

## **Planning Enforcement Protocol**

### **Planning Applications Group, Kent County Council**

#### **Introduction**

Planning enforcement is a high-profile County Council function. It underpins the Development Management service within the Planning Applications Group. Available powers and controls run with the land and in turn derive from statute. The type and degree of action is discretionary (with some qualifications), allowing a flexible and proportionate approach to cases. Each case in turn, has to be considered on its own individual merits. Addressing planning enforcement issues is not an optional activity for Local Planning Authorities. There is a high Member and public expectation for this authority to act decisively within its own powers and in a seamless way with allied enforcement agencies. The priority is to stop any amenity impacts and damage to the environment, followed by repair to the land.

#### **Purpose of the Protocol**

The aim of this Enforcement Protocol is to set the standards against which the performance of the County Council's Planning Applications Group can be judged when investigating an alleged breach of planning control. It sets out how we will respond to individual complaints about breaches of planning control, the process for investigating and recording complaints and the timescales involved. It also deals with breaches identified during routine monitoring of sites.

#### **The Enforcement Role of the Planning Applications Group**

As the County Planning Authority, the Council has responsibility for mineral and waste development (county matters). It is also the planning authority for the County Council's own development such as new roads and transportation schemes, educational facilities under Regulation 3 of the Town and Country Planning Regulations. The County Council only has powers to deal with enforcement matters arising from these types of developments. Borough/District Councils deal with all other planning matters, including any mix of uses.

The County Council does not deal with enforcement matters arising from:

- fly tipping (such as a sofa in a ditch),
- developments permitted by the Borough/District Council. This includes the importation and exportation of material to development sites where the material is an integral part of the permitted scheme and is necessary to enable the development to go ahead. The County Council will however have a role in assessing whether any imported material is 'necessary' in order to implement the permitted scheme.<sup>1</sup>

---

<sup>1</sup> It should be noted that the deposit of any additional material is waste depositing and will require planning permission from the County Planning Authority. However, the importation of waste materials to prepare land in anticipation of future development (but where no application has been submitted) would fall within the remit of the County Council.

## APPENDIX 4

- Waste activities on sites where there are multiple contraventions for which the district council is the enforcement authority for the other contraventions.

Enforcement of these issues is the responsibility of the relevant Borough/District Council. The enforcement of waste permitting issues is dealt with by the Environment Agency.

The County Council has a responsibility to ensure that planning conditions imposed on planning permissions it grants are adhered to and that any unauthorised activities are brought within planning control either by the grant of planning permission, or through enforcement action or negotiation. The overall aim of the enforcement function is to control unauthorised development for which the County Council is responsible as a planning authority and to secure a remedy of unacceptable impacts. Where there are breaches of planning control, the Authority has discretionary power to take enforcement action, where this is in the public interest.

In dealing with breaches arising from County Council development, it is recognised that the Council is unable to take legal action against itself. Nevertheless, protocols are in place to ensure internal compliance, including the enforcement of development contracts and the reporting of breaches to portfolio holders.

The District and Borough Councils also have the authority to enforce controls over development undertaken by the County Council under Regulation 3 of the Town and Country Planning General Regulations 1992 and providing they obtain the agreement of the County Council for waste management activities.

The Planning Application Group also recognises the merit of pro-active work to reduce the number of enforcement cases. Experience has shown that often the most substantive breaches of control stem from the errant disposal of spoil from permitted sites. The Group therefore implements a number of initiatives to address this issue. These include:

- Spoil managing initiatives with advice to major developers on available outlets; re-use of surplus materials and on seeking planning permission for alternative sites.
- Liaison role with mineral and waste companies.
- Liaison role with district/borough councils and other agencies to provide an early warning system on potential and developing breaches.
- Planning advice to operators to complement Environment Agency advice already being sought on the waste permitting regime.

### **Identification of Breaches of Planning Control**

There are two main routes to enforcement. The first is reactive and driven by complaints from the public either individually or via parish councils, elected Members, industry or other regulatory bodies. The other route is self-driven and arises from routine monitoring or chance observation and inspection of sites. Potential planning breaches of control can arise on permitted or unauthorised sites.

Experience has shown that the key generator of complaints is unauthorised waste activities, such as spoil disposal in the countryside. Nevertheless, permitted, yet badly managed waste facilities can attract similar complaints.

### **The Enforcement Framework**

Planning enforcement is a complex area of planning law. The legislative framework for enforcement action is principally contained within the:

- Town and Country Planning Act 1990
- Planning (Listed Buildings and Conservation Areas) Act 1990
- Planning and Compensation Act 1991
- Local Government Act 2000
- Planning and Compulsory Purchase Act 2004
- Localism Act 2011.

Statutory Instruments include:

- Town and Country Planning General Regulations 1992
- Town and Country Planning (General Development Procedure) Order 1995
- Development Management Procedure Order 2010

In the waste planning field, the European Waste Framework Directive 2008 is further relevant.

National policy guidance on planning enforcement has been streamlined and is now consolidated within the National Planning Policy Framework 2012 (paragraph 207 on page 47). The County Council has the intention of supplementing this guidance from a local perspective through the Minerals & Waste Local Plan process.

Good Practice is also shared through various peer groups that the County Council has joined.

### **Planning Enforcement Tools**

A range of tools is available to the county planning authority in dealing with planning breaches. These include:

Planning Contravention Notice (PCN) - Enables the planning authority to gather information about unauthorised development on land and land ownership.

Breach of Condition Notice (BCN) – used when there is a breach of a condition attached to a planning permission. There is no right of appeal other than on a point of law.

Enforcement Notice – used where there has been a breach of planning control and it is expedient to serve a Notice. This Notice must be served on the owners, occupiers and all other parties who have an interest in the land affected by the Notice. It comes into effect not less than 28 days after its issue in which time an appeal can be made. Any appeal stops the Notice taking effect until it is determined. A Stop Notice can be issued to arrest the activity up to the period of confirmation (or otherwise) of any Enforcement Notice.

Stop Notice – used where it is necessary to stop activities pending an Enforcement Notice taking effect or when an appeal has been lodged against the Enforcement Notice. A Stop Notice can only be used where an Enforcement Notice has been served. As compensation can be sought against the County Planning Authority against this Notice, a financial cost benefit analysis is required prior to the serving of this Notice.

Temporary Stop Notice – a free-standing action, calling any alleged planning breach to a halt for up to 28 days, as a precursor to further enforcement action.

Injunctive Relief – notwithstanding any other actions being taken, an injunction (interim/emergency or final version) can be sought from a judge in order to restrain any breach of planning control, causing significant harm to local amenity and the environment.

Statutory Power to enter Land – Power to enter onto land to obtain information required for enforcement purposes under s196A and s324 of the Town and Country Planning Act 1990.

Default action (and recovery of reasonable expenses) when the requirements of an Enforcement Notice have not been met. The Authority may enter the land and correct the breach itself using direct powers. This power is likely to be used only in exceptional circumstances.

### **Standards - Guiding Principles**

#### **Discretionary, Rational and in the Public Interest**

It should be remembered that the taking of enforcement action is a discretionary function. When taking any action, it needs to be carried out in the public interest. The investigation of alleged breaches of planning control is not however a discretionary task. Investigations need to be carried out in accordance with this Protocol.

The delivery of the enforcement service shall be based upon the principles of fairness, honesty and openness. In carrying out the Group's enforcement function, procedures and decisions shall have regard to the Human Rights Act, 1998 (HRA), Crime and Dis-Order Act 1998 and equal opportunities legislation. Any actions pursued will need to meet these HRA expectations in terms of:

- Justification
- Authorisation
- Proportionality
- Auditability
- Necessity

Any decision to take action (or not to) needs to be rational and capable of scrutiny. In considering whether to proceed, account needs to be given to the possibility of maladministration, which may arise where enforcement action was clearly necessary and has not been taken.

In accordance with the proportionality principle, it is important that any action taken is reasonable and measured given the breach of control. Formal action for instance would not be needed against a trivial or technical breach of control which causes no harm to amenity in the area surrounding the site. Should harm apply however (e.g. from dust, noise and groundwater impacts) there is a particular need to maintain the integrity of specially protected areas – i.e. RAMSAR sites (wetlands of international importance), Special Protection Areas, Special Areas of Conservation, Sites of Special Scientific Interest, Scheduled Ancient Monument, Areas of Outstanding Natural Beauty and conservation areas and listed buildings.

In general, enforcement action should only be taken when a breach is unacceptable on planning grounds. However, in deciding whether to take action arising from a breach of condition, the Group shall have particular regard to breaches of any conditions, that were imposed to protect or mitigate environmental or amenity impacts (without which, planning permission would not have been granted).

The scale and the determined nature of a breach of planning control shall be taken into account in determining the nature of any enforcement action. The level of co-operation being shown by the alleged contravener is another important factor. A decision not to take action must be capable of being justified. In such cases, a written record has to be kept setting out why action was not pursued. A copy is retained on file.

### **Relevant Authority**

Any action should relate to planning considerations and not attempt to substitute for action by other agencies (such as Environment Agency or District/Borough Councils) under their legislation. Upon receipt of a breach relating to another authority or agency's interest, details shall be forwarded to that party, as quickly as possible and the complainant advised accordingly. This referral will normally take place within 3 days of establishing the relevant jurisdiction to deal with the complaint.

The planning enforcement service is discretionary and the use of resources within the Group will need to be balanced against the statutory development management (control) function and the County Council's corporate priorities. In striking a balance, it will be necessary for the Group to deal strictly with its own enforcement responsibilities. Where the County Council and the District/Borough Council or the Environment Agency has a potential enforcement interest, the Group will negotiate with the other interested parties the means to bring out an effective enforcement solution. This will often result in cross-authority working.

### **Informal or Formal Solution?**

As far as possible, the authority seeks to deal with any breach of planning control by negotiation and informal action, supported if appropriate through the submission of a planning application to help regularise the activity. The Group will avoid lengthy negotiations unless it is clear that they are likely to lead to a satisfactory remedy. Where swift action is taken to remedy breaches of planning control, it will not normally be necessary to take formal enforcement action.

If in seeking to resolve a breach of planning control an officer considers that a retrospective application is unlikely to be successful, this informal opinion shall be forwarded to the operator/landowner at the earliest opportunity.

In determining the appropriate course of action, consideration will be given to the criteria set out in Figure 1. In the case of significant risk of irreversible harm to the priority 1 areas set out in Figure 1, it is recognised that formal action may be more likely.

In more serious cases where formal notices and/or injunctions are not complied with, the authority shall adopt the principles of the Police and Criminal Evidence Act 1984 (PACE) and Regulation of Investigatory Powers Act 2000 (RIPA), in collecting evidence for a potential court case.

### **Health and Safety Considerations**

The planning enforcement service has to be carried out within Health & Safety rules. That is to protect officers in the conduct of the work. The authority has powers of entry to any land where breaches are suspected (under s196A and s324 of the Town and Country Planning Act 1990). A number of more serious cases require police protection in the execution of these duties. All complaints received from members of the public and other operators have to be treated as confidential and are data protected. Release of such information is strictly forbidden for reasons of personal safety.

### **County Council Development**

If the breach concerns development by the authority itself (Regulation 3 development or joint Regulation 3 development), the matter should be resolved through internal procedures and sanctions. The County Council is unable to take legal action against itself. In the event that formal action is necessary, this could be pursued by the relevant district / borough council. A contingency is therefore in place for serious breaches of planning control to be referred to the borough / district council for formal enforcement as a last resort and on a case by case basis.

### **Timescales**

It is important to recognise the need for some flexibility in the timescales needed to resolve breaches of planning control. Negotiations may take time but are often the key to a good outcome. In more serious cases, the emphasis will be on balancing the urgency to remedy the planning breach with mounting a legal action, with the best chance of success. Action in the courts requires evidence to prove the offence against an individual or company 'beyond reasonable doubt.' The collation of such evidence is time consuming. Pre-trial delays are also common.

### **Procedure for Investigating a Potential Breach of Planning Control**

This procedure will be used when dealing with complaints concerning potential breaches of planning control brought to the attention of the County Planning Authority.

The County Planning Authority will investigate every complaint concerning a potential breach of planning control it receives regarding minerals and waste management matters for which it is the planning authority and for alleged breaches relating to County Council developments (Regulation 3 development).

#### **Action Upon Receipt of Details of a Potential Breach of Planning Control**

Upon receipt of details of an alleged breach, an **initial assessment** shall be made as to whether the breach potentially falls within the **High Priority** rating on Figure 1. If so, the details of the breach shall be registered and normally allocated to a case officer within 1 working day of receipt.

In all other cases, details should normally be registered and forwarded to a case officer within 2 working days of receipt.

In order that the case officer can keep all parties informed it is preferable that complaints are not made anonymously. Personal details will remain strictly confidential.

#### **Within 2 days of receipt of details:**

- Where the potential breach has been identified as a result of a complaint, it will be **acknowledged** within 2 working days and the complainant will be advised of the case officer dealing with the complaint.
- An **initial assessment** shall be made as to whether the details clearly relate to a breach of control for **another local authority or agency** to address. If so, the details shall be forwarded to the relevant authority/agency as soon as possible, normally within 3 working days.

#### **Upon receipt by the Case Officer**

The Case Officer shall **assess the potential seriousness** of the alleged breach of planning control against the table set out in Figure 1. This will determine the timescales that will normally be used to commence an investigation

The advice in the Guiding Principles section above shall be used to **determine the appropriate means of resolving** any breach. In particular, negotiations will form an important part of the process.

Where a breach of planning control is established, **the operator/occupier** or the **relevant County Council officer /joint party representative** (in the case of joint development with the County Council) will be **advised** in writing of:

- nature of the breach of planning control;
- the enforcement powers likely to be used by the county planning authority;
- the nature and extent of work necessary to address the planning breach;
- the time allowed to voluntarily carry out necessary work to remedy the breach;

## APPENDIX 4

- of the opportunity to apply for planning permission to cover the unauthorised development;

**Unless there is an immediate and significant risk to the environment**, negotiation and resolution by **informal action will normally be pursued** prior to the taking of any formal enforcement action. However, this is usually conditional on the co-operation of the operator/occupier and on the breach having stopped. **Where a negotiated solution is sought:**

- The Group will seek within 2 weeks of being notified of the breach of planning control, a written statement of intent from the land owner or operator to remedy the breach within an agreed specified timescale.
- The means to remedy the breach of planning control should be concluded within the agreed timescale set out in the above statement of intent. The timescale will need to take account of the complexity of the issue, and seasonal implications. The objective is to resolve the breach in the most effective way, balancing environmental concerns. As a guide, the Unit would usually expect minor breaches to be resolved within 3 months of the breach of planning control being identified.
- After this period, unless there are exceptional circumstances then formal enforcement is likely to be pursued;
- In deciding whether to take formal action, consideration needs to be given to the good practice advice supporting enforcement action and the above guiding principles.

A **site visit** will normally form part of the investigation, although in some instances it may be possible to resolve a complaint by reference to the extant planning permission or by discussion with the operator/occupier.

Where a site visit is undertaken as part of the investigation, a note shall be taken of the visit and placed on file. The note should be a full and accurate record and drafted in the light that it could form the basis of a legal document. Similarly, a **note of any discussions** with the operator/occupier or an assessment of the planning permission shall be placed on file.

Where appropriate, **liaison** will be undertaken **with other agencies** (ie Environment Agency, Borough/District Council, Highway Authority) to establish whether the complaint may affect their interests or result in a breach of legislation administered by them. On occasions joint action may be pursued with those other parties. If the more detailed assessment establishes that the potential breach rests solely with another agency, then the details will be referred to them as speedily as possible (normally within 3 working days), and the complainant advised accordingly.

Where immediate action is required to remedy a breach of planning control, then **justification** shall be given in writing to the **operator/occupier or the relevant County Council officer/joint party representative** (in the case of County Council development or joint development with the County Council). This notification shall be given within 5 days of the breach being established.

The **complainant** shall be kept **advised** of progress in dealing with the complaint on a regular basis. Where progress is given in a telephone conversation, then a record of the telephone conversation shall be placed on file.



## APPENDIX 4

The Group will seek to advise the complainant and the operator/ landowner of **initial conclusions** within 10 working days.

The operator, landowner or relevant County Council Officer/joint party representative shall be advised of the final outcome and any key stages of the process of the investigation. Where, following investigation a reported breach is found to be incorrect, then the complainant and the party the subject of the alleged breach shall be provided with formal notification of this.

The **progress** of any investigation and changes on site shall be **reviewed** at the Group's monthly business meeting and then **formally reported** to the County Council's Regulation Committee.

### **Member Involvement**

Once County Council involvement has been established in any alleged breach of planning control, the **local County Member** shall be **advised** in writing at the earliest opportunity. They shall then be advised at key stages and of the eventual outcome of the case.

All planning control breaches shall be reported to the Regulation Committee, which meets three times a year. The Group has delegated authority in dealing with enforcement issues, although action containing a risk of compensation has to be referred to the Regulation Committee or a specially convened Members Panel. Similarly, any enforcement matter or local Member concern may be referred to the Committee at the request of the Chairman.

**FIGURE 1: STANDARD RESPONSE TO ALLEGED BREACHES OF PLANNING CONTROL**

PRIORITY RATING	SERIOUSNESS OF ALLEGED BREACH	RESPONSE TIME <sup>1</sup>	Notes
<b>HIGH</b>	<p><b>Significant risk of irreversible harm<sup>2</sup></b></p> <p>Activities causing <b>direct</b> and potentially irreversible harm on or Within <b>Priority 1 areas</b> i.e.</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> internationally designated sites, including: RAMSAR, SPAs and SACs</li> <li><input type="checkbox"/> nationally designated sites, such as SSSIs, Scheduled Ancient Monuments, habitats of statutorily protected species, AONB, listed buildings, conservation areas and protected trees</li> <li><input type="checkbox"/> Human health and safety</li> <li><input type="checkbox"/> Water and archaeological resources</li> </ul>	As soon as possible (but at least within 3 working days)	<p>Typically includes <b>direct</b>:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> removal of habitat / trees / hedgerows / and other protected features (e.g. listed walls)</li> <li><input type="checkbox"/> tipping on original soils</li> <li><input type="checkbox"/> tipping of non-inert waste</li> </ul> <p>Especially by known contravenors, without planning permission and involving an activity which is unlikely to be granted permission</p> <p>This may include excessive noise, dust, nuisance or large vehicles using unsuitable rural sites.</p>
<b>MEDIUM</b>	<p><b>Potential to cause harm to the environment</b></p> <p><b>Indirect</b> impacts to the <b>Priority 1 areas</b> (listed above)</p> <p>Impacts to <b>Priority 2 areas</b>, including:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> all other designated areas (e.g. MGB, SLA, Local Landscape Areas....)</li> <li><input type="checkbox"/> sites within consultation safeguarding zones (e.g. Groundwater Protection Areas, Land liable to Flood)</li> </ul> <p>and disturbance to</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> third parties, causing and having potential to cause a loss of amenity</li> <li><input type="checkbox"/> human health and safety</li> </ul>	Normally within 5 working days of receipt of details of potential breach of planning control	<p>Includes <b>direct</b> and <b>indirect</b> impacts and disturbance from:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Traffic (e.g. mud on the road)</li> <li><input type="checkbox"/> Noise</li> <li><input type="checkbox"/> Odour</li> <li><input type="checkbox"/> Visual intrusion</li> <li><input type="checkbox"/> Windblown dust</li> <li><input type="checkbox"/> Contaminated water (with attendant risk of pollution to groundwater resources)</li> </ul> <p>Damage to and removal of landscape features (e.g. trees, hedgerows, verges &amp; walls)</p> <p>Also, non-approval / compliance with conditions precedent (e.g. starting to operate a waste transfer station before details are approved and site preparation works have been done)</p>
<b>LOW</b>	<p><b>Minor breaches of conditions on permitted sites</b></p> <p>Minimal disturbance to the environment and local amenity</p>	Within 14 days of receipt of details of potential breach of planning control	<p>Often emerges during site monitoring and usually involves:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Minor changes to approved schemes (typically location or design related)</li> <li><input type="checkbox"/> Late submission of details (not relating to a condition precedent - e.g. landscaping scheme)</li> </ul>

<sup>1</sup> This relates to the period in which to commence investigation. The length of time necessary to resolve the breach of planning control will vary on a case by case basis.

<sup>2</sup> When deciding priority, weight needs to be given to the nature and scale of the irreversible damage and what is the impact of delaying action.

### **Monitoring**

Sites where breaches of planning control have been identified shall be scheduled for regular monitoring. Details of the scale and frequency shall be set out in the Group's Monitoring Programme and influenced by the nature of the breach of planning control and the problems identified.

Local Liaison Groups are in place with the main mineral and waste companies. Any unresolved breaches of planning control shall be raised at the relevant Liaison Group with the intention of swiftly resolving the issue to the satisfaction of the County Planning Authority and affected parties.

### **Protocol Review**

The Protocol shall be reviewed when circumstances such as key changes in legislation arise which need to be reflected in the conduct of our planning enforcement service. This frequency however, may be increased if the local guidelines mentioned under the 'Enforcement Framework' above come into play. They would be updateable on a 'rolling' basis.

### **Contacts**

#### **Kent County Council**

Complaints concerning alleged breaches of planning control relating to minerals and waste development and County Council development should preferably be made in writing and addressed in general to:

Sharon Thompson,  
Head of Planning Applications Group,  
Kent County Council  
Invicta House  
County Hall  
Maidstone  
Kent. ME14 1XX

Telephone: (01622) 221070  
Fax (01622) 221072

email: [planning.applications@kent.gov.uk](mailto:planning.applications@kent.gov.uk)

More specifically, the following Team Leaders may be contacted according to the nature of the alleged breaches:

Robin Gregory (01622) 221067 ( <a href="mailto:robin.gregory@kent.gov.uk">robin.gregory@kent.gov.uk</a> )	- Unauthorised minerals and waste matters
Mike Clifton (01622) 221054 ( <a href="mailto:mike.clifton@kent.gov.uk">mike.clifton@kent.gov.uk</a> )	- Waste breaches on permitted sites
Jim Wooldridge (01622) 221060 ( <a href="mailto:jim.wooldridge@kent.gov.uk">jim.wooldridge@kent.gov.uk</a> )	- Mineral breaches on permitted sites

Jerry Crossley (01622) 221052 - County Council Developments  
([jerry.crossley@kent.gov.uk](mailto:jerry.crossley@kent.gov.uk))

Consideration might also be given to contacting your County Councillor. Details of councillors and the areas they represent are available on the Kent County Council website, [www.kent.gov.uk](http://www.kent.gov.uk) within page <https://democracy.kent.gov.uk/mgMemberIndex.aspx?bcr=1> or by telephone on (0300) 3335540.

### **Other Useful Contacts**

The Environment Agency (03708) 506506    Medway Council (01634) 333333

The Borough/District Councils deal with the enforcement issues arising from other types of development. The main office numbers are set out below.

Ashford Borough	(01233) 331111
Canterbury City Council	(01227) 862000
Dartford Borough Council	(01322) 343434
Dover District	(01304) 821199
Gravesham Borough	(01474) 564422
Maidstone Borough	(01622) 602000
Sevenoaks District	(01732) 227000
Shepway District	(01303) 853000
Swale Borough	(01795) 417850
Thanet District	(01843) 577000
Tonbridge & Malling BC	(01732) 844522
Tunbridge Wells Borough	(01892) 526121