

A large, stylized yellow flower graphic is positioned on the right side of the page. It features a large, rounded, multi-lobed head and several long, curved, ribbon-like petals or leaves extending downwards and to the left. The entire graphic is set against a solid blue background.

# Local Enforcement Plan

October 2025 – v.2

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**This information can be provided in another language or format**

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## Version Control

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## Glossary

Abbreviation	Meaning
AONB	Area of Outstanding Natural Beauty (For Lincolnshire: Lincolnshire Wolds National Landscape, Area of Outstanding Natural Beauty)
BGP	Biodiversity Gain Plan
BNG	Biodiversity Net Gain
BCN	Breach of Condition Notice
County Council	Lincolnshire County Council
DCO	Development Consent Order
EA	Environment Agency
EWN	Enforcement Warning Notice
HSE	Health and Safety Executive
LEP	Local Enforcement Plan
LGO	Local Government and Social Care Ombudsman
LMWLP	Lincolnshire Minerals and Waste Local Plan
MWPA	Minerals and Waste Planning Authority (Lincolnshire County Council)
NAPE	National Association of Planning Enforcement
NPPF	National Planning Policy Framework, December 2024
NPS	National Policy Statement
NSIP	Nationally Significant Infrastructure Project
PA08	Planning Act 2008
PCN	Planning Contravention Notice
PEO	Planning Enforcement Order
POCA	Proceeds of Crime Act 2002
PPG	Planning Practice Guidance
RPA	Relevant Planning Authority
TCPA90	Town and Country Planning Act 1990
TSN	Temporary Stop Notice

# 1 Introduction

- 1.1 Lincolnshire County Council is the **Mineral and Waste Planning Authority (MWPA)** for the county of Lincolnshire (which excludes the areas covered by the unitary authorities of North Lincolnshire and North East Lincolnshire).
- 1.2 The purpose of the Local Enforcement Plan (LEP) is to set out, for the benefit of the public and developers/operators, the objectives, and priorities that the County Council will seek to follow in pursuance of its monitoring and enforcement responsibilities including the investigation of alleged cases of unauthorised development. It will also assist the County Council in considering the most appropriate action to take on specific enforcement and monitoring issues.
- 1.3 The planning functions relating to minerals and waste matters are often referred to as “county matters” and are defined by Schedule 1 to The Town and Country Planning Act 1990 and the Town and Country Planning (Prescription of County Matters) (England) Regulations 2003. The County Council as the MWPA has responsibility for discharging the development management planning functions associated with:
  - minerals extraction (as the Mineral Planning Authority);
  - the management of waste (as the Waste Planning Authority); and
  - the County Council’s own development – these are developments approved under the provisions of Regulation 3 of the Town and Country Planning General Regulations 1992 (as amended). Such applications relate to most road schemes, libraries, fire stations and schools under the control of the County Council and those where the County Council has an interest.
- 1.4 The County Council has responsibility for enforcing and monitoring development associated with mineral extraction, the management of waste and Nationally Significant Infrastructure Projects when we are the Responsible Planning Authority (refer section 12) where expedient to do so. This would include unauthorised development, non-compliance with planning conditions and clauses within s106 Planning Obligations which are known as breaches of planning control. Lincolnshire has extensive mineral resources that are of both national and local importance. Waste management facilities are required to meet the needs of business and the public and to minimise the amount of waste which has to go to final disposal in landfill sites.
- 1.5 Most other aspects of planning within Lincolnshire (i.e. not relating to minerals or waste), such as housing, industry, commerce, and recreation are dealt with by the seven constituent district / borough / city councils, namely:
  - Boston Borough Council
  - City of Lincoln Council
  - East Lindsey District Council
  - North Kesteven District Council
  - South Holland District Council
  - South Kesteven District Council and
  - West Lindsey District Council

Each district / borough / city council is responsible for producing its own local enforcement plan to cover how they will deal with breaches of planning control.

- 1.6 Should a breach of planning control occur in relation to the County Council’s own development, the

County Council is not able to take enforcement action against itself. Whilst technically the local district / borough / city council could initiate such action against the County Council, this would be highly undesirable - not least due to the potential drain on the public purse. This LEP therefore sets out (section 9) how the County Council will seek to resolve any reported breaches of planning control relating to such development internally.

- 1.7 The County Council is tasked with taking appropriate action once it becomes aware of a breach of planning control. It has discretion to take formal action, to discuss a remedy either by requesting a planning application or to remove the harm which is causing the breach, or if the expediency test is not met then to take no action given the circumstances and potential greater harm that resolving the breach might cause.
- 1.8 The relevant planning legislation allows some limited development without the need for someone to make a planning application. This is known as permitted development, as defined by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) and the Town and Country Planning (Use Classes) Order 1987 (as amended). If a structure, change of use of land or engineering operation is permitted development, a planning authority cannot take enforcement action against it. However, in the majority of instances there will be conditions that require compliance. Should a breach occur, these will be dealt with as set out in section 3.
- 1.9 Breaches of planning control consisting of the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land can occur in two main ways:
  - a) Activities that have been undertaken without complying with the conditions of a planning permission already granted; and
  - b) Development that has been undertaken without planning permission on land that has not been previously used for that purpose.
- 1.10 In general terms, the approach to dealing with (a) is a proactive one, whilst the approach to dealing with (b) is a reactive one, although clearly there will be some overlap between the two.
- 1.11 Non-compliance with the terms of a planning permission or carrying out development without planning permission is not a criminal offence<sup>1</sup>, but failure to comply with formal enforcement action, i.e. non-compliance with the requirements of a valid enforcement notice, usually is. There are also time limits for taking enforcement action (refer to paragraph 3.3 below).
- 1.12 The National Planning Policy Framework (December 2024) (NPPF) paragraph 60 states that:

*"Effective enforcement is important to maintain 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. They 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 appropriate."*
- 1.13 The National Planning Practice Guidance (PPG) (Paragraph: 006 Reference ID: 17b-006-20140306) goes on to state that the preparation and adoption of a local enforcement plan is important because it:
  - allows engagement in the process of defining objectives and priorities which are tailored to local circumstances;

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<sup>1</sup> Undertaking work to a listed building, trees protected by a preservation order and demolition that requires express consent within a conservation area and advertisements which require express advertisement consent without the necessary permission from the county council or district council are criminal offences.



- sets out priorities for enforcement action, which will inform decisions about when to take enforcement action;
  - provides greater transparency and accountability about how the local planning authority will decide if it is expedient to exercise its discretionary powers; and
  - provides greater certainty for all parties engaged in the development process.
- 1.14 This Local Enforcement Plan (LEP) has therefore been prepared in accordance with the NPPF and PPG and replaces the former LEP dated November 2020.
- 1.15 This Enforcement Plan has had regard to:
- The Town and Country Planning Act 1990.
  - The Planning and Compensation Act 1991.
  - The Town and Country Planning (Minerals) Regulations 1995
  - The Planning and Compulsory Purchase Act 2004.
  - The Town and Country Planning (Fees for Applications, Deemed Application, Requests and Site Visits) (England) Regulations 2012
  - Planning Act 2008.
  - The Levelling Up and Regeneration Act 2023.
  - The Localism Act 2011.
  - The Waste (England and Wales) Regulations 2011.
  - The Development Plans for Lincolnshire County Council and the borough, city and district councils listed at paragraph 1.5. are set out within Appendix 1: Development Plans.
  - National Planning Policy Framework (December 2024).
  - National Planning Policy for Waste (October 2014).
  - Planning Practice Guidance – Enforcement and Post-Permission Matters
  - Fees for monitoring of mining and landfill sites in England: A guide to implementation and good practice (April 2006)
  - The need to maintain the integrity of specially protected areas, including Special Protection Areas, Ramsar, Special Areas of Conservation, Sites of Special Scientific Interest, Lincolnshire Wolds National Landscape, Area of Outstanding Natural Beauty (AONB) 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.

## 2 Planning Policies

- 2.1 In relation to mineral and waste activities, the principal policies of the development plan are contained in the two parts of the **Lincolnshire Minerals and Waste Local Plan (LMWLP)**:
- the [Core Strategy and Development Management Policies \(2016\)](#) document and
  - the [Site Locations \(2017\)](#) document
- 2.2 The Minerals and Waste Local Plan is currently under review. The timetable for its production and adoption is set out in the [Lincolnshire Minerals and Waste Development Scheme, February 2021](#). It is anticipated the new LMWLP will be adopted 2027.
- 2.3 In addition, the district / borough / city councils' local plans and any neighbourhood plans form part of the Development Plan for the County, and any relevant policies in those documents will also need to be taken into account. Should national development management policies be brought into effect, these will comprise a material consideration.
- 2.4 The other material considerations referred to above include this LEP and, if the Development Plan is not fully compliant with the NPPF, any policies in the NPPF that have not been fully incorporated into the Development Plan.
- 2.5 The adopted Development Plan aims to:
- “Over the period to 2031 Lincolnshire County Council will provide a strategic planning framework to facilitate the sustainable supply and use of minerals and to manage waste sustainably in accordance with the waste hierarchy and recognising it as a resource. This will ensure the economic, environmental and social benefits of mineral and waste development are considered whilst Lincolnshire's natural, built and historic environment is protected and enhanced, economic growth is supported, and the health and amenity of local communities is protected. New development will take positive action to mitigate and adapt to climate change. The Council will identify and safeguard important minerals resources and provide a network of sustainable waste management facilities directed at achieving net self-sufficiency in Lincolnshire to provide certainty to both the minerals industry and local communities.”*
- 2.6 When the County Council is considering taking planning enforcement action the decision-making process must take account of the provisions of section 38(6) of the Planning and Compulsory Purchase Act 2004, which states decisions “...must be taken in accordance with the development plan, unless material considerations indicate otherwise.”

### 3 Overview of planning enforcement provisions

#### Breaches of planning control

3.1 In brief, a breach of planning control is defined in Section 171A of the 1990 Act as:

- carrying out of development (which includes operational development and material changes of use) without the required planning permission (referred to in this LEP as "**unauthorised development**"); or
- failing to comply with any condition or limitation subject to which planning permission has been granted (referred to in this LEP as a "**breach of condition**").

3.2 Being in breach of planning control is not an offence under the 1990 Act. However, the County Council, has powers under this Act to take enforcement action against certain breaches of planning control. Where such action is taken and comes into effect, a failure of an owner or operator/occupier to comply is an offence and may result in prosecution. These enforcement powers relate to "**county matter**" activities, which are defined in Schedule 1 of the 1990 Act and in the Town and Country Planning (Prescription of County Matters) (England) Regulations) 2003. In summary these include:

- the winning and working of minerals, and associated development;
- development mainly for the purpose of recovering, treating, storing, processing, sorting, transferring or depositing of waste [Appendix 2];
- Development that has been undertaken that means compliance with conditions on extant permissions (including express and deemed) cannot be met; and
- non-compliance with conditions on planning permissions including express and deemed permissions that may relate to the following issues (note that of mineral and waste management planning permissions, this is not an exhaustive list but illustrates typical areas of non-compliance):
  - Soil stripping and storage
  - Extraction
  - Vehicle movements
  - Noise
  - Dust
  - Odour
  - Hours of operation
  - Mineral processing
  - Drainage
  - Landscaping
  - Restoration and aftercare
  - Poor operational standards on existing sites.

#### Time limits for taking enforcement action

3.3 Under Section 171B of the 1990 Act, breaches of planning control relating to county matters become lawful (and therefore immune from enforcement) if no enforcement action is taken within prescribed periods. These periods are:

- within 10 years of substantial completion for a breach of planning control consisting of

operational development where substantial completion took place **on or after 25 April 2024**

- within 4 years of substantial completion for a breach of planning control consisting of operational development where substantial completion took place **before 25 April 2024**
- within 10 years for any other breach of planning control.

With respect to the above, the winning and working of minerals falls into the category of operational development. With respect to determining whether the operational development might be immune from action, whether under the 10- or 4-year rule, it should be noted that the courts have held that for mineral extraction each shovelful is a separate act of development [David (Thomas) (Porthcawl) Ltd v Penybont Rural District Council (1972)]. Therefore, even if extraction commenced more than four (or ten, as appropriate (refer above bullet points)) years ago, any extraction carried out within the last four (or ten, as appropriate (refer above bullet points)) years will not be immune from enforcement action.

- 3.4 In planning law, the use of land or buildings for waste management is classed as a "sui generis" use, which means "of its own kind", that is it does not fall into any of the use categories identified by the Town and Country Planning (Use Classes) Order 1987 (as amended). As a result, setting up a new waste management facility is likely to result in a material change of use of the land/building, unless the site has previously been used lawfully for the same activity - and that use has not subsequently been abandoned. As a sui generis use, any changes to the nature of the waste management activities, such as changes to the type of waste involved, may result in a further material change of use requiring planning permission. Therefore, even when a waste management facility has been established for more than 10 years, if any subsequent material changes of use have taken place within the last 10 years without planning permission, those uses will not be immune from enforcement action.
- 3.5 The time-limits set out above do not prevent enforcement action after the relevant dates in certain circumstances. These are:
- where further enforcement action is taken in respect of any breach of planning control within four years of previous enforcement action (or purported action) in respect of the same breach (Section 171A of the 1990 Act);
  - where there has been a deliberate concealment of a breach of planning control, the County Council may apply to the Magistrates Court under Section 171BA of the 1990 Act for a **Planning Enforcement Order (PEO)** to allow it to take action after the time limit in section 171B;
  - works to a listed building (including both internal and external alterations) without consent. There is no restriction on when enforcement action may be taken; and
  - when demolition of a building has taken place within a conservation area. This excludes buildings with a volume not exceeding 50m<sup>3</sup>. Buildings with a volume exceeding 50m<sup>3</sup> but less than 115m<sup>3</sup> are permitted, subject to prior approval. Demolition of a building with a volume greater than 115m<sup>3</sup> requires planning permission. There is no restriction on when enforcement action may be taken.
- 3.6 If an owner/operator or other party believes that the development or use has become immune from enforcement action due to meeting the timescales above and require a legal determination of this, an application for a certificate of lawfulness may be submitted.

### **Compliance with Planning Control**

- 3.7 Enforcement action is intended to be remedial rather than punitive and should always be commensurate with the breach of planning control to which it relates. In its role of securing

compliance with planning control, the County Council will have regard to relevant legislation, case law and guidance. The PPG gives procedural guidance on how to use the various enforcement powers available and provides links to the relevant legislation.

- 3.8 The PPG suggests that when considering whether to use its discretionary enforcement powers, the planning authority should have regard to the NPPF and particularly paragraph 60. It also states that the provisions of the European Convention on Human Rights such as Article 1 of the First Protocol (Protection of Property), Article 8 (Right to Respect for Private and Family Life) and Article 14 (Prohibition of Discrimination) are relevant when considering enforcement action. It states:-

*“There is a clear public interest in enforcing planning law and planning legislation in a proportionate way. In deciding whether enforcement action is taken, local planning authorities should, where relevant, have regard to the potential impact on health, housing needs and welfare of those affected by the proposed action, and those who are affected by a breach of planning control”.*

- 3.9 The integrity of the planning system depends on planning authorities’ readiness to take effective enforcement action when it is expedient to do so. In deciding whether it is expedient to take enforcement action the County Council will consider:

- Whether the breach would otherwise have an unacceptable impact having regard to the Development Plan and the NPPF; and
- Whether enforcement action would help maintain the integrity of the decision-making process and help ensure that public acceptance of the decision-making process is maintained. Any action must not be based on irrational factors or be taken without consideration of the relevant facts and planning issues or be based on non-planning grounds.

The PPG states that local planning authorities should usually avoid taking formal enforcement action where “there is a trivial or technical breach which causes no material harm or adverse impact on the amenity of the site or surrounding area”.

- 3.10 Planning authorities have several legal powers available to them to enforce planning control. These are set out at Appendix 3: Enforcement Tools. However, public expectations about the speed with which effective action can be taken may exceed the speed at which legal action can resolve a breach. The PPG acknowledges that addressing breaches of planning control without formal enforcement action can often be the quickest and most cost-effective way of achieving a satisfactory and lasting remedy.
- 3.11 Breaches can be genuine mistakes, and, in some instances, formal action may not be appropriate whereas requesting that a retrospective application is submitted, or remedial works or removal of the development is appropriate. However, each case is assessed on its own merits and appropriate action to resolve the breach will always be considered.
- 3.12 Where unauthorised development appears acceptable on its planning merits, the County Council may invite the submission of a retrospective planning application to regularise the breach of planning control which can be done under the provisions of section 73A of the Town and Country Planning Act 1990 (as amended). In these cases, the planning application will be subject to the same process as any other planning application including consultation with the public, statutory and other consultees before a decision is taken. It cannot be assumed that permission will be granted.
- 3.13 The approach of the County Council, will be to seek to remedy any breach of planning control in a timely manner. Wherever possible this will be done in the first instance by negotiation and persuasion to get the breach remedied voluntarily, or where appropriate, to regularise unauthorised development by the granting of a planning permission, subject to conditions, but in

all cases being consistent with the relevant policies of the Development Plan and the NPPF. This is referred to as **informal action**.

- 3.14 Where negotiation and persuasion is unsuccessful or not possible, either because current planning policy would not support the development, 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 consider taking action commensurate with the breach of planning control. This is referred to as **formal enforcement action**. Please see Appendix 3: Enforcement Tools for a description of both the formal and informal tools available to the County Council.
- 3.15 When formal action is taken, in most instances the recipient of an enforcement notice has the right of appeal to the Secretary of State against the notice and consequently a notice can be quashed. Other formal enforcement actions such as Stop Notices can also be challenged by the recipient through the courts.
- 3.16 Appeal costs may be awarded against the County Council in the event that the authority has behaved “unreasonably” and the appellant has incurred unnecessary expense. Compensation can also follow planning authorities’ enforcement actions in certain cases. It is therefore important that the County Council ensures it is acting in the public interest and has considered all relevant matters before taking formal enforcement action.

**POLICY LEP1 Lincolnshire County Council, as MWPA**, in exercising its function of ensuring compliance with planning control within its remit, will:

- (i) Where a breach of planning control is causing harm to the integrity of the planning system, environment, or public amenity, commence an investigation to gather evidence to enable appropriate action to stop further harm.
- (ii) Where investigations reveal a breach of planning control, the County Council will, when considered appropriate, seek to resolve any problems by offering the owner, operator or occupier an opportunity to remedy the breach within a reasonable period of time without the need to resort to formal enforcement action.
- (iii) Only take formal enforcement action where it is necessary and appropriate 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 and the NPPF.
- (iv) Ensure that action is always commensurate with the breach of planning control and is proportionate, considering the potential effect on those who are affected by the breach as well as the effect on those that action is taken against.
- (v) Give due regard to current legislation, ministerial guidance, appeal decisions and relevant judicial authority.
- (vi) Consider national planning policy, the relevant development plan policies, and comments made by affected members of the public and statutory consultees.
- (vii) Consider the need to achieve a reasonable outcome when protecting amenity and other interests of acknowledged importance, such as preserving heritage assets, protecting and enhancing landscapes and biodiversity, to improve quality of the environment, to protect and conserve good agricultural land throughout the authority’s area.
- (viii) Enable acceptable development to take place.
- (ix) Maintain effective liaison and contact with the general public and developers/operators.

### **Register of enforcement and stop notices**

- 3.17 Under Section 188 of the 1990 Act, each district / borough / city council is responsible for maintaining a register containing information relating to planning enforcement orders, enforcement notices, stop notices and breach of condition notices which relate to land in their area. These registers are available for inspection by the public at all reasonable times. This includes notices issued by the County Council.

## 4 Resources

- 4.1 The enforcement of planning control, including the monitoring of permitted sites, is undertaken by the Planning Enforcement and Monitoring Officers of the County Council.
- 4.2 Delivering an effective Monitoring and Enforcement service takes considerable resources not only monetary but also in officer time. It will require prioritisation of workload within the constraints of the resources available. The County Council also has to balance the demands on this part of the service against other demands and will review the allocation of resources regularly. The County Council has a general discretion to take enforcement action and there is no statutorily prescribed level of monitoring that has to be undertaken although the 'Fees for monitoring of mining and landfill sites in England' guide provides for up to 8 monitoring visits per year and waste sites are required to be monitored periodically.
- 4.3 If enforcement is to be effective there is a need to draw upon a variety of skills within the County Council, across the Council and from outside agencies. For example, specialist legal, archaeological, ecological, landscape, pollution control, environmental health and highway advice may well be required before deciding to initiate appropriate action.



## 5 Site monitoring

- 5.1 The principal enforcement activities of the County Council are directed towards prevention of infringements through the proactive monitoring of mineral and waste sites or, more specifically, the implementation of the planning permissions which it has granted at those sites. The monitoring of planning conditions, compliance with s106 Planning Obligations and Nationally Significant Infrastructure Project requirements falling within the County Council's remit is an important and necessary part of the planning system, and is recognised in the Government's National Planning Policy Framework (2024), by Paragraph 60 (refer to paragraph 1.12 above).
- 5.2 Site monitoring falls into two categories as set out below. Both types of monitoring seek to ensure that the development is being carried out in accordance with the planning requirements and provide an opportunity for officers to provide advice to developers/operators before emerging issues develop into breaches of planning control. Furthermore, the guidance suggests that good practice is praised, for example, when a developer/operator has acted beyond the requirements of planning conditions to limit the harm of development.

### Monitoring of mineral and landfill sites

- 5.3 Following the Town and Country Planning (Fees for Applications and Deemed Applications)(Amendment)(England) Regulations 2006 [now revoked by the 2012 Planning Fee Regulations (refer paragraph 1.15)] coming into force, The County Council is able to undertake an annual programme of chargeable visits to every site in the County which has a valid planning permission (or permissions) for mineral working and/or landfill under the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012 (as amended). These Regulations allow up to 8 chargeable visits to be made to each active site in any one period of 12 months (referred to as the charging year). For inactive sites, a reduced fee is payable and only one chargeable visit can be made in the charging year. If necessary, the County Council may undertake more visits to both active and inactive sites, but no charge can be made.
- 5.4 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 with and monitor planning conditions. Where there are complex conditions, or there is a history of non-compliance, these sites will be inspected on a more frequent basis. In addition, where sites commence development monitoring will take place following a more frequent schedule to ensure, in the initial year of operation, any issues are resolved without delay. In order to manage the monitoring of sites an outline programme of monitoring visits to mineral and waste sites will be drawn up at the beginning of each financial year and operators advised by letter of the number of site visits scheduled. Where an operator considers that they are being subjected to an excessive number of visits, they can follow the County Council's complaints procedures. If this does not resolve the matter to their satisfaction, they can then consider asking the Local Government and Social Care Ombudsman to investigate.
- 5.5 The general approach of the County Council is that:
- for active sites which have been operating largely in compliance with the planning requirements and which are not particularly complex or sensitive, a maximum of four site visits is set;
  - for active sites where there have been significant breaches of planning control, or which are either complex or sensitive, a higher number of visits is set (up to eight); and
  - for inactive sites, where there is a reasonable prospect that mining operations could recommence, a single chargeable site visit is set.

- 5.6 Chargeable, pre-arranged site visits are undertaken by dedicated planning enforcement and monitoring officers whose principal aim is to secure compliance with planning conditions and agreements through constructive dialogue with site operators. These visits and engagement with site operators also assist in preventing breaches of planning control arising before they occur or before they become established. Where breaches of planning control are detected, these are reported to the operator in the site monitoring report which is sent to them following the inspection - together with details of what needs to be done to resolve the breach(es). If these requirements are not met within the specified timescale, a reminder is sent to the operator warning them that, unless the breach is resolved promptly, the matter will be assessed for whether it is expedient to take formal enforcement action. In addition, other unannounced visits might take place, for example, when a complaint has been received regarding mud on the road or to investigate alleged out of hours working. Any visit that does not result in entry to the site is not chargeable.

#### **Inspection of sites involved with the disposal or recovery of waste**

- 5.7 Under Section 19 of The Waste (England and Wales) Regulations 2011, the County Council must ensure that appropriate periodic inspections of establishments or undertakings carrying on disposal or recovery of waste are made. No definition of "periodic" is given in the Regulations, but the County Council considers that this should be a minimum of one inspection per year. In practice, where the County Council grants a new planning permission, an inspection is generally carried out within three months from the date of the permission commencing. Thereafter an inspection will take place at least once a year.
- 5.8 The periodic inspections are undertaken by officers of the County Council's planning enforcement team. These inspections are normally unannounced.

#### **What takes place during and after a site visit?**

- 5.9 A full site visit will usually be conducted by the Enforcement and Monitoring Officer, although the Principal Planning Enforcement Officer and/or Senior Planning Enforcement Officer may undertake visits on occasions. Visits will normally be with the site operator in attendance. The site visit will cover the entire area identified by the red line application boundaries, plus any land controlled by the operator to which other planning requirements apply.
- 5.10 The site visit will involve a review of all conditions and clauses within any s106 Planning Obligation relating to the extant planning permission(s). Each condition will be checked to establish its status, whether it is being complied with, and if a breach of planning control has taken place, the nature of any breach, the degree to which it is happening, and its impact. The visits are also an opportunity for the operator to discuss any other planning matters with the Officer.
- 5.11 The County Council's preferred approach is to work with operators to assist them in meeting the requirements of their planning permission.
- 5.12 Following the site visit, a formal Site Monitoring Report will be compiled and sent to the operator/owner, usually within 10 working days from the date of the inspection. The report will identify all pertinent planning permissions, S106 Planning Obligations and individual conditions and clauses for the site and assess compliance against each. Any breaches, actions required, or points to be clarified will be identified within the document, together with appropriate options to address any issues which have arisen. The actions will be reviewed at the next site visit, and between visits where a more immediate response is required.
- 5.13 Where serious or persistent breaches of condition are taking place, or where co-operation or compliance is not achieved following a reasonable period, the matter will be escalated for consideration as to whether formal enforcement action is required.

## **Accountability and Reporting**

- 5.14 All Monitoring Reports will be stored securely and electronically within the County Council's own systems. Operators and those with a legal interest in the site will have access to reports concerning their site(s).
- 5.15 Any requests to view the reports will be treated as Environmental Information Requests (refer to Environmental Information Regulations, 2004) and considered on their own merits, and in line with the provisions.

## **What Is Expected of Mineral and Waste Site Operators, Developers and Landowners**

- 5.16 In exercising and executing its responsibilities as a planning authority, the County Council expects mineral and waste management site developers, operators and landowners:
- (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 act in any way, which would cause damage, or serious planning harm.
  - (b) To work with the County Council in employing the best practicably available techniques to improve the design, operation, restoration and aftercare standards arising from the winning and working of minerals and the operation of waste management facilities.
  - (c) To co-operate in the appropriate and lawful monitoring of their sites and investigation of unauthorised development and alleged breaches of planning control including enabling reasonable access to those sites for these purposes.

**POLICY LEP2 Lincolnshire County Council** will allocate a level of resources, subject to other budgetary priorities, to the enforcement of planning control sufficient to achieve:

- i. The objectives in the enforcement plan.
- ii. The best practical option to remedy a breach, which takes into account the costs and benefits arising.
- iii. The maintenance of a programme of monitoring and inspection of authorised mineral and waste management sites.
- iv. The collection of data and statistics by the most efficient means, including the use of the best available and appropriate technology.

## 6 Biodiversity net gain

### Background

- 6.1 Mandatory Biodiversity Net Gain (BNG) is a requirement that requires new developments to enhance biodiversity by at least 10% compared to the pre-development state. This requirement, introduced under the Environment Act 2021 and associated legislation became mandatory for new major development applications in February 2024 and non-major in April 2024.

#### Legislation and Guidance relating to Mandatory Biodiversity Net Gain:

- Environment Act 2021 ([Part 6](#))
- Town and Country Planning Act 1990 ([Schedule 7A](#))
- Levelling Up and Regeneration Act 2023 ([Chapter 6](#))
- The Town and Country Planning (Development Management Procedure) (England) Order 2016 (<https://www.legislation.gov.uk/uksi/2015/595/contents>)
- The Biodiversity Gain Requirements (Exemptions) Regulations 2024 ([SI 2024 No. 47](#))
- The Biodiversity Gain (Town and Country Planning) (Modifications and Amendments) (England) Regulations 2024 ([SI 2024 No. 50](#))
- The Biodiversity Gain Requirements (Irreplaceable Habitat) Regulations ([SI 2024 SI No. 48](#))
- The Biodiversity Gain Site Register Regulations 2024 ([SI 2024 No. 45](#))
- The Biodiversity Gain Site Register (Financial Penalties and Fees) Regulations 2024 ([SI 2024 No. 46](#))
- The Biodiversity Gain (Town and Country Planning) (Consequential Amendments) Regulations 2024 ([SI 2024 No 49](#))
- The Environment Act 2021 (Commencement No. 8 and Transitional Provisions) Regulations 2024 (<https://www.legislation.gov.uk/uksi/2024/44/contents/made>)
- [National Planning Policy Framework](#), December 2004
- Planning Practice Guidance – [Biodiversity Net Gain](#)

Please note this list may not be exhaustive.

- 6.2 Applications granted after these effective dates, unless they fall within any of the exemptions or exceptions for providing BNG are all subject to the biodiversity net gain condition as set out in [Schedule 7A of the Town and Country Planning Act 1990](#). This condition requires, amongst other matters for the developer/operator, prior to commencing a development, to submit a biodiversity gain plan (BGP) for approval. The approved BGP must be implemented, and the biodiversity improvements set out within the Plan delivered and, where gains are significant, maintained for at least 30 years following completion.
- 6.3 There is a hierarchy for delivery of this enhancement. Firstly on-site, secondly off-site and lastly via biodiversity credits. For those sites where the delivery is on-site, the County Council will monitor the development, where significant enhancement is to be provided, to ensure the enhancements have been provided in accordance with the BGP. The BGP will detail the timetable for the delivery of biodiversity gain, where gains are significant, it will be secured for at least 30 years post completion of development.

### **Actions by the Minerals and Waste Planning Authority**

- 6.4 Following planning permission being granted for developments requiring the provision of mandatory biodiversity net gain, the County Council will endeavor to write to the applicant, agent, operator and/or developer to remind them of the requirement to provide a BGP prior to the commencement of development. Officers from the County Council will also aim to undertake a site visit
- 6.5 Development commencing without submission of and/or approval of a Biodiversity Gain Plan –  
In the event that development commences prior to submission of and/or securing approval of the BGP, the County Council will consider the expediency of issuing a Temporary Stop Notice (TSN) in order to pause the development and enable time for submission and approval of the BGP by the developer/operator. Due to a TSN expiring 56 days after it is displayed (unless a shorter period is specified), if the BGP has not been submitted and/or approved within this timescale, an Enforcement Notice and Stop Notice will be considered.
- 6.6 Monitoring of the development in compliance with the BGP – due to mandatory BNG not required to be provided until the development is completed, for many sites it is likely that delivery will not take effect for many years. Monitoring reports provided to the operator will detail within them of the requirement for this to be provided and then maintained for 30 years (where relevant). Due to this additional monitoring requirement and with reference to the Regulations relating to mandatory BNG, the County Council will levy a charge for the work associated with monitoring, in accordance with the County Council's Biodiversity Net Gain Planning Guide. The charge and how this will be levied will be detailed within separate documentation. When a charge for monitoring is levied, this will be secured by way of a s106 Planning Obligation.
- 6.7 Non-compliance with the BGP – should the biodiversity net gain not be provided in accordance with the Biodiversity Gain Plan or not provided at all, consideration will be given to the expediency of taking formal planning enforcement action. Such consideration will draw on the expediency tests set out in this document and use of the planning enforcement tools (Section 9).

## 7 How to make a complaint

7.1. When a complaint is made regarding a possible breach of planning enforcement, the following information should be provided:

- A clear description of the alleged breach.
- Why you think this is a breach of planning.
- A description of the 'harm' being caused e.g. noise, traffic, odours.
- The date and, where relevant, the time the activity started, is it happening now, how long has the activity been taking place, is it getting worse?
- A specific site address (if it is a field, describe the surrounding area to help identify the exact site and if possible, an annotated map / grid reference).
- The name and contact details of the site owner/occupier/builder/hauler/other responsible person(s) where known.
- Your name and contact details – please note we may not, or be able to, investigate anonymous complaints. We may need to get in contact with you to gain further information and we will not be able to provide you with updates. Information provided remains confidential in accordance with data protection rules. However, occasionally enforcement action may lead to prosecution in the courts and all information obtained in investigating the case may need to be revealed, including complainant's names.
- Any other information you think would be helpful.

This information may be provided by using the County Council's [on-line form](#) or by sending an email to [Dev\\_PlanningEnforcem@lincolnshire.gov.uk](mailto:Dev_PlanningEnforcem@lincolnshire.gov.uk).

7.2. Where an allegation involves activities on land, you should not undertake surveillance but might record and update the County Council on any continuing breaches as you notice them.

### Dealing with complaints

7.3. Where the alleged breach of planning control has been reported through a complaint, the County Council will:

For those cases falling to the County Council to investigate:

- record the complaint electronically. Recording cases electronically enables the County Council to assess and improve its overall service and identify evidence of problems with particular developments or particular issues and enables an efficient and effective response
- acknowledge the complaint within three working days of receiving it and provide the reference number allocated to the case when it is a matter for the County Council to investigate
- maintain the confidentiality of complainants as far as possible
- identify if a breach might have occurred (refer [Section 8](#))
- identify the category of the breach
- visit the site of the allegedly unauthorised development and ascertain what activities are taking place there, unless the County Council is satisfied that it already has sufficient information that makes a site visit unnecessary
- contact the complainant again within twenty working days of receiving the complaint to

provide an update and, if a final decision has been made by that stage, explain what actions the County Council proposes to take, or why they think no formal enforcement action is needed

- where a decision is made to not enforce, the reason(s) why will be explained within ten working days of the decision.
  - following the investigation of a complaint, if the County Council decides not to take formal enforcement action the reason for this decision will be explained to the complainant. Should the County Council elect to instigate enforcement proceedings the complainant will be notified.
- 7.4. If the complaint relates to a matter that is not a matter for the County Council to investigate, we will reply and provide the complainant with the contact details of the relevant authority unless the complainant has agreed their information may be shared.
- 7.5. The timescale for completing an investigation varies depending on the complexity of the case, workloads of officers and the need to regularise the alleged breach of planning control. We will notify complainants at significant points in the investigation. However, the statutory process we have to follow means that, quite often, extended periods of time will pass without any apparent progress. For example, where the County Council has to allow time for a planning application to be prepared and submitted, many months might pass whilst the supporting documents are prepared. The application will then require time to be determined. Serious cases that result in the service of formal notices, a resultant appeal and possible challenges through the courts can, and do, take many years to resolve.

**POLICY LEP3** In dealing with all complaints concerning an alleged breach of planning control, the Minerals and Waste Planning Authority will:

- i. Treat the source of the complaint confidentially as far as practicable in line with current privacy legislation and if requested.
- ii. Ensure that they are recorded within three working days of receipt and if necessary, an initial response or acknowledgement provided when the complaint is recorded.
- iii. Expeditiously investigate the alleged breach, visit the development where necessary, and establish if there has been a breach of planning control.
- iv. Update the complainant within twenty working days of the complaint being received.
- v. If enforcement action is not considered expedient, explain the reasons why, within ten working days of the decision.
- vi. Notify the complainant if the County Council decides to commence enforcement action against the alleged breach of planning control.
- vii. Endeavour to notify the complainant of the progress of any action taken to resolve the alleged breach in a timely manner.

#### **Investigation priorities**

- 7.6. Complaints will be acted upon as quickly and as efficiently as possible. However, in practice breaches of planning control vary in terms of severity. Therefore, in order to make the most effective use of the resources of the enforcement team, each case will be allocated into one of three categories based on the criteria below:

<b>Category A</b>	<ul style="list-style-type: none"> <li>➤ the aim will be to undertake investigations within three working days where:</li> <li>➤ the breach appears to be causing serious harm to the public e.g. involving hazardous substances; and/or there are reasonable grounds to suspect that the breach is having, or is likely to have, serious detrimental impacts on the environment, which would be difficult or impossible to reverse.</li> </ul>
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<b>Category B</b>	<ul style="list-style-type: none"> <li>➤ the aim will be to undertake investigations within eight working days where:</li> <li>➤ there are reasons to believe that the breach is causing harm to local amenity, but not serious harm (which would fall in Category A); and/or</li> <li>➤ the breach could affect a nationally protected feature such as the Lincolnshire Wolds National Landscape AONB, a Site of Special Scientific Interest, a scheduled monument, a listed building or a conservation area (except where a serious impact is suspected, which would fall into Category A); and/or</li> <li>➤ the breach was undetected until the complaint was received and it appears that the time-limit for enforcement action will expire within six months.</li> </ul>
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<b>Category C</b>	<ul style="list-style-type: none"> <li>➤ the aim will be to undertake investigations within 14 working days for all other complaints relating to alleged breaches not falling in any of the above categories.</li> </ul>
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- 7.7. There will be occasions when these timescales cannot be met, particularly where there are a large number of cases under investigation at the same time, or when some of the cases under investigation place particularly high demands on the time of the planning enforcement staff. In these circumstances, any delays should be capable of being justified.



## 8 Investigating alleged breaches of planning control

- 8.1. This section deals with the investigation of alleged breaches of planning control, which may be discovered through the monitoring detailed in Section 5 (proactive investigations), or may arise from complaints from other sources, such as the general public or public bodies (reactive investigations) (section 7). These breaches may relate to either unauthorised development or to breaches of planning conditions.

### **Determining the appropriate authority**

- 8.2. As stated in the Introduction, the county of Lincolnshire operates under two tiers of local government: the County Council being the upper tier with seven lower tier district / borough / city councils. Section 1(5) (c) and Schedule 1, paragraph 11 of the 1990 Act sets out how the enforcement functions are divided between the two tiers of local government, but these divisions are not always straight forward.
- 8.3. In summary the district / borough / city councils have wide ranging powers to take enforcement action, but subject to the following:
- the County Council may take formal enforcement action where it considers the breach of planning control should properly be considered a county matter;
  - the County Council is exclusively the appropriate authority to take such action in respect of certain forms of specified minerals development; and
  - where it appears to a district / borough / city council that the breach of planning control relates to a county matter, they must consult the County Council before taking enforcement action.
- 8.4. The following are examples of breaches of planning control that would fall within the remit of the County Council :
- Unauthorised waste management development
  - Unauthorised mineral extraction and associated development
  - Development that has been undertaken that means compliance with conditions on extant permissions (including express and deemed) cannot be met;
  - Non-compliance with conditions on planning permissions, including deemed and express permissions, that may relate to the following issues (note that of mineral and waste management planning permissions, this is not an exhaustive list but illustrates typical areas of non-compliance):
    - Soil stripping and storage
    - Extraction
    - Vehicle movements
    - Noise
    - Dust
    - Odour
    - Hours of operation
    - Mineral processing
    - Drainage
    - Landscaping

- Restoration and aftercare
  - Poor operational standards on existing sites
- 8.5. The Planning Enforcement Handbook for England (April 2024) published by the National Association of Planning Enforcement (NAPE), a division of the Royal Town Planning Institute, advises that all enforcement cases should be investigated properly with the following key questions answered:
- Is there development?
  - Is there a breach?
  - Can the breach be resolved through negotiation?
  - Is the breach causing harm?
  - Is enforcement expedient?
- 8.6. In addition to the powers available to the County Council relating to breaches of planning control there are other agencies or Authorities which have regulatory powers and responsibilities that can assist in these matters, particularly those involving the disposal and/or recycling of waste (e.g. the relevant district council's Environmental Health Officer, Environment Agency (EA), and Health and Safety Executive etc.). As a result, even when the County Council is the appropriate planning authority, there is still a need to establish which organisation is best placed to take the lead in any investigations.
- 8.7. Unauthorised development and some breaches of planning conditions involving wastes which results in, or has the potential to result in, pollution may be a criminal offence under legislation enforced by the EA. The EA may therefore be in a stronger position to ultimately remedy harm to amenity by way of prosecution and enforcing cessation of the harmful activities. In these circumstances the EA would normally be the lead authority.
- 8.8. The County Council and the EA will work together, as appropriate, on joint enforcement activities where there is an overlap between the functions of the two regulators.
- 8.9. Where the activities involve a statutory nuisance the appropriate district / borough / city council's environmental health department may be better placed to take action.
- 8.10. In cases where unauthorised development causes or has the potential to cause serious harm to human health, the County Council will have regard to the fact that it may be more appropriate for the Health and Safety Executive (HSE) to be the lead authority, and will liaise with the HSE accordingly.
- 8.11. In all cases that potentially involve the above bodies, consultations and discussions will take place to see which authority is in the best position to lead the investigation and, if necessary, take action.
- 8.12. Whilst the relevant authority for investigating breaches of planning control is normally clear, in some instances it may be less clear. In such cases the County Council will engage with the public bodies listed above as well as the relevant district / borough / city council to establish the most appropriate authority for progressing the matter.
- 8.13. In addition, if appropriate the County Council will liaise with these agencies, and seek to work with them, to secure an efficient remedy to a breach and where necessary joint or complimentary formal action may be taken.

**POLICY LEP4** When investigating an alleged breach of planning the Minerals and Waste Planning Authority will:

- i. Identify the most appropriate authority to take action and notify other authorities where they have regulatory responsibility.
- ii. Seek to work closely with other regulatory bodies where appropriate

- 8.14. Notwithstanding the above, Section 286 of the 1990 Act precludes challenges to the validity of notices issued in relation to formal enforcement action on the grounds that they were issued by the wrong authority (i.e. district / borough / city council rather than county council, or vice versa). It is nevertheless important that the breach is accurately described in the notice, i.e. all the unauthorised uses have been identified.
- 8.15. In addition to breaches of planning control relating to county matters, the County Council's enforcement team will also investigate alleged breaches of planning control relating to the County Council's own development. Whilst formal enforcement action would fall into the jurisdiction of the relevant district / borough / city council, initially the County Council would seek to resolve these matters internally in accordance with this LEP.

#### **Site visits and surveillance**

- 8.16. Site visits, when necessary, will normally be unannounced to ensure public confidence in the enforcement system and to protect the reputation of the County Council. Any surveillance undertaken will, however, be overt.
- 8.17. Although local authorities may seek judicial approval of directed covert surveillance, this is not generally an option for planning enforcement officers because approval can only be sought to prevent or detect criminal offences punishable by imprisonment.

## 9 Resolving apparent breaches of planning control relating to county matters

- 9.1. The County Council is committed to fostering business enterprise, provided that the necessary development can take place without unacceptable harm to local amenity and the environment. While the County Council does not condone willful breaches of planning law, it has a general discretion to take enforcement action only when it regards it as expedient to do so. The purpose of this LEP is therefore to ensure that breaches of planning control are resolved in a consistent, transparent, proportionate and fair manner.
- 9.2. Following an initial investigation of an alleged breach of planning control, the enforcement officer that undertook the investigation will prepare a report setting out their findings and seeking authorisation from an officer authorised under the Directorate's Scheme of Delegation to either close the case (if no further action is needed) or to undertake a specified course of action, which could include formal enforcement action.
- 9.3. In accordance with the Directorate's Scheme of Delegation, where a case raises particularly controversial issues which are likely to be of concern to the County Council's Planning and Regulation Committee, at the discretion of the Head of Planning Services the matter may be referred to that committee for a decision. This approach will, however, only be appropriate when prompt action is not considered necessary.
- 9.4. To avoid misunderstandings and ensure transparency, the County Council will ensure that everyone subject to enforcement action is informed of what is expected of them and the procedures that will need to be followed.
- 9.5. When considering the issue of expediency, the County Council will have regard to the development plan and to any other material considerations, including this LEP.
- 9.6. In considering where the balance of public interest lies, the following considerations will be taken into account:

### Impact on integrity of the planning system/local amenity and/or the environment

- (1) **Proportionality** - All enforcement action should be based upon an assessment of the risk to the environment, public health, public safety, harm to amenity, and/or economic well-being and should be proportionate to the severity of the breach of planning control to which it relates.
- (2) **Breaches of planning control with negligible impacts** - The County Council would consider it inappropriate to take formal enforcement action against a trivial or technical breach of planning control which causes no harm to amenity in the locality of the site or to the environment. In the case of unauthorised development which is more substantive, if it accords with the development plan and does not require mitigation (normally secured through planning conditions), the County Council would not consider it to be expedient to take enforcement action or seek a retrospective application simply to regularise the development.
- (3) **Breaches of planning control causing serious harm to public amenity or irreversible harm to the environment** - In circumstances where the breach is causing serious harm to public amenity in the neighbourhood of the site, or irreversible harm to the environment, the County Council will normally take urgent and vigorous enforcement action (including, if appropriate, the service of a temporary stop notice or stop notice) to remedy the breach and prevent further serious harm. The following subparagraphs should therefore be read in this context.

### Unauthorised development

- (4) **Unauthorised development which could potentially accord with the development plan (subject to the imposition of planning conditions)** - Where the County Council considers that development has been carried out without the requisite planning permission, but the

development would appear to accord with the development plan subject to the imposition of planning conditions to control the impacts, the owner or operator/occupier will be invited to submit a retrospective application and pay the appropriate application fee. If they agree to do this within an acceptable timescale, the County Council will not normally take formal enforcement action provided agreement can be reached on the implementation of appropriate mitigation measures to reduce the impact of the development pending the determination of the application. Such measures could include limiting the hours of operation, restricting the use of plant and equipment, and the routing of vehicles.

Notwithstanding the above, there is no guarantee that a retrospective application invited by the County Council will be granted. In particular, an application might be refused because an issue comes to light during the processing of the application that was not known by officers at the time of the request. Alternatively, if the application needs to be determined by the County Council's Planning and Regulation Committee, that Committee may take a different view to officers.

Should the application be refused either by Officers or Committee, a Notice will be issued, unless it is determined as not being expedient to do so. This will give the owner or operator/occupier the opportunity to appeal the planning refusal and notice at the same time. In turn, the Planning Inspectorate is likely to co-join both appeals. This reduces costs for both the County Council and the owner and operator/occupier. In addition, if the appeals are dismissed, it means the timescale any harm arising from the development will be reduced.

The County Council will normally take formal enforcement action where:

- despite a request by the County Council, a developer/operator refuses or fails to submit a valid retrospective planning application within an agreed timescale
- an application is made but is refused by the County Council and agreement cannot be reached on the cessation/removal of the unauthorised development.

Formal action may comprise the issuing of an Enforcement Warning Notice (EWN) or the issue of an Enforcement Notice against the operational development and/or material change of use. The County Council will not normally invite an owner or operator/occupier to submit a planning application, either informally or formally through the issue of an EWN, if it appears that any actual or potential harm cannot be made acceptable by the imposition of planning conditions.

**(5) Unauthorised development which is contrary to the development plan, but could be relocated** - It is not the County Council's responsibility to seek out and suggest an alternative site to which the activity might be satisfactorily relocated. However, if the developer/operator is proposing to relocate to another site which is likely to accord with the development plan, the County Council will normally agree to suspend enforcement action provided:

- the move can be completed within a reasonable timescale acceptable to the County Council ; and
- the unauthorised development is not causing unacceptable harm to the local amenity or the environment, and will be subject to any mitigation measures agreed with the County Council pending relocation.

In terms of timescale, what is considered reasonable will depend on the particular circumstances, including:

- the nature and extent of the unauthorised development;
- the time needed to negotiate and secure an interest in the alternative site;
- the time needed to secure planning permission for the alternative site (if required); and
- the need to avoid unacceptable disruption during the relocation process.

If the owner or operator/occupier fails to provide satisfactory justification for a suggested

timescale, the County Council 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, or planning permission is refused for the alternative site, the County Council will normally take formal enforcement action. In that event, the compliance period in the notice will specify what the County Council regard as a reasonable period to complete the relocation or resolve the breach, as applicable.

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 County Council considers that any difficulty or delay with relocation will not normally be a sufficient reason for delaying formal enforcement action to remedy unacceptable harm.

**(6) Unauthorised development which is contrary to the development plan and without reasonable prospect of relocation** – Where the unauthorised development is not supported by the development plan and there is no reasonable prospect of relocation or planning permission being granted, the owner or operator/occupier will be advised how long the County Council is prepared to allow it to continue before the operation or activity must stop.

If the owner or operator/occupier accepts the County Council's decision and agrees to comply, formal enforcement action may be avoided. If no agreement can be reached, the issue of an enforcement notice will usually be justified, allowing a realistic compliance period for the cessation/removal of the unauthorised development.

The County Council will not normally invite an owner or operator/occupier to submit a retrospective planning application where the unauthorised development is contrary to the development plan. However, there may be odd occasions when the County Council's planning officers consider that the County Council's Planning and Regulation Committee may be prepared to make an exception and grant planning permission for the unauthorised development (either in its current form or at a reduced level of activity) when it appears there may be overriding material considerations involved. In such cases, the owner or operator/occupier may be invited to make a retrospective application and to provide evidence of the overriding material considerations. When inviting such an application, which may be through the issuing of an Enforcement Warning Notice, the County Council's officers will make it clear that as the development is contrary to the development plan, there would be a higher risk of refusal.

## **Breach of condition**

**(7) Breaches of condition occurring within the first six months from the grant of planning permission** - Most planning permissions granted by the County Council are subject to conditions to protect the amenity of a locality and the environment. For a period of six months following the grant of planning permission, an applicant can appeal to the Secretary of State against the conditions if they consider that they do not meet the tests set out in the NPPF, paragraph 57. Irrespective of whether such an appeal is made, if the applicant elects to commence the development within this six month period, the County Council will normally require them to comply with those conditions.

If an appeal is made, the County Council may agree to suspend enforcement action for a sufficient period of time to allow the determination of the appeal, provided that in the interim any impacts are mitigated to the County Council's satisfaction.

Where the County Council considers that formal enforcement action would be the most appropriate response, a decision to issue a breach of condition notice is not subject to the expediency test.

**(8) Breaches of condition where alternative mitigation may be acceptable** - If in the County Council's view the breach could be resolved through the submission of a retrospective application to vary the condition (by for example putting forward an alternative mitigation strategy), the

County Council will provisionally agree to suspend enforcement action for a sufficient period of time to allow the preparation, submission and determination of such an application, provided that in the interim any impacts are mitigated to the County Council's satisfaction. It should be noted, however, that this will not bind the authority; if it becomes clear that it has become expedient to take formal enforcement action prior to the expiry of the compliance period, then such action will be taken.

As with retrospective applications for unauthorised development described above, there is no guarantee that such an application invited by the County Council will be granted. Where such an application is refused, and the owner or operator/occupier is unwilling to voluntarily comply with the condition, the County Council will normally take formal enforcement action.

**(9) Breaches of condition with unacceptable (or potentially unacceptable) impacts -**

Breaches of conditions may have an immediate harmful impact on local amenity and/or the wider environment. For example, operating plant and equipment outside the permitted hours may cause disturbance through noise. 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 would be an operator's failure to maintain a jet spray wheel wash during dry conditions. Whilst that might not be a problem at the time, if weather conditions change and the wheel wash cannot be brought back into operation immediately, this may result in mud and debris being carried onto the highway.

In considering formal enforcement action, the County Council will have regard to the fact that enforcement notices and breach of condition notices do not take effect for at least 28 days. Therefore, except in cases where the breach is causing significant harm to the local amenity or the wider environment, or it is clear that the breach could be and should be resolved within a shorter timescale, the operator or landowner will normally be given a minimum of 28 days to resolve the breach. However, where the breach of condition is not resolved within the agreed compliance period, the County Council will normally take formal enforcement action.

## **Change of Use**

**(10)** When assessing the materiality of a change of use, two things should be considered:

- any change in the character of the use itself, including the land where it is located; and
- the effects of the change upon neighbouring uses and the locality.

For the change to be material, the new use must be substantially different from the proceeding use.

## **History and behaviour of the owner/operator/occupier**

**(11) History of non-compliance** - In all negotiations seeking to resolve breaches of planning control, the County Council will have regard to the developer/operator'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 a developer/operator who has previously given assurances but has subsequently failed to comply.

**(12) Protracted negotiations** - Where it appears that informal negotiations to remedy a breach of planning control have become protracted with little apparent progress being taken to remedy the breach, the County Council will normally take formal enforcement action if it considers it is expedient to do so.

**(13) flagrant breaches of planning control** - where, in the County Council's view:

- 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 County Council to the person responsible);

- the person responsible for the breach has failed to submit a planning application for it (where advised to do so); and
- the breach is causing harm, or has the potential to cause harm, to local amenity or the wider environment,

the County Council will normally take enforcement action to remedy the breach or prevent further harm to amenity or the environment.

**(14) Previous advice** – the County Council will have regard to previous correspondence and negotiations with the owner or operator/occupier. However, it should be noted that the courts have advised that it is unhelpful to introduce private law concepts of "estoppel" into planning law as public authorities should not be estopped from exercising their statutory discretion and carrying out their public duties [R v East Sussex County Council, ex parte Reprotech (Pebsham) Ltd (2002)].

### **Risks to the County Council (costs and reputation)**

**(15) Exemptions from the LEP** - any departure from the enforcement plan must be fully justified to reduce the risks associated with the challenges set out below.

**(16) Enforceability** - A breach of planning control may not be straight forward, particularly when a site has a complicated planning history or a planning condition has been poorly drafted. The enforceability of the breach therefore needs careful consideration in relation to the likely effectiveness of the enforcement options and the potential for challenges (see below).

**(17) Maladministration** - Whilst the private citizen cannot initiate planning enforcement action, they can complain to the Local Government and Social Care Ombudsman (LGO) if the County Council does not take formal enforcement action. The Ombudsman can investigate such cases and will make a finding of "maladministration" against the County Council if they consider that effective enforcement action was plainly necessary. Such a finding could result in a recommendation to make a compensatory payment to the complainant for the consequent injustice, and could damage the County Council's reputation. Prior to raising a complaint with the LGO, anyone unhappy with the service or outcome is required to raise the complaint through the [Council's complaint process](#).

**(18) Appeals to the Secretary of State** – A person having an interest in the land to which an enforcement notice relates or a relevant occupier may appeal against the notice on any of grounds set out in Section 174 of the 1990 Act. A decision to issue an enforcement notice therefore needs to have regard to the prospects of a successful appeal against the notice. In addition, if the County Council is considered to have behaved unreasonably which has resulted in the appellant incurring wasted costs, those costs can be awarded to the appellant.

Appeals may also be made following a similar process against a notice of unauthorized development (relating to Development Consent Orders) / Nationally Significant Infrastructure Projects) under section 169 of the Planning Act 2008.

**(19) Legal challenge** – Apart from enforcement notices, there is no right of appeal against the other types of notices referred to in this LEP. However, the validity of the notices and the propriety of the County Council's decision to issue those notices may be challenged by application to the High Court for judicial review. A successful challenge is likely to lead to the award of significant costs against the County Council, and in some cases the County Council may become liable to pay compensation.

A decision not to take enforcement action or simply a failure to consider doing so can also be challenged by judicial review [R v Stroud DC Ex p. Goodenough (1982); R v Sevenoaks DC Ex p. Palley (1995)].

**(20) Costs** – The above paragraphs highlight the potential costs that the County Council can face if it loses an appeal or legal challenge against a decision to take formal enforcement action, or



a failure to take such action when necessary. It should be noted, however, that even where the County Council wins an appeal or legal challenge, it is unlikely to recover its full costs, which could be substantial. The unauthorised Dale Farm traveller site in Essex (Basildon Council) is an example of how planning enforcement costs can rapidly spiral into millions of pounds, even though technically successful. The County Council therefore needs to consider the potential costs when deciding how to resolve breaches of planning control.

To avoid incurring such costs, the County Council places a high emphasis on negotiation to resolve breaches of planning control. This includes the provision of advice to help secure voluntary 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 method of enforcement (see Section 2) to achieve compliance.

## **Human Rights, Equality and Data Protection**

**(21) European Convention on Human Rights** - The provisions of Article 1, Article 8 and Article 14 of the first Protocol are relevant when considering enforcement action. There is a clear public interest in enforcing planning law and planning regulation in a proportionate way. In deciding whether enforcement action is taken, the County Council will, where relevant, have regard to the potential impact on the health and welfare of those affected by the proposed action, and those who are affected by a breach of planning control.

When considering commencing formal enforcement action, officers must be satisfied that there has been a breach of planning control and that the activity which amounts to the breach must be stopped within the time limits set for compliance or by action to be taken through the courts in the wider public interest. In compliance with Article 6 of the Human Rights Act 1998, a recipient of a formal enforcement notice will also have the right of appeal or the right to a fair trial in the event of non-compliance with a formal enforcement notice or on receipt of a summons.

**(22) Public Sector Equality Duty** - Equality issues have been considered when drawing up this policy. The application of this Enforcement Policy will be objective and equality will be achieved by ensuring decisions are not influenced by a person's age, disability, race, religion or belief, sex, sexual orientation, gender re-assignment, marriage and civil partnership, pregnancy or maternity status. Officers will comply with the Human Rights Act and Public Sector Equality Duty and only depart from those requirements in exceptional circumstances. Officers will ensure that all enforcement action is justified, auditable, proportionate, authorised, and necessary having regard to the circumstances of the individual case.

**(23) Data Protection** - The County Council needs to hold and process personal information so that it may properly perform its statutory functions. The Data Protection Act 2018 requires that the County Council looks after personal information it holds, keep only what is needed and dispose of it in accordance with the [Council's Data Retention Schedule](#). The County Council may share personal information held where legislation allows and will have information sharing protocols in place where required. Prior to sharing information, the County Council will consider the proposed use of the information, the secure transfer of information and measures that are in place to keep the information secure once it has left the County Council's control. For further details please see the [Council's Data Privacy Policy](#). Information received, including personal data, will be treated in confidence where this is possible and where an overriding public interest does not require its processing. However, should an investigation proceed to legal proceedings then the County Council may be required to reveal information such as an individual's identity.

## **10 Resolving apparent breaches of planning control relating to County Council development**

- 10.1. This Section provides a protocol on how the County Council will deal with any breaches of planning control relating to its own development granted under Regulation 3 of the Town and Country Planning General Regulations 1992. It aims to make the process transparent and reduce the risk of intervention by the ombudsman or relevant district / borough / city council.
- 10.2. Where a breach is detected, the following steps will be taken:
- The planning enforcement case officer will contact the promoting department and seek to agree a settlement in writing, including a timetable to carry out remedial work and, if appropriate, submit a retrospective planning application. Where the promoting department is willing to comply, this will usually result in no further action being required.
  - If the works do not progress, or a commitment is not received to carry out the necessary remedial works, the matter would be referred to the Head of Planning Services to raise with the Head of the relevant promoting department/service. If agreement is reached, and the matter satisfactorily resolved, no further action will be taken.
  - In the event that the two Heads of Service are unable to resolve the breach of planning control, the matter will be referred up to the County Council's corporate leadership team for final resolution.
- 10.3. Any complainant, the local Member and the Executive Member (Planning and Regulation Committee) will be kept informed throughout.

## 11 Prosecutions and formal cautions

- 11.1 The County Council 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 30/2005 'Cautioning of Adult Offenders' and other relevant guidance.
- 11.2 Formal cautions will be issued by an appropriately authorised officer.
- 11.3 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.
- 11.4 The County Council will have regard to government guidance 'The Proceeds of Crime Act 2002 (POCA) guidance under section 2a January 2018'. Asset recovery in every case in which a defendant has benefited from criminal conduct will be considered. The authority will instigate confiscation proceedings in appropriate cases where it appears that a person convicted of offence(s) meets the definition of 'criminal lifestyle' or 'course of criminal activity'.

## 12 Nationally Significant Infrastructure Projects

- 12.1. Nationally Significant Infrastructure Projects (NSIP) are large scale projects falling into five general categories (Energy; Transport; Water; Waste Water and Waste) and from 31 December 2025, a sixth category Digital Infrastructure Projects. These are considered by the Government to be so large and nationally important that permission (an application for a development consent order (DCO)) to build them needs to be given at a national level by the responsible Government minister (the 'Secretary of State'). Thresholds for infrastructure developments considered to be nationally significant are set out in the Planning Act 2008 (PA08) as amended by the Localism Act 2011.
- 12.2. Applications for DCOs are decided in accordance with National Policy Statements (NPSs), which set out the national policy in relation to NSIPs and follow a process, which currently includes:
- pre-application engagement,
  - acceptance of the application documents by the Planning Inspectorate,
  - a pre-examination,
  - examination,
  - recommendation and
  - decision.

The process and what happens at each stage may be viewed on the Planning Inspectorate's or [.gov](https://www.gov.uk) (Nationally Significant Infrastructure Projects) websites. This includes details of how members of the public can become involved.

- 12.3. If the development is granted, the relevant secretary of state will issue a Development Consent Order which sets out the conditions of the permission the development needs to comply with. Failure to comply with the conditions is enforceable under section 173 of the Planning Act 2008 by the relevant planning authority (RPA) which is the district council the development is situated within or, if the development relates to the construction or alteration of a hazardous waste facility the County Council would be the enforcing authority.
- 12.4. The enforcement regime for a DCO is set out in Part 8 of the Planning Act 2008. Unlike enforcement under the TCPA90, as discussed in Section 9, contravening or failing to comply with a condition of a granted DCO is an immediate criminal offence, as is carrying out development of an NSIP without consent.
- 12.5. Both a breach of a condition or carrying out NSIP development without permission can be heard in either the magistrates' (subject to a maximum fine of £50,000) or Crown Court (an unlimited fine).
- 12.6. No conviction can be brought after the end of a period of four-years beginning with:
- The date when development was substantially completed or
  - The later of the date when development was substantially completed and the date on which the breach or failure to comply occurred.

The four-year period can be extended if an information notice is served or an injunction is applied for during the four-year period.

- 12.7. The investigation of an alleged breach of a DCO by the County Council will be dealt with in a similar manner to breaches of planning control under the TCPA90 (Section 8). However, due to a DCO breach immediately being a criminal offence, any action taken will be by prosecution. In view of this and the costs associated with such action, following an assessment of the expediency in taking action, the Council will endeavour to ensure that it has sufficient evidence available before deciding to prosecute.

12.8. Should a conviction be secured (i.e. the party is found guilty), the RPA can serve a notice of unauthorised development under section 169 of the PA08. Such notices can:

- contain conditions or
- require works, or
- require the removal of any unauthorised works or
- the restoration of land to its previous condition.

If the notice is not complied with, the RPA who issued the notice can take action in default by entering onto the land and carry out the work, recovering costs from the convicted party (see Appendix 3: Enforcement Tools, paragraph A18).

12.9. These notices can be appealed, subject to the appeal being lodged with the Planning Inspectorate before the notice takes effect (the same as for enforcement notices served under the TCPA90).

## 13 Our commitment

- 13.1 We aim to treat people with courtesy, respect and fairness, and we expect our staff to be treated in the same way. If staff are subject to verbal abuse or other unacceptable behaviour, in line with our policies, we may restrict communication and will request that all correspondence is in writing or recorded.
- 13.2 If someone requests a reasonable adjustment due to disability in order for us to support, communicate or otherwise engage with them, we will ensure we meet our duties and obligations as stated within The Equality Act 2010.
- 13.3 We acknowledge that some people communicate, express themselves and engage in various ways, and that often this may be due to communication barriers based on language or disability. We will always consider the needs and circumstances that we have been made aware of, before deciding how best to manage individual circumstances. This includes making reasonable adjustments.
- 13.4 Discriminatory, abusive or offensive language, behaviours and actions, based on a person's protected characteristics (as defined in The Equality Act 2010) are prohibited in law and action may be taken in regard to reporting this as a hate crime.

### **Contact Information –**

You can contact the Team in the following ways:

**E-mail:** Dev\_PlanningEnforcem@lincolnshire.gov.uk

**Via our website:** [Report a breach](#)

**Via telephone:** 01522 782070

**In writing:** Lincolnshire County Council, County Offices, Newland, Lincoln LN1 1YL

## Appendix 1: Development Plans

The Plans listed below are correct at the time of adoption of this LEP. However, omission of any Plan from this list does not mean that it does not form a development Plan.

### County and District/Borough/City Plans

Lincolnshire Minerals and Waste Local Plan, Core Strategy and Development Management Policies, June 2016

South East Lincolnshire Local Plan 2011 – 2036, Adopted March 2019

Central Lincolnshire Local Plan, April 2023

East Lindsey District Council

South Kesteven District Council Local Plan, 2011-2036

### Neighbourhood Plans

Alford Neighbourhood Plan 2018-2031

Belchford & Fulletby Neighbourhood Development Plan – up to 2041

Holton-le-Clay Neighbourhood Development Plan 2017-2031

Hormcastle Neighbourhood Development Plan 2014-2029

Skegness Neighbourhood Plan 2021-2031

Carlby Neighbourhood Development Plan 2018 to 2036

Caythorpe and Freiston Neighbourhood Plan for 2023 to 2036, May 2023

Claypole Neighbourhood Plan 2021-2036

Colsterworth & District Neighbourhood Plan 2016-2026

Corby Glen Neighbourhood Plan 2023-2036

Foston Neighbourhood Development Plan 2016-2026

Hough on the Hill Parish Neighbourhood Plan 2014-2026

Long Bennington Neighbourhood Development Plan 2016-2026

Old Somerby Neighbourhood Development Plan 2018-2036

Rippingale Neighbourhood Plan 2023-2036

Ropsley and District Neighbourhood Plan 2020-2036

Skillington Neighbourhood Plan 2017-2031

Stamford Neighbourhood Plan 2016-2036

Stubton Neighbourhood Plan 2014 to 2026

Thurlby Parish Neighbourhood Development Plan 2018-2036

The Deepings Neighbourhood Plan (2020-2036). Adopted 29 June 2021



## Appendix 2: Waste Development

The National Planning Practice Guidance states that, though interpretation is ultimately a matter for the courts, the following is a general, non-exhaustive list of matters which can be considered as waste operations:

- metal recycling sites
- energy from waste incineration and other waste incineration
- landfill and land raising sites (such as soils to re-profile golf courses)
- landfill gas generation plant
- pyrolysis/gasification
- material recovery/recycling facilities
- combined mechanical, biological and/or thermal treatment
- in-vessel composting
- open windrow composting
- anaerobic digestion
- household civic amenity sites
- transfer stations
- waste water management
- dredging tips
- storage of waste
- recycling facilities for construction, demolition and excavation waste

## Appendix 3: Enforcement Tools

- A1. **Informal action** – breaches of planning control can often be resolved without formal enforcement action where:
- the breach of planning control is the result of a genuine mistake and, once pointed out, the owner or operator/occupier takes immediate action to remedy it;
  - the breach is trivial or technical, but causes no material harm or adverse impact on the amenity of the site or the surrounding area; or
  - the development is acceptable on its planning merits and formal action would serve no purpose other than to solely regularise the development.
- A2. Not taking formal action can often be the quickest and most cost effective way of achieving a satisfactory and lasting remedy.
- A3. **Retrospective planning application** (section 73A of the 1990 Act) - the County Council may seek to avoid formal enforcement action by inviting the owner or operator/occupier to submit a retrospective application for the unauthorised development or to amend the breached condition. This would occur where, following an initial assessment, the County Council's planning officers consider that:
- the unauthorised development is likely to be acceptable subject to the imposition of planning conditions to control its impacts; or
  - in the case of a breach of condition, the condition could be amended without this resulting in unacceptable impacts.
- A4. It should be noted that such an application would need to go through the statutory planning process, which could result in issues coming to light that were not apparent during the initial assessment. Also, the application may need to go before the Council's Planning and Regulation Committee for determination. That Committee may take a different view from officers. It cannot therefore be assumed that the application would be granted. Furthermore, enforcement action may still be needed in relation to other elements of the development.
- A5. The County Council can decline to accept a retrospective application if an enforcement notice has previously been issued (Section 70C of the 1990 Act).
- A6. **Planning Contravention Notice (PCN)** (Section 171C of the 1990 Act) - a PCN may be issued by the County Council when it appears that a breach of planning control has occurred and it wants to find out more information before deciding what, if any, enforcement action to take. The notice may be served on the owner or operator/ occupier of the land, or on any person who has an interest in the land. It may also be served on any person carrying out operations on or using the land for any purpose (regardless of their interest in the land). This is a discretionary procedure and the County Council does not have to serve a PCN before considering whether it is expedient to take formal enforcement action.
- A7. A PCN may require the recipient to provide any information the County Council wants for enforcement purposes about any operations, any use, or any activities being carried out on the land. It can also invite the recipient to respond constructively about how the suspected breach of planning control may be satisfactorily remedied. Whilst the service of a PCN is not classed as formal enforcement action, a failure to complete or return it within 21 days is an offence, as is providing false or misleading information on the notice.
- A8. **Rights of entry** (Sections 196A, 196B, and 196C of the 1990 Act) – the County Council can authorise named officers in writing that where there are reasonable grounds they may enter land for the following purposes:

- to ascertain whether there is or has been any breach of planning control;
  - to determine whether any of the County Council's enforcement powers should be exercised in relation to the land, or any other land;
  - to determine how any such power should be exercised; and
  - to ascertain whether there has been compliance with any requirement arising from earlier enforcement action in relation to the land, or any other land.
- A9. The phrase "or any other land" referred to above means that if necessary neighbouring land can be entered, whether or not it is in the same ownership, or is being occupied by the person whose land is being investigated.
- A10. It is an offence to wilfully obstruct an authorised person acting in exercise of a right of entry. Notwithstanding this, where there are reasonable grounds for entering land for enforcement purposes, and entry is refused or is likely to be refused, or there is a need for urgency, then it is possible for a Justice of the Peace to issue a warrant to allow entry.
- A11. **Enforcement Warning Notice** (Section 172ZA of the 1990 Act) – the County Council may issue an enforcement warning notice inviting the recipient to submit a retrospective planning application (see Retrospective planning application above) with the aim of regularising the unauthorised development. The notice will detail the alleged breach and specify a deadline by which the application must be made. If the application is not submitted within the given timeframe, further enforcement action may be taken.
- A12. **Enforcement notice** (Section 172 of the 1990 Act) – the County Council can issue an enforcement notice if it is satisfied that it appears that there has been a breach of planning control and that it is expedient to issue such a notice. A copy of the notice is served on the owner, operator and occupier of the land to which it relates, and on any other person having an interest in the land, being an interest which, in the opinion of the County Council, is materially affected by the notice.
- A13. The notice enables every person who receives a copy to know:
- the matters which, in the County Council's view, constitute the breach of planning control; and
  - what steps are required to be taken, or what activities are required to cease to remedy the breach.
- A14. The County Council may decide not to require action to be taken to remedy the whole of the breach of planning control. This is known as "**under enforcement**". Where this occurs, and all of the requirements of the enforcement notice have been met, planning permission is deemed to be granted for those remaining operations/activities.
- A15. The notice must be served at least 28 days before it takes effect, and during this period there is a right of appeal against the notice to the Secretary of State. If an appeal is made, the notice is suspended pending the final determination or withdrawal of the appeal. Appeals are decided by an independent Planning Inspector and it will take several months, or longer in complex cases, before there is a formal decision. If there is an appeal, interested parties will have an opportunity to make representations to the Planning Inspectorate.
- A16. Once an enforcement notice takes effect, it is an offence not to comply with the steps set out in the notice within the specified time periods. A person guilty of an offence is liable on conviction to an unlimited fine. In determining the amount of any fine, the court should have regard to any financial benefit which has been accrued or appears likely to accrue in consequence of the offence. Where the County Council achieves a successful prosecution for failure to comply with an enforcement notice it can apply for a Confiscation Order under the Proceeds of Crime Act 2002.
- A17. It should be noted that an enforcement notice will be interpreted so as not to interfere with

permitted development rights. Thus, in the context of a prosecution, a defendant may put in issue whether the activity relied on as a breach of the enforcement notice is, in fact, caught by the notice.

- A18. **Direct action** (Section 178 of the 1990 Act) - where steps required by an enforcement notice to be taken are not taken within the period for compliance, the County Council may decide to:
- a) enter the land and take the steps; and
  - b) recover from the person who is then the owner of the land any expenses reasonably incurred by them in doing so.
- A19. These default powers would only be used when other methods have failed to persuade the owner or operator/occupier of the land to carry out, to the County Council's satisfaction, any steps required by an enforcement notice. It is an offence to willfully obstruct anyone who is exercising these powers on the County Council's behalf.
- A20. The County Council can prosecute for a failure to comply with an enforcement notice as well as using these default powers.
- A21. **Stop notice** (Section 183 of the 1990 Act) – The power to serve a stop notice is discretionary, but it cannot be served independently of an enforcement notice. Its purpose is to prohibit any or all of the activities which comprise the alleged breach(es) of planning control specified in the related enforcement notice ahead of the deadline for compliance in that notice. Therefore, before serving such a notice, the County Council must be satisfied that it is expedient to take such action by undertaking an assessment of the likely consequences of serving the notice. This should examine, amongst other things, the foreseeable cost and benefits likely to result from the stop notice.
- A22. A stop notice's requirements should only prohibit what is essential to safeguard amenity or public safety in the neighbourhood or to prevent serious or irreversible harm to the environment in the surrounding area. It must specify when it is to take effect, which normally must not be less than three days after the date the notice is served. However, when there are special reasons for specifying an earlier date, a statement of reasons must be served with the notice.
- A23. There is no right of appeal to the Secretary of State against the prohibitions in a stop notice. The validity of the notice, and the propriety of the County Council's decision to issue one may only be challenged by an application to the High Court for judicial review. However, where the associated enforcement notice is quashed, varied or withdrawn, or the stop notice is withdrawn, compensation may be payable by the County Council in certain circumstances and subject to various limitations as set out in the 1990 Act.
- A24. A person who contravenes a stop notice after a site notice has been displayed, or the stop notice has been served on them, is guilty of an offence and is liable on conviction to an unlimited fine. In determining the amount of fine imposed, the court should have regard to any financial benefit which has been accrued, or appears likely to accrue, in consequence of the offence.
- A25. **Temporary Stop Notice** (Section 171E of the 1990 Act) – unlike a stop notice, a temporary stop notice does not have to wait for an enforcement notice to be issued. Furthermore, while there are restrictions on the activities it can prohibit, those restrictions do not apply to mining operations, or the deposit of refuse or other waste materials. This provision therefore allows the County Council to act very quickly, where it is expedient to do so.
- A26. A temporary stop notice can be served on any of the following:
- the person who the County Council think is carrying out the activity;
  - a person who the County Council think is an occupier of the land;
  - a person who the County Council think has an interest in the land.
- A27. The County Council must display on the land a copy of the notice (together with other statutory information). The notice takes effect from the time it is displayed on site.

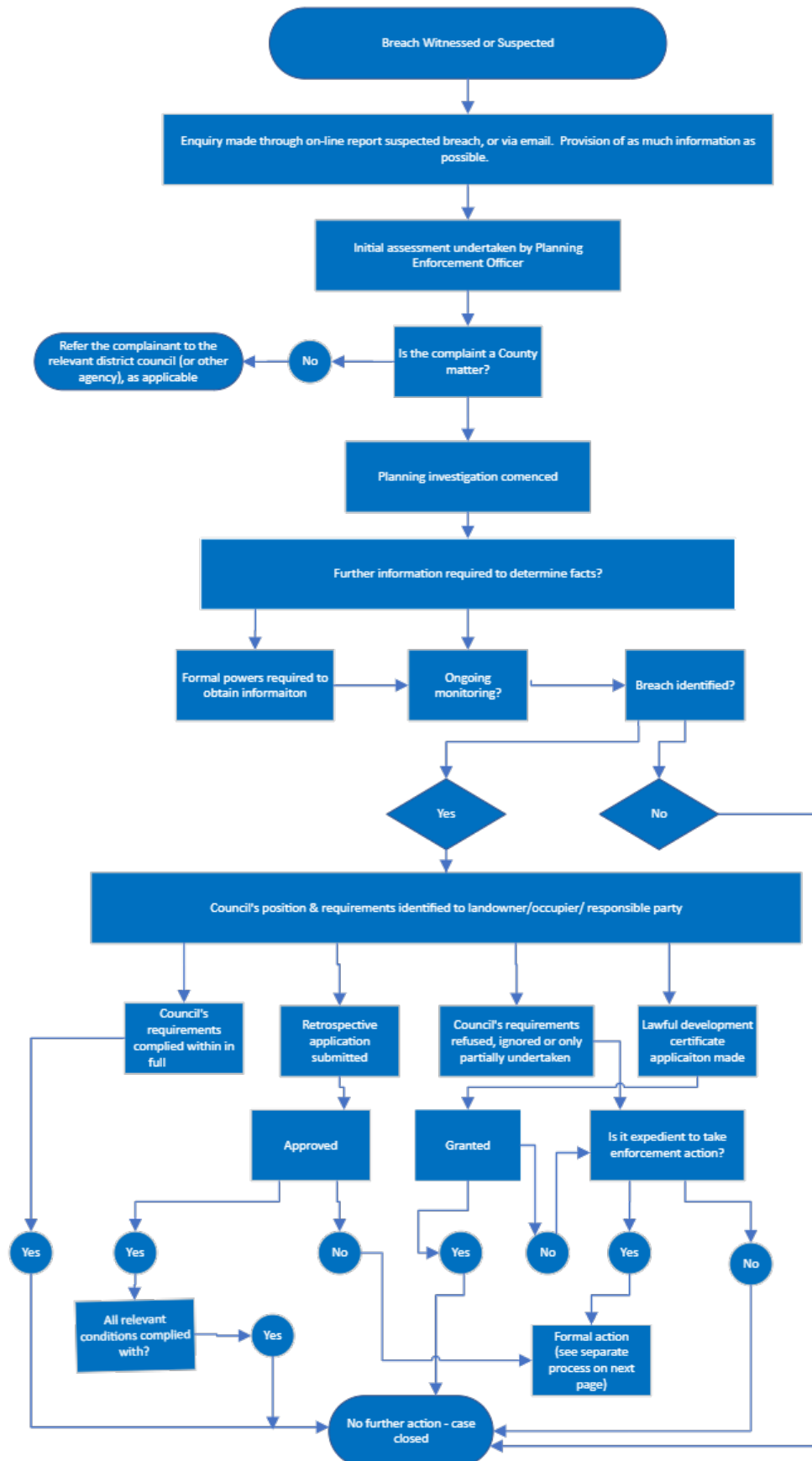
- A28. A temporary stop notice must state the activity that has to cease, and that any person contravening it may be prosecuted for an offence. The PPG advises that a temporary stop notice should only prohibit what is essential to safeguard amenity or public safety in the neighbourhood, or prevent serious or irreversible harm to the environment in the surrounding area.
- A29. Before a temporary stop notice is served, the County Council must be satisfied that there has been a breach of planning control and that it is expedient that the activity which amounts to the breach is stopped immediately. As this can have serious consequences on the recipient, the County Council is also required to undertake a quick but adequate assessment of the likely consequences of issuing the notice. This does not need to be a detailed cost/benefit assessment, but the assessment should examine the foreseeable costs to the company, operator or landowner, against whose activities the notice is directed, and weigh these against the benefits to amenity in the vicinity of the site which is likely to result from the temporary stop notice.
- A30. A temporary stop notice expires 56 days after the display of the notice on site (or any shorter period specified). There is therefore a risk that the specified activity will recommence unless an enforcement notice and stop notice is served in the interim.
- A31. Any person affected by a temporary stop notice will be able to make representations to the County Council to challenge the notice, but there is no right of appeal to the Secretary of State. The validity of the temporary stop notice and the propriety of the County Council to issue a notice may, however, be challenged by an application to the High Court for judicial review.
- A32. It is an offence to contravene a temporary stop notice. A person guilty of an offence is liable on conviction to an unlimited fine.
- A33. In very limited circumstances, compensation for any loss or damage directly attributable to the prohibition effected by the temporary stop notice may be payable by the County Council to the parties affected. The scope of the compensation is set out in section 171H of the 1990 Act.
- A34. **Breach of Condition Notice (BCN) (section 187A of the 1990 Act)** - A BCN requires its recipient to secure compliance with the terms of a planning condition or conditions specified in the notice within a period of not less than 28 days. Unlike an enforcement notice, there is no "expediency test" for the service of a BCN, and the recipient has no right of appeal to the Secretary of State. The validity of such a notice, and the propriety of the County Council's decision to serve it, may however be challenged by application to the High Court for judicial review.
- A35. A BCN may be served on:
- any person who is carrying out or has carried out the development; or
  - any person having control of the land.
- A36. Any recipient of a BCN will be in breach of the notice if, after the compliance period, any condition specified in it has not been complied with, and the steps specified have not been taken or the activities have not ceased. Summary prosecution can be brought in the magistrates' court for the offence of breaching the notice.
- A37. A breach of condition notice is mainly intended as an alternative to an enforcement notice for remedying a breach of condition, particularly where the potentially lower penalties involved would still act as a sufficient deterrent against non-compliance. It may, however, be served in addition to an enforcement notice so that, in the event of non-compliance, the County Council can still prosecute under the breach of condition notice should the enforcement notice not come into effect through the lodging of an appeal.
- A38. **Injunction (Section 187B of the Act)** – Where the County Council consider it expedient for any actual or apprehended breach of planning control to be restrained, it can apply to the High Court or County Court for an injunction. Such an application can be made whether or not the County Council has exercised, or proposes to exercise, any of its other powers to enforce planning control,

and can be sought against a person unknown.

- A39. Proceedings for an injunction are the most serious enforcement action that the County Council can take. This is because if a person fails to comply with an injunction they can be committed to prison for contempt of court. Additionally, once an injunction has been granted, it cannot be discharged except where there has been a significant change of circumstances since the order was made. Therefore, an injunction would generally only be sought as a last resort and only if there have been persistent breaches of planning control over a long period and/or other enforcement options have been, or would be, ineffective.
- A40. **S106 Planning Obligation** – In deciding whether it is necessary or expedient to seek an injunction, the County Council will need to consider whether:
- it has taken account of what appear to be relevant considerations, including the personal circumstances of those concerned;
  - there is clear evidence that a breach of planning control has already occurred , or is likely to occur;
  - injunctive relief is a proportionate remedy in the circumstances of the particular case; and in the case of an injunction sought against a person whose identity is unknown, it is practicable to serve the court's order on the person or persons to whom it will apply.

## Appendix 4 – How enforcement cases are handled

Figure 1 – Investigation of breach



**Figure 2 – Steps when formal action taken**

