



ENFORCEMENT POLICY STATEMENT

COMMUNITY SERVICES DEPARTMENT

MINERALS AND WASTE PLANNING GROUP

June 2005

INTRODUCTION

1. This Enforcement Policy Statement has been prepared in line with the advice contained in Enforcing Planning Control: Good Practice Guide for Local Planning Authorities 1997, published by the Office of the Deputy Prime Minister (OPDM).
2. The purpose of the Statement is to set out the principles and policies that the County Council will seek to follow in pursuance of its monitoring and enforcement responsibilities. These are set out to provide guidance for both members of the public and developers involved. It will also assist the County Council in considering the most appropriate action to take on specific enforcement and monitoring issues.
3. The County Council as Planning Authority has responsibility for discharging the development control planning functions associated with minerals extraction, management of waste and the County Council's own development approved under the provisions of Regulation 3 of the Town and Country Planning General Regulations 1992.
4. The County Council is required to enforce and monitor all development associated with mineral extraction and the management of waste, including all associated unauthorised development. Leicestershire has extensive mineral resources that are of both national and regional importance. Waste management facilities are required to meet the needs of industry and the public.
5. The County Council also undertakes to monitor its own development to ensure compliance with conditions attached to planning permissions granted by it, although statutory responsibility to do so rests with the District Council.
6. This Statement, consequently, deals only with the enforcement of planning control for mineral and waste management operations which is the main role of the development control function of the County Planning Authority.
7. The Good Practice Guide suggests that a statement of enforcement policy should address some or all of the following issues-
 - i) the main planning policies applicable in the Council's administrative area, as stated in its development plan;
 - ii) the type and incidence of enforcement problems;
 - iii) the resources (financial and staff) to be devoted to enforcing planning control, as part of the authority's planning function or in association with its other enforcement responsibilities;
 - iv) the procedure for dealing with complaints about allegedly unauthorised development;

- v) any special planning enforcement issues the authority may anticipate (e.g. unlawful winning and working of minerals; unauthorised waste-tipping.)
- vi) how the authority intends to monitor new building activity on sites where the building control function is not being carried out by the authority.

8. In formulating the Policy Statement particular reference has been made to

- The Town and Country Planning Act 1990
- The Planning and Compulsory Purchase Act 2004
- National guidance in Planning Policy Guidance Note (PPG) 18, “ Enforcing Planning Control”;
- Circular 10/97 “ Enforcing Planning Control”;
- relevant statements in the Leicestershire Development Plan;
- the need to maintain the integrity of specially protected areas, including Sites of Special Scientific Interest and Conservation Areas;
- the need to achieve a reasonable balance between protecting amenity and other interests of acknowledged importance throughout the authority’s area and enabling acceptable development to take place, even though it may initially have been unauthorised.

PLANNING POLICIES

9. The **Development Plan** in Leicestershire consists of:-
- (i) The Regional Spatial Strategy for the East Midlands (2005).
 - (ii) The Leicestershire, Leicester and Rutland Structure Plan (2005).
 - (iii) The Leicestershire Minerals Local Plan (1995).
 - (iv) The Leicestershire, Leicester and Rutland Waste Local Plan (2002).
 - (v) The various District wide Local Plans produced by District and Borough Councils in Leicestershire.
10. In time the Minerals and Waste Local Plans will be superseded by the Minerals and Waste Development Plan Documents produced by the County Council, which are expected to be adopted in 2007/8. District Local Plans, will also be replaced in time by Local Development Plan Documents produced by the District and Borough Councils.
11. The Development Plan aims to protect the County's environment, give guidance on where development should be allowed and where land should be conserved. Amongst other matters, it recognises the requirement to ensure a supply of minerals, adequate waste disposal and treatment facilities for the needs of the community, balanced with its responsibility to keep the environmental impact and other effects of such development to an acceptable level.
12. In taking any decision on the need for enforcement action, the County Council needs to take account of the provisions of Section 38(6) of the planning and Compulsory Purchase Act 2004, which broadly requires planning decisions to be taken in accordance with the policies of the development plan. These will be taken into account when considering whether to take enforcement action.

ENFORCEMENT POLICY 1 (EP1)

THE COUNTY COUNCIL WILL GIVE DUE REGARD TO THE PROVISIONS OF THE DEVELOPMENT PLAN FOR LEICESTERSHIRE IN THE ENFORCEMENT OF PLANNING CONTROL.

TYPE OF ENFORCEMENT PROBLEMS

13. Enforcement action in the County can arise from many types of operations. Through the monitoring of approved developments and the information collected during enforcement work and dealing with complaints received, the following have been identified as problem areas:-

- (a). Unauthorised waste management development
- (b). Unauthorised mineral extraction
- (c). Non-compliance with conditions on planning permissions relating to:
 - Soil Stripping and Storing
 - Extraction
 - Vehicle Movements
 - Dust and Noise Pollution
 - Rock Blasting
 - Extent of Working Area within the Planning Permission
 - Mineral Processing
 - Type and Quantity of Waste Tipping
 - Site Drainage
 - Landscaping
 - Restoration
 - Aftercare
- (d). Poor operational standards on existing sites
- (e). Lack of adequate restoration and aftercare.

14. Lack of effective control in these areas can lead to serious harm to the public amenity, especially (a) and (c). In all cases, action needs to be quick and effective to minimise the affects of unauthorised development, particularly in areas of environmental sensitivity.

COMPLIANCE WITH PLANNING CONTROL

15. In exercising its function to ensure compliance with planning control, the County Council will have regard to all relevant legislation and guidance.
16. In particular Planning Policy Guidance 18: Enforcing Planning Control (1991) gives guidance on enforcing planning control and Circular 10/97: Enforcing Planning Control: Legislative provisions and procedural requirements (1997). Planning Authorities are expected to have regard to this guidance in deciding whether enforcement action is expedient to remedy a breach of planning control, where earlier attempts to do so by negotiation have proved unsuccessful. Due regard has been given to the guidance in formulating this policy statement.
17. In July 1997 the Department of the Environment and the Regions (DETR) published its most recent guidance "Enforcing Planning Control; Good Practice Guide for Local Planning Authorities". The primary intention is that the document should complement Circular 10/97 and PPG18. The Guide suggests that when considering whether to use its discretionary enforcement powers, the authority will be expected to ensure that its decision to issue an enforcement notice takes full account of relevant judicial authority, policy guidance in PPG18 and any well publicised appeal decisions.
18. The Government's view is that the integrity of the planning system depends on the Local Planning Authority's readiness to take effective enforcement action when it is expedient to do so. Public confidence in the planning process is quickly undermined if unauthorised development, which is unacceptable in planning terms, is allowed to proceed without any apparent attempt by the LPA to intervene before serious harm to amenity results. Any action must not be based on irrational factors, or taken without consideration of the relevant facts and planning issues, or based on non-planning grounds.
19. Planning guidance and government legislation has provided LPA's with substantially improved powers to enforce planning control. This may lead to raised expectations by the public of a quicker, more certain and more effective enforcement regime. However, legal action may not result in a quick conclusion.
20. If the LPA invites the submission of an application to regularise a breach of planning control there will be a need for there to be consultation on such an application with members of the public, parish councils, statutory and other consultees.

Circular 10/97 states:

"Enforcement should always be commensurate with the breach of planning control to which it relates. For example, it is usually inappropriate to take formal enforcement action against a minor or technical breach of control which causes no harm to amenity in the locality of the site."

21. The County Council's policy, will be to seek a swift remedy to any breach of planning control, or non-compliance with conditions attached to a planning permission. In the first instance, by negotiation and persuasion, or where appropriate, to regularise unauthorised development by the granting of a planning permission, subject to conditions, consistent with Development Plan Policies.
22. Where negotiation and persuasion is not possible, either because planning permission would not be appropriate, or those contravening will not submit a planning application for determination, or where there is serious harm to the public amenity, then the County Council will take action commensurate with the breach of planning control.

ENFORCEMENT POLICY 2 (EP2)

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

- (i) WHERE A BREACH OF PLANNING CONTROL IS CAUSING SERIOUS HARM TO THE ENVIRONMENT, OR PUBLIC AMENITY, TAKE IMMEDIATE ACTION TO STOP FURTHER DAMAGE;**
- (ii) WHERE INVESTIGATIONS REVEAL A BREACH OF PLANNING CONTROL, IN THE FIRST INSTANCE, SEEK TO RESOLVE ANY PROBLEMS BY OFFERING THE OPERATOR AN OPPORTUNITY TO REMEDY THE BREACH WITHIN A REASONABLE PERIOD OF TIME 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 PROTECT THE ENVIRONMENT AND THE AMENITY OF THE AREA IN ACCORDANCE WITH THE PROVISIONS OF THE DEVELOPMENT PLAN;**
- (iv) ENSURE THAT ACTION IS ALWAYS COMMENSURATE WITH THE BREACH OF PLANNING CONTROL;**
- (v) GIVE DUE REGARD TO CURRENT LEGISLATION, MINISTERIAL GUIDANCE, APPEAL DECISIONS AND RELEVANT JUDICIAL AUTHORITY;**
- (vi) TAKE INTO ACCOUNT COMMENTS MADE BY THE GENERAL PUBLIC AND CONSULTEES;**
- (vii) TAKE INTO ACCOUNT THE NEED TO ACHIEVE A REASONABLE BALANCE BETWEEN PROTECTING AMENITY AND OTHER INTERESTS OF ACKNOWLEDGED IMPORTANCE THROUGHOUT THE AUTHORITY'S AREA;**

(viii) ENABLE ACCEPTABLE DEVELOPMENT TO TAKE PLACE.

(ix) MAINTAIN EFFECTIVE LIAISON AND CONTACT WITH THE GENERAL PUBLIC AND DEVELOPERS.

23. Appeal costs may be awarded against the authority in relation to an appeal to the Secretary of State against an enforcement action if it is shown that the authority has behaved “unreasonably” during the enforcement proceeding and the appellant has incurred unnecessary expense.
24. As is the case in other areas of Leicestershire County Council’s responsibility where Council actions have been deemed not to be balanced and reasonable, or even negligent whilst enforcing planning control, recourse to the Ombudsman by an aggrieved person may be requested to address any complaint.

RESOURCES

25. The enforcement of planning control, including the monitoring of permitted sites, is undertaken by officers within the Planning Group of the County Council. Delivering an effective Monitoring and Enforcement service is a resource hungry activity. The County Council will need to balance the demands on this part of the service against other demands and will need to keep this under review.
26. If enforcement is to be effective there is a need to draw upon a variety of skills within the Group, elsewhere within the Council and from outside agencies. For example, specialist legal, archaeological, ecological, pollution control, environmental health and highway advice may well be required before deciding appropriate action.

MONITORING

27. The enforcement of planning control is well established as part of the general planning system. Nevertheless, unauthorised mineral and waste operations can pose particular enforcement problems that require frequent monitoring.
28. To ensure confidence in the planning system it is essential that the public and operators are made aware of a fair and effective system of monitoring of all authorised and unauthorised development.
29. Monitoring of permitted sites is an essential tool of controlling development. It is this 'pro-active' approach that often enables the Council to anticipate likely breaches of planning control arising before they occur. It enables immediate action to be taken to ensure that deterioration in the situation does not arise, thereby lessening the impact on resources, at a later date. A 'pro-active' approach can only be pursued with a structured monitoring regime, with appropriate staff and the technical equipment to carry out these duties.
30. Where practicable and dependent on the various operations which are carried out on mineral and waste management sites, the County Council will seek to allocate resources to carry out regular monitoring visits to permitted developments as often as necessary to secure compliance and monitor planning conditions. Where there are complex conditions or a history of non-compliance, these sites will be inspected on a more frequent basis.
31. The Good Practice Guide recognises that the business of investigating and remedying alleged breaches of control is labour intensive. The resources allocated both in terms of staff and equipment (including 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. For example, to enable independent monitoring of compliance with blast vibration and noise levels, specialist equipment is required. It is recommended in the Guide that this review should take place at least once a year, possibly to coincide with the annual budget process.

ENFORCEMENT POLICY 3 (EP3)

THE COUNTY COUNCIL WILL ALLOCATE A LEVEL OF RESOURCES TO THE ENFORCEMENT OF PLANNING CONTROL SUFFICIENT TO ACHIEVE:

- (i) THE OBJECTIVES OF THE POLICY STATEMENT AS SET OUT IN POLICY EP2;**
- (ii) THE BEST PRACTICAL OPTION TO REMEDY A BREACH, WHICH TAKES INTO ACCOUNT THE COSTS AND BENEFITS ARISING;**
- (iii) THE MAINTENANCE OF A SYSTEM OF MONITORING AND INSPECTION OF AUTHORISED MINERAL AND WASTE SITES; AND**
- (iv) THE COLLECTION OF DATA AND STATISTICS BY THE MOST EFFICIENT MEANS, INCLUDING THE USE OF THE BEST AVAILABLE AND APPROPRIATE TECHNOLOGY**

COMPLAINTS

32. It is the responsibility of the County Planning Authority to deal with complaints relating to alleged breaches of planning control for mineral and waste development.
33. The County Council has in its Corporate Complaints Procedure identified objectives it wishes to meet when dealing with a complaint, these have been adopted and extended for dealing with complaints about minerals and waste development, to include: -
- Register and acknowledge the complaint within 3 working days of receiving it.
 - Treat the complaint as confidential as far as practicable.
 - Respond to the complainant within 10 working days of the complaint being received. Explain what action the authority intends to take.
 - Where possible remedy the breach, or alleged breach of planning control within a timetable that has been clearly set out.
34. 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 will be recorded on a complaints register and stored thereafter. The complaints register will enable the receiving officer to detail the nature of the complaint and action the has taken to resolve it. Keeping a record of complaints will enable the Council to assess and improve its overall service, which will allow the Planning Group to identify problems within a development, enabling an earlier response.
35. It may not always be necessary to visit sites to satisfactorily resolve a complaint. However, 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 Council decides not to take formal enforcement action the reason for this decision will be explained to the complainant. If, however, the Council elects to instigate enforcement proceedings against the offender the complainant will be notified of the progress of that action.

ENFORCEMENT POLICY 4 (EP4)

THE COUNTY COUNCIL IN DEALING WITH ALL COMPLAINTS CONCERNING AN ALLEGED BREACH OF PLANNING CONTROL WILL:

- (i) TREAT THEM CONFIDENTIALLY AS FAR AS PRACTICAL;**
- (ii) ENSURE THAT THEY ARE ACKNOWLEDGED AND PROPERLY RECORDED WITHIN THREE WORKING DAYS OF RECEIPT AND THEREAFTER INVESTIGATED;**
- (iii) DEAL WITH THEM EXPEDITIOUSLY IN A PROFESSIONAL AND EFFICIENT MANNER;**
- (iv) VISIT THE DEVELOPMENT WHERE NECESSARY, AND ESTABLISH WHETHER THERE HAS BEEN A BREACH OF PLANNING CONTROL;**
- (v) RESPOND FULLY 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 THE ALLEGED BREACH;**
- (vii) NOTIFY THE COMPLAINANT IF THE COUNTY COUNCIL DECIDES TO COMMENCE ENFORCEMENT ACTION AGAINST THE ALLEGED BREACH OF PLANNING CONTROL; AND**
- (viii) BE PREPARED TO EXPLAIN THE REASON WHY FORMAL ENFORCEMENT ACTION HAS NOT BEEN TAKEN.**

36. In addition to the powers available to the Council relating to breaches of planning control there are other agencies which have regulatory powers and responsibilities that can assist in these matters (e.g. District Council Environmental Health Officer, Environment Agency etc.). The Council intends to continue to work with these agencies, often in partnership, to secure an efficient remedy to a breach. Often it will be possible to undertake a dual enforcement approach.

ENFORCEMENT POLICY 5 (EP5)

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.

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

WHAT IS EXPECTED OF MINERAL EXTRACTION AND WASTE MANAGEMENT INDUSTRIES, OPERATORS AND LANDOWNERS

37. To enable the County Council to undertake its responsibilities as a planning authority we expect them:

- (a) To comply with the requirements of any planning permissions and, where there is a need for permission, not to carry out that work before planning permission is obtained. In this respect, they should not anticipate planning permission being granted and should not take action, which would cause damage, or serious harm to interests of acknowledged importance.
- (b) To work with the County Council in employing the best available techniques to raise the design, operation, restoration and aftercare standards in the County arising from the winning and working of minerals and the operation of waste management facilities.