the potential to result in, pollution, the EA will normally be the lead Authority. Where the activities involve a statutory nuisance the District Council EHO 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.

- 5.2 Where practical joint operations in line with the Improving Regulation in Staffordshire (IRIS) model staged in Lichfield, will be undertaken with the above mentioned authorities and The Health and Safety Executive (HSE) to ensure the quickest and best solutions involving the least resources are brought to address problem sites.
- 5.3 The Authority will have regard to the fact that unauthorised development and some breaches of planning conditions involving wastes may be a criminal offence under legislation enforced by the EA and the Authority will liaise with the EA accordingly. The EA may be in a stronger position to ultimately remedy harm to amenity by way of prosecution and enforcing cessation of the harmful activities. In cases where unauthorised development causes or has the potential for serious harm to human health the Authority will have regard to the fact that it may be more appropriate for the HSE to be the lead Authority and will liaise with them accordingly.
- 5.4 Staffordshire County Council is a two-tier Authority with eight District or Borough Councils; Stafford Borough Council; Newcastle-Under-Lyme Borough Council; East Staffordshire Borough Council; South Staffordshire Council; Lichfield District Council; Cannock Chase District Council; Staffordshire Moorlands District Council; and Tamworth Borough Council. Schedule 1 to the Town and Country Planning Act 1990 as amended (The Act) and the Prescription of County Matters Regulations (2003) sets out what functions are the responsibility of County Councils in two tier Authority areas. To summarise development involving waste management facilities and the winning and working of minerals<sup>1</sup> are the responsibility of the County Council. Where a planning unit is carrying out wholly 'county matter' operations Staffordshire County Council will be the enforcing Authority. Stoke on Trent City Council within Staffordshire is a Unitary Authority with both County and District

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<sup>1</sup>. *“The winning and working of minerals” includes the extraction/mining of minerals both in and under the surface and the operation of ancillary and associated plant, buildings and machinery for processing minerals.*

*“Waste management facilities” includes waste transfer stations, materials recycling facilities, composting facilities; scrap metal operations; end of life vehicle dismantlers; incinerators, waste treatment facilities including sewage works and the disposal of waste to land.*

matter responsibilities and operates independent of Staffordshire County Council planning regulation.

- 5.5 The provisions of Section 286 of the Act allows enforcement notices generally to be validated even where they are issued by the 'wrong' Authority. What will invalidate a notice is any Authority's failure to describe the breach accurately. Where a single planning unit has a mixed use of 'District' and 'county matter' operations, Staffordshire County Council will liaise with the relevant District Council to identify all the components of the mixed use, including those which are lawful. This is to ensure that the description of the alleged breach is complete. Once the mixed uses are identified, and enforcement action is expedient, the District Council should normally initiate the enforcement action. However, this does not preclude the County Council taking enforcement action in all cases where there is a mixed use of District and County matter development. Each case will be decided on its own merits and consideration will be given to proportionality of 'county matters' and District Council matters. An example of mixed use where the county council will normally be the Authority issuing a notice is where a quarry diversifies to merchandising non-quarry products, or a scrap yard also provides car repair services. The key factor will be ensuring that the breach been accurately described i.e. have all the unauthorised uses been identified in the enforcement notice?

***LMEP 3 IT IS THE INTENTION OF THE COUNTY COUNCIL TO WORK CLOSELY WITH OTHER REGULATORY BODIES WHEN INVESTIGATING AND REMEDYING AN ALLEGED BREACH OF PLANNING CONTROL.***

***THE COUNTY COUNCIL IN DEALING WITH ALL COMPLAINTS CONCERNING AN ALLEGED BREACH OF PLANNING CONTROL WILL IDENTIFY THE AUTHORITY RESPONSIBLE FOR TAKING ACTION AND REDIRECT COMPLAINTS TO OTHER REGULATING BODIES WHERE NECESSARY.***

## **6.0 GENERAL GUIDANCE**

- 6.1 Staffordshire is rich in mineral resources including coal, clay, evaporites, limestone, sandstone and sand and gravel. It is one of the UK's main mineral producers and the working of minerals makes an important contribution towards the national, regional and local economy. However, mineral operations may also have significant adverse impacts upon people and the environment.
- 6.2 The main emphasis for future mineral planning lies in a presumption in favour of development that facilitates employment and encourages prosperity, whilst also fulfilling an undertaking to try to release sufficient land to maintain an appropriate supply of minerals to contribute towards national, regional and local needs, meanwhile seeking to minimise any adverse impact of mineral development on the environment, the transportation system and the local amenity.
- 6.3 Similarly the main emphasis for future waste planning as set out in the new Staffordshire and Stoke on Trent Waste Core Strategy, is to set out the criteria by which the Authority will determine planning applications for waste management facilities and to ensure provision is made for handling, recycling and disposing of the anticipated volumes of waste arising throughout the county and the immediately surrounding area, while at the same time seeking to minimise any adverse impact of waste management on the environment, the transportation system and the local amenity.
- 6.4 The majority of the wastes produced in Staffordshire are dealt with within the County and Stoke on Trent. However, as identified within the new Staffordshire and Stoke on Trent Waste Core Strategy, some difficult, special and industrial wastes are exported elsewhere for treatment or disposal. Staffordshire County Council is currently a net importer of 800,000 tonnes of wastes per annum for disposal, particularly from the West Midlands, as waste can be seen as a resource which enables employment opportunities bringing prosperity to the County.

***LMEP 4 THE COUNTY COUNCIL WILL HAVE REGARD TO THE PROVISIONS***

***OF THE DEVELOPMENT FRAMEWORK AND CORE STRATEGIES  
FOR STAFFORDSHIRE AND ANY OTHER MATERIAL  
CONSIDERATIONS IN THE ENFORCEMENT OF PLANNING  
CONTROL.***

6.5 In most economically prosperous and sustainable societies the extraction of raw minerals to produce the necessary wealth at the start of the business cycle and the management of residues to minimise and remove waste at the conclusion of the cycle is often fundamental to creating a stable and enduring socio-economic environment.

6.6 This Authority remains committed to fostering business enterprise and prosperity, provided that the necessary development can take place without unacceptable harm to local amenity. Whilst the Authority does not condone wilful breaches of planning law, it has a general discretion to take enforcement action, when they regard it as expedient. Nevertheless, in some cases effective enforcement action is likely to be the only appropriate remedy where a breach is causing unacceptable harm. The Authority will be guided by the following considerations:-

- (i) Parliament has given Local Planning Authorities the primary responsibility for taking whatever enforcement action may be necessary, in the public interest, in their administrative area (the private citizen cannot initiate planning enforcement action);
- (ii) The Commissioner for Local Administration (the local ombudsman) has held, in a number of investigated cases, that there is "maladministration" if the Authority fail to take effective enforcement action which was plainly necessary or where the Authority fail to consider whether to take formal enforcement action or not and be able to show their reasoning for not initiating formal action, often resulting in an award of compensation payable to the complainant for the consequent injustice;
- (iii) In considering any formal enforcement action, the decisive issue for the LPA will be whether the breach of control would unacceptably affect public

amenity or the existing use of land and buildings meriting protection in the public interest;

- (iv) The planning regulatory provisions are to ensure proper land use and to resolve breaches of planning control by removing unacceptable impacts on the environment and the amenity of the area. This ensures a 'level playing field' for legitimate businesses to develop and prosper.
- (v) It is not considered that the planning regulatory framework is a punitive force used wholly to fine or sentence a perpetrator of breaches of planning control especially where the breach and therefore the impact on amenity continues to exist.
- (v) Enforcement action should always be commensurate with the breach of planning control to which it relates (for example, the Authority would usually consider it 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); and
- (vi) Where the Authority's initial attempt to persuade the owner or occupier of the site voluntarily to remedy the harmful effects of unauthorised development fails, negotiations will not be allowed to hamper or delay whatever formal enforcement action may be required to make the development acceptable on planning grounds, or to compel it to stop.

6.7 It is not an offence to carry out development without first obtaining planning permission for it. If the Authority's initial assessment indicates it is likely that unconditional planning permission would be granted for development which has already taken place, the person responsible will be asked to submit a retrospective planning application. However this initial assessment is not binding on the Authority's subsequent decision to grant or not grant planning permission.

6.8 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. This would only apply to development which would be granted without any planning conditions being attached to control the development.

- 6.9 The Authority will not normally invite an owner or operator to submit a planning application if the unauthorised development is contrary to development plan policies or if it appears that any actual or potential harm cannot be made acceptable by the imposition of planning conditions, however we cannot prevent a landowner who is determined to apply for permission retrospectively.
- 6.10 If an operator or owner submits a planning application that the Authority has requested, the Authority will not normally consider formal enforcement action whilst the application is being considered. If agreement can be reached between the operator and the Authority about the operation being reduced to an acceptable level (e.g. hours of operation, use of plant and equipment, routing of vehicles etc) during any period between a planning application being submitted and its determination, and the person concerned honours the agreement, formal enforcement action may be avoided
- 6.11 Where the Authority considers that development has been carried out without the requisite planning permission, but the development could be made acceptable by the imposition of planning conditions the owner or occupier of the land will be invited to submit an application, and pay the appropriate application fee, voluntarily. However, if, after a formal invitation to do so, the owner or occupier of the land refuses or fails to submit a planning application in these circumstances within a reasonable timescale, the Authority will consider whether to take formal enforcement action.
- 6.12 Accordingly, where an owner or occupier of land refuses or fails to submit a planning application which would enable the LPA to grant conditional planning permission, the Authority will be justified in issuing an enforcement notice if, in their view, the unauthorised development has resulted in any harm, or has the

potential to cause harm, which can only be satisfactorily removed or alleviated by imposing conditions on a grant of planning permission for the development.

- 6.13 If the location of the unauthorised development is unacceptable, but relocation is feasible, it is not the Authority's responsibility to seek out and suggest an alternative site to which the activity might be satisfactorily relocated. However, if an alternative site has been suggested, the Authority will make it clear to the owner or occupier of the site where unauthorised development has taken place that he is expected to relocate to the alternative site within a reasonable timescale. In such circumstances the Authority will usually agree a reasonable time-limit within which relocation should be completed.
- 6.14 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; submit a planning application (if required) for the alternative site; consultation timescales; and the need to avoid unacceptable disruption during the relocation process. If the owner or operator fails to provide justification for a suggested timescale, the Authority will set a timescale it considers reasonable. If a timetable for relocation is ignored, or it is evident that appropriate steps are not being taken to progress the relocation, the Authority will consider formal enforcement action. In that event, the compliance period in the notice will specify what the Authority regard as a reasonable period to complete the relocation.
- 6.15 Nevertheless if the unauthorised development is causing unacceptable harm to the environment or amenity, the Authority will consider issuing an Enforcement Notice and/or Stop Notice even if an alternative site has been identified and steps have been made towards relocation. The Authority considers that any difficulty or delay with relocation will not normally be a sufficient reason for delaying formal enforcement action to remedy unacceptable unauthorised development.
- 6.16 Where the Authority considers that 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 is 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 Authority 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. However the Authority will have regard to the possibility of intensification of the development after expiry of the statutory period for enforcement action. 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.

6.17 Where, in the Authority's view, unauthorised development has been carried out and the Authority considers that:-

- (a) the breach of control took place in full knowledge that planning permission was needed (whether or not advice to this effect was given by the Authority to the person responsible);
- (b) the person responsible for the breach has failed to submit a planning application for it (despite being advised to do so); and
- (c) the breach is causing harm, or has the potential to cause harm, to public amenity in the neighbourhood of the site.

The Authority will normally take enforcement action (including, if appropriate, the service of a stop notice) to remedy the breach or prevent further harm to public amenity;

- (d) in circumstances where the breach is causing serious harm to public amenity in the neighbourhood of the site, or irreversible harm to the locality, the Authority will normally take vigorous enforcement action (including, if appropriate in the circumstances and with minimal risk to the

Authority, the service of a stop notice both temporary and full) to remedy the breach urgently, or prevent further serious harm to public amenity.

6.18 Through experience and technical knowledge it is the object of Planning Regulation at County level to aim to ensure permitted operations are undertaken with minimal effects on the environment, thus neighbours and residents can co-exist with a minimal of disturbance to the quiet enjoyment of their business or property. To assist with this a 'Regulation Toolkit' consisting of planning conditions, written cautions and formal action exists, which the Regulation Officer can deploy in the event that negotiations with an operator fail to secure an acceptable outcome.

## 7.0 **BREACHES OF CONDITIONS ATTACHED TO A PLANNING PERMISSION**

7.1 Most planning permissions granted by Staffordshire County 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 dust emanating from site operations, which is then blown beyond the site boundary; 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. Another example could be an operator's failure to maintain a jet spray wheelwash during dry conditions, but if ground conditions change, may be unable to prevent mud and debris being taken onto the highway if the equipment cannot be quickly brought back into operational use. In considering formal enforcement action, except in serious cases of non-compliance the Authority will have regard to the statutory period of at least 28 days which an operator is given to take steps to comply with conditions. The Authority therefore reserves the right to take formal enforcement in cases where there is no immediate harm to amenity, but where non-compliance has the potential to result in harm to amenity at some later date by virtue of such non-

compliance.

7.2 Following the issue of a Decision Notice permitting a development subject to conditions, an operator or owner has a period of six months in which to appeal any or all of the conditions if he considers that such condition(s) should not be imposed. Both during and after the six months period an operator is expected to be fully aware of and compliant with those conditions at all times.

## 8.0 REGULATORY OPTIONS

8.1 Enforcement action will include one or more of the following:

- to determine that no breach of legislation has occurred;
- to take no action;
- to enter in to a legal agreement covering remediation;
- to use statutory notices;
- to seek injunctive relief;
- to use formal cautions;
- to prosecute non-compliance with requirements of a notice or contempt of court;
- to carry out works under Section 178 of the Act in default of the requirements of an enforcement notice.

8.2 In coming to any decision as to which is the appropriate form of action, regard shall be had to this policy document and in particular to the following criteria:-

- the harm or potential harm to amenity if the activity or operations are allowed to continue;
- the past history of the operator's compliance with informal requests to cease or reduce the level of activity or take steps prescribed by the Authority to remedy planning breaches;
- action is proportionate to the risks, and the cost of the remedy is balanced against the effect of the required work or actions;
- enforceability of the proposed actions;
- previous advice, correspondence and negotiations;
- confidence in owner, management or operator;
- the consequences of non-compliance;
- the likely effectiveness of the various enforcement options;
- the public interest;
- the Code for Crown Prosecutors.

8.3 A file will be opened for each formal action or complaint and allocated an enforcement reference number.

8.4 A notice requesting land ownership and occupancy information together with a land registry search should be completed prior to serving any formal notice to assist in proper service of the notice..

## 9.0 INVESTIGATION PRIORITIES

- 9.1 It is recognised within the industry that the business of investigating and remedying alleged breaches of control is labour intensive and the quality of the service is directly proportional to the number of officers directly responsible for regulating planning control. The resources allocated both in terms of staff and equipment (including survey systems, IT and GIS based recording systems) for this purpose will, therefore, need to be reviewed on a regular basis as local circumstances change to take account of a fluctuating workload, advances in technology etc. It is recommended that this should take place at least once a year, possibly to coincide with the annual budget process and as part of the reporting procedure to Members. Reviews should be based on up-to-date information about enforcement activity and trends, using IT equipment to maintain accurate records and retrieve data.
- 9.2 Appeal costs may be awarded against the Authority in relation to an appeal to the First Secretary of State against an enforcement action if it is shown that the Authority has behaved “unreasonably” during the enforcement appeal and the appellant has incurred unnecessary expense.
- 9.3 As is the case in other areas of Staffordshire County Council's responsibility where they are considered to have acted unreasonably, inequitably or negligently whilst enforcing planning control, recourse to the Ombudsman by an aggrieved person may be requested to address the complaint. If the complaint is upheld this may result in compensation being awarded against the County Council.
- 9.4 In some situations decisions made by the County Council can be challenged through the courts. In such cases the Council may have to pay compensation if found to be at fault.

## COMPLAINTS

- 9.5 Complaints from any source will be investigated and acted upon as quickly and

efficiently as is possible. However, enforcement workloads and resources preclude immediate action on all complaints received and on occasions staff availability may result in priorities not being met. Failure to meet such priorities must be capable of being justified.

9.6 The County Council has within its Corporate Complaints Procedure identified objectives it wishes to meet when dealing with a complaint. These have been embraced and extended within this Enforcement Plan to:-

- Register and acknowledge the complaint within 2 working days of receiving it;
- Treat the complaint as confidential as far as practicable.
- Inform the complainant within 10 working days of the complaint being received;
- Explain to the complainant what action the Authority intends to take to remedy the breach;
- Notify the complainant in writing where an address is given of the results of the investigations together with your findings and recommendations within 21 working days;
- Undertake a P.A.C.E. code B interview with alleged perpetrator of breach within 28 working days being notified of complaint where necessary and if the alleged perpetrator voluntarily agrees;
- Where possible resolve or remedy the alleged breach of planning control within 13 weeks.

9.7 The Planning Regulation Team will liaise with the Legal Services; Environment Agency; District Council or any other relevant Authority as necessary throughout the investigation.

9.8 When complaints about alleged breaches of planning control are received, they will be properly recorded and investigated. If the Authority decides to exercise its discretion not to take formal enforcement action it should be prepared to explain its reasons to the complainant, including where complaints are attributable to repeated allegations from vexatious complainants and they have

been previously proved unsubstantiated.

9.9 The County Council will ensure that anyone who does complain about a breach of planning control is dealt with in a polite, efficient and responsive way. All complaints that are received although confidential will be recorded and stored on a complaints register, which is currently a paper based system. The complaints register will enable the receiving officer to detail both the nature of the complaint and the action the Authority has taken to resolve it. Keeping a record of complaints will enable the Authority to assess and improve its overall service. The Regulation Service continually aspire to a computer based complaints database to support more detailed analysis of complaints.

9.10 It may not always be necessary to visit sites to satisfactorily resolve a complaint. However, in most cases it may be necessary to establish whether there has been a breach of planning control by visiting the site. Where, following the investigation of a complaint, the Authority decides not to take formal enforcement action to resolve a substantive issue, the matter being satisfactorily resolved by other methods, the reason for this decision will be explained to the complainant. If, however, the Authority elects to instigate enforcement proceedings against the offender the complainant will be notified of the progress of that action.

**LMEP 5 THE COUNTY COUNCIL IN DEALING WITH ALL COMPLAINTS CONCERNING AN ALLEGED BREACH OF PLANNING CONTROL WITHIN THEIR RESPONSIBILITY WILL:**

**I. TREAT THEM CONFIDENTIALLY AS FAR AS PRACTICAL;**

**II. ENSURE THAT THEY ARE ACKNOWLEDGED AND PROPERLY RECORDED WITHIN TWO WORKING DAYS OF RECEIPT AND THEREAFTER INVESTIGATED;**

**III. DEAL WITH THEM EXPEDITIOUSLY IN A PROFESSIONAL AND EFFICIENT MANNER;**

- IV. VISIT THE SITE WHERE NECESSARY, AND ESTABLISH WHETHER THERE HAS BEEN A BREACH OF PLANNING CONTROL;**
- V. RESPOND TO THE COMPLAINANT WITHIN 10 WORKING DAYS OF THE COMPLAINT BEING RECEIVED;**
- VI. NOTIFY THE COMPLAINANT UPON REQUEST OF THE PROGRESS OF ANY ACTION TAKEN TO RESOLVE SUBSTANTIVE MATTERS FORMING THE BASIS OF THE COMPLAINT;**
- VII. NOTIFY THE COMPLAINANT IF THE AUTHORITY ELECTS TO COMMENCE ENFORCEMENT ACTION AGAINST THE ALLEGED BREACH OF PLANNING CONTROL AND**
- VIII. BE PREPARED TO EXPLAIN THE REASON IN THE EVENT FORMAL ENFORCEMENT ACTION HAS NOT BEEN TAKEN.**

## **10.0 PROSECUTIONS AND FORMAL CAUTIONS**

- 10.1 The Authority accepts the principle that failure to comply with formal notices should not automatically be the subject of prosecution. Formal cautions will be considered where criteria for a prosecution are satisfied, but the offence is of a less serious nature, having regard to Home Office Circular 18/1994 and other relevant guidance.
- 10.2 Formal cautions will be issued by an appropriately authorised and senior officer.
- 10.3 Persons who fail to comply with a formal notice will normally be prosecuted if the non-compliance meets both of the following criteria:
  - (i) Evidential test i.e. where the evidence is sufficient for a realistic prospect of successful prosecution; and

(ii) Public Interest test i.e. where the prosecution is in the public interest.

10.4 A check list will be completed and placed on the prosecution file together with a recommendation, before it is forwarded to legal section for action in line with section 7 of this Enforcement Plan.

## 11.0 PERFORMANCE STANDARDS

### SUMMARY

#### 11.1 COMPLAINTS

The Regulation Team will within the constraints of available resources aim to:

- acknowledge someone's complaint about a County Planning Matter within two working days of receiving it;
- treat the complaint as confidential, as far as possible, within the Authority;
- visit the site of the allegedly unauthorised development and ascertain what activities are taking place there, unless the Authority is satisfied that it already has sufficient information that renders a site visit unnecessary;
- contact the complainant again, within ten working days of the complaint, explaining what actions the Authority propose to take, or why the Authority think no formal enforcement action is needed; and
- tell the complainant about the Authority's decision to take formal enforcement action within ten days of the Authority making that decision.
- where possible resolve or remedy the alleged breach of planning control within 13 weeks.

## 11.2 MONITORING

The Regulation Team will within the constraints of available resources aim to:

- Monitor all Mineral extraction Sites 4 times per year.
- Monitor large domestic landfill sites 4 times per year.
- Monitor small non-hazardous waste landfill sites and Materials Recycling Facilities twice per year.
- Monitor sites in aftercare, dormant or permitted sites yet to commence once per year.
- Inspect 75% of all sites at least once per year.

11.3 Members of the Council's Planning Committee will be presented on a regular basis of not less than once per year with a report detailing the decisions made under delegated authority, performance statistics and enforcement update for the work of the Regulation Team.

END

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